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2 LAW OFFICES OF STEVEN L. MARTIN
3 11900 West Olympic Boulevard, Suite 700
4 Los Angeles CA 90064-1045
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7 Email: smartin@slmartinlaw.com

8 Attorneys for Plaintiff,
9 Facts 'n Figures, Inc.

FILED
Superior Court of California
County of Los Angeles
JAN 05 2018
Sherril R. Carter, Executive Officer/Clerk
By M. Ventura Deputy
Marisa Ventura

RECEIVED
JAN 04 2018
By: _____ Deputy
Los Angeles Superior Court

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
11 **CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE**

12 **FACTS 'N FIGURES, INC., a California**
13 **corporation,**
14 **Plaintiff,**
15 **vs.**
16 **GALLERIA PARK PARTNERS, LLC, a**
17 **Delaware limited liability company;**
18 **DOUGLAS EMMETT 1996, LLC, a Delaware**
19 **Limited Liability Company; DOUGLAS**
20 **EMMETT MANAGEMENT, LLC, a Delaware**
21 **Limited Liability Company; and DOES**
22 **1 through 20, inclusive,**
23 **Defendants.**

24 Case No. BC 587876
25 Civil Unlimited
26 [Judge Terry A. Green, Department 14]
27 **EX PARTE APPLICATION FOR ORDER**
28 **CONTINUING FSC, TRIAL AND CUTOFF**
DATES AND FOR ORDER ON MOTION
FOR SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND DECLARATION OF
STEVEN L. MARTIN
DATE: January 5, 2017
TIME: 8:45 a.m.
Complaint Filed: July 13, 2015
Discovery Cut-off: December 15, 2017
Final Status Conf. January 29, 2018
Trial Date: February 13, 2018

BY FAX

APPLICATION

25 Plaintiff, Facts 'n Figures, Inc., by and through its attorney of record herein, hereby
26 applies for an Order continuing the Trial and Final Status Conference in this matter and
27 extending the discovery and motion cut-off dates for the reasons set forth in the accompanying
28 Declaration of Steven L. Martin.

010701010

1 Plaintiff also requests that the Court sign an Order pursuant to its September 25, 2017
2 ruling on Defendants' Motion for Summary Judgment, or in the Alternative, for Summary
3 Adjudication, which Plaintiff has been informed that the Court has not had the opportunity to do
4 because of its responsibilities in the trials of other cases.

5 This case was last continued on November 1, 2017, following an Informal Discovery
6 Conference. When determining the new trial date, Mr. Martin advised the Court that he was
7 undergoing hip replacement surgery on December 18, 2017 and expected to be able to return to
8 work within a few weeks of that surgery. The trial was accordingly set for February 13, 2018.

9 Following the surgery, Mr. Martin was advised by his surgeon and home care therapists
10 that his expectations for recovery were unreasonably optimistic. As evidenced by the
11 accompanying Declaration of Steven L. Martin, his disability occasioned by the surgery limits his
12 ability to walk, climb or descend steps, sit for more than 20 minutes, to drive, and he continues to
13 experience moderate but chronic pain from the internal and external wounds caused by the
14 surgery, which requires regular pain medication, which causes frequent drowsiness.

15 Mr. Martin is not scheduled for his first post-op examination until January 10, 2018, but
16 his physician's assistant has advised him that he will likely not be able to return to work in his
17 office before the end of January. As a result, Mr. Martin will not be able to properly prepare for
18 trial in this matter until that time, which is less than two weeks from the current trial date.

19 Mr. Martin will also not be able to take the depositions of two of Defendants' witnesses,
20 which are currently scheduled for January 11 and January 12, 2018.

21 While writing this application, Mr. Martin received a January 3, 2018 letter from Guy
22 Gruppie, lead counsel for Defendants, indicating that his clients are amenable to stipulating to a
23 continuance of the Trial on the condition that Plaintiff agrees to a supplemental expert
24 designation by defendants concerning "damages". Defendants also seek an informal discovery
25 conference regarding Plaintiff's objections to questions concerning Plaintiff's financial
26 condition. In addition, Mr. Gruppie has advised that his clients have agreed to a second
27 mediation session with Judge Stone, which Mr. Martin is informed can take place in February or
28 March 2018.

1 Plaintiff therefore requests that the trial and related dates be continued for a period of not
2 less than 45 days in order to allow for counsel's recovery from surgery, the completion of
3 discovery and the desired mediation.

4 With respect to the Order on the Court's ruling on Defendants' Motion for Summary
5 Judgment, the parties asked the Court's clerk on numerous occasions since the hearing on that
6 motion as to the status of the Order on its ruling. The parties were advised that as a result of the
7 Court's responsibility in other cases, it had not yet had the opportunity to issue that Order. As the
8 Court is aware from Mr. Martin's comments during the last informal discovery conference on
9 November 1, 2017, Plaintiff intends to challenge the Court's ruling, but cannot do so by way of
10 Motion for New Trial until the Order is issued.

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **GOOD CAUSE EXISTS FOR THE REQUESTED RELIEF.**

15 California Rule of Court, Rule 3.1332 provides that a continuance of a trial may be
16 granted by way of *ex parte* application and upon an affirmative showing of good cause.

17 While the Court has broad discretion on ruling on the motion for continuance, that
18 discretion should be exercised with due regard to all interests involved, and the motion should be
19 granted where the practical effect of denying the motion would be to deny a party a full and fair
20 hearing. *Palomar Mortgage Co. v. Lister* (1963) 212 Cal.App.2d 236, 239.

21 Among the circumstances that may indicate good cause for the continuance of a trial is
22 the unavailability of trial counsel because of death, illness or other excusable circumstances.
23 CRC Rule 3.1332(c)(3).

24 As evidenced by the attached declaration and records in this action, those circumstances
25 pertain here.

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II.

**PLAINTIFF RESPECTFULLY REQUESTS THAT THE COURT SIGN AN ORDER
REGARDING ITS SUMMARY JUDGMENT RULING.**

A party intending to move for a new trial must file with the clerk and serve upon each adverse party a notice of his intention to move for a new trial either: (1) before the entry of judgment; or (2) within 15 days of the date of mailing notice of entry of judgment by the clerk of the court. C.C.P. § 659. Within 10 days after filing notice of intention to move for a new trial in a civil case, the moving party must serve and file a memorandum in support of the motion. C.R.C. 3.1600.

Thus, Plaintiff may not proceed with its motion until the order granting summary adjudication regarding several of its causes of action is issued. Plaintiff therefore requests that such an order be signed by the Court.

III.

CONCLUSION

From all the foregoing, Plaintiff Facts 'n Figures, Inc., respectfully submits that a continuance of the Trial, Final Status Conference and related cut-off dates for a period of no less than 45 days are necessary in order to ensure that the parties are afforded a chance to resolve their differences without the necessity of trial and, should trial become necessary, that all of the parties have an opportunity for a full and fair hearing of the case on its merits. Plaintiff further requests that the Court issue its order regarding Plaintiff's Motion for Summary Judgment.

Dated: January 4, 2018

Respectfully submitted,

LAW OFFICES OF STEVEN L. MARTIN

By: _____/s/
Steven L. Martin
Attorneys for Plaintiff
Facts 'n Figures, Inc.

01/10/2018

01/10/2018

EXHIBIT "1"

MURCHISON & CUMMING LLP

801 South Grand Avenue
Ninth Floor
Los Angeles, CA 90017
213.623.7400 Phone
213.623.6336 Fax

www.murchisonlaw.com

Guy R. Grupp
ggrupp@murchisonlaw.com
213.630.1089 Direct Dial

January 3, 2018

VIA E-MAIL AND FACSIMILE (310) 479-2346

Steven L. Martin, Esq.
Law Offices of Steven L. Martin
11900 West Olympic Boulevard
Suite 700
Los Angeles, California 90064

Re: Facts 'n Figures, Inc. v. Galleria Park Partners, LLC, et al.
Our File No: 37868 GRG

Dear Mr. Martin:

We hope this letter finds you recovering well.

Stipulation for Trial Continuance and Meet-and-Confer re Brian Ponchak

We are in receipt of your email correspondence of December 27 and 29, 2017 and January 2, 2018 in the above-referenced matter. This letter shall serve as a response to said correspondence and as Defendants' meet-and-confer effort regarding a motion *in limine* to exclude Brian Ponchak as an expert witness.

Defendants are amenable to stipulate to a trial continuance if Plaintiff agrees to a further supplemental expert designation by Defendants of a "damages" expert witness to counter Brian Ponchak's expert opinions.

Defendants designated Robert S. Griswold as a commercial real estate property management "liability" expert. In response, Plaintiff supplementally designated Mr. Ponchak as "an expert on lease administration and compliance issues." However, Mr. Ponchak's deposition testimony revealed that he is a "damages" expert, which is an entirely different type of expert witness than Mr. Griswold.

Please let us know whether Plaintiff will agree to a further supplemental expert designation by Defendants of a "damages" expert witness. Otherwise, to remedy this, Defendants will file a motion *in limine* to exclude Mr. Ponchak as an expert witness under the *Sargon* standards and because his opinions lie beyond the scope of the Code

01/10/2018



Steven L. Martin, Esq.
January 3, 2018
Page 2

of Civil Procedure and Evidence Code. In that event, we presume Plaintiff will oppose said motion *in limine*, but please let us know if this is inaccurate.

Bob Johnson's Deposition

We will contact Department 14 to obtain Judge Green's dates of availability in January for an informal discovery conference regarding your objections to my questions regarding Plaintiff's financial difficulties in the deposition of Bob Johnson so a mutually agreeable date can be coordinated.

Additionally, your letter dated November 22, 2017 indicates that you were advised Bob Johnson signed his deposition transcript without making any changes, but that you had not yet received the deposition transcript to confirm that was accurate. Please confirm that Mr. Johnson indeed signed his deposition transcript without making any changes.

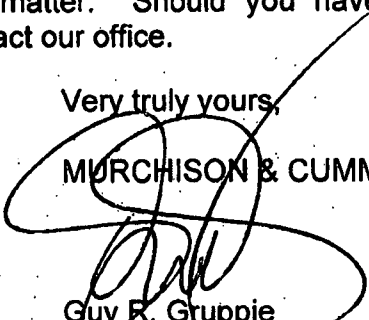
Mediation

Defendants agree to a second mediation with Judge Stone. Since you are unavailable on January 8 and 10, 2018, we will contact Judge Stone for additional dates in January and coordinate a mutually agreeable date.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,

MURCHISON & CUMMING, LLP


Guy R. Gruppie
James S. Williams
Tina H. Vo

GRG:THV

01/10/2018

**MURCHISON
& CUMMING LLP**

801 South Grand Avenue
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January 3, 2018

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Please let us know whether Plaintiff will agree to a further supplemental expert designation by Defendants of a "damages" expert witness. Otherwise, to remedy this, Defendants will file a motion *in limine* to exclude Mr. Ponchak as an expert witness under the *Sargon* standards and because his opinions lie beyond the scope of the Code

01/03/2018



Steven L. Martin, Esq.
January 3, 2018
Page 2

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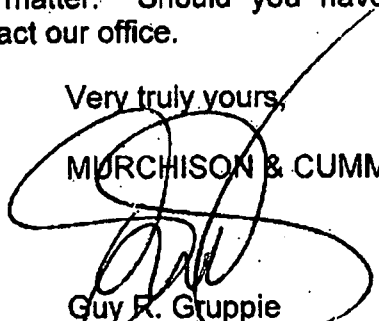
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Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,

MURCHISON & CUMMING, LLP



Guy F. Gruppie
James S. Williams
Tina H. Vo

GRG:THV

01/10/2018

01/10/2018

EXHIBIT "2"

Steven L. Martin

From: Steven L. Martin
Sent: Thursday, January 04, 2018 9:27 AM
To: ggruppie@murchisonlaw.com; tvo@murchisonlaw.com; James S. Williams (JWilliams@murchisonlaw.com)
Cc: firm (firm@slmartinlaw.com)
Subject: FW: Facts 'n Figures v. Galleria Park Partners

Counsel –

I'm a bit at sea as to why you haven't replied to my recent emails concerning the stipulation to continue the trial, but I suspect it will not be forthcoming.

Therefore, please accept this as notice that on January 5, 2018 at 8:30 a.m., in Department 14 of the Stanley Mosk Courthouse, Plaintiff will apply to the Court, ex parte, for an order continuing the FSC and trial in the referenced matter for a period of 45 days, on account of the disability occasioned by my recent surgery and my inability to attend to my duties in this matter. Plaintiff will also request that the Court continue the discovery and motion cut-off dates with reference to the new trial date.

Plaintiff will further request that the Court sign an order on its ruling on Defendant's Motion for Summary Judgment, heard on September 25, 2017.

Best,
Steven



Steven L. Martin, Esq.
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This electronic mail transmission contains information from the Law Offices of Steven L. Martin that may be confidential or privileged. Such information is intended solely for the use of the person or entity to whom the email was addressed, and use by any other party is not authorized. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this message, its contents or any attachments is prohibited. Any wrongful interception of this message is punishable as a Federal crime. If you have received this message in error, please notify the sender immediately by telephone (310.479.2345) or by electronic mail at the above address.

From: Steven L. Martin
Sent: Tuesday, January 02, 2018 2:04 PM
To: ggruppie@murchisonlaw.com; tvo@murchisonlaw.com; James S. Williams (JWilliams@murchisonlaw.com)
Cc: firm (firm@slmartinlaw.com)
Subject: FW: Facts 'n Figures v. Galleria Park Partners

Folks –

I was informed by my assistant that she called this morning to inquire as to the status of the stipulation you offered, when we spoke just prior to my surgery.

I understand that you have not yet decided to go forward with that offer and am concerned that I may have to make arrangements for an ex parte application. I am still not cleared to return to work; truth be told, I suffered a bit of a setback from pushing a little too hard to recover, much to the chagrin of my doctor and therapists. Frustrating, to say the least, but I'm on the mend and hope to be able to work full time by month's end.

Please call me on the cell or my office at your earliest convenience, so that appropriate arrangements can be made.

Thanks,
Steven



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From: Steven L. Martin
Sent: Friday, December 29, 2017 2:52 PM
To: ggruppie@murchisonlaw.com
Cc: tvo@murchisonlaw.com; James S. Williams (JWilliams@murchisonlaw.com); firm (firm@smartinlaw.com)
Subject: FW: Facts 'n Figures v. Galleria Park Partners

Counsel –

Please let me know if you will be amenable to the stipulation as soon as possible, as I will otherwise have to make arrangements for an ex parte appearance on an application to continue. I remain available by cell phone.

If we don't speak before the weekend, have a happy and healthy new year.

Best,
Steven



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From: Steven L. Martin
Sent: Wednesday, December 27, 2017 1:46 PM
To: ggruppie@murchisonlaw.com
Cc: tyo@murchisonlaw.com; James S. Williams (JWilliams@murchisonlaw.com); firm (firm@slmartinlaw.com)
Subject: Facts 'n Figures v. Galleria Park Partners

Dear Guy –

While not yet entirely ambulatory, I can now sit up long enough to pen this missive.

I have been advised by my doctor and the home rehab therapist that I was a bit too optimistic about when I would be able to return to work on a full time basis. I thought I'd be back in the saddle by now, but due to the continued instability of my hip at this point, they expect that I won't be able to have full function for another 5-6 weeks. Thus, I'd like to avail myself of your kind offer to stipulate to put the trial in this case off for at least 45 days, so that we may do battle in earnest.

We talked about the possibility of seeking the assistance of Judge Stone during the second week of January. I don't know if your clients are still interested in mediating the dispute, but if they are, we'll have to ask for a later date. I'm scheduled for my first post-op appointment with my surgeon on January 10, the date available to Judge Stone. In addition, we'll have to continue the depositions of Messrs. Griswold and Means, scheduled for January 11 and 12, respectively.

Let me know your available dates in late March/early April, and I'll prepare the stip and have my assistant deliver it to the Court – I'll appear by Courtcall.

I hope your holiday was an enjoyable one – the same to Tina and Jim.

If you need to discuss anything, I'm available on my cell: 310.779.5808.

Best wishes for a happy new year,

Steven



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01/10/2018

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 11900 West Olympic Boulevard,
Suite 700, Los Angeles CA 90064-1045. I am employed in the office of a member of the bar of
5 this court at whose direction the service was made.

6 On the date set forth below, I served the foregoing document described as:

7 ***EX PARTE* APPLICATION FOR ORDER CONTINUING TRIAL DATE;
8 MEMORANDUM OF POINTS AND AUTHORITIES;
9 AND DECLARATION OF STEVEN L. MARTIN**

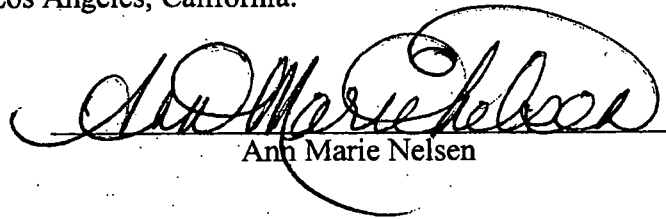
10 on the interested parties in this action listed below:

11 Guy R. Gruppie, Esq. 12 Tina Vo, Esq. 13 Murchison & Cumming, LLP 801 South Grand Avenue, 9th Floor Los Angeles CA 90017-4613 (O) (213) 623-7400; (213) 630-1068 [TV] (F) (213) 623-6336 (E) tvo@murchisonlaw.com	
---	--

14 **XX BY ELECTRONIC MAIL (EMAIL).** Based on an agreement between the parties to
15 accept service by electronic mail (Email), I transmitted the document electronically to the
16 person at their email address listed above. The transmission was reported as complete and
without error.

17 I declare under penalty of perjury under the laws of the State of California that the above
18 is true and correct.

19 Executed on January 4, 2018, at Los Angeles, California.

20 
21 Ann Marie Nelsen

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23
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28
01/10/2018