

October 26, 2022

**VIA EMAIL ONLY**

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**Re: Global Discoveries, Ltd.  
Contra Costa County Policy Regarding Claims for Excess Proceeds**

Dear Supervisors:

My office represents Global Discoveries, Ltd. (“**Global**”). As you likely know, Global assists others in recovering lost or unclaimed assets on their behalf, including excess proceeds from tax sales (“**Excess Proceeds**”), and performs these services solely on a contingency basis. In other

words, neither Global nor its clients receive any compensation until Global successfully receives the subject asset.

I assume you are also aware of the lawsuit entitled *Global Discoveries, Ltd., v. County of Contra Costa, et al.*, which Global initiated against Contra Costa County (the “**County**”) on January 31, 2019, after the County denied Global’s claim for Excess Proceeds as a result of Global failing to submit supporting documentation within a year of the recordation of the deed from the tax sale. The trial court sustained the County’s demurrer to Global’s complaint, reasoning that the County’s denial of Global’s claim was consistent with the County’s claim policies:

Here, Global's deadline to submit a complete claim, including ‘all necessary supporting documentation,’ was March 21, 2019: one year after the tax sale deed was recorded. Global sent the judgment to the Treasurer Tax Collector five months after that deadline had passed. Respondents had proceeded in a manner consistent with the Claims Policy and already denied the claim. We thus conclude that Global has not shown an abuse of discretion on this basis. (Cf. *Verdugo Hills Hospital, Inc. v. Department of Health* (1979) 88 Cal.App.3d 957, 963 [abuse of discretion ‘may be established if, among other things, the administrative agency has not proceeded in the manner required by law’].)

Although the issue in the foregoing action was merely whether the County’s denial of Global’s claim was consistent with the County’s claim policies, subsequent to the trial court’s ruling Global discovered significant evidence revealing that the County has engaged in a pattern and practice of discriminatory conduct in applying such policies, as discussed in detail below. Since the evidence substantiating the County’s disparate treatment of Global now gives rise to claims for violation of due process and equal protection, among others, Global has requested that I bring this matter directly to your attention with the hope of avoiding further litigation.

### **The County’s Claim Policies**

In March of 2015, the County’s Board of Supervisors (the “**Board**”) adopted Resolution No. 2015/68, establishing the “Contra Costa County Policy Regarding Claims for Excess Proceeds” (the “**2015 Policy**”), which in turn set forth the rules and procedures governing the distribution of Excess Proceeds. Through Resolution No. 2017/301 adopted in August of 2017, the Board amended the 2015 Policy “to include updated requirements, as recommended by the County Treasurer-Tax Collector” (the “**2017 Policy**”) (the 2015 Policy and the 2017 Policy are collectively referred to as the “**Claim Policies**”).

The “Claim Requirements” section of the Claim Policies states:

As described below, each claimant must submit a completed Contra Costa County Treasurer-Tax Collector's Excess Proceeds Claim Form and supporting documentation, which provides information and proof of the claimant's right to all or any portion of excess proceeds. [Emphasis added.]

Appendix A to the Claim Policies identifies the “supporting documentation” specifically required for each type of claim. For example, under the 2015 Policy, one of the requirements for lienholders of record is that they must submit the original promissory note. However, this requirement was subsequently revised under the 2017 Policy to allow a certified copy of the note. The revised section now reads as follows:

- i. The original or certified copy of the promissory note and all amendments or other modifications (if any) on the tax-defaulted property.
  - a) The only alternative to providing an original or certified copy of the promissory note is a court order pursuant to California Civil Code section 3415, which establishes the existence and terms of a lost note.

The “Submission of Claim” section of the Claim Policies identifies the deadline for submitting claims and supporting documentation, stating in relevant part:

- a. The deadline (the ‘Deadline’) to file a completed claim with the Contra Costa County Treasurer-Tax Collector's Office is one (1) year following the date of the recording of the deed to the purchaser of the tax-default property. The claim shall be postmarked on or before the one-year expiration date to be considered timely.
  - i. A claimant may not file or amend a claim after the Deadline. It is the claimant's sole responsibility to timely submit a complete claim, including all necessary supporting documentation.
  - ii. A claimant may not rely on the Treasurer-Tax Collector's Office to approve or request information to supplement incomplete claims.

Subdivision (d) of the “Preliminary Claim Review” section of the 2015 Policy, prior to being revised by the 2017 Policy, stated: “The Treasurer-Tax Collector’s Office will not accept claims, amendments to claims and supporting documentation after the Deadline.” The revised version under the 2017 Policy no longer includes reference to the phrase “and supporting documentation,” and now simply states: “The Treasurer-Tax Collector’s Office will not accept claims or amendments to claims after the Deadline.” While the purpose of this specific revision was clearly to allow the County to accept “supporting documentation” submitted by a claimant “after the Deadline” when the County *chose* to do so, as I am sure you know it is unlawful for the County to exercise such discretion in a discriminatory manner. Unfortunately, as discussed more fully below, it appears the County is engaging in such discrimination with respect to my client, Global.

### **The County Has Utilized Its Statutory Discretion To Discriminate Against Global**

On February 21, 2019, Global timely submitted a claim to the County for Excess Proceeds related to a real property that was secured by a deed of trust.<sup>1</sup> The County's 2017 Policy, which governed this claim, required that Global's claim include the original or certified copy of the promissory note or, if the note could not be located, a court order establishing the existence and terms of the note. Since the promissory note could not be located, Global had filed a complaint in Contra Costa Superior Court to establish the existence and terms of the lost note prior to submitting its claim for Excess Proceeds to the County.<sup>2</sup> Since the judgment had not yet been issued by the time of Global's submission, which is certainly not surprising considering the pace at which the wheels of justice often move, Global noted in its claim that it was "currently in the process of obtaining a court order to reprove the Note" and enclosed therewith a copy of the complaint filed in the action.

On August 15, 2019, the County notified Global that its claim had been denied for failure to submit the "supporting documentation" by the deadline. In a subsequent email from the County to Global, the County explained the basis of its denial, stating:

After a careful review of the claims received for excess proceeds resulting from the tax sale of APN 073-042-004, the Treasurer-Tax Collector determined that Global Discoveries had failed to submit documentation necessary to establish its rights to all or any portion of the excess proceeds, or a court order to obtain the necessary documentation. Global Discoveries **failed to submit such documentation within one year following the date of recording of the deed to the purchaser of the Property, as required by the Revenue and Taxation Code and the County Policy Regarding Claims for Excess Proceeds.** Based on Global Discoveries' failure the Treasurer-Tax Collector denied the claim.

When Global thereafter received the judgment establishing the terms of the lost note on August 27, 2019, it promptly sent correspondence to the County on August 30, 2019, enclosed a copy of the judgment and inquired whether the County was standing by its denial of the claim. Despite its clear authority to exercise its discretion to accept the supporting documentation under the 2017 Policy as set forth above, the County informed Global it was "standing by its decision" and refused to consider the documentation.

By contrast, the evidence recently obtained by Global reveals that the County has actually resorted to *violating* its own policies in favor of claimants other than Global and, quite egregiously, has done so even when such violation would be to Global's detriment. For example, Parcel Number 095-042-016-6 (Item 123) was sold at a property tax auction by the

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<sup>1</sup> The deed from the tax sale was recorded on March 21, 2018, and the former lienholders assigned their interests in the Excess Proceeds to Global..

<sup>2</sup> The unpaid balance on the note was \$150,064.51.

County on February 23, 2016, for \$172,200.00, resulting in excess proceeds in the amount of \$154,682.00. On March 8, 2017, a claim for Excess Proceeds in the amount of \$154,682.56 was filed with the County by Hinshaw & Culbertson LLP (“**Hinshaw**”) on behalf of Bank of America (the “**BofA Claim**”).<sup>3</sup> Global also filed a claim on this property in the same amount as the BofA Claim. In the County’s April 6, 2017, “Acknowledgement of Claim for Excess Proceeds Received” form (“**Acknowledgement**”) to Hinshaw, the County checked the following box:

The claim was timely received but incomplete. Please refer to the County of Contra Costa Policy Regarding the Submission of Claims for Excess Proceeds, which contains the instructions for filing a claim. The policy may be downloaded at [www.cctax.us](http://www.cctax.us).  
**PLEASE REVIEW SECTION 3A (attached)**

Since the 2017 Policy had not yet been adopted by the County, this claim was governed by the 2015 Policy, which unequivocally *required* that the original promissory note be submitted with any claim for Excess Proceeds, with no exceptions. Not only did BofA fail to submit the original promissory note with its claim, BofA did not even submit a copy of the note. Instead, by correspondence dated April 27, 2017, after expiration of the deadline, Hinshaw notified the County that neither the original nor a copy of the promissory note could be located, and requested that the County accept a declaration attaching the HELOC agreement, as previously submitted with its claim, as alternative proof of the terms of the note. In direct violation of its own 2015 Policy, the County reversed course and approved the BofA claim.

Incredibly, the County not only violated its 2015 Policy in approving the BofA Claim, but did so to Global’s direct detriment by denying Global’s claim due to the seniority of the BofA Claim. In other words, had the County followed its express 2015 Policy, the Excess Proceeds of \$154,682 would have been paid to Global, not BofA. Adding insult to injury, the County expressly concealed from Global the fatal defects of the BofA claim. Specifically, a handwritten note from the County, on May 2, 2017, states: “Spoke w/ Jed Byerly @1pm explaining that claim was denied due to BofA claim as lien holder. GD. will not challenge BofA claim.” This documentation and correspondence are enclosed herewith as **Exhibit A**.

The outcomes in the two examples referenced above involving Global obviously leave Global with more questions than answers. The County refused to accept the allegations of the complaint filed in the Contra Costa Superior Court as evidence of the terms of the promissory note, which even the trial court found to be more than sufficient in issuing the judgment. Further, despite the County’s clear discretion under its 2017 Policy to accept that judgment submitted by Global after the deadline, the County refused to do so. Yet, for BofA, the County not only accepted documentation other than the promissory note itself when its 2017 Policy expressly prohibited it from doing so, but chose to violate its own policy to the detriment of Global.

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<sup>3</sup> The final date to submit the claim was March 11, 2017.

Unfortunately, as Global has recently discovered, the two foregoing examples involving Global are not isolated incidents. Included below are further examples of the County selectively choosing not to enforce its Claim Policies against claimants for Excess Proceeds:<sup>4</sup>

1.     APN:                     534-082-024-9  
        Item No.:            67  
        Deadline:           6/5/2016  
        Claimant:           Tina Ha of Castleroy California Corp. for Semisi Moala,  
                                       Malia Moala and Telesia Malia Salt  
        Claim Amount:       \$86,983.37  
        Amount Received:   \$78,763.71

On June 12, 2016, after the deadline to submit a claim, and while the 2015 Policy was in force (expressly precluding the County from accepting supporting documentation submitted after the deadline), the claimant emailed the County supplemental paperwork regarding the claim stating, in relevant part:

Would you please do us a great favor and put this ID in the package that we sent you?

You should receive a physical copy for your filed by next Tuesday 6/14.

Thank you so much for all your help!

In addition, in a handwritten note that stated “Death Cert after due date”, the County acknowledged accepting further supplemental documentation after the purported deadline related to this claim. On August 9, 2016, the County notified the claimant that its records indicated that the claimant filed her claim for Excess Proceeds on or about June 3, 2016, and that that it had accepted the claim.

2.     APN:                     430-122-001-0  
        Item No.:            169  
        Deadline:           3/13/2016  
        Claimant:           Frank Connelly  
        Claim Amount:       \$190,000.00  
        Amount Received:   \$12,325.45

On March 10, 2016, the County received the above referenced claim from the claimant which included a copy of the deed of trust as evidence of its lien. On March 14, 2016, a day after the purported deadline to submit a claim, and again while the 2015 Policy was in force, the claimant faxed a notarized copy of the claim of the same date. In a handwritten note, the County

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<sup>4</sup> These examples are not intended to be an exhaustive list.

acknowledged that the supplemental documentation was received after the deadline stating, "Notary 1 day after due date."

On May 11, 2016, nearly two months after the purported deadline, the claimant faxed Eric Moe of the County the following:

Statement regarding Claim for Excess Proceeds- Parcel number  
430-122-001-0 Item number 169

I recently put in a claim for excess proceeds on the above property in the amount of \$190,000. This represents the original Principal on the First Deed of Trust. It should be noted that the note also required annual interest of 10% which over a 7 year period from 2008-2014 would amount to an additional \$133,000.

I never received any payments from Mr. Pereira. There was always one excuse after another.

If you have any further questions, please contact me at  
925-683-0856.

Without an original of the promissory note (as required by the County's 2015 Policy), or even a copy of the note, and despite the fact that the claim was not complete by the deadline as required by the 2015 Policy, the County notified the claimant on May 25, 2016, that its records indicated that the claimant filed his claim for Excess Proceeds on or about March 10, 2016, and that that it had accepted the claim. This documentation regarding the examples cited above is enclosed herewith as **Exhibit B**.

Additional examples of the County selectively choosing not to enforce its Claim Policies against claimants for Excess Proceeds are enclosed herewith as **Exhibit C**.

Finally, I want to note that the foregoing discriminatory conduct employed against Global is not isolated to the County. Based upon the evidence discovered by my client, it is clear that several counties within California have formed an alliance and have been conspiring against Global and the few other companies engaged in the same business by adopting, revising, and discriminately applying their claim policies. Unfortunately, it appears that such counties are justifying their conduct on the mistaken belief that Global and its peers are taking advantage of individuals who would otherwise be inclined to submit their own claims for Excess Proceeds, when in fact the truth is that most individual potential claimants are not even aware of their right to claim such proceeds. For example, an email dated August 7, 2019, from the Tax Collector for the County of Madera, Tracy Kennedy, states in relevant part: "Thank you for establishing our first ever Excess Proceeds Policy! ... I really like that you embolden the part that tells taxpayers they can do their own claims .. hopefully more of them will and cut global discoveries out of a million or so dollars." Based upon this and other evidence discovered by Global that reveals and discriminatory pattern and practice quite similar to the examples set forth above involving the County, Global filed a lawsuit against the County of Madera and others in the Superior Court of California, County of Madera, identified as Case No. MCV084356.

## **Legal Violations**

### ***Due Process and Equal Protection Violations***

The County's selective enforcement of its Claim Policies violates the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution as well as the analogous due process provisions of the California Constitution. The Due Process Clause bars local governments from depriving any person of life, liberty, or property without due process of law. Here, it appears the County has created an irrational distinction between Global and the other Claimants in its practice of selectively choosing when to enforce its Claim Policies and has demonstrated a pattern of abuse and arbitrary action, thereby depriving Global of due process as guaranteed by the Fourteenth Amendment Constitution of the United States.

The County's selective enforcement of the Claim Policies and its discriminatory practices against Global also violates the U.S. Constitution and California Constitution's Equal Protection Clauses (the "Equal Protection Clauses"). The Equal Protection Clauses provide for "equal protections of the laws."<sup>5</sup> This guarantee is "essentially a direction that all persons similarly situated should be treated alike" and "secure[s] every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

In reviewing the claims for Excess Proceeds that have been approved contrary to its Claim Policies, it is clear that the County is implementing its Claim Policies in an arbitrary manner and not treating similarly situated persons alike. As set forth by the examples provided above, it is clear that the County's actions and disparate treatment of Global have been unreasonable, arbitrary and capricious, and in violation of state and federal laws. What the equal protection guarantee prohibits is state officials' purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis. (*Cilderman v. City of Los Angeles*, 67 Cal. App. 4th 1466, 80 Cal. Rptr. 2d 20 (2d Dist. 1998).)<sup>6</sup>

### ***Civil Rights Violations***

Section 1983 of Title 42 of the U.S. Code, enacted by Congress pursuant to section 5 of the Fourteenth Amendment, creates an action for damages, and injunctive relief against individuals and local governmental bodies who deprive a plaintiff of rights, privileges, or immunities

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<sup>5</sup> U.S. Const. amend. XIV, § 1; Cal.. Const. art I, § 7(a)

<sup>6</sup> The Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the plaintiff does not allege membership in a class or group, but alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for such treatment. (See, e. g., *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441. )



“secured by the Constitution and laws.”<sup>7</sup> This cause of action is available to “any citizen of the United States or other person within the jurisdiction thereof” suffering the deprivation of a federally protected right.<sup>8</sup>

Action under color of state law is action taken with the appearance that the state government authorizes the action. Public employees act under the color of state law when they are acting in their official capacity or exercising the authority that state law gives them, even if they abuse that authority. (*Monroe v. Pape*, 365 U.S. 167, 184 (1961); *Monell v. Dep’t of Social Servs.*, 436 U.S. 658 (1978).) If a municipal “policy or custom” is the “moving force” of a constitutional violation, liability against a local government can be established under Section 1983. A municipal “policy or custom” may take the form of the following:

- A formal regulation or policy statement.
- An informal custom amounting to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled that it constitutes a custom or usage with the force of law.
- The decisions of employees with final policymaking authority.
- The ratification by these final policymakers of the decisions, and the basis for them, of subordinates to which authority was delegated subject to these policymakers' review and approval.
- The failure to adequately train or supervise employees if that failure results from deliberate indifference to the injuries that may be caused.

(See *Bryson v. City of Okla. City*, 627 F.3d 784, 788 (10th Cir. 2010) (internal quotations and citations omitted), cert. denied, 131 S. Ct. 3030 (2011); *Monell*, 436 U.S. at 694.)

### ***Other Claims***

The foregoing are only a few of the primary claims arising from the County’s unlawful practice at issue. Obviously, the County’s conduct has damaged Global’s business, including its reputation and relationships with Global’s Assignors, and has denied Global and Global’s Assignors the use of the funds at issue (thereby entitling Global and Global’s Assignors to prejudgment interest on such sums). Such facts give rise to claims against the County for

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<sup>7</sup> Such constitutional deprivations may include violations of procedural due process and equal protection; clause of the Fourteenth Amendment;<sup>8</sup> and certain violations of the Commerce Clause. (Introduction, 1 Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983 § 2:1*)

<sup>8</sup> Courts have found that corporations were proper plaintiffs in a Section 1983 suit. (See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993).).

interference with contract, interference with prospective economic advantage, conversion, and related causes of action.

### **Demand**

To be clear, Global has no desire to pursue further litigation against the County for the discriminatory practices set forth herein, as it has been forced to do against the County of Madera. However, as I am sure you can understand, Global will simply not tolerate any unlawful discriminatory practices that continue to harm its business and its clients.

My client would like to give the County an opportunity to explain the inconsistent practices identified above, including (1) the specific circumstances and/or factors considered by the County in choosing to violate its 2015 Policy by not requiring a claimant for Excess Proceeds to submit an original copy of the promissory note; (2) the specific circumstances and/or factors considered by the County in choosing to violate its 2015 Policy by accepting supporting documentation submitted by a claimant after the deadline; (3) the specific circumstances and/or factors considered by the County in choosing to exercise its discretion under its 2017 Policy by accepting supporting documentation submitted by a claimant after the deadline; and (4) the specific circumstances and/or factors considered by the County in refusing to exercise its discretion under its 2017 Policy to accept supporting documentation submitted after the deadline by Global, and otherwise denying Global's claim referenced above by letter dated August 15, 2019, while simultaneously violating its 2017 Policy in approving the competing and patently defective BofA claim.

**A satisfactory response to this correspondence from the County is requested by November 11, 2022. In addition, until these issues are resolved, I strongly encourage the County to continue withholding the Excess Proceeds that are at issue in the pending lawsuit referenced above, *Global Discoveries, Ltd., v. County of Contra Costa, et al.* In the event the County distributes such proceeds and further litigation is initiated against the County, Global will seek to hold the County liable for payment of such proceeds.**

If you wish to discuss this matter further, please do not hesitate to contact me directly. Your prompt attention to this matter is appreciated.

Very truly yours,

DOWNEY BRAND LLP



Anthony L. Vignolo

ALV:bs

Cc: Rebecca J. Hooley, Assistant County Counsel (by email only -  
Rebecca.Hooley@cc.cccounty.us)

Enclosures