

*In the*  
**Supreme Court**  
*of the*  
**State of California**

SUPREME COURT  
**FILED**

SEP 21 2017

Jorge Navarrete Clerk

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Deputy

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

v.

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

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AFTER A DECISION OF THE CALIFORNIA COURT OF APPEAL  
FOURTH APPELLATE DISTRICT, DIVISION THREE, CASE NO. G052660  
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2013-00665314  
HONORABLE DEBORAH C. SERVINO

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**APPELLANTS' REQUEST FOR JUDICIAL NOTICE OF RESPONDENT  
VERTICAL MEDIA GROUP, INC.'S CORPORATE STATUS**

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Trust*



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## MOTION

Pursuant to Rule 8.252, Appellants Morris Cerullo World Evangelism, Roger Artz, and Lynn Hodge as Co-Trustees of the Plaza Del Sol Real Estate Trust (“Appellants”) request that this Court take judicial notice of the corporate status of Respondent Vertical Media Group, Inc. (“VMG”), reflected in the official records of the State of Delaware and State of California. Evid. Code §§452(c), 452(h). See **Exhibit A**.

1. **VMG’s corporate status is relevant to the appeal because it affects whether VMG has standing to file a brief or maintain this lawsuit.**

The matter to be judicially noticed is relevant to this appeal. Rule 8.252(a)(2)(A). When this lawsuit began, VMG was a corporation organized under the laws of the State of Delaware. It had filed to do business in California. However, according to the California Secretary of State, VMG is now a suspended company with no ability to defend itself in this lawsuit. While a corporation’s powers, rights, and privileged are suspended or forfeited, it may not sue or defend an action. *Alhambra-Sumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1957) 155 Cal.App.2d 46, 49-51 (holding “respondent corporation had no right to defend in the instant action, or even to participate therein during the time that its corporate rights were suspended. Therefore the trial court should have granted appellants’ motion to strike the pleadings of respondent”). One of the questions on appeal is whether VMG can show a probability of prevailing on the merits of its claims – this is the second prong of the anti-SLAPP analysis. Code of Civ. Proc. §425.16, et. seq. VMG’s defunct corporate status renders it unable to prevail on its claims.

**2. This matter was not presented to the trial court because VMG’s defunct status was only recently discovered.**

This matter was not presented to the trial court. Rule 8.252(a)(2)(B). However, Respondents themselves presented the issue of Respondent Newport Harbor Ventures, LLC’s status to the intermediate appellate court, after that entity allowed its corporate status to lapse in California. Newport Harbor Ventures, LLC, unlike Respondent VMG, brought itself back into good standing within a couple weeks of the appellate oral argument, and litigation continued. Until recently, the California Secretary of State’s website did not show anything amiss with VMG. Only recently<sup>1</sup> did California declare VMG in bad standing, which led to further investigation revealing that VMG, a Delaware corporation, has actually been “inoperative and void” in Delaware since March 1, 2015.

**3. Although judicial notice was not taken by the trial court, the matter is subject to judicial notice under Evidence Code §452(c) and §452(h).**

The corporate status of VMG is subject to judicial notice. Rule 8.252(a)(2)(C). Evidence Code §452(c) allows this Court to take judicial notice of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” The judicially noticeable facts in this motion consist of official acts of the executive departments of Delaware and California, each acting through its respective secretary of state.

Evidence Code §452(h) allows judicial notice of “facts...that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” The corporate status of VMG, as determined by Delaware and California’s respective executive branches, is not reasonably subject to dispute and is

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<sup>1</sup> The exact date VMG suffered its suspension of status in California is unknown.

capable of accurate determination by resort to those states' government officers and clerical employees.

**4. The matter to be noticed does not relate to proceedings occurring after the order on appeal.**

The corporate status of VMG is not something that “relates to proceedings occurring after the order or judgment that is the subject of the appeal.” Rule 8.252(a)(2)(D). According to VMG’s home state of Delaware, VMG has been “no longer in existence” since March 1, 2015, when it became “inoperative and void” for non-payment of taxes. The California Secretary of State revoked VMG’s ability to do business in this state on an unknown date, and Appellants have no personal knowledge of when that happened.

**5. The matter to be noticed is served with this motion.**

As required by Rule of Court 8.252(a)(3), served with this motion is a copy of the matter to be noticed. See **Exhibit A**.

**CONCLUSION**

Appellants respectfully ask this Court to sign the proposed order submitted with this motion in accordance with Rule 8.252(a) of the California Rules of Court.

Respectfully submitted,

Date: September 19, 2017



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MORRIS CERULLO, ROGER ARTZ, and  
LYNN HODGE, Co-Trustees of the  
PLAZA DEL SOL REAL ESTATE TRUST

# **Exhibit A**

## **to Appellants' Motion Requesting Judicial Notice**

- 1) *California Secretary of State, "Business Entity Detail" for Vertical Media Group, Inc. (accessed August 25, 2017 at 11:40 a.m.)*
- 2) *Delaware Secretary of State, certificate of status for Vertical Media Group, Inc.*





## Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Thursday, August 24, 2017. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

02847252 VERTICAL MEDIA GROUP, INC.

Registration Date:	12/09/2005
Jurisdiction:	DELAWARE
Entity Type:	FOREIGN STOCK
Status:	FTB FORFEITED
Agent for Service of Process:	DENNIS D'ALESSIO 440 FAIR DRIVE, #200 COSTA MESA CA 92626
Entity Address:	440 FAIR DRIVE, #200 COSTA MESA CA 92626
Entity Mailing Address:	440 FAIR DRIVE, #200 COSTA MESA CA 92626

Document Type	File Date	PDF
SI-COMPLETE	08/04/2015	
SI-COMPLETE	02/07/2014	
REGISTRATION	12/09/2005	

\* indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

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# 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.



  
Jeffrey W. Bullock, Secretary of State

3912631 8400  
SR# 20175768910

Authentication: 203102973  
Date: 08-23-17

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

State of California )  
County of Los Angeles )  
 )

Proof of Service by:  
✓ US Postal Service  
Federal Express

I, Kirstin Largent, declare that I am not a party to the action, am over 18 years of age and my business address is: 631 S Olive Street, Suite 600, Los Angeles, California 90014.

On 9/20/2017 declarant served the within: Appellants' Request for Judicial Notice upon:

1 Copies FedEx ✓ USPS

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Grant Steven Hermes, Esq.  
KNYPSTRA HEREMES, LLP  
18200 Von Karman Avenue, Suite 730  
Irvine, California 92612  
  
Attorneys for Respondents Newport Harbor Ventures, LLC and Vertical Media Group, Inc.

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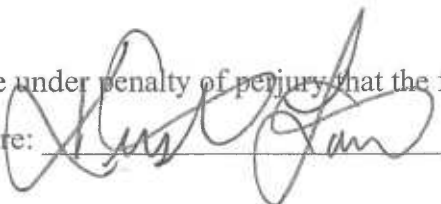
Copies FedEx USPS

the address(es) designated by said attorney(s) for that purpose by depositing **the number of copies indicated above**, of same, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California

I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and** 13 copies has/have been filed by ✓ third party commercial carrier for next business day delivery to:

Office of the Clerk  
SUPREME COURT OF CALIFORNIA  
350 McAllister Street, Room 1295  
San Francisco, California 94102-4797

I declare under penalty of perjury that the foregoing is true and correct:

Signature:  \_\_\_\_\_