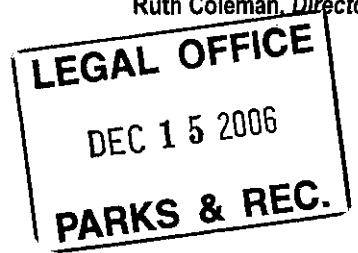




December 15, 2006



Alexander I. Leff, Member  
Malibu Pier Partners, LLC  
450 Mission Street, Suite 500  
San Francisco, California 94105

***Sent Via Certified Mail, First Class Mail,  
Facsimile, and Electronic Mail***

Dear Mr. Leff,

Malibu Pier – Restaurant, Food Service, Retail,  
Sport Fishing Boat Tour and  
Beach Equipment Rental Concession Contract

**Notice of Breach of Contract for  
Failure to Observe and Perform Contract Provisions**

This letter provides Malibu Pier Partners, LLC ("MPP" or "Concessionaire") notice that it is in breach of the above-mentioned Contract for failing to observe and perform the provisions of the Contract. In accordance with Contract Section 29, the State of California, Department of Parks and Recreation ("State" or "DPR") hereby notifies MPP that it is in breach of the following Contract provisions:

**1. Contract Section 4 D – Financial Considerations, Rent**

Pursuant to Contract Section 4 D, MPP's payments must be received by State and deposits made on or before the fifteenth (15<sup>th</sup>) day of the appropriate month. Any late payment or deposit will be subject to a late penalty(s) consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or deposit or portion(s) thereof.

Additionally, any amount due to State, if not paid within five (5) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year.

Rent payment for the month of September 2006 was received by State on October 19, 2006. Rent payment for the month of October 2006 was received by State on November 17, 2006. To date, neither the late penalty payment nor the interest thereon on either of the above-mentioned late rent payments has been received by State. As such, MPP is in breach of the Contract.

State hereby demands that MPP submit to State the late penalty payment and the interest thereon for the September 2006 and October 2006 Rent.

## **2. Contract Section 10 C – Construction and Completion of Improvements, Use of Consultants**

Pursuant to Contract Section 10 C, copies of any contract contemplated between Concessionaire and any contractor, architect, or other professional to be utilized by Concessionaire in connection for the construction of the concession facilities shall be furnished to and consented to in writing by State in advance of execution by Concessionaire, which shall not be unreasonably withheld or delayed.

To date, MPP has failed to submit to State for consent any contract related to architectural or other professional services prior to the commencement of design plans for the concession facilities. As such, MPP is in breach of the Contract.

State demands that MPP submit to State for State's consent any and all contracts executed and/or contemplated between MPP and any contractor, architect, or other professional related to the work of design plans for the concession facilities.

## **3. Contract Section 10 D – Construction and Completion of Improvements, Facility Design and Plan Submittal Process**

Pursuant to Contract Section 10 D, Concessionaire shall submit formal working drawings, plans, and specifications of facility improvements for State's review and approval within four (4) weeks after State's approval of Concessionaire's preliminary drawings, plans, and specifications.

Via written letter dated June 7, 2006, a copy of which is attached, State notified MPP that State accepts the preliminary working drawings; but in order to receive final authorization to proceed with construction, State requires MPP to submit a complete set of working drawings, which includes removal of all references to "Not for Construction" and each drawing and cover sheet to be stamped and signed by the California State Fire Marshall and a certified architect or engineer licensed by the State of California. In such letter, State provided other comments to the preliminary working drawings for MPP to address. To date, over six (6) months later, MPP has failed to submit complete formal working drawings, plans, and specifications for State's review and approval. As a result, construction of concession facilities has not commenced. As such, MPP is in breach of the Contract.

State hereby demands that MPP submit to State, for State's review and approval, complete formal working drawings, plans, and specifications, which meet and address State's requirements and comments as articulated in State's June 7, 2006, letter.

#### **4. Contract Section 12 – Records and Reports and Section 14 – Rates, Charges, and Quality of Goods and Services**

Pursuant to Contract Section 12, MPP shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this contract in a manner which conforms to industry standards and practices and in a manner acceptable to State. MPP shall obtain and install cash registers or other accounting equipment acceptable to the State, through which MPP shall record all gross receipts from the operation of the concession (and no others). Such machines shall be non-resetable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display which is visible to the public. MPP shall make all cash register tapes available to the State upon State's request. MPP shall provide a cash register receipt to each customer setting forth the full amount of the sale.

Pursuant to Contract Section 14, MPP shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner, and comparable to other high-quality concessions providing similar facilities and services.

On October 21 and 28, 2006, State employees observed Peter Zuckerman, son of on-site pier manager Mark Zuckerman, collecting parking fees from the back of a pick-up truck. On both occasions, no cash register was visible; and the customers received no receipt for fees paid. Furthermore, Peter Zuckerman was shirtless. Collecting parking fees shirtless is not in a manner which conforms to industry standards and practices or in a manner acceptable to the State. As such, MPP is in breach of the Contract.

State hereby demands that MPP, in accordance with the Contract, obtain and install cash registers or other accounting equipment acceptable to the State, through which MPP shall record all gross receipts from the parking operation of the concession. Such machines shall be non-resetable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display, which is visible to the public. DPR hereby demands that MPP, in accordance with the Contract, provide a cash register receipt to each customer setting forth the full amount of the sale. State hereby demands that MPP and its agents, employees, and subcontractors provide all services in a first-class manner, which includes, but is not limited to, dressing appropriately (ie. wearing an appropriate shirt) at all times.

#### **5. Contract Section 26 – Signs and Advertising**

Pursuant to Contract Section 26, no signs, logos, names, placards, or advertising matter (collectively, "Signage") shall be inscribed, painted, or affixed upon the concession facilities without prior written consent of State, which consent shall not be unreasonably withheld or delayed if the same is consistent with the purposes of the contract. All signs shall include DPR's logo and name and State Lands Commission's logo and name.

MPP has affixed at the south end of the Malibu Pier (Lagoon) parking lot a banner advertising the sport fishing boat. MPP failed to submit to State for State's consent such banner. MPP also failed to include DPR's logo and name and State Lands Commission's logo and name on the banner. As such, MPP is in breach of the Contract.

State hereby demands that MPP remove the banner. If MPP chooses to affix a banner on the Malibu Pier advertising the sport fishing boat, such banner shall be submitted to State for consent prior to affixing of the banner. Such banner shall include all appropriate logos and name in accordance with the Contract.

#### **6. Contract Section 36 – Assignments and Subconcessions**

Pursuant to Contract Section 36, MPP may enter into sub-concession contracts for the purpose of implementing the operations of the concession with prior consent of State. MPP may enter into sub-concession contracts so long as: (1) MPP provides State written notice of the transaction at least thirty days prior to the effective date of the sub-concession, (2) the experience and financial condition of and security offered by the proposed sub-concessionaire is equal to or greater than that represented by MPP in connection with the original proposal based upon which this Contract was awarded, (3) all necessary and appropriate documentation is prepared and executed by all necessary parties, and (4) all insurance, bonds, and other security required by this Contract are changed to reflect the new sub-concessionaire and provided to State prior to the sub-concession becoming effective.

State is aware that MPP has contracted with other entities for the following concession operations: catering services, restaurant/food services, security services, parking fee collection, and routine maintenance. However, MPP has failed to obtain State's consent prior to entering into contracts for these operations. Specifically, MPP has failed to submit sub-concession contracts as requested by State for State's review and approval for the operation of the catering truck, Mo's, security, parking fee collection, and routine maintenance. MPP has not submitted current insurance certificates as requested by State for the sub-concession operations of the sport fishing/tour boat or the food operation. As such, MPP is in breach of the Contract.

State hereby demands that MPP submit to State, for State's consent, any and all sub-concession contracts that MPP has executed or intends to execute with any and all entities for any and all concession operations. State hereby demands that MPP submit all insurance certificates as required by the Contract for any and all sub-concessions, including, but not limited to, the sport fishing/tour boat and the food operation.

## **7. Contract Section 36 – Assignments and Subconcessions and Contract Section 37 - Compliance with Laws, Rules, Regulations and Policies**

Pursuant to Contract Section 36, MPP may enter into sub-concession contracts for the purpose of implementing the operations of the concession with prior consent of State. MPP may enter into sub-concession contracts so long as: (1) MPP provides State written notice of the transaction at least thirty days prior to the effective date of the sub-concession, (2) the experience and financial condition of and security offered by the proposed sub-concessionaire is equal to or greater than that represented by MPP in connection with the original proposal based upon which this Contract was awarded, (3) all necessary and appropriate documentation is prepared and executed by all necessary parties, and (4) all insurance, bonds, and other security required by this Contract are changed to reflect the new sub-concessionaire and provided to State prior to the sub-concession becoming effective.

Pursuant to Contract Section 37, with respect to MPP's operation of the Concession Premises pursuant to the Contract, MPP shall comply with all applicable laws, rules and regulations and orders existing during the term of this contract, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges and warrants that it is, or will make itself, through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities including, but not limited to, laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental impacts and building standards.

Inherent in all contracts is the covenant of good faith and fair dealing, which imposes a duty upon the contracting parties, to execute contract performance in honesty and good faith.

A sub-concession contract by and between Malibu Pier Partners, LLC, and Malibu Sport Fishing, LLC, was submitted by MPP to State, with a signature identified as that of Malibu Sport Fishing, LLC, member Damon Porter. Damon Porter has since stated that he did not sign the sub-concession contract, and the signature on the sub-concession contract is not his.

State demands that MPP authenticate the signature on the sub-concession contract between MPP and Malibu Sport Fishing, LLC. If MPP fails to authenticate the signature on the sub-concession contract, MPP will be in breach of Contract.

## **8. Contract Exhibit H – Special Event and Filming Fees**

Pursuant to Contract Exhibit H, MPP's fees for Special Events (including parking fees) and Filming may be determined by Concessionaire and must be approved by State's District Superintendent.

Mr. Alexander I. Leff  
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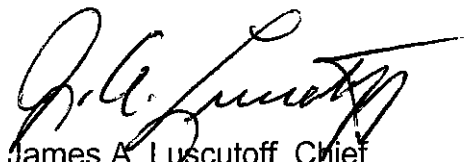
In monthly conference calls held over the last year, State has requested MPP's fee schedules for Special Events and Filming. To date, MPP has failed to provide this schedule. As such, MPP is in breach of the Contract.

State demands MPP submit to State for State's approval MPP's fee schedule for Special Events and Filming.

In accordance with Contract Section 29, State hereby notifies MPP that MPP is in breach of the Contract for failure to observe and perform the terms of the Contract as above-stated. State hereby demands MPP to observe and perform the terms of the Contract and State's above-stated demands and submit to State no later than 5:00 p.m. on January 5, 2007, the appropriate and adequate fees and documents and evidence that MPP has observed and performed the terms of the Contract and State's above-stated demands. Failure of MPP to submit any and all such appropriate and adequate fees and documents and evidence to State by 5:00 p.m. on January 5, 2007, shall result in default of the Contract by MPP, at which point State may exercise any and all of its rights and remedies it may have in law or in equity related to MPP's default of Contract including, but not limited to, any and all of State's remedies stated in Contract Section 30.

If you have any questions, please call me at (916) 653-7733.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Luscutoff", with a stylized flourish extending from the end.

James A. Luscutoff, Chief  
Concessions, Reservations, and Fees Division

Enclosure

cc (w/o enclosure):

Ron Schafer, Angeles District Superintendent  
Tara E. L. Todd, Staff Counsel III, Legal Office