

SUPREME COURT COPY

Case No. S239777
IN THE SUPREME COURT OF CALIFORNIA

NEWPORT HARBOR VENTURES, LLC, et al.,
Plaintiffs and Respondents,

vs.

MORRIS CERULLO WORLD EVANGELISM, et al.,
Defendants and Appellants.

After a Decision of the Court of Appeal
Fourth Appellate District, Division Three
Court of Appeal Case No. G052660
Orange County Superior Court Case No. 30-2013-00665314

Honorable Deborah C. Servino, Judge Presiding

APPELLANTS' OPPOSITION TO RESPONDENTS' REQUEST FOR JUDICIAL NOTICE

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EVANGELISM, ROGER ARTZ and LYNN HODGE as Trustees of the
PLAZA DEL SOL REAL ESTATE TRUST

SUPREME COURT
FILED

DEC 21 2017

Jorge Navarrete Clerk

Deputy

OPPOSITION

Appellants Morris Cerullo World Evangelism, Roger Artz, and Lynn Hodge as Co-Trustees of the Plaza Del Sol Real Estate Trust (“Appellants”) oppose the motion filed by Respondents Newport Harbor Ventures, LLC and Vertical Media Group, Inc. asking this Court to take judicial notice of the purportedly “ACTIVE” status of Vertical Media Group, Inc., based on what appears to be a screenshot from a website created on an unknown date by an unknown person.

First, if Vertical Media Group has actually become an active corporation again, its “changed” corporate status is something that “relates to proceedings occurring after the order or judgment that is the subject of the appeal.” Rule 8.252(a)(2)(D). Vertical Media Group has been inactive since 2015, according to the Delaware Secretary of State. If that has changed, it violates Rule 8.252.

Second, although the website screenshot resembles that of the California Secretary of State, Vertical Media Group, Inc. is incorporated in Delaware, not California. The Delaware Secretary of State says that since March 1, 2015, Vertical Media Group has been “no longer in existence” and “inoperative and void”. This Court took judicial notice of that fact on December 13, 2017, when it granted *Appellants’* request for judicial notice of a certificate of status issued by the Delaware Secretary of State. (See Order issued Dec. 13, 2017, stating in part, “Appellants’ request for judicial notice, filed on September 21, 2017, is granted.”). Unlike a screenshot of a website taken on an unknown date and time by an unspecified person, the Delaware certificate is an official government document and was the proper subject of judicial notice. Attached as **Exhibit A** to this opposition is a true

and correct copy of the certificate from the Delaware Secretary of State, of which this Court took judicial notice in its order on December 13, 2017.

Respondents' motion does not mention Delaware at all. There is therefore nothing in their motion disputing the fact of which this Court previously took judicial notice: Delaware considers Vertical Media Group, Inc. to be "no longer in existence and good standing under the laws of the State of Delaware[,] having become inoperative and void the first day of March, A.D. 2015 for non-payment of taxes." (Exhibit A to Appellants' September 21, 2017 Request for Judicial Notice). Vertical Media Group remains "inoperative and void" today.

To confirm the corporate status of Vertical Media Group, Appellants' counsel has requested another copy of the certificate of standing from Delaware, which is expected to arrive by December 21, 2017. After it arrives, Appellants will provide a copy to this Court. Appellants expect it will confirm that the Delaware corporation known as Vertical Media Group, Inc. is still "inoperative and void," irrespective of what it says on the black-and-white screenshot provided by Respondents.

Respondents' motion should be denied because it does not comply with the statutory requirements for revivor. After this Court properly took judicial notice of Vertical Media Group's suspended/forfeited corporate status, the means of restoring its status was to obtain a certificate of revivor. "A corporation whose powers have been suspended may apply with the Franchise Tax Board for reinstatement after satisfying its obligations." See *Bourhis v. Lord* (2013) 56 Cal.4th 320, 324 (citing Rev. & Tax. Code §23305). If the statutory requirements are met, the Franchise Tax Board issues a "certificate of revivor." *Id.* "Upon the issuance of the certificate [of

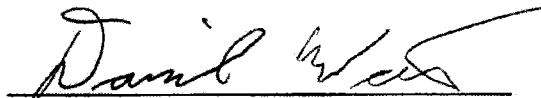
revivor] by the Franchise Tax Board the taxpayer therein named shall become reinstated but the reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture” Id. (citing Rev. & Tax. Code §23305a). Vertical Media Group has not presented a certificate of reviver or claimed that it paid its back taxes. Respondents’ motion offers only a black-and-white screenshot of a website without explanation. This is insufficient to provide the basis for judicially noticing the supposed revival of the Vertical Media Group corporation.

CONCLUSION

Appellants ask this Court to deny Respondents’ motion for judicial notice of Vertical Media Group’s corporate status, because the screenshot attached to their motion is not properly authenticated, lacks foundation, conflicts with the official certificate of status provided by the Delaware state government, and is therefore not the proper subject of judicial notice.

Respectfully submitted,

Date: December 20, 2017



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LYNN HODGE, Co-Trustees of the
PLAZA DEL SOL REAL ESTATE TRUST

Exhibit A

to Appellants' Opposition

Certificate from Delaware Secretary of State

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "VERTICAL MEDIA GROUP, INC.", WAS RECEIVED AND FILED IN THIS OFFICE THE FOURTEENTH DAY OF JANUARY, A.D. 2005.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING BECOME INOPERATIVE AND VOID THE FIRST DAY OF MARCH, A.D. 2015 FOR NON-PAYMENT OF TAXES.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION WAS SO PROCLAIMED IN ACCORDANCE WITH THE PROVISIONS OF GENERAL CORPORATION LAW OF THE STATE OF DELAWARE ON THE NINETEENTH DAY OF MAY, A.D. 2015 THE SAME HAVING BEEN REPORTED TO THE GOVERNOR AS HAVING NEGLECTED OR REFUSED TO PAY THEIR ANNUAL TAXES.



3912631 8400
SR# 20175768910

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 203102973
Date: 08-23-17

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6 Attorneys for Defendants and Appellants MORRIS CERULLO WORLD EVANGELISM, ROGER
ARTZ, individually and as Trustee of the Plaza Del Sol Real Estate Trust

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IN THE SUPREME COURT OF CALIFORNIA

9

10 NEWPORT HARBOR VENTURES, LLC, a
California Limited Liability Company; and
11 VERTICAL MEDIA GROUP, INC., a
Delaware Corporation;

CASE NO.: S239777

12

Plaintiffs,

PROOF OF SERVICE

13

vs.

14

15 MORRIS CERULLO WORLD
EVANGELISM, a California non-profit
corporation, ROGER ARTZ, individually and
16 as Trustee of the Plaza Del Sol Real Estate
Trust; and DOES 1-20, Inclusive,

17

Defendants.

18

19

20 I am employed in San Diego County. I am over the age of 18 and not a party to this action.
21 My business address is 2792 Gateway Road, Suite 102, Carlsbad, California 92009.

22

On **December 20, 2017**, I served the foregoing document(s) in this action described as:

23

**APPELLANTS' OPPOSITION TO
RESPONDENTS' REQUEST FOR JUDICIAL NOTICE**

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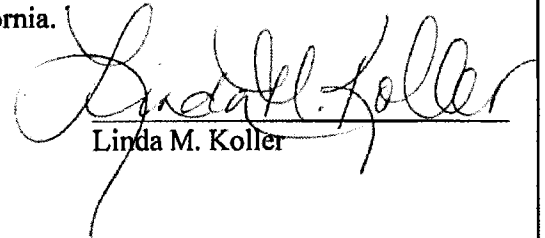
1 [X] by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as
2 follows:

3 Bradley P. Knypstra
4 Grant Hermes
5 KNYPSTRA HERMES LLP
6 2731 ½ E Coast Hwy
7 Corona Del Mar, CA 92625
8 brad@knypstralaw.com
9 grant@knypstralaw.com

10 [X] **BY U.S. MAIL** I deposited such envelopes in the mail at Carlsbad, California. The
11 envelopes were mailed with postage thereon fully prepaid. I am readily familiar with
12 GALUPPO & BLAKE's practice of collection and processing correspondence for mailing.
13 Under that practice, documents are deposited with the United States Postal Service on the same
14 day which is stated in the proof of service, with postage fully prepaid at Carlsbad, California in
15 the ordinary course of business.

16 [X] **STATE** I declare under penalty of perjury under the laws of the State of California that
17 the above is true and correct.

18 Executed on **December 20, 2017** at Carlsbad, California.

19 
20 Linda M. Koller