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14 **EXEMPT FROM FILING FEES, GOV. CODE § 6103**

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF PLACER

17 CITY OF ROCKLIN,
18 PLAINTIFF,
19 V.

20 LEGACY FAMILY ADVENTURES-
21 ROCKLIN, LLC, A CALIFORNIA
22 LIMITED LIABILITY COMPANY;
23 DAVID BUSCH, AN INDIVIDUAL;
24 AND DOES 1-10 INCLUSIVE,

25 DEFENDANTS.

CASE NO. **SCV 0042514**

COMPLAINT FOR:

- (1) FRAUD
- (2) FRAUD
- (3) NEGLIGENT MISREPRESENTATION
- (4) VIOLATION OF BUS. PROF. CODE SECTION 17200, ET SEQ.
- (5) BREACH OF CONTRACT
- (6) BREACH OF CONTRACT
- (7) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (MASTER AGREEMENT)
- (8) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (OPERATING AGREEMENT)
- (9) MONEY HAD AND RECEIVED
- (10) BREACH OF CONTRACT – ANTICIPATORY REPUDIATION
- (11) DECLARATORY RELIEF
- (12) UNJUST ENRICHMENT

BY FAX

DOWNEY BRAND LLP

1 Plaintiff City of Rocklin (“Plaintiff or the “City”) complains and alleges against
2 Defendants Legacy Family Adventures-Rocklin, LLC (“LFA”) and David Busch (“Busch”) as
3 follows:

4 **SUMMARY OF THE CASE**

5 1. David Busch and LFA conned the City. From 2013-2016, Busch’s shell entities
6 ran adventure parks in Texas into the ground—leaving cities in Texas holding the bag. Busch’s
7 adventure parks in the Texas cities, which utilized substantially the same public/private
8 partnership model as Busch utilized with the City, were operational and financial disasters. In
9 2015, the Busch entities in Texas were actively neglecting their financial and contractual
10 obligations to the Texas cities that they had partnered with. Also in 2015, the Busch entities in
11 Texas defaulted on their financial obligations to their third party lenders, resulting in the lenders
12 coming in, injecting cash, and taking over a majority interest in the entities—with Bush
13 maintaining a minority interest in the entities. But Busch left his Texas adventure parks in such
14 poor financial and operational shape in 2015 that the additional cash injection could not save the
15 entities. By mid-late 2016, the entities failed and the Texas cities ended their long term
16 agreements with the Busch entities after just two years. To make matters worse, Busch’s Texas
17 entities were under investigation by the US Government for child labor violations throughout
18 2015 and eventually cited and fined \$86,000 for the violations in 2016.

19 2. With that backdrop, Busch approached the City in March and April 2016. He
20 trumpeted his unrivaled experience and expertise in developing amusement and adventure parks.
21 Busch then made a proposal to the City for an adventure park which included a pro-forma
22 financial statement showing that if the City invested millions of dollars to build the park, he
23 would make it a financial success. And although Busch provided credentials and references, he
24 misrepresented and concealed that his only adventure park projects, which happened to be his
25 most recent projects, were abject failures that were actively being investigated for child labor law
26 violations.

27 3. The misrepresented and concealed Texas projects involved situations that are
28 eerily similar to the facts and circumstances here. In Texas, Busch touted his experience, offered

1 lofty projections, induced cities to expend millions of dollars, obtained long-term operating
2 agreements, then failed to come close to meeting his projections and left cities holding the bag.
3 He did the same thing to the City of Rocklin. His misrepresented experience and overstated
4 financial projections led the City to expend several million dollars to build an adventure park and
5 give his entity, LFA, a long-term operating agreement. But soon after his entity took over
6 operations, it failed to honor its contractual obligations and proceeded to “revise” its financial
7 projections to show that it was never going to be able to satisfy the financial obligations that it
8 owed to the City. The City proceeded to investigate. After the investigation revealed the
9 misrepresented and concealed dealings and child labor violations in Texas, the City took action to
10 permanently remove LFA and has filed this lawsuit to recoup the losses caused by LFA.

11 THE PARTIES

12 4. Plaintiff City of Rocklin is a local agency of the State of California, as defined by
13 Government Code section 6252, subdivision (a).

14 5. On information and belief, Defendant Legacy Family Adventures-Rocklin, LLC is
15 a California limited liability company incorporated on October 25, 2016 with its principal place
16 of business in El Dorado Hills, California. On information and belief, its Chief Executive Officer
17 and sole member is David Busch.

18 6. Defendant David Busch is a natural person who, on information and relief, resides
19 in El Dorado Hills, California. On information and belief, Busch is LFA’s Chief Executive
20 Officer and sole member.

21 7. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
22 true names and capacities are unknown to the City. When their true names and capacities are
23 ascertained, the City will amend this Complaint by inserting their true names and capacities
24 herein.

25 8. The City is informed and believes, and based thereon alleges, that at all times
26 relevant herein, Defendants and the Doe Defendants (collectively, “Defendants”) were and are the
27 agents, employees, and partners of each of the remaining Defendants, and were, in performing the
28 acts complained of herein, acting with the scope of such agency, employment, or partnership

1 authority.

2 JURISDICTION AND VENUE

3 9. The Court is a proper venue because LFA contracted to perform obligations under
4 the Operating Agreement to operate an adventure park in Placer County, California, and the
5 Master Agreement and Operating Agreement were both entered into in Placer County, California.
6 (Code Civ. Proc., § 395, subd. (a).) Further, paragraph 19 of Exhibit F of the Master Agreement
7 provides that “[a]ny dispute arising under this Agreement shall be venued in the Superior Court of
8 Placer County.” In addition, Paragraph 28 of the Operating Agreement provides that “venue for
9 any judicial action under this agreement shall be in Placer County, California.”

10 10. This Court has subject matter jurisdiction because the causes of action arise under
11 California state law. (Code Civ. Proc., § 410.10.)

12 11. This Court has personal jurisdiction because LFA is incorporated and has its
13 principal place of business in California, and Busch is a resident of California and will be served
14 with process in California. (Code Civ. Proc., § 410.50.)

15 GENERAL ALLEGATIONS

16 **David Busch’s Concealed History of Failings as an Adventure Park Operator**

17 12. David Busch has operated amusement parks in Texas, Hawaii, and California over
18 at least the past two decades, mostly consisting of water parks. His business model is to approach
19 municipalities with ideas for parks that appeal to a broad base of constituencies (families and
20 children), tout his experience and capabilities, offer lofty revenue projections, and then leverage
21 those concepts into agreements where the municipalities bear the burden of the capital investment
22 and give Busch a long-term operating agreement.

23 13. As the municipalities bear the risk of a substantial capital investment, Busch
24 assumes virtually no risk. He has little or no capital investment in the project. Thus, the only
25 meaningful risk he has is whatever financial obligation is included in the long-term operating
26 agreement. And that risk is mitigated by Busch’s practice of forming single purpose shell
27 companies to enter into the agreements and operate the parks. These shell companies, include,
28 for example:

- 1 • Harvest Family Entertainment LLC
- 2 • Mansfield Family Entertainment LLC
- 3 • Roanoke Family Entertainment LLC
- 4 • Hawaiian Parks-Pflugerville LLC
- 5 • Hawaiian Parks-White Settlement, LLC
- 6 • Waco Family Entertainment LLC
- 7 • Legacy Family Adventures-Rocklin, LLC

8 14. Municipalities are lured by Busch’s overstatements about his experience and
9 competence and the lofty financial projections he offers. Municipalities are also drawn to
10 Busch’s representations that his parks offer good, wholesome family fun that “brings families
11 together.” So for a municipality, the prospect of a partnership with a Busch entity is very
12 appealing—at least on its face.

13 15. Given Busch’s business model, he has very little to lose by overpromising and
14 underperforming. As a result, it is no coincidence that many of Busch’s business endeavors have
15 ended in situations where his entities fail to meet their projected expectations and a municipality
16 is out substantial sums of money.

17 16. Below is a summary of failed Busch endeavors that the City recently discovered
18 and that Busch either misrepresented or never disclosed to the City. In fact, Busch unequivocally
19 misrepresented to the City that two of the below failed ventures—city of White Settlement and
20 city of Pflugerville were highly profitable and “wildly successful.”

21 *The City of Dallas, Texas*

22 17. On information and belief, in or around 2005, Busch’s shell company, Horizon
23 Amusement Management Group, LLC, entered into a long-term agreement to operate an
24 amusement park in Dallas, Texas after the city agreed to pay for the construction of the park. On
25 information and belief, Busch failed to meet his financial projections and failed to satisfy his
26 financial obligations to the city. On information and belief, the city of Dallas terminated the
27 agreement with Busch’s company after Busch’s entity failed to satisfy its obligations.

28 ///

The City of White Settlement, Texas

1
2 18. On information and belief, in or around 2014, another one of Busch's shell
3 companies, Harvest Family Entertainment Texas, LP, entered into a long-term agreement to
4 operate an adventure park in White Settlement, Texas (a suburb of Fort Worth), after the city
5 agreed to pay \$17 million to build the park. But in April 2016, after only two years of operations,
6 the city of White Settlement terminated its agreement with Busch's shell company¹ because the
7 company failed to meet its financial projections and failed to honor its financial obligations to
8 White Settlement. In fact, at the time of termination, Busch's shell company owed almost \$1
9 million in payment obligations to White Settlement. Presently, litigation is pending in Texas
10 relating to the failed White Settlement adventure park where the city of White Settlement is
11 seeking to recoup its losses.

The City of Pflugerville, Texas

12
13 19. On information and belief, in or around 2014, another one of Busch's shell
14 companies entered into a long-term agreement to operate an adventure park in Pflugerville, Texas
15 (a suburb of Austin), after the city agreed to pay \$25.5 million to build the park. But in
16 December 2016, after only two years of operations, Pflugerville ended its relationship with
17 Busch's shell company because the company failed to honor its financial obligations to
18 Pflugerville. In fact, at the time the relationship was severed, Busch's shell company owed over
19 \$400,000 in payment obligations to Pflugerville. Furthermore, Busch's shell company failed to
20 honor its promises to deliver attractions and refused to operate and remain open for sufficient
21 periods of time to enable attendance to increase.

The City of Waco, Texas

22
23 20. Most recently, on information and belief, in March 2018, the city of Waco issued a
24 notice of default to another of Busch's shell companies that operates an amusement park in Waco.
25

26 _____
27 ¹ Because of his business failings, on information and belief, in or around May 2015 Busch was forced to give up
28 67% of his ownership interest in companies that operated amusement parks in Texas to Source Capital LLC, a private
equity firm from whom the Busch entities borrowed money and subsequently defaulted on their repayment
obligations. Busch therefore retained approximately a 33% ownership interest in these companies after Source took
majority control in the wake of the Busch entity defaults to Source.

1 The company was in default on its financial obligations and owed the city at least \$102,000. The
2 city of Waco ended its relationship with the Busch entity by summer 2018.

3 *Widespread Violations of Federal Child Labor Laws*

4 21. On information and belief, seven different Texas amusement parks that were
5 operated by Busch's entities, including the two adventure parks in Pflugerville and White
6 Settlement, were cited by the federal government for repeated violations of child labor laws
7 which occurred throughout 2015-2016. The violations included underage employees being
8 overworked beyond the legally permitted hours and underage employees working on hazardous
9 equipment and in hazardous conditions. These serious violations resulted in approximately
10 \$86,000 in government fines and penalties being assessed against Busch's shell companies.

11 **Busch Approaches the City With Proposals and Overstated Projections—While Two of His**
12 **Shell Companies Owe Hundreds of Thousands of Dollars to Cities in Texas**

13 22. On or around March 7, 2016, at a time when two of Busch's Texas entities were
14 on the brink of being terminated from long-term agreements in White Settlement and Pflugerville
15 and the entities were hundreds of thousands of dollars in debt to those cities, Busch met with the
16 City about the development of an adventure park in Rocklin. Busch pushed an adventure park
17 concept that would involve, among other things, ziplining, rock-climbing, and an elevated rope-
18 course. At that time, Busch touted his extensive experience and success with public/private
19 partnerships in the adventure and amusement park arena but never suggested, let alone disclosed,
20 that his entities in Texas were indebted to cities by hundreds of thousands of dollars and on the
21 brink of being terminated.

22 23. On or around April 22, 2016—coincidentally the same month that the city of
23 White Settlement terminated Busch's entity—Busch provided the City with an initial proposal
24 outlining his proposed adventure park. Busch proposed a framework for an agreement with the
25 City in which: 1) he would assist the City with the initial design and development of the
26 proposed park; 2) the City would pay 100% of the development costs; and 3) he would have a
27 long-term agreement for the operation of the park and would re-pay the City's development costs
28 through revenue generated by his operations. This was a substantially similar framework that was

1 causing significant financial losses to cities in White Settlement and Pflugerville.

2 24. On or around June 17, 2016, Busch provided the City with a “cash flow pro-
3 forma” document which outlined his representations regarding the adventure park’s projected
4 annual attendance, revenues, and expenses. He projected first-year attendance of 100,000 people
5 with total first-year operating profits of \$719,395. Busch projected that the attendance would
6 steadily increase each year and, during the first ten years of operation, the adventure park would
7 garner 1,384,000 visitors and generate \$9.8 million in net revenues from operations. Busch’s
8 June 17, 2016 pro-forma presented a very compelling business case for the City to move forward
9 with the adventure park. And in reliance on it, together with the City’s misinformed belief that
10 Busch was a competent and experienced operator with an unblemished record of success, the City
11 moved forward.

12 **Busch Doubles Down on His Misrepresentations and Misleading Statements to Induce**
13 **Contracts**

14 25. In the months following Busch’s initial contact with the City, and before the City
15 entered into a written agreement with him in late January 2017, Busch kicked his sales pitch into
16 high gear. He engaged in an all-out effort to induce a contract from the City that was consistent
17 with the framework he proposed in April 2016.

18 26. For example, on September 15, 2016, Busch sent an e-mail to the City’s Director
19 of Community Development, Marc Mondell, in which Busch attached documents and stated, in
20 relevant part:

21 “I hope this information attached is helpful as you consider the way forward in the
22 development of the Big Gun/Quarry Park entertainment venue...[w]e have full
23 confidence no firm can design and operate a combination adventure park and
24 theme park in a successful manner, other than LFE.”

24 27. An attachment to the same e-mail, also dated September 15, 2016, stated:

25 “You can see from the information included with this communication there is no
26 other firm in the industry that has the knowledge, experience, depth and track
27 record to meet the unique needs of the City for this project.”

27 28. Another attachment to the same e-mail, again dated September 15, 2016, stated:

28 “From Beijing, China to Philadelphia, MS, the LFE principals have built and

1 operated more themed family parks than any other group in America.” (Emphasis
2 in original.)

3 29. But most remarkably, this same attachment repeatedly pointed to Busch’s
4 amusement parks in White Settlement and Pflugerville as the primary basis that the City should
5 enter into a contract with Busch. In the attachment, Busch pointed to the fact that both White
6 Settlement and Pflugerville were particularly important to establishing that his entity was the
7 most qualified operator in the United States to operate the City’s adventure park because both the
8 White Settlement and Pflugerville parks were adventure parks as well.

9 30. Incredibly, however, as of September 2016, Busch’s entity had already been
10 terminated by White Settlement (terminated in April 2016) and was on the brink of being
11 terminated by Pflugerville (Pflugerville ended the relationship in December 2016). It was
12 obvious and apparent that both projects were failures by September 2016. Yet Busch nonetheless
13 failed to disclose any such information to the City and instead misrepresented both projects as
14 successes that justified the City’s award of a contract to his entity for the adventure park.

15 31. On January 11, 2017, approximately two weeks before the City executed a master
16 agreement with LFA, Busch sent an e-mail to the City’s Manager (at the time), Ricky Horst,
17 concerning the alleged financial success of his Texas parks. Amongst the attachments in the e-
18 mail was a chart summarizing projected profits for Busch’s seven parks in Texas. Notably, the
19 chart represented that the parks in Pflugerville and White Settlement were projected to realize
20 substantial profits for 2016. It is inexplicable why Busch, in January 2017, provided the City
21 with information indicating that Pflugerville and White Settlement were active and successful
22 parks when his companies’ operation of both parks was completely shut down by that time amidst
23 huge operational losses and unpaid obligations. This was a blatant misrepresentation by Busch
24 that was completely misleading.

25 32. On January 23, 2017, on the eve of the City entering into a master agreement with
26 Busch for the development and operation of the adventure park, City Manager Ricky Horst e-
27 mailed Busch the following:

28 “Good Morning, As I put the finishing touches on my presentation for tomorrow

1 night's city council meeting, can you please verify the follow [sic] statement from
2 a presentation you provided to me early in the process?
3 LFE: 'Currently owes [sic] seven water parks and tow [sic] adventure parks' [sic]
4 Is this still a correct statement?'"

5 City Manager Horst made this final inquiry on the eve of the City's decision to
6 enter into an agreement with Busch because this information was materially important to
7 the City's decision.

8 33. The same day, on January 23, 2017, Busch e-mailed a response to Mr. Horst in
9 which he stated: "Yes, I am currently a 30% owner of six water/adventure parks in Texas."

10 34. Busch's response: 1) was a blatant misrepresentation; 2) was evasive and
11 misleading; and 3) failed to disclose material facts. The response was a blatant misrepresentation
12 because, in January 2017, Busch neither owned nor operated any adventure parks (because
13 Pflugerville and White Settlement had both ended their respective relationships with Busch
14 entities by January 2017). The response was evasive and misleading because Mr. Horst asked
15 him about seven parks and he responded as to six. And the response also failed to disclose
16 material facts that his entities had recently had their relationships severed by White Settlement
17 and Pflugerville months prior.

18 35. The next day, January 24, 2017, the Rocklin City Council met to publicly consider
19 whether to enter into the Master Agreement with LFA. Busch was in attendance at the January
20 24 City Council meeting and spoke extensively about his past successes with adventure and
21 amusement parks and the unqualified success that the City's (yet to be constructed) Adventure
22 Park would become under his direction.

23 36. During the council meeting, Council Member Gregory Janda specifically asked
24 Busch about his adventure parks—the two in Pflugerville and White Settlement—and said to
25 Busch: "how are [those parks] received in those communities? Basically, how are they doing?"
26 Busch directly responded that the two parks were "wildly successful."

27 37. Later at the same meeting, Rocklin City Council Member Ken Broadway followed
28 up the question about the two adventure parks in White Settlement and Pflugerville and asked
Busch to confirm that the two parks were "successful" and asked Busch to elaborate. Busch

1 responded by confirming that the White Settlement and Pflugerville parks were successful.

2 38. Later at that same meeting, Busch was asked by the City Council to elaborate on
3 information that a member of the public raised regarding the cessation of operating agreements in
4 two Texas cities. Busch responded by stating that people had “been knocking on our doors for
5 the last 14 years” wanting to buy his parks. Busch went on to say that in 2015 he decided that it
6 “was a good time” to sell because he was “ready to come home” to the Sacramento area. Busch
7 then stated he sold a majority interest in the parks in 2015. Busch then stated that the entity that
8 “bought” the majority interest later sold it to a different company. Busch then stated that if the
9 City were to contact the people with whom Busch had dealt with over the years that the City
10 would get “glowing, glowing remarks.”

11 39. Immediately after the aforementioned exchange, Councilmember Janda followed
12 up by asking: “Mr. Busch, are those parks still functioning and successful, currently?” Busch
13 unequivocally and directly responded: “yes, yes.” Council member Janda then asked: “so the fact
14 that you are no longer involved is not because [the parks] went bad or the deal was bad or
15 anything like that?” Busch responded: “yes, I was on the road and I am old and did not want to
16 do it anymore.”

17 40. Busch’s aforementioned statements, in direct response to questions by council
18 members, were a combination of misrepresentations and misleading and evasive statements. The
19 Pflugerville and White Settlement parks were not “successful” or “wildly successful” at any point
20 in time, let alone on January 24, 2017, when Busch made the statements. Indeed, by January 24,
21 2017 both cities had ended their relationship with the Busch entities in the wake of significant
22 balances owed to the cities of White Settlement and Pflugerville. Busch’s statements about those
23 parks being “successful” and “wildly successful” were blatant misrepresentations. Further,
24 Busch’s statements regarding the “sale” of his majority interest in 2015 was misleading at best
25 and a blatant misrepresentation at worst. Busch concealed and failed to disclose that he gave up
26 his majority interest the entities in 2015 when his entities defaulted to their creditors while they
27 were simultaneously in default to multiple Texas cities. Moreover, even when directly confronted
28 about the termination of the relationships in the cities in Pflugerville and White Settlement, Busch

1 provided a misleading and evasive response and never disclosed that both cities ended their
2 operating agreements with Busch's entities in 2016 due to the failure of those entities to honor
3 their financial and contractual obligations to the cities.

4 41. Throughout its extensive involvement with Busch, the City was never aware of the
5 following material facts, which the City only recently discovered and now alleges on information
6 and belief:

- 7 • In 2008, the city of Dallas terminated one of Busch's entities from a long-term
8 agreement when the entity failed to meet its financial obligations to the city of
9 Dallas;
- 10 • In 2015, Busch lost a majority interest in his Texas entities while in default to third
11 party lenders and Texas cities;
- 12 • In April 2016, the city of White Settlement terminated its long-term agreement
13 with one of Busch's entities because the entity was indebted to the city by almost
14 \$1 million since Busch's entity failed to honor its obligations;
- 15 • In July 2016, the federal government issued citations and fined Busch's various
16 Texas entities approximately \$86,000 for violation of child labor laws;
- 17 • In December 2016, the city of Pflugerville ended its long-term agreement with
18 another one of Busch's entities because the entity was indebted to the city by
19 almost over \$400,000;
- 20 • In March 2018, the city of Waco issued a notice of default to another one of
21 Busch's entities because Busch's entity was over \$100,000 behind on its
22 obligations to the city. The City of Waco then proceeded to end its relationship
23 with Busch's entity in summer 2018.

24 42. As Busch touted his alleged prior success and held himself out to be an unrivaled
25 theme park magnate, he repeatedly misrepresented himself and misled the City regarding his
26 checkered past, including his numerous prior business failings and violation of federal child labor
27 laws.

28 ///

The City Enters into the Master Agreement with LFA

1
2 43. In reliance on Busch’s misrepresentations, misleading statements, and
3 concealments, and without knowledge of the history of failures with Busch’s entities or the child
4 labor law violations and citations, the City entered into a written agreement entitled “Rocklin
5 Adventure Park Master Agreement” (the “Master Agreement”) on or about January 24, 2017 with
6 LFA—which was a single purpose entity formed by Busch to operate the City’s adventure park.
7 The Master Agreement set forth three phases for the development and operation of the adventure
8 park. In the first phase, LFA agreed to “produce a Design/Development Package to the thirty
9 percent design level” that would “include schematic drawings and information required for a
10 request for proposals for a design build construction of an adventure park similar to the proposed
11 site plan” In the second phase, LFA agreed “to provide advice and assistance in the final
12 design and construction phase (Design Build Phase) of the Project.” Finally, in the third phase,
13 LFA agreed to “operate the Project and its related activities on the Project Site in the manner and
14 as set forth in the Operating Terms” The Master Agreement contemplated that the City
15 would retain a third party contractor to complete the design of the park and construct it and that
16 the City would pay for the construction of the park. The Master Agreement also provided that the
17 City’s investment in the development and construction of the park would be completely recouped
18 over time, together with interest, out of LFA’s profitable operation of the park.

19 44. The Master Agreement included a section entitled “General Contract Terms,” the
20 provisions of which generally governed all phases of the parties’ relationship. The relevant
21 provisions of the Master Agreement’s General Contract terms provided:

- 22 • LFA shall devote such time to the performance of services pursuant to this
23 Agreement as may be reasonably necessary for the satisfactory performance of
24 LFA’s obligations. (Para. 3.)
- 25 • LFA shall only assign competent personnel to perform services. (Para. 7.A.)

The Parties Proceed with the Agreement

26
27 45. Once the parties signed the Master Agreement, they pressed forward with the
28 design and construction phases of the adventure park.

1 \$490,000. In the first three years, Busch represented operating profits of over \$2
2 million.

- 3 • On August 14, 2017, Busch e-mailed the City with another pro forma, representing
4 attendance at 95,000 for the first full year and year one operating profits of
5 \$498,160. Busch still projected operating profits of over \$2 million for the
6 adventure park's first three years of operation.
- 7 • On March 28, 2018, Busch e-mailed the City with "the correct projected pro
8 forma." It represented year one attendance of 95,000 and year one operating
9 profits of \$498,160. Once again, Busch projected operating profits of over \$2
10 million for the adventure park's first three years of operation.
- 11 • As detailed below, the parties signed an amended Operating Agreement in April
12 2018, which contained a pro forma as Exhibit G. It represented year one
13 attendance of 95,000 and year one operating profits of \$498,160. Again, Busch
14 projected operating profits of over \$2 million for the first three years of operation.

15 51. Based on the misleading picture that Busch had painted of himself, the City's
16 resulting belief in Busch's competence and credibility (and lack of knowledge of his checkered
17 past), and Busch's repeated representations about the adventure park's projected attendance and
18 profitability, the City entered into a written agreement entitled "Amended and Re-Stated
19 Adventure Park Operating Agreement" with LFA on or about April 24, 2018 (the "Operating
20 Agreement"). The Operating Agreement was largely similar to the operating agreement that was
21 included as part of the Master Agreement but included several modifications to the previous
22 version.

23 52. The Operating Agreement set forth the rights and obligations of the parties with
24 respect to LFA's operation of the adventure park.

25 53. Notably, the Operating Agreement specifically set forth the City's heavy reliance
26 on Busch's representations regarding his experience and expertise. At paragraph 6.2.2.b., it
27 stated: "The City enters into this Operating Agreement with LFA based on its experience and
28 history of operating similar facilities."

1 54. Some of the most critical terms of the Operating Agreement were its financial
2 terms. Pursuant to paragraph 9.1, LFA was required to repay the City the amount of the City's
3 investment in the park in full, with interest (at 4%), quarterly, over twelve years beginning July 1,
4 2018. The proceeds for each payment would derive from the adventure park's net operating
5 revenue, and the payments were to be interest only for the first three years, then to be amortized
6 with principal and interest over the remaining nine years. The provision also provided that LFA
7 would contribute \$60,000 per year towards a capital improvement account and further provided
8 that LFA and the City would share the remaining proceeds generated by net operating revenues
9 such that the City would receive 35% and LFA would receive 65%. Significantly, paragraph 9.2
10 provided that the capital improvement account "shall be established to provide the City access to
11 the funds in the event of a shortfall of Gross Revenue to cover the City's Debt Service Payment
12 as outlined in Section 9.1." Thus, at minimum, LFA was to pay the City \$40,000 annually.

13 55. Paragraph 7.3.4 of the Operating Agreement further provided that the City would
14 advance LFA pre-opening expenses in the amount of \$150,000, plus an additional \$90,000, for a
15 total of \$240,000 in pre-opening expenses. Further, LFA agreed to repay \$90,000 of the pre-
16 opening expenses during the first year of operation.

17 56. The Operating Agreement set forth numerous other obligations relating to LFA's
18 operation of the adventure park and its financial obligations to the City.

19 **The City Issues \$240,000 in Pre-Opening Expenses**

20 57. Between September 2017 and July, 2018, the City issued a total of \$240,000 in
21 pre-opening expenses to LFA under the Operating Agreement.

22 58. As set forth above, the construction of all of the elements of the adventure park
23 was completed in September 2018 and all of the elements were turned over to LFA for operation
24 in mid-late September 2018.

25 **LFA "Revises" its Financial Projections to Reflect that Its Operations Will Not Generate 26 Sufficient Revenue to Honor Its Financial Obligations**

27 59. LFA opened all of the elements of the adventure park to the public in mid-late
28 September 2018. From that time, the proverbial leopard began showing its spots and it has since

1 become apparent that the adventure park, under Busch's direction, would be another one of
2 Busch's operational failures.

3 60. On October 4, 2018, several months after the execution of the Operating
4 Agreement and just weeks after opening all of the elements of the adventure park to the public,
5 LFA provided the City with "revised" pro forma projections (the "10/18 Pro-Forma"), which
6 contained startling figures never before disclosed or contemplated by the City. The "revised" pro
7 forma projected attendance at a meager 62,000 for the first year and year one operating profits of
8 only \$194,800—which was \$300,000 less than included on the pro-forma LFA provided just 6
9 months prior. LFA further projected for the first time that operating profits for the first three
10 years would total less than \$600,000—not the \$2 million originally projected on numerous
11 occasions, including as recently as April 2018. The projections were even more daunting when
12 viewed over a 10-year span. It projected attendance over the first 10 years at 710,761—about
13 half of the 1,384,000 attendees that virtually all of Busch's prior pro-formas represented.

14 61. The 10/18 Pro-Forma unequivocally established that LFA would never meet its
15 financial obligations to the City. The City became extremely concerned about Busch and LFA's
16 competence and credibility at that point. What followed were numerous meetings and the
17 beginning of an investigation into Busch's background.

18 **LFA Disregards Numerous Other Contractual Obligations**

19 62. In accord with paragraph 9.1(a)(i) of the Operating Agreement, the City sent an
20 invoice on October 23, 2018 requesting the first quarter interest-only debt service payment of
21 \$40,000, due by November 15, 2018. This invoice was based on the adventure park's anticipated
22 total debt service principal of \$4,000,000 and accrued interest owed to the City of \$40,000 at the
23 time the invoice was sent. To date, this invoice has not been paid.

24 63. Paragraph 10.2 of the Operating Agreement requires that LFA keep true and
25 accurate books and records showing all its business transactions concerning its operations on the
26 adventure park in a format and manner acceptable to the City. At LFA's request, the City
27 purchased a point-of-sale system for LFA's use. Even though the City has made repeated
28 requests for LFA to demonstrate its point-of-sale system, LFA has failed to provide a