FILED TONI L. HELLON CLERK, SUPERIOR COURT 12/11/2015 1:05:58 PM BY: KEITH YLVISAKER **DEPUTY** Case No. C20155575 HON. GUS ARAGON

1 JACKSON & ODEN, P.C. 3573 East Sunrise Drive, Suite 125 2 Tucson, Arizona 85718 Telephone: (520) 884-0024 Fax: (520) 884-0025 3 **TODD JACKSON ASB NO. 012202** TJACKSON@JACKSONODENLAW.COM 4 LANE D. ODEN, ASB 012833 LODEN@BOJ-LAW.COM 5 **Attorneys for Plaintiff** 6 Pasadera Behavioral Health Network 7

8

9

10

19

20

21

22

23

24

25

26

27

28

20

ARIZONA SUPERIOR COURT

PIMA COUNTY

11	PASADERA BEHAVIORAL HEALTH NETWORK, an Arizona non-profit	Case No.
12	corporation,	
13	Plaintiff,	COMPLAINT FOR DAMAGES
14	vs.	
15		Assigned to:
16	CITY OF SOUTH TUCSON, a Municipal corporation,	
17	Defendant.	
18	Defendant.	

Plaintiff Pasadera Behavioral Health Network ("Pasadera") alleges as follows:

Parties, Jurisdiction and Venue

- Pasadera is an Arizona non-profit with its principal place of business in 1. Pima County, Arizona. Pasadera provides behavioral health and substance abuse prevention and treatment facilities.
- Defendant City of South Tucson ("City") is an Arizona municipal corporation and political subdivision of the State of Arizona, located in Pima County, Arizona.

- 3. As more fully set forth below, this is an action to recover damages incurred by Pasadera and arising from the City's decision to repudiate its stated position on the permissible use of property that Pasadera purchased within the City and located at 2700 South 8th Avenue, Tucson, Arizona (the "Property").
- 4. On June 22, 2015, Pasadera timely served its notice of claim for the claims stated herein, in accordance with A.R.S. §12-821.01.
- 5. The actions and omissions giving rise to this Complaint occurred in Pima County, Arizona. Jurisdiction and venue are proper in this Court.

Facts

- 6. In 1921, The Arizona's Children Association (the "ACA") opened the Property's first building for use as an orphanage, and over the following decades, ACA added various structures, including an infirmary, dormitories, recreational areas, behavioral health outpatient clinic, and administrative offices.
- 7. In the 1960s, ACA incorporated a residential facility on the Property to provide residential substance abuse service to its clients (the "Residential Facility").
- 8. In 1978, the City adopted the Zoning Code, which placed the Property in a Single-Family Residence Zoning District.
- 9. ACA continued the Residential Facility until 2013, when it was forced to close the residential treatment facility due to outside factors beyond its control.
- 10. In early 2014, Pasadera identified the Property as an ideal location to relocate where it could consolidate multiple functions: administrative offices, outpatient clinics and a residential facility.
- 11. The services Pasadera intended to provide at the Property fall under a State Level II License, the same state licensing requirements as the services ACA provided at the Property.

- 12. Pasadera (then known as Compass Health Care, Inc.) placed an offer to purchase the Property on February 13, 2014, and entered into a purchase contract with ACA on March 3, 2014. The purchase contract provided for a period of due diligence to allow Pasadera to verify that its intended uses were permitted on the Property.
- 13. During the Summer 2014, Pasadera received multiple assurances from the Zoning Administrator that it could continue ACA's uses, specifically the Residential Facility.
- 14. At a meeting on or about May 28, 2014, the City's Zoning Administrator (the "Administrator"), in his official capacity and on behalf of the City, stated to Pasadera representatives that Pasadera's intended use is grandfathered, as a legal nonconforming use.
- 15. On June 2, 2014, the City's Mayor and Council held a special meeting for the purpose of discussing in public the sale of the Property to Pasadera, which was attended by the Administrator. At that meeting, the speakers discussed Pasadera's intended use of the Residential Facility in detail, including Pasadera's adult inpatient rehabilitation services. Toward the end of the meeting Mr. Gastelum was asked to comment on the legal nonconforming use. He stated:

[The] company is not being grandfathered in. The use is being grandfathered in. It has nothing to do with Children's Home being there. It's being that that use has been grandfathered in. It could be an auto repair shop, for example. If our zoning code was adopted in '78 and that shop has been there since '64 and it's in a middle of a neighborhood, we can do nothing to change the zoning. That is against the law.

16. On July 14, 2014, Pasadera requested that the Zoning Administrator provide a formal Zoning Compliance Certificate ("Certificate") to ensure that Pasadera's proposed uses would be permitted at the Property.

- 17. On July 16, 2014, the Administrator responded in writing, reiterating his prior position that Pasadera's uses would be permitted as legal nonconforming uses (the "First Determination"). He wrote that the City "acknowledges that the proposed use by Pasadera is not changing and therefore it is a legal nonconforming use and Pasadera will have no issue receiving a Zoning Compliance Certificate." He added that the Certificate would be issued after Pasadera completed its purchase of the Property and secured a business license, which the City would not issue until Pasadera owned the Property.
- 18. On August 5, 2014, the Administrator again stated to Pasadera's legal counsel in a telephone conversation that the content of his First Determination was accurate. Although there was political opposition to Pasadera operating on the Property, he confirmed his decision regarding the Property's legal nonconforming status.
- 19. Over the next five months, Pasadera had numerous conversations with City Manager Luis Gonzales (the "City Manager") and Mayor Paul Diaz (the "Mayor") to discuss obtaining the Certificate and business license prior to Pasadera owning the Property with ACA's consent. The City responded that such permitting and licensing would be issued once Pasadera obtained title ownership, and continued to provide assurances that the Certificate would be issued based on the Property's legal nonconforming status.
- 20. Based on the First Determination and the City's continued assurances that Pasadera would receive the Certificate and building permits when it owned the Property, Pasadera closed on the purchase contract and purchased the Property on December 24, 2014, for approximately \$2,025,000.00.
- 21. Also in reliance on the statements and First Determination described above, Pasadera sold its administrative facility on Jackrabbit Avenue, entered into a contract to sell its residential facility at 302 West Ventura, offered its facility at 2950 North Dodge

Boulevard for sale, and initiated the process of moving and consolidating its operations at the Property.

- 22. In early January 2015, Pasadera requested to meet the newly-appointed interim City Manager Benny Young to introduce him to Pasadera.
- 23. On January 2, 2015, Pasadera representatives met with Mr. Young and expected to discuss the issuance of the Certificate and permits. Instead, Mr. Young notified them that no Certificate or business license would be issued. Mr. Young informed them for the first time that the Certificate and building permits would only be issued if Pasadera served clients under 18 years old, a distinction not recognized in the Zoning Code, nor in the Level II License.
- 24. The City confirmed Mr. Young had reversed the City's position in a January 5, 2015 letter from the Administrator to Pasadera (the "January 5 Letter"). This letter stated that Pasadera had been approved for a business license for "administrative and family outpatient services." The letter stated that "Pasadera Behavioral Health Network is not permitted to provide adult residential services at this site as indicated by Mr. Benny Young late last week."
- 25. The City, in both the meeting and the January 5 Letter, failed to provide Pasadera with any basis or justification for its reversal, or any new facts that led it to its new position.
- 26. Pasadera requested a formal clarification letter, which the Administrator issued on January 21, 2015 and Pasadera received on January 26, 2015 (the "Second Determination"). The January 21, 2015 letter reversed the First Determination on the grounds that the clients served at the Residential Facility by Pasadera would change from "youth to adult" and because ACA's Residential Facility use had been discontinued for more than six months.

- 27. The City and the Administrator were aware of the age of clientele served by Pasadera, and of ACA's 2013 discontinuance of its residential services, prior to the First Determination and other statements described in Paragraphs 15-21 above.
- 28. The City's representations, and sudden change of position, caused damage to Pasadera. Pasadera relied on such representations, and it would not have purchased the Property, sold its Jackrabbit facility, or incurred substantial transaction and other costs associated with the consolidation if the City had disclosed its revised position before Pasadera closed on the purchase contract.
- 29. As a direct result of the City's actions, Pasadera (i) purchased a property it cannot use as intended, (ii) sold its administrative facility, (iii) incurred substantial transaction, renovation, legal, and moving costs, and (v) lost and will continue to lose revenues due to a reduction in bed space.

Count I (Promissory Estoppel)

- 30. Plaintiff restates and incorporates the foregoing allegations.
- 31. The City, in making the First Determination and making the statements alleged above, committed affirmative and sufficiently formal actions, which Pasadera reasonably relied upon in closing the purchase of the Property.
- 32. The City's subsequently reversed its position and repudiated its earlier actions and statements, after Pasadera's closing on the Property.
- 33. Pasadera suffered injury as direct and proximate result of its reliance on the City's actions and statements.

Count II (Negligent Misrepresentation)

34. Plaintiff restates and incorporates the foregoing allegations.

- 35. The City, through the authorized officials described above, provided false information to Pasadera for the guidance of Pasadera in connection with the purchase of the Property.
- 36. Such authorized officials failed to use reasonable care and competence in obtaining and/or communication information to Pasadera regarding the permitted use for the Property. Pasadera justifiably relied on such information and as a direct and proximate result, suffered damages.

Count III (Tortious Interference with Contract and/or Business Expectancies)

- 37. Plaintiff restates and incorporates the foregoing allegations.
- 38. Plaintiff had valid contractual relationships and expectations of future business dealings to provide residential treatment services from the Property that would have resulted in income to Pasadera.
 - 39. The City had knowledge of such relationships and expectations.
- 40. The City, through its actions described above, intentionally and improperly interfered with and prevented such contractual relations and business dealings, which caused damage to Pasadera.

WHEREFORE, Pasadera requests the Court enter judgment in its favor and against Defendant, to include:

- a. Compensatory damages in an amount to be proven at trial;
- b. Pre- and post-judgment interest;
- c. Reasonable costs and attorneys' fees incurred in this matter under all applicable legal bases; and

1	d. Such other and furth	er relie	ef to Pasadera as the Court deems just and
2	proper.		
3	DATED: December, 2015.		
4	, , , , , , , , , , , , , , , , , , ,		racyt a ODENI D C
5		JACK	KSON & ODEN, P.C.
6		By:	
7		Dy.	Todd Jackson
8			Lane D. Öden Attorneys for Plaintiff
9			Pasadera Behavioral Health Network
10			
11			
12	,		·
13			
14			
15			
16			
17			
18			
19			•
20			
21			
22			
23			
24			
25			
26			
27			