THIS ORDER IS APPROVED.

Dated: January 18, 2005

James M. Marlar

JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 11
LEASCO, INC., a California corporation,	)	No. 2-03-bk-21422-JMM
Debtor.	)	Adversary No. 2-04-ap-00089-JMM
FLAVIO TENORIO; JUAN TENORIO; FRANCISCO TENORIO; AURELIO TENORIO; and FILIBERTO TENORIO,	)	**MEMORANDUM DECISION**
Plaintiffs,	)	(Under advisement since August 2, 2004)
vs.	)	
LEASCO, INC., a California corporation; LEASCO HOLDINGS, INC., a California corporation; MANSFIELD COLLINS; and IVANIA PISKULICH,	)	
Defendants.	)	
CV 03-2421 CV 02-2265 PXH CV 2002-023269 CV 2002-023270 CV 2002-023273 CV 2002-023274	)	
LEASCO, INC.,	)	
Plaintiff,	)	
vs.	)	
ARMANDO MANCILLAS; OLGA MANCILLAS; MARIA FRANCISCA MANCILLAS; JUAN TENORIO; ARACELI TENORIO; SANTA DOMINGO & COMPANY, INC.; RAUL RIOS; MARTHA RIOS; JORGE TENORIO; ADELAIDA TENORIO; SERGIO TENORIO; ANA ELIZABETH TENORIO; JORGE QUINTERO; AND IRMA QUINTERO,	)	
Defendants.	)	

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The trial in these consolidated and removed adversary proceedings was held over a period of several months in 2004 on the following dates:

April 12	May 5	June 14
April 13	May 6	June 15
April 14	May 7	June 16
April 16	June 8	June 17
May 4	June 9	

After taking the matter under advisement once the post-filing briefing ended with the filing of the last brief on August 2, 2004, the court now issues its ruling. The matters settled by this ruling will enable the Chapter 11 proceeding to move forward.

I. JURISDICTION AND PROCEDURE

The parties have consented to both the procedure and jurisdiction of this court as to all matters. The court also notes that the matters that were tried to the court were either core proceedings or were non-core matters over which the court had "related to" jurisdiction. 28 U.S.C. §§ 1334; 157(b)(1), (2).

Additionally, the parties removed several cases from other courts, which aided the court in deciding all necessary issues, and which helps the parties in accomplishing a comprehensive resolution of their many disputes. This procedural step has eliminated the possibility of inconsistent results, lengthy delays, and the myriad of frustrations and complications that can occur in such circumstances.

The parties affected by this decision are only those who have appeared herein, and no others.[1] Those appearing were:

Flavio Tenorio
Filiberto Tenorio
Francisco Tenorio
Aurelio Tenorio
Juan Tenorio

Araceli Tenorio
Santa Domingo & Company, Inc.
Raul Rios
Martha Rios
Jorge Tenorio
Adelaida Tenorio
Sergio Tenorio
Ana Elizabeth Tenorio
Jorge Quintero
Irma Quintero

Leasco, Inc.
Leasco Holdings, Inc.

Ivania Piskulich
Mansfield Collins

II. BACKGROUND

The various claims by and between the parties arise out of a dispute over who, or what entity, owns the trademark to the name "Filiberto's," as well as to its related marks, logos, recipes, menus, goodwill, and operational methods. Filiberto's is a chain of Mexican food restaurants located in Arizona and California.

Associated with that dispute is whether payments on the Promissory Note which was given for the sale of the trademark have been made or justifiably withheld. This court has been asked to determine the amount currently due thereon, if any, and to adjudge an appropriate legal remedy, including recision of the sale transaction itself.

[1] To the extent that rulings are made which may appear to also affect others, the parties should limit the judgment to only those parties who actually appeared.

Also at issue is Leasco's claim against numerous parties for the tort of interference with contractual relations, as well as issues alleging trademark infringement and breach of contract regarding payment of licensing fees.

Finally, individual parties, Mansfield Collins ("Collins") and Ivania Piskulich ("Piskulich"), have claims for, or seek ratification of, attorneys' or agent's fees, which are defended on theories of breach of contract, professional malpractice, and breach of fiduciary duty. In addition, affirmative relief is sought against Collins and Piskulich for judgment for improper payments allegedly made to them.

All of these inter-related matters were heard and are now decided. The court's Findings of Fact and Conclusions of Law are set forth hereafter pursuant to FED.R.BANK.P. 7052.

A. <u>The Formation of "Filiberto's"</u>

In 1974, Flavio Tenorio ("Flavio") moved from Santo Domingo, Mexico to the United States. Flavio is the oldest of thirteen siblings. That same year, his sister, Martha Rios ("Martha"), also immigrated to America.

Over time, Flavio and Martha were joined by other siblings, most notably brothers Francisco, Aurelio, and Filiberto. Together, these four brothers (collectively, the "Tenorio Brothers"), became involved in the restaurant business, first as employees of others, but eventually started their own restaurant chain, each of which bore the name "Filiberto's." One by one, the chain expanded to include brothers, sisters, extended family, and friends as part of the aggregation of restaurants, which now number approximately thirty-one. (See Ex. 100.) Most of the restaurants have been established in Arizona, but five restaurants are scattered throughout the San Diego area.

In 1983, Juan Tenorio ("Juan"), one of the Tenorio Brothers' siblings, moved to Arizona and opened the first "Filiberto's" restaurant in that state. On September 17, 1993, Juan registered the trade name with the Arizona Secretary of State (Ex. 8; D-144). He utilized his accountant, Ben Guerra, as the agent for the restaurant organization. Mr. Guerra claimed no ownership interest in the trade name and is now deceased. (See Ex. 141.) Guerra's estate likewise claims no interest in the trade name.

In 1994, Martha also moved to Arizona, and she too became the operator of a Filiberto's restaurant.

The restaurants were profitable. The organization of the restaurant chain's operation was informal and unorthodox, unmarred by the formalities of any legal structure. The chain loosely operated in a manner which most closely approximates a joint venture or joint enterprise. Locations were jointly selected by the Tenorio Brothers, who would then decide which loyal sibling, relative, or friend was deserving of the management of each new Filiberto's restaurant. One of the Tenorio Brothers, usually Flavio, would negotiate leases with various landlords for the physical premises, as well as obtain equipment and vendor contracts. Once a person or persons was handed the keys to a new location, that person would pay, monthly, a sum of money to the Tenorio Brothers. This monetary tribute was called "la renta." The amount paid each month would vary, but the testimony indicated that an average of $7,000 - 8,000 per month, per location, was approximately the amount received by the Tenorio Brothers. No written documents governed this enterprise. Each operator understood and complied with this established procedure. The Tenorio Brothers would inspect and oversee the restaurants' operations, and counsel the managers as various problems or questions emerged.

In this fashion, the restaurants operated until late 1997.

B. <u>The Arrests and Federal Criminal Charges</u>

In September, 1997, the "Filiberto's" restaurants suffered a major setback. By then, approximately nine of the Tenorio siblings and relations were operating 18 - 20 restaurants. It was at this time that the U.S. Justice Department arrested the four Tenorio Brothers, as well as other siblings or related parties, and charged them with numerous violations of immigration laws, tax fraud, and other felonies. Documents were seized, and the arrests were highly publicized. Their case was filed in the District of Arizona, and assigned to Chief District Court Judge Stephen M. McNamee.

The Tenorio Brothers were all placed in jail, awaiting trial. They remained in jail, variously, through October 1998. The new charges were serious, and for three of the four brothers, involved deportment back to Mexico, as well as possible lengthy American prison sentences. The difficulties for the Tenorio Brothers were compounded by previous federal convictions in San Diego for the same types of offenses.

C. Ivania Piskulich Meets Flavio Tenorio

Ivania Piskulich ("Piskulich") is a Certified Public Accountant in Los Angeles. She has been practicing for over 25 years. Her practice niche is with the Hispanic community, and she is well known there. While in prison, the Tenorio Brothers were given the name of Piskulich as a person who might assist them in the coordination of their legal defenses and counseling concerning associated problems. In February, 1998, Piskulich was invited to talk to the brothers about their legal difficulties.

Piskulich traveled to the initial meeting in February, 1998, meeting with Flavio Tenorio and Aurelio Tenorio in prison in San Bernardino. She was accompanied by an attorney, Mansfield Collins ("Collins"), who at that time was a professional acquaintance. At the meeting, discussion centered around the selection and coordination of a legal defense team. The parties agreed on a method by which Piskulich would act as the Tenorio Brothers' agent, and Piskulich prepared, and soon thereafter, on February 17, 1998, the parties executed an "Agency Agreement" (Ex. 3).

D. <u>The Defense Team</u>

After the Agency Agreement was signed, Piskulich began to coordinate the formation of a defense team for the Tenorio Brothers. In that capacity, the following criminal defense attorneys were hired:

Attorney	Fee	Representing
Booker Evans, Quarles & Brady Streich Lang	$35,000; $15,000 more if tried or case lasted more than one year	Filiberto Tenorio
Thomas Mesereau	$35,000; $15,000 more if tried or case lasted more than one year	Francisco Tenorio
Cornell Price[2]	Unknown	Flavio Tenorio
Mansfield Collins	$10,000	Aurelio Tenorio

Numerous individual and joint meetings were held to coordinate the defenses, over a period of several months. Other attorneys were also hired, or switched out, to perform other related tasks for the Tenorio Brothers.

Finally, on January 20, 2000, the Tenorio Brothers appeared before the Honorable Stephen M. McNamee, Chief, U.S. District Court Judge for the District of Arizona, and entered a guilty plea to various charges (Ex. 61, 71). The penalties were as follows:

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[2] Price was fired on March 26, 1998 (Ex. 14). He was replaced by Jennifer L. Keller. (See Ex. 71.) From the evidence submitted, it appears that Price was paid $14,696.92 (Ex. 92, 93) and Keller $5,500 (Ex. 92, 93).

Party	Prison, including time served	Fines	Deported	Ex.
Francisco Tenorio	13 months	$ 375,110	Yes	61, 71
Filiberto Tenorio	13 months	$ 375,110	Yes	61, 71
Aurelio Tenorio	13 months	$ 375,110	Yes	61, 71
Flavio Tenorio	13 months	$ 375,110	No	61, 71

Three of the Tenorio Brothers were thereafter deported back to Mexico, where they remain to this day.

E. The Sale of the Trademark

Between the signing of the Agency Agreement in February, and June, 1998, the four Tenorio Brothers decided to sell the "Filiberto's" trade name and related property.

This arrangement was motivated by the Tenorio Brothers' fear that they might lose the restaurants to government seizure or forfeiture, without ever having been able to capitalize on their years of sacrifice and hard work, should they continue to remain in control of the enterprise. They also were seeking a method to pay their defense attorneys and anticipated fines. Flavio proposed the sale to Piskulich, and offered to sell the "Filiberto's" mark to her. Although initially reluctant to make an investment of this magnitude, after further discussion, Piskulich agreed to purchase the "Filiberto's" name and proprietary goodwill. The Tenorio Brothers convinced Piskulich that she could pay for the trade name by utilizing the former "la renta" payments to pay each instalment amount. In order to also accommodate the aims of the Agency Agreement, the Tenorio Brothers agreed that Piskulich could credit, against her payments to them, the amounts necessary to pay the defense attorneys under the Agreement.

Thus, the concept was that:

1. Piskulich, or her assignee, would be sold the trademark and, in consideration therefor, pay the Tenorio Brothers $2.5 million, plus interest, in monthly instalments;

2. As owner of the Filiberto's mark and name, Piskulich, or her assignee, would be entitled to collect "la renta," in whatever form;

3. From the monthly payments that Piskulich, or her assignee, was required to pay to the Brothers on the Promissory Note, Piskulich was authorized to pay--as their agent and on their behalf--their obligations incurred for their criminal defense.

Piskulich accepted the offer, and executed, on behalf of "Leasco, Inc.," a corporation which she then formed, a Promissory Note for $2.5 million (Ex. 16). Collins drafted the note for Piskulich and Leasco, and also incorporated Leasco and acted as both her attorney, individually, and as attorney on behalf of Leasco, Inc.

Despite the Tenorios' pleas to the contrary, the court finds this transaction to have been at arms-length, for valid consideration, without fraud or the exercise of undue influence. In deciding upon the purchase price, to be paid with interest at 12% per annum. the court finds the negotiated price to have been a fair one.

A meeting was thereafter set up with the various restaurant operators, on June 10, 1998, at which Flavio was present.[3] He explained that the trade name had been sold to Piskulich, and that the payments, formerly known as "la renta," would be restructured and paid to Leasco, under written license agreements, on a sliding 3% to 6% of each restaurant's gross each month. (See, e.g., Ex. 18.)

F. <u>Leasco Formed</u>

Leasco, Inc. was then formed two days after the meeting with the restaurant operators, on June 12, 1998 (Ex. 17, D-3). Piskulich testified that Collins did the legal work for this endeavor, and was paid $4,500 for his effort (Ex. 24).

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[3] Flavio was released on bail.

Later, in 1999, Collins wound down his practice and went to work full-time as Leasco's General Counsel. He has been an officer of Leasco since its inception. (Collins Deposition; August 28, 2003, 43:9-14.)

Sometime after Leasco was formed, Collins and Piskulich developed an intimate personal relationship as well, which remains to this day. In early 2000, the pair began living together.

G. <u>The Breakdown</u>

From 1998 through mid-2002, the Leasco operation proceeded relatively smoothly. Leasco developed a uniform recipe book and a sanitation manual for the restaurants (Ex. D-44, D-45, D-46), actively promoted the brand (see, e.g., Ex. D-157), collected licensing fees, held regular meetings with operator-managers, and hired Filiberto and Francisco Tenorio, upon their release from prison and until their deportation, as employees to assist in quality-control inspections.

But by mid-2002, the operators became restive. Prompted by the Tenorio Brothers' complaints about not receiving the benefits of their bargain, payments under the Leasco note, and the Tenorio Brothers' campaign to convince the operator-managers to withhold their payments under the Leasco licensing agreements, the operators began to refuse to pay licensee fees each month. In addition, the Tenorio Brothers began asserting that they "wanted their family name back." Translated, this meant that the Tenorio Brothers wanted, once again, to exercise complete control over the Filiberto's restaurants, the trademark and trade name, and to effectively freeze out Leasco.

Additionally, under the banner held aloft by Juan and Flavio Tenorio, new restaurants were opened using the name and identifying marks of "Filiberto's," in at least four new locations in Arizona. These individuals also created a new corporation, called Santo Domingo Corporation, which operated and owned some of the new restaurants. None of these restaurants were authorized by Leasco, and they did not operate pursuant to licensing agreements.

H. The Lawsuits

This series of events set the parties on a collision course of litigation. Numerous lawsuits were filed in Arizona and California, in both state and federal courts. Claims and counterclaims, both legal and equitable, were asserted against the numerous parties.

Thus, squeezed for cash flow, and the attendant expenses associated with the many lawsuits, Leasco filed for chapter 11 relief on December 8, 2003. A major reason for the filing was to manage the myriad of litigation in all of its multiple forms. The parties then either removed these actions to this court, or agreed to be bound by its decisions as to all associated claims. They did so both to expedite a final resolution of their many disputes, and to avoid the possibility of conflicting decisions which would inevitably protract the legal proceedings for many years.

III. THE PARTIES' LEGAL RELATIONSHIPS

An analysis of the parties' legal relationships, *inter se*, requires a closer scrutiny of the facts and law relating to the following:

1 The Agency Agreement--Piskulich's duties to the Tenorio Brothers;

2. The Promissory Note--Leasco's obligation to the Tenorio Brothers;

3. The Trademark Assignment and who or what owns the rights to the mark: "Filiberto's;"

4. The License Agreements--operators' obligations to Leasco;

5. Collins' contract for legal services;

6. Non-licensed restaurants--whether may they operate a "Filiberto's" restaurant.

Each will be discussed in turn.

A. "Filiberto's"--The Trademark, Trade Name, Logos, Recipes, and Operational Uniformity

The overarching issue of the entire controversy stems from the dispute over who or what entity owns the rights to the "Filiberto's" trademark, trade name, and the goodwill connected to the uniformity of the restaurants' business operations. The court, after reviewing the entirety of the evidence, finds and concludes that the owner of this valuable asset is Leasco, Inc.

Leasco acquired the asset by an assignment executed as of July 14, 1998, in recognition of an agreement reached earlier than June 10, 1998 (See Ex. 15). The consideration was Leasco's agreement to pay $2.5 million therefor, plus interest. (Ex. 16.) Although both parties have presented evidence disputing the adequacy of the consideration paid, and have each presented expert testimony thereon[4], the court, applying Ninth Circuit law, finds that the agreement was negotiated at arms-length and that the value of the asset at the time of sale was $2.5 million. *In re Two "S" Corp.*, 875 F.2d 240 (9th Cir. 1989) (Value of assets, sold at a commercially reasonable sale, is the sales price).

Each of the four Tenorio Brothers were the owners of the trademark, and each executed the Assignment to Leasco (Ex. 15) for valuable and adequate consideration. Although their brother, Juan Tenorio, has claimed to have owned the mark since it was registered in Arizona in September, 1993 (Ex 8, D-144), the court finds, from the totality of the evidence submitted, that Juan Tenorio was, at all times, only an agent for the Tenorio Brothers. Juan's own testimony revealed that he "was acting for the entire family" when he registered the mark, has never made a claim against the brothers for any share of the $2.5 million which Leasco agreed to pay the Tenorio Brothers, and did not participate in or claim an interest in a 1995 infringement lawsuit against an entity calling itself "Fliberto's."[5] Finally, Juan Tenorio signed one of the June 10, 1998 licensing agreements and thereafter made payments thereunder to Leasco. (Ex. 119-A.) Juan's conduct is wholly inconsistent with

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[4] The valuation testimony for the trademark's value in 1998 ranged from a low of $1,267,000 to a high of $4,310,000. (See Ex. 148, 151.) Expert Brian P. Brinig valued the trademark between $3,960,000 and $4,310,000. Expert Bryce R. Cook valued the asset at $1,267,000.

[5] Indeed, Filiberto Tenorio himself signed the verification. (Ex. D-116.)

his claim that it is he who owns the trademark. Juan's conduct thus estops him from now claiming to be the owner. Therefore, the court finds and concludes that Juan Tenorio does not own the name or the trademark, or any portion of this asset. This is partly because, as a matter of law, a licensee of a trademark is not, and cannot be, the owner of the trademark. The Ninth Circuit has held that it is a "long settled principle of law that a licensee . . . of a trademark or trade name may not set up any adverse claim in it as against its licensor. Such use as a recognized licensee . . . sets up no rights in that licensee adverse to the terms of the license and the actual circumstances of the use." *Pacific Supply Coop. v. Farmers Union Cent. Exch., Inc.*, 318 F.2d 894, 908-09 (9th Cir. 1963) (citing *Hicks v. Anchor Packing Co.*, 16 F.2d 723, 726 (3d Cir. 1926); *Medd v. Boyd Wagner, Inc.*, 132 F. Supp. 399 (D.C. 1955).

Regarding the evidence concerning whether the sale of the trademark should be rescinded, the court finds that the evidence presented by the plaintiffs did not prove either a fraud, undue influence, or a ground for recision of the trademark assignment. The court therefore concludes that Leasco is the owner of the "Filiberto's" trademark, trade name, and all of the accompanying goodwill associated therewith.

Judgment on this issue will so declare.

B. <u>The Promissory Note</u>

In consideration for and contemporaneous with the sale of the "Filiberto's" trade name was Leasco's execution of a Promissory Note payable to the "Tenorio Brothers Partnership" for $2,500,000, bearing interest at 12% per annum. (Ex. 15, 16.) Each of the four Tenorio Brothers signed the Assignment. Although the Assignment is dated July 14, 1998, the parties agree that it was actually signed sometime in October, 1998. To further confuse matters, the parties then acknowledge that the operative date should have been "June," instead of July, to coincide with the operators' licensing agreements. The court finds that the Promissory Note, Assignment of Trademark, June 10, 1998 Licensing Agreements, and formation of Leasco were all intended to be executed contemporaneously and that such was the effect.

The Promissory Note bears the date of "September, 1998." (Ex. 16.) The note contained no acceleration clause, no attorneys' fees provision, and no retained security interest in the asset which was sold. The first payment was due September 1, 1998 in the amount of $25,000 principal, and a like $25,000 principal payment was due each month thereafter, together with accrued interest, until paid.[6]

As noted above, the note was not secured by a security interest in the trademark, no separate security agreement was executed, there was no UCC-1 Financing Statement, or any reference to any collateral whatsoever securing the $2,500,000 obligation was non-existent. Piskulich asserts that, if the licensing payments were not sufficient to pay both principal and interest each month, that she was only required to pay 50% of the collected license sums to the Tenorio Brothers under the Promissory Note. This alleged oral agreement is not in writing, and is inadmissable as parol evidence. Even if accepted as true, the interest would still run and would only be deferred. The balance due under the note remains the same.

Collins prepared both the note and assignment instruments for Leasco. At the time, he was also representing Aurelio in his criminal matter. At no time did Collins advise Aurelio–his client–as to the impact of the documents which Aurelio was signing for Collins' <u>other</u> client, Leasco. Nor did Collins advise Aurelio to obtain separate counsel to review the Assignment and Promissory Note, or to otherwise have a professional review the transaction.

C. <u>The License Agreements</u>

Because it was necessary for Leasco to utilize the license payments in order to make the monthly payments to the Tenorio Brothers, the parties contemplated that each of the participating restaurants would execute "Licensing Agreements" in favor of Leasco, which acknowledged Leasco's ownership of the trademark and name, and which provided--in contrast to the non-specific "la renta"-- an easily calculated percentage of

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[6] On a $2.5 million principal balance at 12% per annum, monthly interest alone would be $25,000. Thus, if a principal reduction of $25,000 was also due each month, the note payments, in the early years of the note, would run at approximately $50,000 per month, or $600,000 per year.

gross sales to be paid monthly to Leasco. The operators executed, on June 10, 1998, or from time to time thereafter, such license agreements. This arrangement was encouraged by the Tenorio Brothers, whose spokesman at the June 10, 1998 operators' meeting was Flavio Tenorio.

On June 10, 1998, most of the individual operators of the numerous Arizona Filiberto's restaurants, at a meeting with Piskulich and Collins, executed "Trademark Licensing Agreements" acknowledging Leasco's ownership of the mark, "Filiberto's Mexican Food," together with its goodwill. The trademark was licensed to each restaurant for a 10-year term, with license fee payments to be made monthly on a sliding scale of from 3 - 6% of gross income. The licensing agreements placed in evidence were executed by:

Signator	Store No.	Exhibit
Juan Tenorio	1	D-7
Isidro Araiza	2	D-17
Alfredo Almanzo	3	D-17
Raul Rios	4	18
Ricardo Araiza	5	D-17
Matias Quintero	6	D-17
Jorge Santiallanes	8	D-17
Ana Mendoza	9	D-17
Jorge Tenorio	10	D-17
Juan Castro	13	D-17
Armando Mancillas	14	D-17, D-167
Leonardo Alvarado	15	D-17

(Ex. D-17; see, also, Ex. 8, D-7.)

Two days after the meeting, on June 12, 1998, Leasco, Inc. filed its Articles of Incorporation with the California Secretary of State. Collins signed the Articles as Incorporator, and Piskulich was its initial agent. (Ex. 17, D-3.) Collins was Leasco's attorney for this purpose, and was paid $4,500 for such services (Ex. 24).[7]

Thereafter, the individual operators commenced making contractual payments[8] to Leasco, until later prodding from the Tenorio Brothers caused them to stop doing so. (See Section IV.D.1. of this Memorandum Decision.)

Thus, the intention of the parties to the note was that the operators would pay monthly percentages of gross sales to Leasco. In this fashion, Leasco would then have the cash flow required to make its $25,000 monthly payments, plus interest, to the Tenorio Brothers on the $2.5 million note, until it was paid.

D. <u>The Agency Agreement</u>

As noted above, the Agency Agreement was between the four Tenorio Brothers and Piskulich, individually, and they employed her as their agent for the purpose of selecting attorneys and coordinating payment of the legal fees arising solely out of the Arizona criminal action or matters closely related thereto. (Ex. 3, numbered paragraphs 2, 3; para. 2 of the recitals). For this service, Piskulich was to receive a "reasonable" compensation. That agreement was signed four months before the trademark sale took place.

From the evidence submitted, the court finds and concludes that the Tenorio Brothers gave permission for Piskulich, in her individual capacity and as agent during the criminal proceedings, to utilize the note payment amounts, coming to them from the Leasco monthly payments, to pay their attorneys and attendant expenses. This was the intention of the parties, as clearly set forth in the written Agency Agreement.

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[7] Collins' testimony was that the $4,500 represented an incorporation that he allegedly did for Aurelio Tenorio. However, this testimony is not credible, in view of the proximity of the payment to the Leasco incorporation, and that no other evidence was produced to show that Aurelio ever set up another corporation from his prison cell.

[8] Those contractual payments replaced the former, loosely-managed "la renta" payments made to the Tenorio Brothers.

So long as the attorneys were paid for the criminal action, as well as "any employee . . . necessary to accomplish the purposes of the Agency," the Tenorio Brothers agreed that the monies coming to them from the Promissory Note funds could be used for such purposes. However, if Piskulich's authority was exceeded, or the Agency Agreement was breached, then Piskulich would have legal liability to the Tenorio Brothers. That issue will be discussed in Section IV.B. of this Memorandum Decision.

To pay for their criminal defense, the Tenorio Brothers agreed that Piskulich could use their Promissory Note payments each month to do so. Piskulich began the defense fund pool with $60,000 received from the wives of Aurelio and Flavio Tenorio. The attorneys were then hired to conduct the Tenorio Brothers' criminal defense.

The legal issue to be addressed and resolved in this litigation is, did Piskulich breach the Agency Agreement? If so, what is the Tenorio Brothers' legal remedy?

E. <u>Attorney-Client</u>

The final legal relationship at issue in this case concerns attorney Mansfield Collins. As attorney, Collins represented Aurelio Tenorio in the Arizona criminal action; Ivania Piskulich in the preparation of the Agency Agreement; Ivania Piskulich and Leasco in the trademark sale; Leasco in actions against the operators over licensing disputes; and Flavio or the other Tenorio Brothers for various small legal matters.

While theirs was certainly not a legal relationship, Collins undertook most of these various and continuing attorney-client representations while he and Piskulich were carrying on an intimate personal relationship and ultimately began living together.

Under California law, an attorney's responsibilities and duties to his client are ones of trust, confidence, competence, zealous representation, loyalty, and the avoidance of conflicts of interest. "A violation of the Rules of Professional Conduct subjects an attorney to disciplinary proceedings, but does not in itself provide a basis for civil liability." *BGJ Assoc., LLC v. Wilson*, 7 Cal. Rptr. 3d. 140, 147 (2003), citing *Noble v. Sears, Roebuck & Co.*, 33 Cal. App. 3d 654, 658, 109 Cal. Rptr. 269 (1973). "But the rules, 'together with statutes and general principles relating to other fiduciary relationships, all help define the duty component of the fiduciary duty which the attorney owes to his or her client.'" *Id.*, citing *David Welch Co. v. Erskine & Tulley*, 203 Cal. App. 3d 884, 890, 250 Cal. Rptr. 399 (1988). It is settled that "'[t]he relation between attorney and client is a fiduciary relation of the very highest character and binds the attorney to the most conscientious fidelity--*uberrima fides*.'" *Pavicich v. Santucci*, 102 Cal. Rptr. 2d 125, 137 (2000), citing 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys § 118, p. 155, quoting *Cox v. Delmas*, 99 Cal. 104, 123, 33 P. 836 (1893).

Thus, the legal issues to be decided, in this case, are whether Collins committed legal malpractice or breached his contract or contracts with any of the Tenorio Brothers.

IV. ACTIONS BETWEEN THE PARTIES BASED UPON THEIR LEGAL RELATIONSHIPS

Having described the nature of each legal relationship between the various parties to this litigation, it now falls to the court to decide whether legal liability flows from the conduct of the parties, and if, so, to determine appropriate remedies in order to achieve just results.

A. The License Agreements

The court first addresses the liability of the parties under the License Agreements.

Most of the various individuals who operate the numerous "Filiberto's" restaurants are using its logos, menus, recipes, operational handbook, and methods pursuant to written licensing agreements. The majority of those agreements were executed on June 10, 1998. Several others were executed at later dates. These contracts established the legal relationship between those parties. In addition to those parties who signed licensing agreements on June 10, 1998, the evidence showed that additional licensees, post-June 10, 1998, were:

Date	Name	Location
8/01/2000	Jorge Quintero Uribe	735 E. Fry, Sierra Vista
3/05/2000	Jose Quintero	735 E. Fry, Sierra Vista
11/04/1999	Leasco Holdings, Inc.	Unspecified
3/05/2001	Novoa Investments, LLC	Unspecified
4/10/2001	Aguilar Bros. Co., LLC	1250 W. Broadway, Tempe

Simply, in exchange for the use of the trademarked property, and the procedures associated therewith, the operators agreed to pay Leasco a percentage of their gross profits each month.

Between March and June 30, 2002, through the wrongful influence of Juan Tenorio and Flavio Tenorio, who were acting for the four Tenorio Brothers, many of these operators elected to cease making payments to Leasco, based principally on the Tenorio Brothers' representation that Leasco did not own the mark, and that the Tenorio Brothers did. Each operator's decision to stop making license payments was made unilaterally, without a court's judgment as to whether the Tenorio Brothers' representations were legally correct. As noted above, the Tenorio Brothers' unilateral assessment of their legal position has now been found to be wholly erroneous regarding the ownership of the "Filiberto's" trademark.

Each licensing contract provides for a method of termination with Leasco, should an operator choose to no longer operate under the "Filiberto's" banner. Each licensee can terminate upon the giving of a 180-day notice to Leasco. (See, e.g., para. 10 of Ex. D-17.) Should Leasco desire to terminate a licensee, it may do so within 14 days after giving that person or entity written notice. (See, e.g., para. 6 of Ex. D-17.) Nowhere do the licensing agreements provide that a licensee may unilaterally stop paying <u>and</u> continue to use the trademark and other proprietary rights which all licensees had acknowledged to be the property of Leasco (see, e.g., second paragraph of recitals, p. 1, Ex. D-17).

The arguments of the licensee operators as to their reason for not paying do not rise to the level of a justifiable or legal reason for them to have simply stopped making payments and to have simultaneously appropriated the trademark and accompanying property rights to their own use.

Accordingly, the court finds and concludes that each individual operator, which stopped payments to Leasco, yet continued using its proprietary trademarks, logos, menus, and operations, is liable to Leasco for the percentages due, each month, under the license agreements.

Accordingly, each individual operator which or who did not formally terminate its license agreement to Leasco, and who has ceased making monthly payments to Leasco, is declared to be contractually liable to Leasco for the appropriate contractual percentages. The evidence presented at trial was lacking as to what such amounts might be (or the court was unable to locate that specific information). Therefore, the court will conduct supplemental hearings as to each licensee which was delinquent, due to the Tenorio Brothers' wrongful interference, and liquidate each claim in favor of Leasco, together with Leasco's attorneys' fees and costs for the portion of this suit related to the parties who have been served.

B. <u>The Agency Agreement</u>

1. <u>An Agent's Legal Responsibilities</u>

Ivania Piskulich was the agent for the Tenorio Brothers under the Agency Agreement dated February 17, 1998 (Ex. 3). Pursuant to the Agency Agreement, Piskulich was required, expressly or implicitly, to:

(a) Collect from Leasco the payments due under the September, 1998, Promissory Note, and account for such payments;

(b) Collect from others, and account for, any payments made for the Tenorio Brothers' benefit, related to payment of attorneys' fees and costs associated with the criminal defense;

(c) Pay, on the Tenorio Brothers' behalf, attorneys' fees or related expenses incurred for the Tenorio Brothers;

(d) Account for payments made on the Tenorio Brothers' behalf; and

(e) Not misappropriate any of the Leasco or third party payments, or improperly pay the same.

The parties contracted in California, and California law governs their relationship. In California, an agent is a fiduciary with the same obligations of diligence and faithful service as a trustee, and thus must make the fullest disclosure of all material facts that might affect her principal's decision making. Additionally, an agent is bound to use reasonable care, skill, and diligence in the performance of the object of the agency, and is under a duty not to compete with her principal on matters connected with the agency. If the agent breaches her fiduciary duty, she must give the principal the benefit of his bargain and place him, insofar as possible, in the same position he would have enjoyed had the duty been performed. Cal.Civ.Code § 3333. "An agent is a fiduciary with the same obligations of diligence and faithful service as a trustee." *Pollack v. Lytel*, 120 Cal. App. 3d 931, 940, 175 Cal. Rptr. 81 (1981), citing Cal.Civ.Code § 2322, sub d. 3; *Cutler v. State Bar of Cal.*, 71 Cal.2d 241, 251, 78 Cal. Rptr.172, 455 P.2d 108 (1969). "Accordingly, an agent must make the fullest disclosure of all material facts which might affect his principal's decision making." *Id.*, citing *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 782, 157 Cal. Rptr.392, 598 P.2d 45 (1979); *Smith v. Zak* (1971) 20 Cal. App.3d 785, 793, 98 Cal. Rptr.242 (1971). "In addition, an agent is bound to use reasonable care, skill and diligence in the performance of the object of the agency." *Id.*, citing Cal.Lab.Code §§ 2858, 2859; *Stiefel v. McKee* (1969) 1 Cal. App. 3d 263, 266, 81 Cal Rptr. 565 (1969). "Finally, an agent is under a duty not to compete with his principal on matters connected with the agency." *Id*, citing *Realty Co. of America v. Burton*, 160 Cal. App. 2d 178, 191, 325 P.2d 171 (1958); Restatement (Second) Agency § 393.

Cal.Civ.Code § 2322(c) holds an agent to the same standards as a trustee. In California, statutes require that a trustee keep trust property separate from other property not subject to the trust, Cal. Prob. Code § 16009(a), that a trustee not use or deal with trust property for the trustee's own profit or for any other purposes unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiaries. Cal. Prob.Code § 16004(a). As for her duty of loyalty, a trustee must administer the trust solely in the interest of the beneficiaries.

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2. <u>The Defense Team</u>

On February 17, 1998, Flavio Tenorio, "for all of the Brothers," executed an Agency Agreement with Piskulich. (Ex. 3). Her duties were to select attorneys who would represent the four brothers in the Arizona criminal action, and to coordinate the payments to those attorneys. (Ex. 3.) Her compensation was to be at a "reasonable" rate. (Ex. 3, para. 4.) Piskulich testified to having a "verbal" agreement of $150 per hour, but the writing does not discuss any such hourly arrangement. That same day, Piskulich received a $60,000 initial deposit to the defense fund, $30,000 each from the wives of Flavio and Aurelio Tenorio (Ex. 44).

Thereafter, on February 19, 1998, Mansfield Collins was selected by Piskulich to represent Aurelio Tenorio in the pending Arizona criminal case for a fee of $10,000. Collins wrote that his fee "includes a jury trial, if necessary, but does <u>not</u> include any appeal." (Ex. 4.) Paragraph 3 of the retention letter noted that "should additional fees be necessary, both parties agree to decide in good faith, the required amount." No evidence was provided by Collins of any such later negotiation and no writing exists to show that Aurelio agreed to more.

On February 24, 1998, attorney Booker Evans of Phoenix was selected to represent Filiberto Tenorio in the same criminal case. His fee was $35,000, plus an additional $15,000 if the matter either proceeded to trial or lasted longer than one year. (Ex. 7.) Eventually the firm's duties expanded and other attorneys in the firm began providing other legal services to the four Tenorio Brothers.

On March 3, 1998, attorney Thomas A. Mesereau, Jr., was retained on behalf of Francisco Tenorio. (Ex. 10.) His fee was also $35,000, with an additional $15,000 to be paid if the matter proceeded to trial. Mr. Mesereau's letter, like Collins', contained a statement that if additional fees were necessary, both parties would decide, "in good faith," what such fees should be. There was no provision as to what event or circumstances would necessitate any request for additional fees, or what standards would apply to determine such additional amount.

Also, by March 26, Piskulich procured the criminal defense services of attorney Cornell J. Price, on behalf of Flavio Tenorio. (See Ex. 11, 12.) He was eventually replaced, as Flavio's criminal defense attorney. (Ex. 14.) Jennifer Keller was chosen to replace him.[9] (See Ex. 71.)

Once the criminal defense attorneys were in place, they began working in a unified effort to coordinate defenses for their clients, the four Tenorio Brothers.

Later, attorney Terence Woolston, also with Booker Evans' law firm, was hired for consultation relative to the tax and inter-related commercial issues affecting their client, Filiberto Tenorio.[10] (Ex. 53.) Other attorneys, such as Anthony Bueno, were consulted on immigration questions as well.

In the first quarter of 1999, there were many discussions with the United States government concerning the criminal charges against the Tenorio Brothers. Proposed plea agreements were circulated, discussed, and negotiated by each defense attorney, working collaboratively with one another in a joint defense effort.[11] (See, e.g., Ex. 45, D-159.) In one such letter, attorney Woolston (Filiberto's attorney) recommended against a plea proposal. (Ex. 45.) Shortly thereafter, on May 12, 1999, Filiberto terminated Woolston as his attorney for the "tax matters." (Ex. 65.) Booker Evans, with the same firm, stayed on as Aurelio's criminal defense attorney.

None of the attorneys listed above, with the exception of Mansfield Collins, have had their fees

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[9] For limited purposes, Collins would also occasionally represent Flavio, performing small administrative tasks for him. (See Ex. 5, 6.) No separate written fee agreements were ever signed for these matters.

[10] On September 4, 1998, Collins asked Woolston for tax and business advice concerning a sale of the Tenorio Brothers trademark to a new entity, which new entity might or could involve Piskulich. Woolston's reply letter was cautious and careful, and ultimately advised Piskulich to seek separate counsel. The letter may have contained advice helpful to Woolston's client, Filiberto Tenorio individually, but the letter is equally helpful in its advice to the four Tenorio Brothers, as well as to Piskulich. There is no indication that Woolston had ever been advised, as of the previous June, that the transfer of the trademark had already occurred. (Ex. 25.)

[11] All of the Tenorio Brothers had previously been convicted for tax under-reporting in the Southern District of California. Thus, the Arizona proceedings were their second brush with the federal criminal system. (Ex. 76.)

challenged in this litigation by the Tenorio Brothers. There is no allegation that payments to attorneys, other than Mansfield Collins, were improper or not contemplated by the Agency Agreement.

The new millennium dawned with a plea agreement and judgment against the four Tenorio Brothers (Ex. 61, 71), Juan Tenorio (Ex. 49), Martha Idalia Rios, and Sergio Tenorio (D-162). The sentences imposed by Chief Judge McNamee were:

Name	Fine	Probation/Prison
Francisco Tenorio	$375,110	13 months prison 3 years probation
Filiberto Tenorio	$375,110	13 months prison 3 years probation
Flavio Tenorio	$375,110	3 years probation
Aurelio Tenorio	$375,110	13 months prison 3 years probation
Juan Tenorio	$24,025	3 years probation
Sergio Tenorio	$36,025	5 years probation
Martha Idalia Rios	Unknown	Unknown

(See, also, Ex. D-162; 49.) For their individual immigration violations, Filiberto, Francisco, and Aurelio were deported back to Mexico. Flavio, Idalia Rios, and Juan Tenorio were not subject to deportation, and have remained in the United States.

The criminal cases thus effectively ended in early 2000.

3. Confusion Reigns and Chaos Runs Rampant

a. In general

When looking at the Agency Agreement and Piskulich's duties as agent in a vacuum, the issues are straightforward and simple. But after Piskulich acquired the trademark and began collecting license fees for Leasco, things went haywire.

Almost immediately upon Piskulich's formation of Leasco on June 12, 1998, and its attempts to collect licensee payments, Piskulich began a wholesale mismanagement of her individual duties as the Tenorio Brothers' agent, for which duties, it turned out, she was personally and professionally unqualified.

Relying solely upon the advice of her attorney/boyfriend, Mansfield Collins, Piskulich quickly began to blur the legal distinctions between herself and Leasco, and her responsibilities as Leasco's President and sole shareholder, and her individual duties to the Tenorio Brothers as their agent to manage Leasco's payments to them.

The accountings produced by Piskulich, in defense of both the agency action against her individually, and the records concerning Leasco's payments to the Tenorio Brothers, are unprofessional, inadequate, and to a large-degree non-existent.

By attempting to wear hats for both Leasco, as payor under the $2.5 million Promissory Note, and as agent for the Tenorio Brothers, the recipients of those same payments, Piskulich placed herself in an irreconcilable conflict of interest with her principals. And, her accountings and actions reflect the tangled results of that conflict.

Piskulich continued to try to represent both sides up until these lawsuits began, and apparently has yet to recognize the gross conflict of interest inherent in her dual roles.

b. Piskulich's Role as President of Leasco

Once Leasco obtained the trademark assignment from the Tenorio Brothers (Ex. 15), Leasco had to find a way to pay on its $2.5 million purchase price (Ex. 15,16). It initially did this by creating a cash flow to Leasco from the licensing of the acquired property to the various individual "Filiberto's" operators. (See, e.g., Ex. D-17.) Leasco also began to expand the "Filiberto's" operations.

Piskulich and Collins actively marketed the "Filiberto's" chain, and expanded its stores, gaining new licensees. In November 1999, Leasco begin opening "company stores," the first of which, Leasco Holdings, Inc., executed a licensing agreement on November 4, 1999. Piskulich signed for both Leasco, Inc. and for Leasco Holdings, Inc.

On March 5, 2001, another company store was licensed to Novoa Investments, LLC, for a Tucson, Arizona, location. Piskulich signed for both Leasco and Novoa.[12]

On March 10, 2000, Leasco hired attorney Ton D. Chen to register the Filiberto's trademark with the U.S. Patent and Trademark office. Mr. Chen sent an application to the federal trademark office. (Ex. 72.) The mark was registered in Leasco's name thirteen months later, on April 3, 2001. (Ex. D-162.) On July 18, 2000, Leasco applied for authority to transact business in Arizona. Piskulich signed it as President, and Collins signed the application as Vice President/Secretary of the corporation (Ex. 27).

But all of Piskulich's and Collins' efforts to improve Leasco came at a cost: Piskulich paid scant attention to her duties to the Tenorio Brothers under the Agency Agreement.

c. Piskulich's Attempts to Prop Up Her Duties as the Tenorio Brothers' Agent

By early 2001, Leasco's monthly payments to the Tenorio Brothers of $25,000 plus interest had been seriously lagging and were severely delinquent (Ex. 32), and by the summer of 2001, relations between

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[12] Wilfredo Novoa is Piskulich's brother. He is now Leasco's accountant. Wilfredo may or may not have been a prncipal in Novoa Investments, LLC.

Leasco and the four Tenorio Brothers had become strained to the breaking point. Acting for the brothers, Flavio Tenorio asked Piskulich to explain how she was handling the payments under the Agency Agreement. She responded in writing on June 26, 2001. (Ex. 76, D-43.) She stated that Leasco had "paid you and your brothers approximately $972,290.66" (Ex. 76, D-43), a figure which Piskulich did not justify and, in fact, contradicted at trial. Piskulich also stated that "Leasco has made and continues to make substantial payments on behalf of you and your brothers," including an agreement to pay $1.1 million of a fine to the INS, "from the amounts that Leasco owes you . . . from the sale of the trademark."[13] However, the court has not been furnished with any written agreement in which Leasco had agreed to pay the Tenorio Brothers' criminal fines. The only written agreement between these parties is the Agency Agreement itself, and it is dated February 17, 1998 (Ex. 3). That document only refers to the coordination of payments to defense attorneys or to others in connection with that defense.

Reading between the lines of this important June 26, 2001 letter, and from considering the testimony from the witnesses, it appears that Leasco had stopped paying on the $2.5 million Promissory Note, yet at the same time it was continuing to collect from the owner/operators of the various locations, and Leasco was using those license payments to pay Collins and Piskulich significant amounts of money. At the same time, Piskulich was telling Flavio that Leasco was "doing everything possible to remain financially viable." (Ex. 76, D-43.) She noted that Collins, now Vice-President and General Counsel for Leasco, was assisting it in its negotiations with vendors.

In October, 2001, Piskulich traveled to Tijuana, MX, to review the status of her Agency Agreement with the Tenorio Brothers. It was necessary to meet in Mexico because three of the brothers had been deported. At that meeting, Piskulich presented them with the first "accounting" of payments allegedly made

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[13] By the $1.1 million fine, Piskulich is presumably referring to the $1,500,440 fine levied and allocated against the Tenorio Brothers by the District Court. If she was referring to some different assessment, however, that fine or penalty was not included within the evidence. No evidence was offered by Piskulich to show that the $1.5 million in criminal fines has ever been paid in any amount. Also, one year later, on May 30, 2002, Collins wrote Aurelio Tenorio, stating that "Leasco has paid more than $1 million dollars in legal services and to other professionals on yours and your brothers' behalf since 1998." (Ex. 31.)

d. **Piskulich's Accountings**

As set forth above, Piskulich's duties as the four Tenorio Brothers' agent were clearly spelled out in the Agency Agreement (Ex. 3). As previously explained, Piskulich, as the agent for the Tenorio Brothers under the Agency Agreement, was responsible to hire attorneys and "employees" to accomplish the purpose of the agency. The court finds that this charter also included necessary costs and incidental expenses to accomplish the agency's purpose.

The Agency Agreement ran between Piskulich, personally, and each of the four Tenorio Brothers. Yet, when Piskulich presented accountings, she presented them as if Leasco had made the Agency Agreement payments on behalf of the four brothers. But, Leasco had no legal obligation under the Agency Agreement; Leasco's only obligation was to make payments each month under the Promissory Note. (Ex. 16.) Piskulich not only blurred, but obliterated, the legal distinctions between her agent's duties and Leasco, and improperly merged their separate legal responsibilities. She compounded the confusion and error by lavishly favoring her attorney/boyfriend/live-in companion, Mansfield Collins, with unearned fees.

Since Piskulich was the President and sole shareholder of Leasco, she almost immediately became sloppy in recognizing the distinction between who had obligation to the four brothers and what those obligations entailed, and she directed Leasco to make not only the Agency Agreement payments but other payments as well. Exhibits 30, 33, and 33A represent those payments allegedly made on behalf of the four brothers. Its total, for which Leasco wants credit against its promissory note, contained in Ex. 30, from July, 1998, through April, 2003, is $798,673.66. Both Piskulich's and Leasco's accountings were atrocious, sloppy, unprofessional, and extremely difficult if not impossible to comprehend. Nonetheless, the Tenorio Brothers concede that $338,572 of that amount is not in dispute (Ex. 124, Appendix II to this Memorandum Decision.) That leaves $460,101[14] of the payments, which were claimed to have been made, still in dispute.

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[14] For ease of calculation, the court has omitted cents.

4. Analyzing the Difference

The dispute between the parties over Leasco's accounting for payments is over the sum of $460,101. Leasco wants credit for $798,673; the Tenorio Brothers only want to credit it for $338,572. The Tenorio Brothers have identified four principal areas of disagreement. They are:

a. "Reclassified" wages;

b. Mansfield Collins' attorneys' fees;

c. Ivania Piskulich's agent's fees; and

d. Miscellaneous.

Each will be discussed in turn. The evidence produced by Leasco showed that Piskulich credited payments made under each of these categories as payments made in favor of the Tenorios. The Tenorio Brothers dispute the benefit received under each category.

From December 31, 1998 through July 30, 2003, Leasco received from the individual operators, under the licensing agreements, the sum of $3,045,708.91.[15] (Ex. 46.)

Using Leasco's Ex. 30 as the guide to what Piskulich used the licensee payments to pay, allegedly on the brothers' behalf, under her individual duties to them under the Agency Agreement, the court has analyzed each expenditure. Again, Piskulich's duties were to coordinate the payment of legal fees for the brothers in their Arizona criminal case. (Ex. 3.) Additionally, she was to "employ any employee" deemed necessary to accomplish this purpose. (Ex. 3.) Listed here is the court's evaluation, taken from all of the facts of this case, as to how she performed her agency in the four categories listed above.

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[15] However, other testimony revealed that Leasco had received $3,582,237.01 from its Arizona licensees.

a. **Reclassified wages**

During 1999, upon their release from prison, both Filiberto and Francisco Tenorio worked as employees of Leasco, inspecting and overseeing the Arizona operations, earning wages. (See, e.g., W-2 Statement, Ex. D-13.) Exhibits 30, 33, and 33A and Piskulich's testimony show that Leasco, acting at Piskulich's discretion, "reclassified" these wages paid to Filiberto and Francisco Tenorio as "note payments." This was not appropriate. A note payment is different than, and distinctly separate from, a wage payment. The Leasco Promissory Note should not be credited for services performed for which a wage was earned and paid. The accounting also shows wages paid to Aurelio and Flavio which were credited as note payments. These are also improper. Therefore, from the $798,673 allegedly paid on the note, deductions from such Leasco credits shall be made as follows:

Francisco's wages	$35,063.17
Flavio's wages	24,490.36
Aurelio's wages	35,063.15
Filiberto's wages	31,026.34
Total	$125,643.02

b. **Mansfield Collins' Attorneys' Fees**

Mansfield Collins was overpaid well beyond his agreed $10,000 retainer fee. Leasco paid him $268,400.34, allegedly for the Tenorio Brothers' benefit. In this litigation, he still seeks $226,213.77 more.

As set forth in Section IV.C. of this Memorandum Decision, Collins agreed to be paid $10,000 for legal work connected with Aurelio's criminal defense. There was no writing admitted into evidence which convinces the court that the parties changed that agreement. Moreover, Collins' only written agreement was with his client, Aurelio Tenorio, not the four Tenorio Brothers. As noted in Section IV.C., Collins kept inadequate records of any work performed for Aurelio or the four brothers, and did not prove that what he accomplished or failed to accomplish was agreed to be paid for any amount greater than $10,000. The testimony that was produced, in an effort to persuade the court that the $10,000 was increased to $35,000, was not supported by any document signed by Aurelio (Ex. 13). Moreover, Piskulich's testimony, as well as other attorneys' testimony (besides Collins), was that this idea was only floated as a proposal by Piskulich, which none of the attorneys accepted. (See Piskulich letter dated March 23, 1998, Ex. 13.) Leasco paid Collins $268,400.34.

Therefore, further reduction from Leasco's claimed $798,673.66 shall be the $258,400.34 that Collins received in excess of his agreed-upon $10,000 fee.

c. <u>Miscellaneous</u>

The items in the miscellaneous category are found mainly in Exhibit 30. In that exhibit, there are a number of other payees whose relationship to the criminal defense was not carefully explained. Therefore, the Tenorio Brothers argue that there is no basis upon which to allow their payment. These "miscellaneous" items are:

David C. Arnell	$3,487.50
Don Stapley	2,000.00
INS	1,154.48
Itzel Williams	1,296.20
Bueno and Assoc.	1,500.00
Mission Lienn/Marko	1,762.50
Arboleda Law Firm	3,729.00
INS	100.00
U.S. Treasury	1,000.00
Walker, Ryan	2,476.75

Wilfredo Novoa	2,124.00
Total	$20,630.43

The court has reviewed each of these expenditures in the context of what Piskulich did accomplish for the Tenorio Brothers under her agency. Neither side adequately explained or completely refuted the need for these items, but the totality of the evidence convinces the court that these expenditures did, in some way, benefit the four Tenorio Brothers. (See, e.g., depositions of Anthony Bueno, Cornell Price; D-173.) Accordingly, they will not be deducted as the Tenorio Brothers request.

d. <u>Piskulich's Agent's Fee</u>

Piskulich has, in this litigation, asked the court to ratify payments to her of $70,204.50, and to award her a total fee of $339,967.50 from the Tenorio Brothers. (Piskulich Post-Trial Brief.) Payments to her occurred on the following dates:

12/31/98	From Defense Fund account	$40,204.50
7/12/02	From Leasco on Tenorio Brothers' account	$30,000.00
	Total	$70,204.50

(Ex. I to Ex. 43.) The balance still due, Piskulich maintains, is $269,763.50. (Ex. I to Ex. 43.) For their part, the Tenorio Brothers have asked for a judgment against Piskulich for the fees already paid ($70,204.50) and a declaration that they owe nothing further.

(1) **The Evidence**

On December 15, 2002, after this litigation had boiled over, Piskulich sent a billing statement to the four Tenorio Brothers. The statement covered services allegedly rendered from February 1, 1998, through July 12, 2002. Piskulich charged an hourly rate of $150, claiming 2,266.45 hours of work, and the total came to $339,967.50. (Ex. I to Ex. 43.) This was the only billing statement ever sent by Piskulich, and it is neither carefully crafted nor itemized. This billing is also suspect because it purports to cover four and one-half years of services, and yet was not prepared from contemporaneous time slips. Many of the entries are sketchy, such as "telephone conference with," with no substantive reference to the nature of, or reason for the call. Piskulich testified that she reconstructed it from miscellaneous paperwork, calendars, etc. in her possession. Those supporting documents were not submitted as evidence.

Additionally, the billing statement upon which Piskulich relies was prepared after the litigation between the parties had commenced, making its reliability doubly suspect.

Piskulich also submitted, as part of the case for her fees, some other miscellaneous invoices that either appear to be addressed to other entities, or which seem to be "conduit" billings for others. (Ex. 51.) They do not relate to the Agency Agreement, and are not included within Ex. I to Ex. 43, nor are they at issue in, or relevant to this litigation.

The accountings presented by Piskulich to the Tenorio Brothers, in October, 2001, for services from June 1, 1998 to October 20, 2001, for her agent's services, reflect payments received in 1998 and 1999 of $10,100 and $5,900, respectively. (Ex. 33, 33A.) These payments total only $16,000 through October 20, 2001 and thus belie Piskulich's claim that she earned almost $340,000 pursuant to her agency. By October 20, 1999, the criminal case was quickly winding down, ending three months later with Chief Judge McNamee's acceptance of the four Tenorio Brothers' guilty plea on January 20, 2000 (Ex. 71).

So, without furnishing any comprehensive accountings, Piskulich now seeks a total of $339,967.50 jointly and severally against the Tenorio Brothers (Piskulich's Post-Trial Brief; Ex. I to Ex. 43), even though, through almost the end of the criminal case, she had collected (without any accounting) only $16,000 from the Tenorio Brothers.

Piskulich has not carried her burden of proof. First, her accountings, submitted to the Tenorio Brothers in October, 2001, reflected payments to her of $16,000 from the inception of her agency. (Ex. 33, 33A.) This was for a period when most--if not all--of the agent's responsibilities had been accomplished.[16] Yet, Piskulich's more "detailed" post-litigation accounting, allegedly prepared on December 15, 2002, and covering four and one-half years, shows that she allegedly spent 2,266 hours, adding up to a bill of $339,967.50. No reasonable explanation was offered at trial to reflect that Piskulich had acted, at all relevant times of her agency, for the four Tenorio Brothers, in a manner which would justify a bill of such magnitude.

In sum, Piskulich's accountings are woefully inadequate, on any number of fronts, to support any fee of the vast size suggested by this lawsuit. Such a request severely taints her credibility.

(2) <u>Conclusion</u>

When the court applies California law, it concludes that Piskulich breached the Agency Agreement. The amounts of money in excess of Aurelio's agreed $10,000 fee, which Piskulich paid out to Collins, her live-in boyfriend ($258,400.34), and her "reclassification" of wages as note payments, for the benefit of her wholly-owned Leasco corporation ($125,643.02), were egregious breaches of her agent's duties and conflicts of interest. From the inception of the trademark purchase, Piskulich had a clear conflict of interest which disabled her ability to rationally separate herself, as agent, from her position as sole shareholder and President of Leasco. It has clearly cost the Tenorio Brothers more to recover these improperly paid amounts than the $70,204.50 that Piskulich has paid herself as a fee. Thus, the Tenorio Brothers' actual damages are $70,204.50. However, because California law requires a written contract for recovery of legal fees, and the

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[16] The evidence and testimony showed that the various plea agreements were being "wrapped up" in April, 1999, and that they were lodged with the court on April 30, 1999.

Agency Agreement is silent on that subject, reasonable attorneys' fees incurred in recovering this $70,204.50 are not available to the Tenorio Brothers. WEST'S ANN.CAL.CIV.CODE § 1717.

To the extent that Piskulich claims that she is <u>still</u> owed $269,763.50 in addition to the $70,204.50 which she has already collected, for a total of $339,967.50, the court finds and concludes that such a fee, under the Agency Agreement, constitutes an unsustainable act of overreaching and is unsupported and unreasonable, and that due to Piskulich's self-dealing and overt conflicts of interest, her inability to accurately and timely provide meaningful accountings, her overpayments to Collins, and her wrongful reclassification of wages into "note payments," all for the benefit of both her wholly-owned corporation and her paramour, she has fully breached her Agency Agreement. As a consequence, the court finds and concludes that Piskulich should be paid nothing for her agency, and that she is owed nothing more.

A judgment will, therefore, be entered for the four Tenorio Brothers that Piskulich's claim for fees of $339,967 be DISMISSED, with prejudice. Moreover, the Tenorio Brothers shall have judgment, against Piskulich personally, for the $70,204.50 paid to her as an agent's fee.

e. <u>Conclusion--Proper Credit for Note Payments</u>

Thus, from all of the foregoing, the court finds and concludes that the following amounts were improperly paid out by Leasco or credited by Leasco as note payments:

Ex. 30 Leasco claimed note payments	$798,673.66
LESS: Overstated or inappropriate amounts:	
"Reclassified" wages	*(125,643.02*)
Mansfield Collins	*(258,400.34)*
Ivania Piskulich	*(70,204.50*)
Subtotal of **inappropriate** credits	*(454,247.86)*
Appropriate credit for Leasco payments	$344,425.80

The court finds (taken from the totality of the evidence), that Leasco made payments which can be properly credited on the $2.5 million Promissory Note, of $344,426.

Because the Tenorio Brothers' analysis reflects, on Ex. 124 (Appendix II to this Memorandum Decision), a note balance of $3,344,727, through February, 2002, which includes an agreed credit of $338,572, this court further reduces the note balance by the $5,853 difference, to $3,338,874, as of February 28, 2002.

C. Mansfield Collins' Legal Representation

Allegations proliferated during this intense litigation concerning whether Mansfield Collins was guilty of professional negligence, or stated another way, did he commit legal malpractice? Also raised is the question of whether he breached his contract for legal services.

In connection with these issues, in addition to the body of general facts and chronology, the court heard from expert witnesses Marc X. Carlos, Gregory L. Ogden, and Boyd Lemon. (See, also, Ex. 149, 150.)

1. Who were Collins' clients?

Mr. Collins is a California attorney, who has been licensed to practice since 1981. In February, 1998, he was asked to accompany Piskulich on her first visit to the San Bernardino jail, where he met Flavio and Aurelio Tenorio.

The evidence is clear that Collins was asked to represent Flavio Tenorio in early February, 1998, for the limited purpose of reviewing legal files in the office of attorney Ezekiel Cortez. The engagement was to determine the "status of any pending actions, criminal, or tax issues regarding Flavio and Aurelio Tenorio. . . ." (Ex. 1.) For these services, Flavio Tenorio agreed to pay a fee of $3,000. (Ex. 1.) There was no dispute involving either that representation or that fee.

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Shortly thereafter, Piskulich hired Collins to represent Aurelio Tenorio in the Arizona criminal case. He agreed to perform this task, through a jury trial, for $10,000. This agreement was in writing (Ex. 4), consistent with California's statute governing attorneys and the Rules of Professional Responsibility.

On May 7, 1998, Collins wrote Allen Rabinowitz, an INS attorney, requesting, on a "special appearance" basis, an administrative hearing for Flavio Tenorio (Ex. 6). There was no fee agreement letter produced for this one-time event, nor is this item in dispute in this litigation.

On December 18, 1998, Collins also accepted a limited representation of Juan Tenorio, in a civil immigration matter, and disclosed that a conflict of interest might surface if the administration of the immigration case became entwined with Aurelio Tenorio's interests. (Ex. 26.)[17] Mr. Collins' representation in that proceeding, or any fees paid, are not at issue here.

Finally, on March 7, 2002, Collins & Mesereau, LLP, agreed to represent Flavio in "all post-conviction matters arising out of the California and Arizona [federal criminal] cases. . . ." (Ex. 77.) No billing statements were presented by Collins, or by Collins and Mesereau, LLP, for any such services, and evidence concerning any alleged post-conviction representation was either too scant, or completely lacking, to support any finding that fees were earned for any such post-conviction matters. Moreover, since the evidence in the case showed that many of the various licensed restauranteurs began withholding license payments to Leasco in March, 2002, it is unlikely that Collins did any legal work for Flavio thereafter, since by then he was also Leasco's general counsel.

Thus, for the issues in this case, the court finds that only Aurelio Tenorio was Collins' client, and only for the work involved in the criminal defense.

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[17] In that letter, Collins advised that his hourly rate was $200 per hour.

2. The Transaction Involving the Sale of the Trademark: Was it Legal Malpractice?

By June, 1998, Collins had been working for Aurelio Tenorio on the Arizona criminal case for a few months.

But, while he represented Aurelio in the criminal matter, Collins also undertook the representation of Piskulich and her newly formed company, Leasco, and prepared a Promissory Note and assignment for the transfer of Aurelio's one-fourth interest in the Filiberto's trade name and trademark, along with the interests of his brothers. Collins testified that, in this connection, he had never previously prepared a promissory note, security agreement, or UCC-1 financing statement, and that he was "not familiar" with what an attorney's standard of care as to that type of endeavor would be.

At this stage of the proceedings, Collins owed a duty, as Aurelio's counsel, to inform him that he needed separate counsel to advise him as to whether the documents that Collins had presented for his <u>other</u> client, Leasco, was favorable or unfair to Aurelio. Collins did not do so.

As matters have turned out, and as would have been immediately apparent to any commercial lawyer, the note and assignment prepared by Collins were anything but favorable to Aurelio. The following list describes several flaws in the documents, the lack of which fell below an attorney's applicable standard of care:

A. Although Aurelio was selling, on credit, something which had a value to him of at least $625,000, plus interest over several years, the documents provided for no retention of a security interest. Thus, should the buyer, Leasco (also Collins' client) default, Aurelio would have no collateral to look to. He would be merely an unsecured creditor. This arrangement benefitted Leasco, but was a major detriment to Aurelio;

B. The Promissory Note contained no acceleration clause. If the buyer was to default, as it did, all that Aurelio could do was sue for only the amount in arrears, not the entire debt. Again, Leasco benefitted; Aurelio did not;

C. The note did not provide for the collection of attorneys' fees on default or suit. California statutory law, unlike Arizona's statute, does not award fees in a contract action to the prevailing party unless the contract expressly provides. A competent attorney would have included such a provision. Failure to include it has severely harmed Aurelio; and

D. The transaction did not take care to assure a reliable method of accounting for any note payments, such as through a title company. This omission has caused severe confusion and, ultimately, this litigation. That confusion and all of the Leasco/Piskulich accounting inaccuracies have severely damaged Aurelio Tenorio.

These omissions were not only a breach of ethics, they were also incompetent and were, as a matter of law, professional malpractice. As a result, Aurelio stands to lose a significant asset, and has incurred sizeable unreimburseable legal bills in pursuing justice.

Focusing only upon Collins' representation of Aurelio related to the sale of the trademark asset, the court concludes that Collins, who was not an experienced commercial attorney, breached the professional standard of care associated with that representation and that, as a result, Aurelio Tenorio has been economically harmed. However, professional negligence (malpractice) actions in California carry a one-year statute of limitations, which begins upon the discovery of the claimed malpractice. The statute also allows a tolling period relating to when a party's reasonable diligence should have discovered the omission. CAL.CIV.P. § 340.6.

The cause of action here occurred, at the latest, when the parties acknowledge that the note and assignment instruments were finally executed, October, 1998.

The first legal action involving the parties was filed on July 5, 2002. (See Collins' Post-Trial Brief at 9:30.) However, by July 2001, the year before, as reflected by Ex. 124 (Appendix II), the payments on the note had been erratic since the inception, and Piskulich had not provided a single reliable or professional accounting.[18] This was enough to have legally required Aurelio to question and investigate the legal effect of the Collins'-prepared documents that he signed. Since Aurelio did not do so, his claim for professional negligence is brought too late to state a claim for malpractice.

Aurelio Tenorio is, therefore, barred by the statute of limitations from bringing his claim under this theory, and judgment on this issue shall be entered in favor of Collins.[19]

3. Breach of Contract: Did Collins Earn $494,614.11?

Aurelio also has maintained that Collins has breached his fee agreement with him, and has overcharged for the legal work done in the criminal case. In California, an action for breach of a written contract is subject to a four year statute of limitations. WEST'S ANN. CAL. C.C.P. § 337. This action for breach is within this period. (See, e.g., Ex. 19, 21, 22.)

Also, all four Tenorio Brothers have contended that, to the extent that any portion of the $494,614.11 charged by, or paid to Collins by Leasco was not authorized by them, that they were overcharged, or that they were not the beneficiaries of any such legal work represented by the fee. They seek judgment so declaring.

Collins has requested a judgment against the Tenorio Brothers for additional fees of $226,213.77 (Collins' Post-Trial Brief). Collins acknowledges that he has already been paid, through Leasco and charged to all four Tenorio Brothers, through October 26, 2001, the amount of $225,786.23 (Ex. 22). However, Leasco's accounting, through April 2003, however, reflects payments to Collins of $268,400.34 (Ex. 30).

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[18] The first "accounting," such as it was, was presented by Piskulich at the Tijuana meeting in October, 2001. (Ex. 33, 33A.)

[19] Although extensive testimony was given regarding to whether Collins' actions were also violations of his ethical duties as an attorney, this court can issue no legal relief based thereon. Those issues are properly left to the State Bar's disciplinary board.

Collins' prayer, against the Tenorio Brothers, is for the balance set forth in his last bill dated October 26, 2001 (Ex. 22) of $226,213.77. Collins does not reconcile the difference between Leasco's alleged accounting of payments to him of $268,400.34, and his acknowledged receipts of $225,786.23. (Compare Ex. 22 to Ex. 30.) The court finds, therefore, that the evidence supports a finding that Collins was paid $268,400.34 by Leasco.

a. <u>Collins' Legal Responsibilities and Contracts With Clients</u>

The California rules governing fees for professional services are neither complex nor irrational. In essence, they require, with limited exceptions that are not applicable to this case, written fee agreements and adequate disclosures. WEST'S ANN.CAL.BUS. & PROF. CODE § 6148.

For the almost one-half million dollars in legal fees which Collins seeks, Collins produced only three billing statements, collectively containing only two (2) paragraphs of "itemization." (See Ex. 19, 21, 22.) Each bill will be discussed in chronological order.

Collins maintains that his representation and legal work involved not only Aurelio, the only Tenorio brother with whom he had a written fee agreement, but indeed <u>all</u> <u>four</u> Tenorio Brothers. Collins' representation in this regard is misplaced, because California law requires a <u>written</u> fee agreement with each client in each representation. *Id*. Even if the law did not require it, practice would. This simple rule is designed to eliminate the type of confusion which runs rampant in this litigation.

Thus, the court must review the only written billing statements, collectively covering March, 1998, through October, 2001, as obligations now sought against Collins' only client at that time, Aurelio Tenorio.

Although Collins' only written fee agreement was with Aurelio (Ex. 4), and Collins' only representation in the Arizona criminal case was on Aurelio's behalf, the court notes that each of the three bills are addressed to the other brothers as well:

Date	Period	Addressed to	Amount	Ex.
04/05/99	March 1998 - February 1999	Flavio Tenorio; Aurelio Tenorio	$ 40,875.00	19
02/04/00	May 1998 - January 2000	Flavio Tenorio; Aurelio Tenorio; Filiberto Tenorio; Francisco Tenorio	241,500.00	21
10/26/01	February 2000 - October 2001	Flavio Tenorio; Francisco Tenorio; Aurelio Tenorio; Filiberto Tenorio	226,213.77	22

The last billing (Ex. 22) reflects payments received and credited of $225,786.23. This billing also includes the unpaid balance of $40,875 from the April 5, 1999 (Ex. 19) statement.

Collins' proof supporting how these billings were calculated and prepared was sketchy, inaccurate, confused, and evasive. In reality, it is clear from the totality of the evidence that Collins and his live-in girlfriend, Piskulich, without proper accountings supporting an earned professional fee, and without regard for their professional and fiduciary responsibilities, merely invaded a ready cash source which rightly belonged to the Tenorio Brothers, and converted it to their own use.

As noted repeatedly above, the first legal issue that this court must decide is, who did Collins represent in the criminal proceedings. The answer to that question is an easy one--Aurelio Tenorio. Collins only appeared on Aurelio's behalf before Judge McNamee (Ex. 71), and Collins' only relevant fee agreement was with Aurelio (Ex. 4). Thus, the court finds and concludes that Collins' three statements for legal services were not, and are not, an obligation of Flavio, Francisco, and Filiberto Tenorio, each of whom had separate counsel for the criminal proceeding.

Next, the court must address whether Aurelio is responsible for any billings by Collins in excess of the $10,000 flat fee agreed to in the retainer letter. (Ex. 4.)

In this regard, the court looks to the letter itself. Although Ex. 4 is not signed by Aurelio, there was no dispute over whether he agreed to it, nor that Collins earned the $10,000 fee agreed upon (Ex. 4). However, as for the additional $484,614.11 for which ratification or additional fees are sought, there is no competent evidence that Aurelio agreed to pay more than the $10,000. The fee agreement provides, "Should additional fees be necessary, both parties agree to decide in good faith, the required amount." (Ex. 4, p. 2, subparagraph (3).) No convincing evidence supported Collins' entitlement to an additional mutually agreed-upon fee.

The $10,000 fee agreement letter was drafted by Collins. He produced no credible evidence that Aurelio agreed to bind himself to almost half a million dollars more in <u>additional</u> legal fees. Collins, who wrote the retainer letter, as a licensed attorney, knew how to memorialize any agreement for additional fees, and, indeed, was required to do so by statute. The California Business and Professions Code requires no less. CAL. BUS. & PROF. CODE § 6148.

The court also finds that the billing statements are wholly inadequate to support the fees claimed. Collins was charging on an hourly rate of between $150 and $200 per hour. To lump 840 hours, 600 hours, and 60 hours (a total of 1500 hours) into a mere two paragraphs is inexcusable and unprofessional. Collins kept no time sheets and produced none at trial; his billings were not produced contemporaneously with the work done, but were "reconstructed" after years of delay; the so-called "itemized" bills that were produced were so inadequate as to be wholly worthless; and human memory cannot produce accurate, professional accountings over such extended periods. Also, the court finds Collins' statement that his bills were reproduced from handwritten notes to be not credible, since any backup files, notes, or correspondence was not produced at trial.

Shocking too is the gratuitous addition of a 15% "bonus" of $31,500 for the "exceptional results" obtained in the criminal case. This was neither provided for by the retainer agreement, nor was there any evidence that Aurelio agreed to it. No evidence was presented that the other criminal defense attorneys, who also got the same results for their clients, charged "bonuses" to their clients.

Accordingly, the court finds and concludes that Collins is entitled to a single fee, the one agreed upon--of $10,000--from Aurelio.

The court also finds and concludes that the costs set forth in the April 5, 1999 and October 26, 2001 bills were similarly unsupported by backup data or persuasive testimony, and were merely guessed at in conveniently round numbers. (See Ex. 19, 22.)

For the reasons stated above, Collins did not prove that his clients were the four Tenorio Brothers, and his billing statements are essentially worthless to justify either a contractual basis for their payment, or any equitable reason therefor. Collins wholly failed to document his legal work for, or his alleged representation of the Tenorio Brothers. Any payments received, other than the $10,000 earned for representing Aurelio, were gross overpayments, unjustified by the alleged effort involved, and paid with no contractual basis therefor.

b. <u>Conclusion</u>

Accordingly, of the $268,400.34 paid to Collins by Leasco on Aurelio's behalf, the court shall enter judgment in favor of Aurelio and the four Tenorio Brothers, jointly and severally, for the amount overpaid, $258,400.34. The court will also enter judgment that Collins' request for an additional $226,213.77 against Aurelio Tenorio or the four Tenorio Brothers is unreasonable, excessive, not properly itemized or earned, and not within the terms of the written contract. Collins' claims for $226,213.77 against Aurelio Tenorio and/or the four Tenorio Brothers shall be dismissed, with prejudice.

D. <u>The Promissory Note - What Amount is Now Due?</u>

The court has determined that Leasco, Inc., is the absolute owner of the "Filiberto's" trademark and trade name, as well as the proprietary goodwill associated with that name. Therefore, Leasco is required to pay for that assigned mark, pursuant to the Promissory Note dated September, 1998 (Ex. 16).

1. Tortious Interference With Contractual Relations

The testimony and other evidence established that the payments from the individual operators began to slow or dry up between March 1 through June 30, 2002. (See, e.g., Ex. 46.) Thereafter, the license fees dwindled to a trickle. It was these payments that enabled Leasco to have the capital to pay its own operations and to generate sufficient cash flow to pay the Tenorio Brothers the $25,000 monthly payments, plus interest, due them under the $2.5 million Promissory Note.

The individual payments under the license agreement slowed or stopped due directly to the tortious interference of the four Tenorio Brothers, acting through their agents, Juan Tenorio and Flavio Tenorio, who counseled, advised, or coerced the Filiberto's network operators into doing their bidding. In so doing, their actions had a direct and adverse impact on Leasco's ability to function and to make the monthly payments due under the note. By March, 2002, the criminal case had been concluded for over two years. While the Tenorio Brothers certainly had good reason to question Piskulich's payments to others (especially to Mansfield Collins) and her judgment in crediting wage payments as note payments, their remedy was to sue for an accounting, not to interfere with Leasco's contracts.

The Tenorio Brothers' interference occurred within the State of Arizona. In Arizona, the elements of the tort of intentional interference with contractual relations are:

1. the existence of valid contractual relationship or business expectancy;
2. knowledge of the relationship or expectancy on the part of the interferor;
3. intentional interference inducing or causing a breach or termination of the relationship or expectancy; and
4. resultant damage to the party whose relationship or expectancy has been disrupted.

Antwerp Diamond Exch. of Am. v. Better Bus. Bureau of Maricopa County, 130 Ariz. 523, 530, 637 P.2d 733, 740 (1981) (quoting *Calbom v. Knudtzon*, 65 Wash. 2d 157, 162-63, 396 P.2d 148, 153-54 (1964)). All of these elements were proven by Leasco against the four Tenorio Brothers.

Accordingly, to the extent that the Tenorio Brothers are seeking an accounting of what is due under the Promissory Note, the court finds and concludes that Leasco's damages, attributable to their wrongful actions, should be that the Tenorio Brothers receive no interest on the $2.5 million Promissory Note from March 1, 2002 to date of judgment herein. Thus, as of the date of judgment, the balance would be $3,338,874 (Appendix II to this Memorandum Decision, as adjusted by Section IV.B.4.).

2. <u>Other Adjustments</u>

As noted in Section IV.B.4.(e) of this Memorandum Decision, the court has established that Leasco did make payments of $344,426 on the Promissory Note.

To find the current balance due, the court finds that the reconstituted accounting of the Tenorio Brothers is accepted as the most accurate. Attached as Appendix I to this decision is the proper calculation and amortization of how the note <u>should</u> have paid out, according to its terms. (Ex. 124(B).)

However, because of the sequence of events and problems stemming from both Piskulich's improper use of funds, and her inaccurate and deplorable accounting methods, or lack thereof, and the interference by the Tenorio Brothers which resulted in cutting off Leasco's cash flow, that ideal amortization schedule has been significantly altered.

From the evidence, the court finds and concludes that the reconstructed accounting, prepared by expert witness Brian P. Brinig, a law school graduate, appraiser, and certified public accountant should be accepted, with modifications to be described hereafter, as the appropriate accounting on Leasco's September, 1998, Promissory Note.

Under Mr. Brinig's accounting, attached to this Memorandum Decision as Appendix II (and as will be further adjusted by the court), the court concludes that the Promissory Note should be accounted for, as to both principal and interest, as set forth in Exhibit 124, attached hereto as Appendix II. Under that accounting, the balance due on the note, as of February 28, 2002, would be $3,344,727, less the $5,853 adjustment, for a balance due of $3,338,874.

Because of the Tenorio Brothers' interference with Leasco's contracts, from March 1, 2002, forward, the Tenorio Brothers should suffer damages equal to all interest payments which accrued from March 1, 2002, until date of judgment.[20] Thus, the adjusted balance, as of February 28, 2002, and indeed as of date of judgment, is $3,338,874. This sum represents the starting note balance as of the date of judgment.

But this figure does not end the inquiry. Although the court has found that Leasco did not make each contractual payment of principal and interest as called for by the Promissory Note, the note itself does not contain an acceleration clause. The court now examines the impact of this omission from the Tenorio Brothers' enforcement rights. The law is clear that:

> Instruments payable at a fixed time may provide that if an installment of interest or principal is not paid when due, the holder may declare the whole debt due, thereby accelerating repayment of the obligation. There can be no acceleration of the amount due on commercial paper in the absence of an express provision authorization acceleration. In the absence of an acceleration clause providing for the entire amount of a note to be due on default of any one installment, the promisee is entitled to recover only past-due installments, plus accumulated interest, and cannot unilaterally declare the note to be accelerated. However, the acceleration clause need not be contained in the instrument itself; it may be included instead in an agreement executed contemporaneously with the instrument.

See, generally, AM. JUR. *Bills and Notes* § 194; *Rickel v. Energy Sys. Holdings, Ltd.*, 114 Idaho 585, 759 P.2d 876 (1998); *Shuey v. Hamilton*, 142 Mont. 83, 381 P.2d 482 (1963) (in absence of agreement or statutory provision to that effect, maturity of debt under contract could not be accelerated).

The note contains no acceleration clause. A note without such a remedy hampers a creditor's rights. However, because a court cannot re-make a contract for the parties, *Wyandotte Orchards, Inc. v. Oroville-Wyandotte Irr. Dist.*, 49 Cal. App. 3d 981, 987, 123 Cal. Rptr. 135 (1975), citing *Addiego v. Hill*, 238 Cal. App. 2d 842, 846, 48 Cal Rptr. 240 (1965); *Hinckley v. Bechtel Corp.*, 41 Cal. App. 3d 206, 211,

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[20] The interest calculation on that time period is $987,551 (Ex. 124, Appendix II).

116 Cal. Rptr. 33 (1974) ("[c]ourts cannot make for the parties better agreements than they themselves made or rewrite contracts because they operate harshly or inequitably as to one of the parties[.]"), the parties must be content, in the event of a default, with suing only for the past amounts then due.

Thus, because the September, 1998, Promissory Note is incapable of unilateral acceleration, the Tenorio Brothers may only be granted an enforceable judgment for the amounts due them as of the date of judgment. Applying the accepted accounting of Ex. 124 (Appendix II), the court finds and concludes that the judgment, while declaring the balance due of $3,344.727 (adjusted downward by $5,853 to $3,338,874), may only be immediately enforced to collect what amounts are due as of the date of judgment.

The accounting reveals the following immediately enforceable amounts (Ex. 124):

Year	**Principal Amount Unpaid**	**Interest Unpaid**	**Cumulative Arrearage**
1998	18,582	101,260	119,842
1999	150,151	311,627	461,778
2000	214,678	334,528	549,206
20001	278,992	369,969	648,961
2002	299,025	65,914[21]	364,939
2003	300,000	0.00	300,000
2004	300,000	0.00	300,000
2005	Up to date of judgment	0.00	0.00
Totals	$1,561,428	$1,183,298	$2,744,726

From the date of judgment forward, assuming that there will be no further interference with contractual relations, interest shall resume on the amount of $3,338,874.

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[21] Interest from March 1, 2002 to date of judgment has been forfeited by the Tenorio Brothers for their wrongful interference with Leasco's contractual relations. This figure only represents January and February, 2002.

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Thus, judgment will be entered for the Tenorio Brothers finding that the balance still due them under the Promissory Note, to date of judgment is $3,338,874. However, the amount that can be <u>collected</u> upon at this time is only the amount required to bring the note payments current, or $2,744,726. The court further directs, as a part of this judgment, that a collection escrow account shall be established at First American Title Company, to administer all further monthly payments and credits henceforth. Piskulich shall be divested of all of the accounting functions, and her agency is hereby terminated. Escrow fees and costs shall be divided equally between the parties.

The judgment of the court will further provide that the first monthly payment due under the Promissory Note shall commence on the first day of the month following the entry of the judgment herein, and each monthly payment due thereafter shall be due on the first day of each month, consistent with the note's terms. Each monthly payment shall include principal and interest payments.

Since the only truly valuable asset of Leasco is the trademark and all proprietary goodwill, this court, utilizing its equitable powers under bankruptcy law, will enjoin Leasco from transferring or encumbering that asset until the Tenorio Brothers' note is paid in full, in cash, or unless a plan of reorganization is confirmed which is determined to fairly and equitably treat the Tenorio Brothers in a different fashion.

Thus, the court finds that the only equitable way to achieve a just equilibrium under the Promissory Note is to enter judgment that:

1. The balance due to the Tenorio Brothers on the date of entry of judgment is $3,338,874;[22]

2. Interest shall accrue thereon at 12% simple interest per annum as the note provides;

3. The amount immediately in default, and necessary to be paid in order to reinstate the note, as of the date of judgment, is $2,744,726. That figure shall be increased by any principal payments not made in 2005;

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[22] The Tenorio Brothers have not cross-claimed against one another for a determination as to what is owed to each brother. Thus, the court finds only the amount due under the note.

4. Any future monthly payment, after judgment, which is not timely made, shall also bear interest at 12% per annum, consistent with the terms of the Promissory Note;

5. Because the note does not contain an acceleration clause, any action to enforce it may only be for the amounts now due thereon, $2,744,726, plus any 2005 principal payments remaining unpaid as of the date of judgment; execution may issue upon any such judgment, subject to bankruptcy intervention;

6. Leasco shall be, and is hereby, enjoined from transferring, encumbering, or selling its "Filiberto's" trademark, or proprietary rights, designs, logos, menus, recipes, and operational handbooks unless and until the obligation represented by the Promissory Note is paid in full, in cash. At such time, this injunction shall terminate without further order of the court;

7. The parties shall establish a collection escrow at First American Title Company, Phoenix, Arizona, to collect and account for all payments and interest accruals due under the Promissory Note. The opening balance shall be $3,338,874. Escrow fees shall be equally divided between the parties to the note (the Tenorio Brothers and Leasco);

8. The first payment shall be due on the first day of the month following entry of the judgment. Each payment shall consist of a $25,000 principal reduction, plus accrued interest; and

9. This judgment may be altered by the terms of a confirmed plan of reorganization.

V. INJUNCTIVE RELIEF AGAINST "ROGUE" RESTAURANTS

A. Arizona Restaurants

Once the disputes between the parties escalated into full-scale war, several new and unauthorized "Filiberto's" restaurants were opened by relatives or associates of the Tenorio Brothers. Those restaurants are:[23]

Owner	Location	Ex.
Santo Domingo and Co., Inc. #2	1845 E. Guadalupe Rd. Tempe, AZ	D-147 D-147A
Santo Domingo & Co., Inc.	531 E. Southern Mesa, AZ	D-147B
Sergio Quintero & Company, Inc.[24]	6339 E. Main St. Mesa, AZ	D-150 D-150A D-169
Jorge de la Torre, Inc.	530 E. Wickenburg Way Wickenberg, AZ	D-168
Mancillas-Gutierrez	2750 E. Thomas Rd. Phoenix, AZ	D-171

(See, e.g., D-146, "License Agreement" between Juan Tenorio as "Licensor" and Maria Francisca Gutierrez, dated July 31, 2003.)

None of these restaurants were licensed by Leasco, yet each of them uses the trade name, trademark, proprietary logos, menus, and operations of the other properly licensed "Filiberto's" restaurants. This

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[23] While the court believes this list includes each of the unauthorized "Filiberto's" restaurants, it is possible that the list may also inadvertently include an authorized location. If so, counsel for Leasco is directed to delete any such authorized owner/location from the form of judgment.

[24] The court is unsure as to whether this operator is licensed. No license agreement was admitted in evidence, but it appears from other documents to possibly be a licensed entity. (See Ex. 46, 100.) If so, counsel should not include this entity in any judgment. The testimony did not appear to include this restaurant.

ongoing unlawful use is an infringement of Leasco's "Filiberto's" property rights. Therefore, a mandatory and permanent injunction against said entities or individuals will be entered, which requires such restaurants to immediately cease and desist in the use of the "Filiberto's" name, goodwill, and methods of operation. Should they fail to cease and desist within thirty (30) days after entry of the judgment, contingent damages will accrue against them at the rate of $1,000 per day until such renegade restaurants comply with this court's order.

Leasco has proven, by a preponderance of the evidence, that these unauthorized restaurants willfully and intentionally infringed upon the registered trademark, "Filiberto's," and the operational methods owned and utilized by Leasco. This series of infringements violated the federal Lanham Act, 15 U.S.C. § 1114, *et seq.*, causing confusion among the public and reaping benefit to the violators from the known trademark. *See Levi Strauss & Co. v. Blue Bell, Inc.*, 778 F.2d 1352, 1354 (9th Cir. 1985); *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F. 2d 837 (9th Cir. 1987); 15 U.S.C. § 1114.

Monetary damages for such knowing violations is not difficult to establish. While it is clear that there was a knowing infringement of the "Filiberto's" name, logo, and proprietary goodwill, there was scant evidence presented which directly links the renegade restaurants' income to the "Filiberto's" mark. In other words, evidence was lacking to establish, for example, that a patron hungry for Mexican fast food would choose to frequent a "Filiberto's" rather than another Mexican food competitor. This court takes judicial notice that in Arizona and Southern California the choices for such types of restaurants are numerous. As a consequence, the court is not inclined to award damages in the draconian amounts proposed by Leasco.

In reviewing the evidence, consisting of reports to the Arizona taxing authorities, related to the revenue generated by each of the unauthorized restaurants, the court finds gross revenues as follows:

Owner	**Location**	**Ex.**	**Reported Months**	**Gross Revenues**[25]
Santo Domingo and Co., Inc. #2	1845 E. Guadalupe Rd. Tempe, AZ	D-147 D-147A	12	$ 953,847

[25] The calculations of gross revenues have omitted, and not calculated, cents.

Santo Domingo & Co., Inc.	531 E. Southern Mesa, AZ	D-147B	17	1,614,932
Sergio Quintero & Company, Inc.	6339 E. Main St. Mesa, AZ	D-150 D-150A D-169	43	6,559,409[26]
Jorge de la Torre, Inc.	530 E. Wickenburg Way Wickenberg, AZ	D-168	2	169,019
Mancillas-Gutierrez	2750 E. Thomas Rd. Phoenix, AZ	D-171	9	323,570

From the foregoing, it is apparent that substantial gross revenues were generated by each of these unauthorized restaurants. Measuring damages is thus an easy task; had the restaurants been licensed, Leasco would have been entitled to no less than 3% of the gross revenues. Therefore, as compensatory damage for the infringement, each of the infringing restaurants shall pay Leasco damages equal to 3% of the figures set forth above. Additionally, as further compensatory and punitive damages for the intentional and wrongful appropriation of Leasco's name and practices, each unlicensed restaurant is hereby found to be liable for an additional 2% of gross revenues in order to to compensate Leasco for its attorneys' fees and costs and to punish each infringer. Such an additional award should be sufficient to adequately compensate Leasco for the wrongful use of its name, marks, and operational methods, and for its fees and costs in pursuing this litigation. "The Ninth Circuit has mandated awards of attorneys' fees where defendant has engaged in blatant acts of trademark counterfeiting." *Rolex Watch USA, Inc. v. Dauley*, 1986 WL 12432 (N.D. Cal. 1986), *citing Playboy Enterprises, Inc. v. Baccarat Clothing*, 692 F. 2d 1272 (9th Cir. 1982). *See Levi Strauss & Co. v. Shilon*, 121 F. 3d 1309, 1314 (9th Cir. 1997); *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431 (C.D. Cal. 1999). *See also Microsoft Corp. v. U-Top Printing Corp.*, 1996 WL 479066 (N.D. Cal. 1996); *New York Racing Ass'n., Inc. v. Stroup News Agency Corp.*, 920 F. Supp. 295 (N.D.N.Y. 1996). The court finds these rogue restaurants to have blatantly and knowingly violated Leasco's trademarked rights.

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[26] One of the months, February 2000, was illegible, and therefore no dollar amount was included.

Thus, a judgment will be entered in favor of Leasco, and against each of the unlicensed restaurants as follows:

Owner	Gross Revenues	3% Compensatory	2% Additional Compensatory/ Punitive	Total
Santo Domingo and Co., Inc. #2	$ 953,847	$ 28,615	$ 19,077	$ 47,692
Santo Domingo & Co., Inc.	1,614,932	48,448	32,299	80,747
Sergio Quintero & Company, Inc.	6,559,409	196,782	131,188	327,970
Jorge de la Torre, Inc.	169,019	5,071	3,380	8,451
Mancillas-Gutierrez	323,570	9,707	6,471	16,178
	$ 9,620,777	$ 288,623	$ 192,415	$ 481,038

The court declines to award damages, as Leasco requests, against "all the members of the Tenorio family" on the flimsy evidence that they "make decisions collectively." Only those restauranteurs that were proven to have actually infringed and counterfeited the mark should be held accountable for their actions, not others who merely happened to also be members of the extended family.

Additionally, each of the foregoing infringing restaurants shall cease and desist in the use of the Filiberto's mark, operational handbooks, logos, menus, and recipes within thirty (30) days of entry of judgment. Should such parties refuse to do so, then a continuing, contingent judgment shall run from the 31st day after judgment at $1,000 per day, per restaurant, until the violations cease. The court will also entertain contempt sanctions if this judgment is not followed.

GRANTED

B. California Restaurants

The evidence shows that there are five existing "Filiberto's" restaurants in California. None of these restaurants have ever paid licensing fees to Leasco, and have never signed licensing agreements with Leasco. (See Ex. 46.)

Jorge ("George") Tenorio testified credibly that Leasco provides no services to or for these California restaurants, and that Leasco has never made demand upon them to cease using the name "Filiberto's."

These restaurants appear to have been left out of the chain's loop and to have been "grandfathered" in, not subject to the requirements which Leasco has imposed on the Arizona stores.

Mansfield Collins testified that these restaurants had agreed to "verbal licensing agreements." The court finds this testimony both unbelievable and incredible. Leasco produced not a single document to show it had ever asserted its trademark rights against any of those entities. And because Leasco was careful to document licenses with at least sixteen Arizona stores, the comment that Leasco had "verbal licensing agreements" with the California restaurants is simply ludicrous.

While there was evidence of possible infringement by the California restaurants, no damage figures were presented by Leasco. Any litigation over the use of the "Filiberto's" trademark in California must be left to another day. At this moment, any claims against the California stores for infringement or damages, up to the date of judgment, will be DISMISSED, with prejudice.[27]

VI. OTHER LEGAL THEORIES PRESENTED BY THE PARTIES

The parties have raised numerous other legal issues and theories, many of which are included within, or rejected by, the rulings set forth above. To the extent that the court has failed to address any such

[27] The court is skeptical as to whether any of the California restaurants were even served or are parties to this litigation.

theory, it is because the court has determined that the parties are deserving of the legal relief set forth herein, and none other. These judgments are determined to be fair, adequate, and equitable to all concerned.

Thus, to the extent that issues, including but not limited to, undue influence, fraud, misrepresentation, failure of consideration, alter ego, and illegal "franchise" were raised, the court finds that the evidence does not justify either additional findings or judgments.

VII. SUMMARY OF RULING

To summarize, the judgment of the court shall be:

A. Leasco, Inc. is the owner of the "Filiberto's" trademark, trade name, and all of the accompanying goodwill associated therewith.

B. Juan Tenorio does not own the name or the trademark, or any portion of "Filiberto's."

C. The balance due to the Tenorio Brothers under the Promissory Note, to date of judgment is $3,338,874. This judgment may only be immediately enforced to collect what amounts are due as of the date of judgment in the sum of $2,744,726, through 2004, plus any 2005 principal payments not paid up to the date of judgment, subject to the application of bankruptcy law principles. From the date of judgment forward, assuming that there will be no further interference with contractual relations, interest shall resume on the amount of $3,338,874.

D. A collection escrow account shall be established at First American Title Company, to administer all further monthly payments and credits henceforth. Escrow fees and costs shall be divided equally between the parties, 50% Leasco and 50% Tenorio Brothers.

E. Ivania Piskulich's agency is terminated.

F. The first monthly payment due under the Promissory Note shall commence on the first day of the month following the entry of the judgment herein, and each monthly payment due thereafter shall be due on the first day of each month, consistent with the note's terms. Each monthly payment shall include principal and interest payments.

G. Each individual operator which or who has not terminated its license agreement to Leasco is declared to be contractually liable to Leasco for these contractual percentages proven to be in arrears. Further hearings will establish the amounts.

H. To the extent that Piskulich claims that she is still owed $269,763.50 in addition to what she has already collected through Leasco, for a total of $339,967.50, the court finds and concludes that Piskulich has breached her Agency Agreement, that she is to be be paid nothing for her agency, and that she is owed nothing more.

I. The four Tenorio Brothers shall have judgment against Ivania Piskulich for $70,204.50.

J. Collins is entitled to a single fee of $10,000 from Aurelio Tenorio, and has been paid in full.

K. Aurelio Tenorio and the four Tenorio Brothers shall have judgment, jointly and severally, against Mansfield Collins for $258,400.34. The court will also enter judgment that Collins' request for an additional $226,213.77 against Aurelio Tenorio or the Tenorio Brothers is unreasonable, excessive, not properly itemized and not within the contract of the parties. Collins' claims for $226,213.77 against Aurelio Tenorio or the four Tenorio Brothers shall be dismissed, with prejudice.

L. The four Tenorio Brothers tortiously interfered with Leasco's contracts, and therefore, shall forfeit all interest earned on the September, 1998, Leasco Promissory Note from March 1, 2002 to date of judgment. Thereafter, interest shall resume at the note rate.

M. Monetary judgments, as well as permanent injunctions, shall be entered against the Arizona "rogue" restaurants for a collective sum of $481,038, as follows:

Owner	**Location**	**Amount**
Santo Domingo and Co., Inc. #2	1845 E. Guadalupe Rd., Tempe, AZ	$ 47,692
Santo Domingo & Co., Inc.	531 E. Southern Mesa, AZ	80,747
Sergio Quintero & Company, Inc.	6339 E. Main St. Mesa, AZ	327,970
Jorge de la Torre, Inc.	530 E. Wickenburg Way, Wickenberg, AZ	8,451
Mancillas-Gutierrez	2750 E. Thomas Rd., Phoenix, AZ	16,178

N. Leasco's claims against the California "rogue" restaurants shall be DISMISSED.

O. To the extent that only the individual actions against each licensed Arizona restaurant remains for supplemental hearings, the parties shall submit a form of judgment within fifteen (15) days, including FED.R.CIV.P 54(b) language.

DATED: January 18th 2005.

____
JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

COPIES served as indicated below this 18th day of January, 2005, upon:

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By /s/ M.B. Thompson
Judicial Assistant

APPENDIX I

Payment Amortization Schedule Pursuant to Note Provisions

GRANTED

Tenorio vs. Leasco, et al.

Loan Amortization Schedule

Maximum Monthly Payment Equals Terms of Promissory Note

Month	Payment #	Beginning Principal	Required Principal	12.0% Interest	Monthly Payment	Ending Balance
September-98	1	$ 2,500,000	$ 25,000	$ 25,000	$ 50,000	$ 2,475,000
October-98	2	2,475,000	25,000	24,750	49,750	2,450,000
November-98	3	2,450,000	25,000	24,500	49,500	2,425,000
December-98	4	2,425,000	25,000	24,250	49,250	2,400,000
Subtotal			100,000	98,500	198,500	
January-99	5	2,400,000	25,000	24,000	49,000	2,375,000
February-99	6	2,375,000	25,000	23,750	48,750	2,350,000
March-99	7	2,350,000	25,000	23,500	48,500	2,325,000
April-99	8	2,325,000	25,000	23,250	48,250	2,300,000
May-99	9	2,300,000	25,000	23,000	48,000	2,275,000
June-99	10	2,275,000	25,000	22,750	47,750	2,250,000
July-99	11	2,250,000	25,000	22,500	47,500	2,225,000
August-99	12	2,225,000	25,000	22,250	47,250	2,200,000
September-99	13	2,200,000	25,000	22,000	47,000	2,175,000
October-99	14	2,175,000	25,000	21,750	46,750	2,150,000
November-99	15	2,150,000	25,000	21,500	46,500	2,125,000
December-99	16	2,125,000	25,000	21,250	46,250	2,100,000
Subtotal			300,000	271,500	571,500	
January-00	17	2,100,000	25,000	21,000	46,000	2,075,000
February-00	18	2,075,000	25,000	20,750	45,750	2,050,000
March-00	19	2,050,000	25,000	20,500	45,500	2,025,000
April-00	20	2,025,000	25,000	20,250	45,250	2,000,000
May-00	21	2,000,000	25,000	20,000	45,000	1,975,000
June-00	22	1,975,000	25,000	19,750	44,750	1,950,000
July-00	23	1,950,000	25,000	19,500	44,500	1,925,000
August-00	24	1,925,000	25,000	19,250	44,250	1,900,000
September-00	25	1,900,000	25,000	19,000	44,000	1,875,000
October-00	26	1,875,000	25,000	18,750	43,750	1,850,000
November-00	27	1,850,000	25,000	18,500	43,500	1,825,000
December-00	28	1,825,000	25,000	18,250	43,250	1,800,000
Subtotal			300,000	235,500	535,500	
January-01	29	1,800,000	25,000	18,000	43,000	1,775,000
February-01	30	1,775,000	25,000	17,750	42,750	1,750,000
March-01	31	1,750,000	25,000	17,500	42,500	1,725,000
April-01	32	1,725,000	25,000	17,250	42,250	1,700,000
May-01	33	1,700,000	25,000	17,000	42,000	1,675,000
June-01	34	1,675,000	25,000	16,750	41,750	1,650,000
July-01	35	1,650,000	25,000	16,500	41,500	1,625,000
August-01	36	1,625,000	25,000	16,250	41,250	1,600,000
September-01	37	1,600,000	25,000	16,000	41,000	1,575,000

GRANTED

Tenorio vs. Leasco, et al.

Loan Amortization Schedule

Maximum Monthly Payment Equals Terms of Promissory Note

Month	Payment #	Beginning Principal	Required Principal	12.0% Interest	Monthly Payment	Ending Balance
October-01	38	1,575,000	25,000	15,750	40,750	1,550,000
November-01	39	1,550,000	25,000	15,500	40,500	1,525,000
December-01	40	1,525,000	25,000	15,250	40,250	1,500,000
Subtotal			300,000	199,500	499,500	
January-02	41	1,500,000	25,000	15,000	40,000	1,475,000
February-02	42	1,475,000	25,000	14,750	39,750	1,450,000
March-02	43	1,450,000	25,000	14,500	39,500	1,425,000
April-02	44	1,425,000	25,000	14,250	39,250	1,400,000
May-02	45	1,400,000	25,000	14,000	39,000	1,375,000
June-02	46	1,375,000	25,000	13,750	38,750	1,350,000
July-02	47	1,350,000	25,000	13,500	38,500	1,325,000
August-02	48	1,325,000	25,000	13,250	38,250	1,300,000
September-02	49	1,300,000	25,000	13,000	38,000	1,275,000
October-02	50	1,275,000	25,000	12,750	37,750	1,250,000
November-02	51	1,250,000	25,000	12,500	37,500	1,225,000
December-02	52	1,225,000	25,000	12,250	37,250	1,200,000
Subtotal			300,000	163,500	463,500	
January-03	53	1,200,000	25,000	12,000	37,000	1,175,000
February-03	54	1,175,000	25,000	11,750	36,750	1,150,000
March-03	55	1,150,000	25,000	11,500	36,500	1,125,000
April-03	56	1,125,000	25,000	11,250	36,250	1,100,000
May-03	57	1,100,000	25,000	11,000	36,000	1,075,000
June-03	58	1,075,000	25,000	10,750	35,750	1,050,000
July-03	59	1,050,000	25,000	10,500	35,500	1,025,000
August-03	60	1,025,000	25,000	10,250	35,250	1,000,000
September-03	61	1,000,000	25,000	10,000	35,000	975,000
October-03	62	975,000	25,000	9,750	34,750	950,000
November-03	63	950,000	25,000	9,500	34,500	925,000
December-03	64	925,000	25,000	9,250	34,250	900,000
Subtotal			300,000	127,500	427,500	
January-04	65	900,000	25,000	9,000	34,000	875,000
February-04	66	875,000	25,000	8,750	33,750	850,000
March-04	67	850,000	25,000	8,500	33,500	825,000
April-04	68	825,000	25,000	8,250	33,250	800,000
May-04	69	800,000	25,000	8,000	33,000	775,000
June-04	70	775,000	25,000	7,750	32,750	750,000
July-04	71	750,000	25,000	7,500	32,500	725,000
August-04	72	725,000	25,000	7,250	32,250	700,000
September-04	73	700,000	25,000	7,000	32,000	675,000
October-04	74	675,000	25,000	6,750	31,750	650,000

GRANTED

Tenorio vs. Leasco, et al.

Loan Amortization Schedule

Maximum Monthly Payment Equals Terms of Promissory Note

Month	Payment #	Beginning Principal	Required Principal	12.0% Interest	Monthly Payment	Ending Balance
November-04	75	650,000	25,000	6,500	31,500	625,000
December-04	76	625,000	25,000	6,250	31,250	600,000
Subtotal			300,000	91,500	391,500	
January-05	77	600,000	25,000	6,000	31,000	575,000
February-05	78	575,000	25,000	5,750	30,750	550,000
March-05	79	550,000	25,000	5,500	30,500	525,000
April-05	80	525,000	25,000	5,250	30,250	500,000
May-05	81	500,000	25,000	5,000	30,000	475,000
June-05	82	475,000	25,000	4,750	29,750	450,000
July-05	83	450,000	25,000	4,500	29,500	425,000
August-05	84	425,000	25,000	4,250	29,250	400,000
September-05	85	400,000	25,000	4,000	29,000	375,000
October-05	86	375,000	25,000	3,750	28,750	350,000
November-05	87	350,000	25,000	3,500	28,500	325,000
December-05	88	325,000	25,000	3,250	28,250	300,000
Subtotal			300,000	55,500	355,500	
January-06	89	300,000	25,000	3,000	28,000	275,000
February-06	90	275,000	25,000	2,750	27,750	250,000
March-06	91	250,000	25,000	2,500	27,500	225,000
April-06	92	225,000	25,000	2,250	27,250	200,000
May-06	93	200,000	25,000	2,000	27,000	175,000
June-06	94	175,000	25,000	1,750	26,750	150,000
July-06	95	150,000	25,000	1,500	26,500	125,000
August-06	96	125,000	25,000	1,250	26,250	100,000
September-06	97	100,000	25,000	1,000	26,000	75,000
October-06	98	75,000	25,000	750	25,750	50,000
November-06	99	50,000	25,000	500	25,500	25,000
December-06	100	25,000	25,000	250	25,250	-
Subtotal	8.33	Years	300,000	19,500	319,500	

GRANTED

APPENDIX II

Payments Actually Made by Leasco*

*   Subject to adjustment by court.

Tenorio vs. Leasco, et al.

Schedule IA - Analysis of Note Balance Due - Scenario I

Based on Defendants claimed payments (Exhibit 30) less amounts disputed by Tenorio Family

Month	Payment #	Beginning Principal	Payments	12.0% Interest	Ending Balance
September-98	1	$ 2,500,000	$ -	$ 25,000	$ 2,525,000
October-98	2	2,525,000	-	25,250	2,550,250
November-98	3	2,550,250	25,000	25,503	2,550,753
December-98	4	2,550,753	56,418	25,508	2,519,842
Subtotal			81,418	101,260	
January-99	5	2,519,842	3,437	25,198	2,541,603
February-99	6	2,541,603	31,595	25,416	2,535,423
March-99	7	2,535,423	3,013	25,354	2,557,765
April-99	8	2,557,765	-	25,578	2,583,342
May-99	9	2,583,342	20,530	25,833	2,588,645
June-99	10	2,588,645	11,050	25,886	2,603,482
July-99	11	2,603,482	5,000	26,035	2,624,517
August-99	12	2,624,517	5,917	26,245	2,644,845
September-99	13	2,644,845	27,159	26,448	2,644,134
October-99	14	2,644,134	15,000	26,441	2,655,576
November-99	15	2,655,576	18,602	26,556	2,663,530
December-99	16	2,663,530	8,545	26,635	2,681,620
Subtotal			149,849	311,627	
January-00	17	2,681,620	8,500	26,816	2,699,936
February-00	18	2,699,936	7,563	26,999	2,719,373
March-00	19	2,719,373	16,013	27,194	2,730,554
April-00	20	2,730,554	6,234	27,306	2,751,626
May-00	21	2,751,626	9,000	27,516	2,770,142
June-00	22	2,770,142	1,500	27,701	2,796,344
July-00	23	2,796,344	8,001	27,963	2,816,306
August-00	24	2,816,306	10,088	28,163	2,834,381
September-00	25	2,834,381	4,628	28,344	2,858,097
October-00	26	2,858,097	-	28,581	2,886,678
November-00	27	2,886,678	7,796	28,867	2,907,748
December-00	28	2,907,748	6,000	29,077	2,930,826
Subtotal			85,322	334,528	

GRANTED

Tenorio vs. Leasco, et al.

Schedule IA - Analysis of Note Balance Due - Scenario I

Based on Defendants claimed payments (Exhibit 30) less amounts disputed by Tenorio Family

Month	Payment #	Beginning Principal	Payments	12.0% Interest	Ending Balance
January-01	29	2,930,826	-	29,308	2,960,134
February-01	30	2,960,134	9,325	29,601	2,980,410
March-01	31	2,980,410	-	29,804	3,010,215
April-01	32	3,010,215	3,436	30,102	3,036,880
May-01	33	3,036,880	6,268	30,369	3,060,981
June-01	34	3,060,981	-	30,610	3,091,591
July-01	35	3,091,591	47	30,916	3,122,460
August-01	36	3,122,460	-	31,225	3,153,684
September-01	37	3,153,684	-	31,537	3,185,221
October-01	38	3,185,221	-	31,852	3,217,073
November-01	39	3,217,073	1,790	32,171	3,247,454
December-01	40	3,247,454	141	32,475	3,279,787
Subtotal			21,008	369,969	
January-02	41	3,279,787	975	32,798	3,311,610
February-02	42	3,311,610	-	33,116	3,344,727
March-02	43	3,344,727	-	33,447	3,378,174
April-02	44	3,378,174	-	33,782	3,411,956
May-02	45	3,411,956	-	34,120	3,446,075
June-02	46	3,446,075	-	34,461	3,480,536
July-02	47	3,480,536	-	34,805	3,515,341
August-02	48	3,515,341	-	35,153	3,550,495
September-02	49	3,550,495	-	35,505	3,586,000
October-02	50	3,586,000	-	35,860	3,621,860
November-02	51	3,621,860	-	36,219	3,658,078
December-02	52	3,658,078	-	36,581	3,694,659
Subtotal			975	415,846	
January-03	53	3,694,659	-	36,947	3,731,606
February-03	54	3,731,606	-	37,316	3,768,922
March-03	55	3,768,922	-	37,689	3,806,611
April-03	56	3,806,611	-	38,066	3,844,677
May-03	57	3,844,677	-	38,447	3,883,124

GRANTED

Tenorio vs. Leasco, et al.

Schedule IA - Analysis of Note Balance Due - Scenario I

Based on Defendants claimed payments (Exhibit 30) less amounts disputed by Tenorio Family

Month	Payment #	Beginning Principal	Payments	12.0% Interest	Ending Balance
June-03	58	3,883,124	-	38,831	3,921,955
July-03	59	3,921,955	-	39,220	3,961,174
August-03	60	3,961,174	-	39,612	4,000,786
September-03	61	4,000,786	-	40,008	4,040,794
October-03	62	4,040,794	-	40,408	4,081,202
November-03	63	4,081,202	-	40,812	4,122,014
December-03	64	4,122,014	-	41,220	4,163,234
Subtotal			-	468,575	
January-04	65	4,163,234	-	41,632	4,204,866
February-04	66	4,204,866	-	42,049	4,246,915
March-04	67	4,246,915	-	42,469	4,289,384
April-04	68	4,289,384	-	42,894	4,332,278
Totals			$ 338,572	$ 2,170,850	

GRANTED