

F I L E D
Clerk of the Superior Court

AUG 30 2017

By: J. CERDA

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

MITCHELL INVESTMENTS, INC., a California Corporation;
JAMES M. SHAPIRO, an individual;
MATTHEW R. DEVINE, an individual;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2017-00030943-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Mara W. Elliott, City Attorney, and by David E. Miller, Deputy City Attorney, and Defendants MITCHELL INVESTMENTS, INC., a California corporation; and JAMES M. SHAPIRO, an individual, appearing by and through their attorneys Crosbie Gliner Schiffman, Southard & Swanson, LLP; and Defendant MATTHEW R. DEVINE, an individual, appearing by and through his attorneys Lieb & Lieb, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1. This Stipulation for Entry of Final Judgment (Stipulation) is executed only between and among Plaintiff City of San Diego (CITY), a municipal corporation, and Defendants MITCHELL INVESTMENTS, INC., a California corporation (MITCHELL); JAMES M.

1 SHAPIRO, an individual (SHAPIRO); and MATTHEW R. DEVINE, (DEVINE), who are named
2 parties in the above-entitled actions (hereinafter DEFENDANTS).

3 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
4 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
5 *corporation v. MITCHELL INVESTMENTS, INC., a California corporation; JAMES M.*
6 *SHAPIRO, an individual; MATTHEW R. DEVINE, an individual; and DOES 1 through 50,*
7 *inclusive.*

8 3. The parties wish to avoid the burden and expense of further litigation and accordingly
9 have determined to compromise and settle their differences in accordance with the provisions of
10 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
11 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
12 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
13 only them by mutually consenting to the entry of Final Judgment in its Entirety and Permanent
14 Injunction by the Superior Court. Nothing in this Stipulation is intended to be a final adjudication
15 of any claims, issues, defenses or causes of action between MITCHELL and DEVINE, nor an
16 admission of any wrongdoing or breach of any provision of the June 15, 2012 lease, by either
17 DEVINE or MITCHELL, nor do DEVINE or MITCHELL, by entering into this Stipulation,
18 waive any issues, claims, causes of action, or defenses they may have against one another.

19 4. The real property that is the subject of this Stipulation consists of one parcel of land
20 located at 1815-1845 Main Street, San Diego, California 92113, identified as Assessor's Parcel
21 Number 538-470-07-00 (PROPERTY). The legal description of the parcel as recorded in the
22 Office of the County Recorder of San Diego is:

23 All that portion of Block 83 of Mannassee and Schiller's Addition,
24 according to map thereof No. 209, filed in the office of the County
Recorder of San Diego County, California, described as follows:

25 Beginning at a point in the Northeasterly line of said Block 83,
26 distant 200 feet Northwesterly thereon from the most Easterly corner
of said Block 83; thence Northwesterly along the Northeasterly line
27 of said Block 83, a distance of 225 feet to a point on said
Northeasterly line distant thereon 175 feet from the most Northerly
28 corner of said Block 83, being the Northeast corner of land described
in the deed from San Diego & Arizona Eastern Railway Company to
Bolivar Packing Company, dated October 9, 1941, recorded in Book

1 1273, page 38 Official Records; thence Southwesterly parallel with
2 the Northwesterly line of said Block 83, along the Southeasterly line
3 of Bolivar Packaging Company's land, a distance of 175 feet; thence
4 Southeast parallel with the Northeasterly line of said Block 83 a
5 distance of 225 feet; thence Northeasterly parallel with the
6 Southeasterly line of said Block 83, a distance of 175 feet to the point
7 of the beginning.

8 5. "Glashaus" is a business located at 1815 B Main Street, San Diego, CA 92113 (1815
9 MAIN) on the portion of the PROPERTY identified as Lots 38-41 and depicted on Exhibit 1,
10 attached hereto and incorporated herein.

11 6. Defendant SHAPIRO represents that he is an officer of MITCHELL and as such has
12 authority to bind MITCHELL to the terms and conditions of this Stipulation.

13 7. Defendant DEVINE represents that at all times relevant to this action he was the
14 lessee of 1815 MAIN and the operator of Glashaus, which contained artist studios, a gallery, and
15 an event space. As lessee, DEVINE subleased 1815 MAIN to other artists.

16 8. This action is brought under California law, and this Court has jurisdiction over the
17 subject matter, the PROPERTY, and each of the parties in this action.

18 INJUNCTION

19 9. The provisions of this Stipulation are applicable to DEFENDANTS, their successors
20 and assigns, any of their agents, officers, employees, representatives, and tenants, and all persons,
21 corporations or other entities acting by, through, under or on behalf of DEFENDANTS, and all
22 persons acting in concert with or participating with DEFENDANTS with actual or constructive
23 knowledge of this Stipulation and Injunction. **Effective immediately**, DEFENDANTS and all
24 persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal
25 Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526,
26 and under the Court's inherent equity powers, from engaging in or performing, directly or
27 indirectly, any of the following acts at the PROPERTY or solely with respect to DEVINE
28 anywhere else in the City of San Diego:

a. Maintaining or performing any construction work without first obtaining all
required permits per SDMC section 129.0202;

1 compliance with the provisions of Paragraph 12 and only until such time as the PROPERTY is
2 vacated, shall not constitute a violation of this Stipulation.

3 12. Remove all SUBTENANTS. 1815 MAIN is currently occupied by SUBTENANTS.
4 DEFENDANTS cannot commence the construction work set forth herein required to restore 1815
5 MAIN to the previously approved factory warehouse use (F-2 Occupancy Classification) until
6 1815 MAIN is vacant. Therefore, DEFENDANTS shall take all actions reasonably necessary and
7 use all legal means to ensure that SUBTENANTS vacate 1815 MAIN as soon as possible,
8 including:

9 a. At any time prior to or within 48 hours of signing this Stipulation, serve a Notice
10 to Vacate on all SUBTENANTS;

11 b. If all of the SUBTENANTS have not vacated 1815 MAIN on or before September
12 15, 2017, DEFENDANTS shall, **no later than September 20, 2017**, initiate unlawful detainer
13 proceedings and prosecute diligently and in good faith until all occupants have been removed
14 from 1815 MAIN; and

15 c. Take any other legal action available against any Subtenant remaining at 1815
16 MAIN after September 15, 2017, and thereafter in good faith use all legal remedies available, to
17 remove all occupants from 1815 MAIN.

18 13. **Within 24-hours after 1815 MAIN is completely vacated**, post a conspicuous sign
19 on the exterior of 1815 MAIN, stating in large, bold font and capital letters that can be seen from
20 the public right of way proclaiming that Glashaus is closed. The sign must remain posted for a
21 minimum of 60 calendar days.

22 14. After 1815 MAIN becomes vacant:

23 a. File and maintain a Letter of Agency with the San Diego Police Department;

24 i. A Letter of Agency may be obtained at:

25 <https://www.sandiego.gov/police/forms/forms> under the title Trespass Authorization/Letter of
26 Agency Form.

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1 b. Prohibit any individuals from entering 1815 MAIN, except for the sole purpose of
2 performing those approved/permitted acts necessary to bring 1815 MAIN into compliance with
3 the SDMC; and

4 c. Ensure that 1815 MAIN remains vacant until compliance with the SDMC, as
5 determined by the Development Services Department, has been achieved.

6 i. Comply with all provisions of SDMC Article 4, Division 3 – Abatement of
7 Abandoned Properties.

8 15. Under the supervision of the City of San Diego’s Development Services Department
9 (DSD) and Code Enforcement Division (CED), correct the building violations at 1815 MAIN:

10 a. **Within 14 calendar days from the signing of this Stipulation**, submit a
11 complete application and four (4) sets of plans to CED, attention Senior Building Inspector Bryan
12 Monaghan, to obtain all required permits, including but not limited to a Commercial Building
13 Permit, to restore 1815 MAIN to its previously approved factory warehouse use (F-2 Occupancy
14 Classification) and configuration approved by CED and DSD;

15 i. The plans must be prepared by a licensed professional.

16 ii. The plans must reflect in the scope of work that the plans are for the “removal
17 of unpermitted additions and for the restoration of 1815 MAIN to the previously approved factory
18 warehouse use (F-2 Occupancy Designation).”

19 iii. The plans shall include a copy of the Civil Penalty Notice and Order (CPNO)
20 dated June 1, 2015.

21 b. **Within 7 calendar days from CED’s approval of the application and plans**,
22 DEFENDANTS shall submit the complete application and plans to DSD to obtain all required
23 permits to restore 1815 MAIN to its previously approved factory warehouse use (F-2 Occupancy
24 Classification) and to a configuration approved by CED and DSD;

25 c. If CED or DSD requests corrections to the submitted plans or application, or
26 requests additional documentation, DEFENDANTS shall exercise due diligence in making the
27 requested changes and resubmit the corrected plans and any other applicable documents **no later**
28 **than ten (10) calendar days from the date of any such request**; and

1 d. Within 90 calendar days from obtaining all required permits from DSD or 90
2 calendar days from the date on which 1815 MAIN is vacated, whichever is later,
3 DEFENDANTS must obtain final inspection and approval by DSD.

4 16. Until final inspection and approval, allow personnel from the City of San Diego access
5 to 1815 MAIN to inspect and monitor for compliance upon 24 hour verbal or written notice.
6 Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m. In addition to any other
7 method of delivery of notice, City shall email copies of notices of inspection, to the extent written
8 notice was provided, to Glenna Gasper at gmgasper11@gmail.com, and Jim Shapiro at
9 jim@kearnyvp.com.

10 MONETARY RELIEF

11 17. DEFENDANTS shall jointly and severally reimburse the City of San Diego for
12 investigative costs incurred by the Code Enforcement Division of the Development Services
13 Department in the amount of **\$5,981.43**. The City of San Diego will separately mail an invoice
14 to the DEFENDANTS requiring the payment of investigative costs. The invoice will be mailed to
15 MITCHELL INVESTMENTS, INC. at 1827 Main Street, San Diego, California 92113, c/o
16 Glenna Gasper. **DEFENDANTS must pay the investigative costs owed within 30 calendar**
17 **days from the date of the invoice. Payment of investigative costs** can be made by personal
18 check, cashier's check, or money order payable to the City Treasurer and can be paid by mail or
19 in person at the Office of the City Treasurer, 1200 Third Avenue, Suite 100, San Diego, CA
20 92101. **Payment must be accompanied by the corresponding invoice, and the invoice**
21 **number must be written on the check or money order.**

22 18. DEFENDANTS shall jointly and severally pay Plaintiff City of San Diego, civil
23 penalties in the amount of \$100,000 pursuant to SDMC section 12.0202(b), in full satisfaction of
24 all claims against DEFENDANTS arising from any of the past violations alleged by Plaintiff in
25 this action. **\$75,000 of these penalties is immediately suspended.** These suspended penalties
26 shall only be imposed if DEFENDANTS fail to comply with the terms of this Stipulation.

27 a. The City of San Diego will separately mail an invoice to MITCHELL
28 INVESTMENTS, INC., at 1827 Main Street, San Diego, California 92113, c/o Glenna Gasper,

1 requiring the payment of \$25,000 in civil penalties owed. **DEFENDANTS must pay the civil**
2 **penalties owed within 45 calendar days from the date of the invoice. Payment of civil**
3 **penalties** can be made by personal check, cashier's check, or money order payable to the City
4 Treasurer and can be paid by mail or in person at the Office of the City Treasurer, 1200 Third
5 Avenue, Suite 100, San Diego, CA 92101. **Payment must be accompanied by the**
6 **corresponding invoice, and the invoice number must be written on the check or money**
7 **order; and**

8 b. The CITY will provide these invoices to Mitchell only as a convenience to the
9 parties. Nothing in this Stipulation, including the manner in which the dollar amounts in this
10 Stipulation are invoiced or paid, shall be construed to affect which of the DEFENDANTS are
11 ultimately liable, as between the DEFENDANTS, for any dollar amounts invoiced and paid by
12 any of the DEFENDANTS to the CITY or for any other fees, costs, liabilities, or expenses
13 associated with this Stipulation.

14 **DISMISSAL OF DOES**

15 19. All allegations as to DOES 1 through 50, inclusive, are dismissed.

16 **ENFORCEMENT OF JUDGMENT**

17 20. In the event of default by DEFENDANTS as to any of the terms under this
18 Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to
19 the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by
20 law for the enforcement of this Final Judgment. Further, any amount in default shall bear interest
21 at the prevailing legal rate from the date of default until paid in full.

22 21. Nothing in this Final Judgment shall prevent any party from pursuing any remedies as
23 provided by law to subsequently enforce this Final Judgment, including criminal prosecution and
24 civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of
25 up to \$2,500 per day per violation.

26 22. DEFENDANTS agree that any act, intentional or negligent, or any omission or failure
27 by their contractors, successors, assigns, partners, members, agents, employees or representatives
28 to comply with the requirements set forth above will be deemed to be the act, omission, or failure

1 of DEFENDANTS and shall not constitute a defense to a failure to comply with any part of this
2 Final Judgment. Further, should any dispute arise between any contractor, successor, assign,
3 partner, member, agent, employee or representative of DEFENDANTS for any
4 reason, DEFENDANTS agree that such dispute shall not constitute a defense to any failure to
5 comply with any part of this Final Judgment, nor justify a delay in executing its requirements.

6 **RETENTION OF JURISDICTION**

7 23. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
8 Final Judgment to apply to this Court at any time for such order or directions that may be
9 necessary or appropriate for the construction, operation or modification of the Final Judgment, or
10 for the enforcement or compliance therewith.

11 **KNOWLEDGE AND ENTRY OF JUDGMENT**

12 24. By signing this Final Judgment, DEFENDANTS admit personal knowledge of the
13 terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

14 25. The clerk is ordered to immediately enter this Final Judgment.

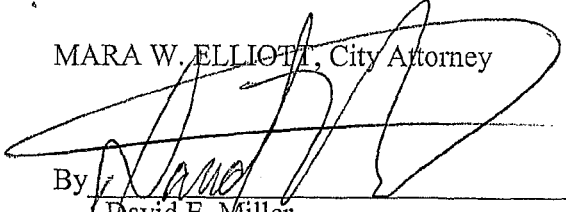
15 **RECORDATION OF JUDGMENT**

16 26. A certified copy of this Judgment shall be filed in the Office of the San Diego County
17 Recorder pursuant to the legal description of the PROPERTY.

18 **IT IS SO STIPULATED.**

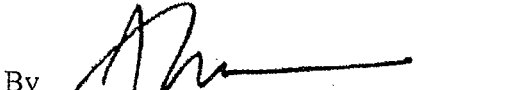
19 Dated: 8/18, 2017

MARA W. ELLIOTT, City Attorney

By 
David E. Miller
Deputy City Attorney

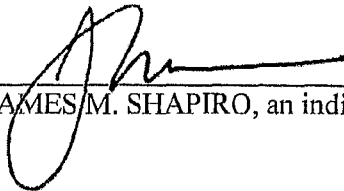
Attorneys for Plaintiff

26 Dated: August 18, 2017

By 
MITCHELL INVESTMENTS, INC., a
California corporation by JAMES M.
SHAPIRO, Chief Executive Officer

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Dated: August 18, 2017

By 
JAMES M. SHAPIRO, an individual

Dated: _____, 2017

By _____
Attorney for Defendants MITCHELL
INVESTMENTS, INC. and JAMES M.
SHAPIRO

Dated: _____, 2017

By _____
MATTHEW R. DEVINE, an individual

Dated: _____, 2017

By _____
Attorney for Defendant MATTHEW R.
DEVINE

Upon the stipulation of the parties hereto and upon their agreement to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and good cause appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

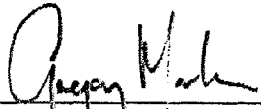
City of San Diego, v. Mitchell Investments, Inc., et al.

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Dated: _____, 2017

By _____
JAMES M. SHAPIRO, an individual

Dated: August 18, 2017

By  _____
Attorney for Defendants MITCHELL
INVESTMENTS, INC. and JAMES M.
SHAPIRO

Dated: _____, 2017

By _____
MATTHEW R. DEVINE, an individual

Dated: _____, 2017

By _____
Attorney for Defendant MATTHEW R.
DEVINE

Upon the stipulation of the parties hereto and upon their agreement to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and good cause appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

City of San Diego, v. Mitchell Investments, Inc., et al.

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Dated: _____, 2017

By _____
JAMES M. SHAPIRO, an individual

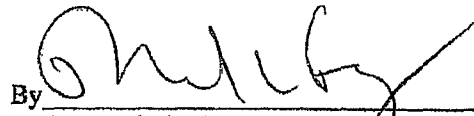
Dated: _____, 2017

By _____
Attorney for Defendants MITCHELL
INVESTMENTS, INC. and JAMES M.
SHAPIRO

Dated: AUGUST 18, 2017

By 
MATTHEW R. DEVINE, an individual

Dated: August, 2017

By 
Attorney for Defendant MATTHEW R.
DEVINE

Upon the stipulation of the parties hereto and upon their agreement to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and good cause appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

City of San Diego v. Mitchell Investments, Inc., et al.

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Dated: _____, 2017

By _____
JAMES M. SHAPIRO, an individual

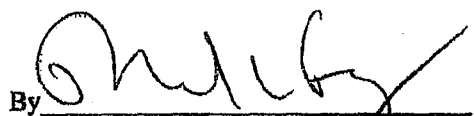
Dated: _____, 2017

By _____
Attorney for Defendants MITCHELL
INVESTMENTS, INC. and JAMES M.
SHAPIRO

Dated: AUGUST 18, 2017

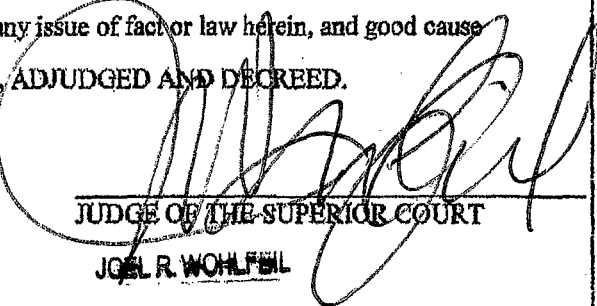
By 
MATTHEW R. DEVINE, an individual

Dated: Aug 18, 2017

By 
Attorney for Defendant MATTHEW R.
DEVINE

Upon the stipulation of the parties hereto and upon their agreement to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and good cause appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 8-30-17


JUDGE OF THE SUPERIOR COURT
JOEL R. WOHLFEL

City of San Diego, v. Mitchell Investments, Inc., et al.



CLERK'S CERTIFICATE

The foregoing document, consisting of 14 page(s), is a full, true, and correct copy of the original copy on file in this office.


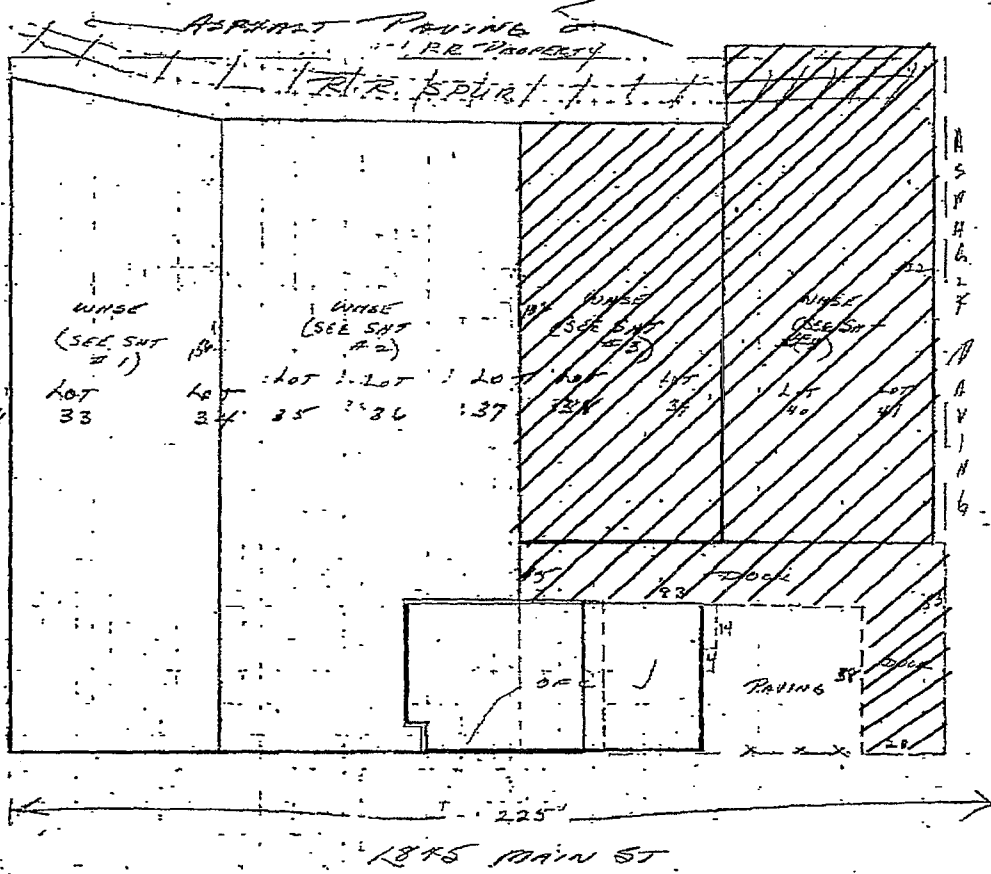

Clerk of the Superior Court
9-6-17 by J. Cerda
Date Deputy 

Exhibit 1

1/4 MI EXTEND
 CONCRETE FENCE ON RR PARCEL 18-40-1

NOTE: SOME ASPHALT PAVING NOT CHARGED SINCE IT IS ON R.R. PROPERTY



 1815 B Main Street
 Glashaus

DOCK AREA
 $83 \times 15 = 1245$
 $38 \times 20 = 760$
 $14 \times 4 = 56$

 2061 #