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LLP

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June 11, 2018

Sent by Email

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Re: Request for Mutual Conflict Waivers

Dear Mr. Johnson and Mr. Blanck:

The County of Humboldt (County) is interested in retaining Remy Moose Manley, LLP (RMM) to defend the County in litigation challenging the Environmental Impact Report (EIR) that the County prepared in connection with what became Board of Supervisors Resolution 18-43, by which the County established a limit (cap) on the number of permits and acres that may be approved for commercial cannabis cultivation within unincorporated areas of the

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County. (See *Friends of the Eel River v. County of Humboldt* [Humboldt County Superior Court No. CV180495].) I write this letter requesting mutual waivers with respect to potential conflicts of interest associated with the County's request of RMM.

RMM has worked as outside counsel for The Danco Group (Danco) since approximately 2011, with respect to its Samoa Town Master Plan development project in Humboldt County, providing ongoing legal advice with respect to issues arising under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and related environmental statutes.

The County would like to retain RMM to defend the County in the above-described litigation. The County recognizes that, in order for RMM to be able to perform such work, the firm will need to obtain a conflict waiver from Danco. The County further recognizes that, in order for Danco to be willing to grant such a waiver, the County in turn must grant a reciprocal waiver, providing Danco with assurance that, should RMM be retained by the County for this litigation, RMM would still be able to continue its work for Danco in its dealings with the County without fear that the County would object to such continued representation.

This letter, with its signature blocks below, is intended to provide a vehicle for such mutual conflict waivers, authorizing RMM to take on the proposed work for the County while continuing to represent Danco with respect to its ongoing matter before the County.

LEGAL BACKGROUND

Attorneys have four basic duties that are relevant to potential conflict situations: (1) the fiduciary duty of undivided loyalty to a client; (2) the duty to impart significant information to a client; (3) the duty to maintain client confidences and secrets; and (4) the duty to represent a client competently.

Regarding the duty of confidentiality, a lawyer is "precluded from putting himself in a position where he may be required to choose between conflicting



duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." (*Anderson v. Eaton* (1930) 211 Cal. 113, 116.) A lawyer must also "maintain inviolate the confidence . . . of his or her client." (Bus. & Prof. Code, § 6068(e).) Closely related to the attorney's duty of loyalty is the duty to keep a client reasonably informed about significant developments relating to the matters for which the attorney was retained. A lawyer also has a duty to provide legal services competently.

The rules governing attorneys' conflicts of interest require informed written consent by both clients prior to attorneys' entry into legal representation that gives rise to potential or actual conflicts between the two clients. (Cal. Rules Prof. Conduct, Rule 3-310(C).) The purpose of this requirement is to give both clients sufficient information to make free and intelligent decisions regarding the subject matter of the representation. The terms of the specific waivers of any real or potential conflicts and the terms of RMM's work for the County are provided below.

POTENTIAL CONFLICTS OF INTEREST

As the Court of Appeal has noted, an applicant seeking entitlements from a local government agency has interests that are not identical to those of the local government agency, even if both parties are favorably inclined toward a proposed project. (*Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 917-919.) Indeed, the possibility of project denial by a local agency decisionmaker creates the potential for an actual conflict. Since RMM is currently representing Danco before the County with respect to implementation of Danco's Samoa Town Master Plan project and related proposed Development Agreement, a potential conflict of interest would arise should County retain to defend the above-described litigation, even though the two matters appear to be



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wholly unrelated. RMM therefore proposes a mutual waiver on the terms set forth below. If Danco and the County find the terms acceptable, they can grant the waivers by signing where indicated below.

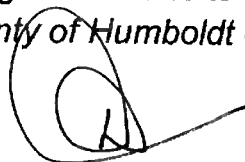
Very truly yours,

James G. Moose

TERMS OF RECIPROCAL WAIVER

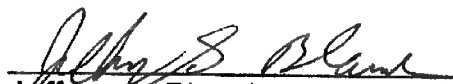
1. The County shall engage RMM to defend the County in *Friends of the Eel River v. County of Humboldt* (Humboldt County Superior Court No. CV180495), but shall not involve RMM in any additional matter without the need for an additional mutual waiver from Danco. The County shall not seek advice from RMM regarding anything to do with Danco's Samoa Town Master Plan project.
2. The County does not object to Danco's continued employment of RMM with respect to implementation of the Master Plan project, including execution of the pending proposed Development Agreement, and hereby waives any real or potential conflict of interest that might arise due to RMM's ongoing work for Danco.
3. In consideration for the County's willingness to grant a waiver under the terms set forth in paragraphs 1 and 2 above, Danco hereby waives any real or potential conflict of interest that might arise due to RMM's work for the County on *Friends of the Eel River v. County of Humboldt* (Humboldt County Superior Court No. CV180495).

Date: June 10, 2018



Dan Johnson
President & CEO, The Danco Group

Date: June 19, 2018



Jeffrey S. Blanck
Humboldt County Counsel

