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8 Attorney for Defendants
9 DR. ALI TAVAKOLI-PARSA and
10 HARBORBD, LLC

11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

12 **700 CIVIC CENTER DRIVE WEST, SANTA ANA, CALIFORNIA 92701**

13 NIPA, INC.,

14 Case No.: 30-2013-00672091

15 Plaintiff,

16) ASSIGNED FOR ALL PURPOSES TO:
17) JUDICIAL OFFICER GREGORY H. LEWIS
18) DEPARTMENT C-26

19 vs.

20)
21) **DEFENDANT HARBORBD,LLC'S NOTICE
22) OF MOTION AND MOTION TO REQUIRE
23) CLAIMANT NIPA, INC. TO PROVIDE
24) UNDERTAKING; MEMORANDUM OF
25) POINTS AND AUTHORITIES; SUPPORTING
26) DECLARATION OF DR. ALI TAVAKOLI
27) AND DAVID JAFARI; LAW & MOTION
28) PROCEDURES FOR DEPT. C26; PROOF OF
29) SERVICE**

30 DR. ALI TAVAKOLI aka DR. ALI TAVAKOLI-
31 PARSA, HARBORBD, LLC AND
32 DOES 1 TO 100, inclusive,

33)
34) Hearing Date/Time: June 9, 2014, 10:30 A.M.
35) Dept. No. C-26
36) Judicial Officer: Hon. Gregory H. Lewis
37) Reservation No.: 855359870
38)

39 Defendants.

40)
41) Complaint filed: August 28, 2013
42) Trial date: None set
43)

44 TO EACH PARTY AND TO EACH PARTY'S COUNSEL OF RECORD:

45 YOU ARE HEREBY NOTIFIED that on the date and time set forth above under the document
46 title or as soon thereafter as the matter may be heard in Department C-26 of this court, located at 700
47 Civic Center Drive West, Santa Ana, California, 92705 defendant HARBORBD, LLC ("Harborbd" or
48 "Defendant") will, an hereby does, move for an order requiring plaintiff Nipa, Inc. the claimant herein, to
49 give an undertaking to Harborbd as a condition of maintaining the notice of pendency of action (Lis
50)

1 Pendens) that plaintiff had recorded on September 12, 2013, Document Number: 2013000532438, with
2 the Official Records of Orange County, California.

3 The motion will be made on the grounds that the undertaking is necessary to indemnify Harbordbd
4 for all damages proximately resulting from the maintenance of the notice if plaintiff does not prevail on
5 the real property claim.

6 The motion further requests that Harborbd be awarded reasonable attorney's fees and costs
7 incurred in connection with this motion pursuant to Code of Civil Procedure Section 405.38, in the
8 amount of \$ 2,097.95, against plaintiff Nipa, Inc.

9 The motion will be based on the following: this notice of motion; the attached memorandum of
10 points and authorities; the attached declaration of Dr. Ali Tavakoli; the attached declaration of David
11 Jafari; the attached Law and Motion Procedure for Department C26; the papers, records, and files of this
12 action; and any evidence presented at the hearing of the motion.

13 Dated: March 3, 2014

14 **JAFARI LAW GROUP, INC.**



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17 DAVID V. JAFARI
18 Attorney for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This is a collection action by a contractor, Plaintiff herein, for labor and material rendered. The work to be performed involved remodeling of a building intended for use as a dental office and an auto mechanic shop. On August 28, 2013, Plaintiff filed a verified complaint against HARBORBD, LLC (“Harborbd”) and its president DR. ALI TAVAKOLI (“Dr. Tavakoli”) alleging cause of actions for 1) Breach of written contract, 2) Goods sold and delivered, 3) Open book account, 4) account stated, 5) Quantum valebant, 6) Work, labor, services and materials rendered at special insistence and request of defendant, 7) Foreclosure of mechanic’s lien, and 8) breach of oral contract. Plaintiff’s complaint demanded \$55,631.50 in damages. On or around September 12, 2013, plaintiff filed a ‘Notice of Pendency of Action’ with the Orange County Clerk-Recorder alleging the above-captioned action alleges a real property claim affecting certain real property situated at 1221 N. Harbor Blvd, Anaheim, Orange of County, California 92801 (“Property”) and owned by Harborbd. Defendants secured counsel and filed a motion to strike the complaint on January 6, 2013 set to be heard on April 14, 2014.

Plaintiff's Lis Pendens has harmed Defendant by rendering the Property unmarketable. An undertaking is necessary to indemnify Harborbd for all damages proximately resulting from the maintenance of the Lis Pendens if plaintiff does not prevail on the real property claim.

II.

THE COURT IS AUTHORIZED TO ORDER PLAINTIFF TO GIVE AN UNDERTAKING AS
CONDITION OF MAINTAINING THE LIS PENDENS

As an alternative to moving for an order expunging a Lis Pendens, a party with an interest in the real property affected may seek indemnity for damages he may incur as a result of the Lis Pendens. This procedure is governed by Code of Civil Procedure section 405.34¹, which provides in pertinent parts:

Subject to the provisions of Sections 405.31 and 405.32, at any time after a notice of pendency of action has been recorded, and regardless of whether a motion to expunge has been filed, the court may, upon motion by any person with an interest in the property, require the claimant to give the moving party an undertaking as a condition of maintaining the notice in the record title. However, a person who is not a party to the action shall obtain leave to intervene from the court at or before the time the person moves to require an undertaking. The court may permit evidence to be received in the form of oral testimony and may make any orders it deems just to provide for discovery by

¹ All statutory references are to Code of Civil Procedure unless stated otherwise.

any affected party. An undertaking required pursuant to this section shall be of such nature and in such amount as the court may determine to be just. In its order requiring an undertaking, the court shall set a return date for the claimant to show compliance and if the claimant fails to show compliance on the return date, the court shall order the notice of pendency of action expunged without further notice or hearing...

Pursuant to section 405.34, Harborbd has standing to bring this motion for undertaking because it is a defendant in this action and owns the Property. The motion is ripe as the Lis Pendens was recorded on September 13, 2013, the action is pending, and the motion is filed on March 3, 2014. As the attached declarations of Jafari and Dr. Tavakoli declarations show, Defendant will suffer damages if this motion is not granted because the Property may decrease in value while the action is pending and Defendant is unable to use the Property as collateral for business loans. The undertaking is intended to cover the damages suffered by the defendant as a result of the maintenance of the notice. Section 405.34 further provides:

Recovery on an undertaking required pursuant to this section may be had in an amount not to exceed the undertaking ... upon a showing (a) that the claimant did not prevail on the real property claim and (b) that the person seeking recovery suffered damages as a result of the maintenance of the notice. *Id.*

The amount of the undertaking should also cover attorneys' fees that Harbord will incur in the defense of the case, because Harborbd can recover attorneys' fees from the undertaking. *On v. Cow Hollow*, 222 Cal.App.3d 1568, 1573 (1990)(decided under former law). The amount of Plaintiff's bond is calculated as follows:

According to Dr. Tavakoli's Declaration, the estimated value of the property is \$2,300,000. The Lis Pendens prevents Harbordbd from selling or encumbering the Property, such as using it as collateral for a loan. If the value of the property drops by just two (2) percent between the filing of Lis Pendens and trial of this case (approximately 18 months), Harbordbd stands to lose \$47,000 by not being able to sell the Property. Moreover, Dr. Tavakoli, as a practicing dentist with his own dental practice, stands to lose lost business opportunities by tying up capital in the Property. (Tavakoli Decl. par. 9; Jafari Decl. par. 3)

Harborbd's attorneys' fees to defend this are estimated to be approximately \$40,000. (Jafari Decl. par. 5)

The amount of the bond that Plaintiff should be required to post, as a condition of Plaintiff's maintaining the Lis Pendens on record, should therefore be the sum of \$87,000. If this motion is granted, the Court must set a return date for Plaintiff to demonstrate compliance. (See section 405.34)

III.

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DEFENDANT IS ENTITLED TO ATTORNEY FEES INCURRED
FOR BRINGING THIS MOTION

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Section 405.38, allows a defendant that prevails on a motion for bond under section 405.34 to recover its attorney fees. Section 405.38 provides:

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the court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

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As demonstrated by Jafari declaration, the reasonable attorney fees for bringing this motion is \$2,097.95. According, the Court should direct Nipa, Inc. to pay Harborbd \$2,097.95 as reasonable attorney's fees and costs for bringing this motion.

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IV.

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CONCLUSION

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Based on the foregoing, defendant Harbordbd, LLC requests that Plaintiff be required to post a bond in an amount no less than \$87,000, representing the amount by which Harborbd, LLC reasonably anticipates being damaged by the continued maintenance of the Lis Pendens on the record. Additionally, the Court should direct Nipa, Inc. to pay Harborbd \$2,097.95 as reasonable attorney's fees and costs for bringing this motion.

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Dated: March 3, 2014

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JAFARI LAW GROUP, INC.

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DAVID V. JAFARI
Attorney for Defendants

DECLARATION OF DR. ALI TAVAKOLI

I, ALI TAVAKOLI, declare as follows:

1. I make this declaration on my personal knowledge, unless otherwise stated. If called as a witness I can and will testify truthfully to the facts set forth in this declaration.
2. I am a named defendant to this action. I am also the president of HARBORBD, LLC (“Harborbd”), another defendant in this action.
3. I created Harborbd to hold title to the property situated at 1221 N. Harbor Blvd, Anaheim, Orange of County, California 92801 (“Property”).
4. In 2012, I caused Harborbd to purchase the Property for \$1,010,000.
5. After the acquisition of the Property, I caused approximately \$345,000 of remodeling work to be performed on the Property.
6. The Property is situated on a 27,000 square foot lot of land. It has approximately 4,100 square feet of heated and cooled space.
7. Approximately 500 square feet of the Property is leased to an auto mechanic shop at a monthly rental rate of \$2,500.
8. Based on comparison of similar properties in the vicinity of the Property, I estimate the current market value of the Property to be \$2,300,000. My valuation is based on the following breakdown: Land \$70 sq. ft., Building \$100 sq. ft.
9. There is good cause for the order sought by Harborbd in that I will suffer damages due to the Lis Pendens because the Property will be unmarketable during the pendency of the lawsuit. An undertaking is necessary to protect my financial interest in the event the Property decreases in value during the pendency of the lawsuit. Further, I have been licensed as dentist since November 22, 1999 and operate my own dental practice. The Lis Pendens will prevent me from securing business loans by using the Property as collateral, thus losing business opportunities.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on March 3, 2014 in the County of Orange, State of California.

/at/

ALI TAVAKOLI

DECLARATION OF DAVID JAFARI

I, DAVID JAFARI, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record for defendants DR. ALI TAVAKOLI (“Tavakoli”) and HARBORBD, LLC. (“Harborbd”).
2. Harborbd is seeking an order of this court to require plaintiff Nipa, Inc., claimant, to provide Harborbd with an undertaking as a condition of maintaining the lis pendens recorded by claimant in the office of the County Recorder of Orange County, City of Santa Ana, California.
3. There is good cause for the order sought by Harbordbd in that Harbordbd will suffer damages because the real property described in the lis pendens notice will be unmarketable during the pendency of the lawsuit. An undertaking is necessary to protect Harbordbd’s financial interest in the event the property decreases in value during the pendency of the lawsuit. Further, Dr. Tavkaloi, Harborbd’s president, has been licensed as dentist since November 22, 1999 and operates his own dental practice. The Lis Pendens will prevent Dr. Tavakoli from securing business loans on the Property as collateral, thus losing business opportunities.
4. My hourly billing rate in this matter is \$250. I estimate that, if this action goes to trial, I would need to spend approximately 160 hours on this matter. Thus the estimated attorney fees for handling this matter until trial is \$40,000.
5. Tavakoli has incurred expenses as follows in making this motion: I spent five (5) hours researching the law and procedure re expunging a lis penden and draft, filing, and serving this motion. I expect to spend another three (3) hours drafting any reply that might be necessitated and appearing at the hearing of this motion. My hourly billing rate in this matter is \$250. In addition, I have paid a \$90 filing fee. I also have paid \$7.95 fee for mandatory electronic service filing of said motion. Therefore, Dr. Tavakoli has incurred expenses for bringing this motion in the sum of \$2,097.95.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 3, 2014 at Aliso Viejo, California.



DAVID V. JAFARI

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LAW & MOTION PROCEDURES FOR DEPT. C26

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3 Law and Motion matters are scheduled every MONDAY AT 10:30 A.M. No reservations are
4 taken in the courtroom. By calling (657) 622-5226 the next available date(s) may be obtained. All rulings
will normally be posted on the internet by 12:00 p.m., Friday before the Monday hearing date.

5 The Court will hear oral argument on all matters at the time notice for the hearing. Counsel may obtain
6 the Court's ruling by referencing/printing a copy via the internet at www.occourts.org. A copy of the
7 Court's ruling is also posted outside the courtroom on the bulletin board for those without internet access,
no later than 8:30 a.m. on the day of the scheduled motion.

8 If you do not have Internet access, you may contact the Clerk in Department C26 (657) 622-5226 for the
9 rulings. Prevailing party is to give notice of ruling or prepare an order if required. If you intend to submit
10 on the tentative ruling without oral argument, please advise the clerk in Department C26 by calling (657)
11 622-5226.

12 A teleconference appearance by an attorney/party re: oral argument is voluntary and does not require
13 consent of the other attorneys or parties in the case. However, the Court does reserve the right to reject
14 any request, which shall be made in writing. Teleconference appearances are conducted in conformity
15 with the guidelines which are available by calling CourtCall, LLC, at (310) 914-7884 or (888) 88-
COURT. For information about CourtCall, please contact CourtCall directly, not Department C26.

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17 **UPON FILING A MOTION, MOVING PARTY SHALL MAIL A COPY OF THIS NOTICE TO**
18 **OPPOSING COUNSEL. IF OPPOSING COUNSEL APPEAR UNNECESSARILY BECAUSE OF**
19 **MOVING PARTY'S FAILURE TO GIVE NOTICE ON THE ABOVE, SANCTIONS MAY BE**
20 **IMPOSED.**

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 120 Vantis, Ste 430, Aliso Viejo, CA 92656.

On March 3, 2014, I served the following document(s);

**DEFENDANT HARBORBD,LLC'S NOTICE OF MOTION AND MOTION TO REQUIRE
CLAIMANT NIPA, INC. TO PROVIDE UNDERTAKING; MEMORANDUM OF POINTS AND
AUTHORITIES; SUPPORTING DECLARATION OF DR. ALI TAVAKOLI AND DAVID
JAFARI; LAW & MOTION PROCEDURES FOR DEPT. C26; PROOF OF SERVICE**

on the interested parties in this action, as follows:

Scott G Nathan
Law Offices of Scott G. Nathan
12241 Newport Avenue
North Tustin, CA 92705

X BY US MAIL: by placing a copy of the aforementioned documents, on the date below, in a
an envelope addressed to the party named above, proper postage paid and depositing said envelope
with US Post office.

I declare under penalty of perjury, pursuant to the laws of the State of California that the foregoing is true and correct, and that this proof of service was executed on March 3, 2014 at Aliso Viejo, California.

/s/

ARASH ALIZADEH