Appendix C

Response to Comments

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESPONSE TO COMMENTS

TO: Dyan Whyte
Assistant Executive Officer

December 1, 2011
File No. 07S0197 (BGS)

FROM: Barbara Sieminski
Engineering Geologist

SUBJECT: **Response to Comments on Tentative Order for Hamlin Cleaners, 3425 Golden Gate Way, Lafayette, Contra Costa County**

This document provides Water Board cleanup staff's response to comments received on the Tentative Order (TO) for final Site Cleanup Requirements (SCR) for the subject site. On October 5, 2011, cleanup staff distributed the TO to the appropriate parties for comment. We received comments on the draft TO from the following parties:

Date	Commenter
10/17/11	Barry R. Gross – Son of Leonard A. Gross, representing his father Leonard A. Gross, and Leonard A. Gross Professional Corporation, former property owners
11/3/11	Mr. Mario A. Consolacion – Engineering technician, representing Contra Costa County Flood Control & Water Conservation District, the owner of properties at Las Trampas Creek located approximately 200 feet downstream of the site
11/10/11	Linda C. Beresford of Opper & Varco LLP – Attorney representing Scott Monroe, the former property owner
11/14/11	David F. Wood and Matthew O. Kovacs of Wood, Smith, Henning & Berman LLP – Attorneys representing Jeanne Stewart, Jeanne's Hamlin Cleaners, Jeanne Stewart dba Hamlin Cleaners, and Tommy Lee Stewart (former Hamlin Cleaners operators)

The comments are summarized below together with our responses.

<u>Leonard A. Gross Comments</u>

1**.** ***Comment:*** Leonard A. Gross Professional Corporation is not listed in Finding 2.b. regarding land ownership, but only under named dischargers.

Response: Comment noted. We have added Leonard A. Gross Professional Corporation under 1981 listing for Assessor's Parcel No. 233-051-016 in Finding 2.b. of the revised TO. The

corporation was erroneously omitted in the TO. However, as the comment properly noted, Leonard A. Gross Professional Corporation was listed in Finding 3 (named dischargers).

2. ***Comment:*** There is nothing showing that Leonard A. Gross Professional Corporation had any connection to the site.

Response: We disagree. Finding 3 of the TO explains why Leonard A. Gross Professional Corporation is named as a discharger.

3. ***Comment:*** Leonard A. Gross should come under an exemption for lenders and should not be named a discharger because he acquired a Trustee's Deed after a property foreclosure sale. At no time did he have knowledge of any discharge or activities causing discharge.

Response: We disagree. The cleanup staff recommends that the Board name both the individual and corporate entity to the proposed Order based on his ownership and active management of the property from 1981 to 1987. Despite comments from his son, Barry R. Gross, that Leonard A. Gross "should come under an exemption for lenders," the cleanup staff finds Mr. Gross acted consistent with an owner and had knowledge of the dry cleaning businesses which operated on his property.

Leonard A. Gross purchased the property through a public action on November 10, 1981. It is unclear whether ultimate ownership rested with the individual or with the corporation, since we have deeds indicating that both the individual and corporation received the property and recorded their interest around the October/November 1981 timeframe (see Exhibit A). The Grant Deed transferring the property from Leonard A. Gross to the next property owners, the Peacocks, was signed and dated November 25, 1987 and signed by Mr. Gross in his individual capacity (see Exhibit B).

Leonard A. Gross actively managed the property. He leased the property to dry cleaners operators (to Ronald Monroe from 1981 to 1986, and to Stewarts from 1986 to 1987 – see Exhibit C), entered into leasehold arrangements in which he exercised control over what took place on his property, filed an unlawful detainer lawsuit as a landlord against Ronald Monroe in 1984 (see Exhibit D), and sold the property to the Peacocks in 1987 (see Exhibit B). These actions are consistent with that of an owner subject to liability under Water Code section 13304. The State Water Board precedent allows former owners to be responsible if they have a significant ownership interest in the property at the time of the discharge, have knowledge of the activities which resulted in the discharge, and they have the ability to prevent the discharge. WQ 92-13 (Wenwest) and WQ 86-15 (Stuart). Here, Gross had a significant ownership for most of the 1980s when the discharges from the dry cleaners took place, knew about the activities that caused the discharge, and had the ability to prevent it.

Gross is unlike Scott Monroe, whose responsibility is discussed below. Gross' ownership lasted for many years. He was not merely an absentee owner. He actively controlled the property, leased the property to dry cleaning operations which caused the current contamination, and derived income from it.

The Stuart Order, cited above, involved a lessor and sublessee rather than an owner (Gross) who leased the property, but this language is relevant: "At all times during the lease period, [Gross] had an important legal interest in the property and derived income from it. It is disingenuous for [Gross] to argue that he had nothing at stake in the property. Accordingly, we find the action of naming petitioner, along with the lessor and the sublessees, as a party responsible for the cleanup to be appropriate and proper."

Contra Costa County Flood Control & Water Conservation District Comments

1. ***Comment:*** The District is concerned about health risks (to their workers working on the structures in the creek) resulting from the contamination, and their liability for accumulation of contaminants on their properties, therefore request that we require the responsible parties to install monitoring wells and perform soil, surface water, and groundwater monitoring activities adjacent to their properties.

Response: Comment noted. We did not make changes to the TO because it already addresses the District's concerns. Tasks 4-5 require site investigation, Tasks 6-7 require site cleanup, and Provision 5 require self-monitoring activities and reporting.

Scott Monroe Comments

1. ***Comment:*** Scott Monroe should not be named as a discharger due to insufficient evidence.

Response: We agree. The cleanup staff recommends that the Board exercise its discretion not to name Scott Monroe to the proposed Order based on his ownership of the property in 1978-1980. There is insufficient evidence that he caused or permitted a discharge during his ownership, as further explained below.

Scott Monroe owned the property located at 3425 Golden Gate Way in Lafayette between July 21, 1978, and December 5, 1980, when the property was foreclosed on. His ownership was unusual. When he was 18 years old, his father, Ronald Monroe, asked him take title to the property because of financial hardships facing the Monroe family. Scott Monroe agreed and Ronald Monroe thereafter owned and operated Hamlin Cleaners on the property until his death in October 1985. According to Scott Monroe's declaration submitted under the penalty of perjury, he never made any payments toward ownership of the property, he never took possession of the property and in fact went away to college in Oregon shortly after taking title, he never collected any payments such as rent from his father for use of his property, and he never believed he had the ability to evict his father. So while Scott Monroe was the technical owner of the property, he exercised no attributes of ownership.

In *State Water Board Order WQ 92-13 (Wenwest),* the State Board narrowly held a former owner was not liable based on various such factors as brief ownership, the owner did not have anything to do with the activity that caused the discharge, the owner did not exacerbate the problem, the owner had minimal knowledge of the pollution problem, and there were other

responsible parties and cleanup was proceeding. Consideration of the *Wenwest* factors weighs against requiring Scott Monroe to cleanup the property. Scott Monroe took title to the property solely to facilitate his father's business endeavors, but his ownership was in name only and he exercised no attributes of ownership over the property. His ownership was for two years (in *Wenwest* it was less than a year). During this period, he had nothing to do with the activity that caused the condition of pollution other than intermittently help out at the front counter of his father's dry cleaning business (while he was in school he only visited the property once every six months). He never engaged in any activity that exacerbated the problem. As an 18-20 year old with minimal contact with the property, it is doubtful that he had complete knowledge of the activities that caused the discharge at the property. Finally, there are numerous other dischargers named in the proposed Order. Therefore, cleanup staff recommends that the Board exercise its discretion not to name Scott Monroe to the proposed Order.

There are comments that Scott Monroe be named to the proposed Order based on the rationale that he was also an owner and operator of the dry cleaners. There is, however, no evidence that he was an owner or operator of the business. After the property was foreclosed on, Ronald Monroe continued to be the owner and operator of Hamlin Cleaners at the property. Scott Monroe was only a part-time employee there from 1980 to 1985. When his father died in October 1985, Scott Monroe acted as a realtor to sell Hamlin Cleaners, to wrap up the affairs of Ronald Monroe, and to arrange for the payment of his father's outstanding debts. The bulk transfer agreement to sell the assets of the dry cleaning business to Jeanne Stewart and which bears Scott Monroe's name is not signed. The final, executed bulk transfer agreement is signed by a Matthew Monroe, who is now deceased. In short, there is no evidence that Scott Monroe was the owner or operator of Hamlin Cleaners, and should not be named to the proposed Order on those grounds.

Stewarts/Hamlin Cleaners Comments

1. ***Comment:*** Include the information that Mr. Monroe continued to operate the cleaners after selling his ownership interest to the property.

Response: We disagree. There is insufficient evidence to include such statement in the revised TO.

Exhibit A

Gross's Trustee's Deeds

81 146214 NOV 10 1981

RECORDING REQUESTED BY:

Contractors Capital Corp.

WHEN RECORDED RETURN TO:

Contractors Capital Corp.
2030 Franklin Street, Sixth Floor
Oakland, California 94612

SURVEY MONUMENT FUND $10

NOV 10 1981 CONTRA COSTA CO. TRANSFER TAX PAID $ 143.00

Documentary Transfer Tax Due $ 143.00
Amount of Consideration $ 130,000.00
Amount of unpaid debt $ 161,784.72
Grantee is ☐ beneficiary ☐ Mortgagee
declare under penalty of perjury that the foregoing statement is true and correct.
Contractors Capital Corp.
Firm Name
☐ Unconditional

Recorded at request of Contractors Capital Corp
at 2 min. Past 9 o'clock a.m.
NOV 10 1981
Contra Costa County Recorder
J. R. Olsson, Recorder FEE: $10.00 cpd

1. Amount of Unpaid Debt: $161,784.72
2. Amount of Bid: $130,000.00
3. Location: 3425 Golden Gate Way
Lafayette, California
4. Parcel No.: 233-015-016
5. City Tax: -0-
6. County Tax: $143.00

TRUSTEE'S DEED

Contractors Capital Corp., a California corporation, Trustee, under the Deed of Trust hereafter particularly described, the first party, hereby grants, without warranty to: LEONARD A. GROSS, the second party, all of the real property situated in the County of Contra Costa, State of California, described as follows:

See Exhibit "A" Attached Hereto and Incorporated Herein

This conveyance is made pursuant to the powers conferred upon first party by that certain Deed of Trust between Scott Vincent Monroe, a single man, to Contractors Capital Corp., a California corporation, as Trustee, and Laurel Blum, a married woman as Beneficiary, dated December 5, 1980, and recorded January 7, 1981, in the Office of the County Recorder of Contra Costa County, State of California, as Series No. 81 1374, in Book 10156, at Page 268, Official records of said County, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

1. Default was made in the obligations for which such transfer in trust was given as security, and Notice of Default was recorded in the Office of the County Recorder of each county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being that recited in said Notice of Default. Such default still existed at the time of sale.

2. Not less than three months elapsed between the recordation of said Notice of Default and the posting and first publication of the Notice of Sale of said property.

3. The beneficiary made due and proper demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust.

4. Said Trustee gave notice of the time and place of the sale of said property in accordance with the laws of the State of California, and the terms of said Deed of Trust.

5. All requirements of law regarding the mailing, publication and delivery of copies of the Notice of Default and of all other notices, have been complied with.

6. Said property was sold by said Trustee at public auction on September 16, 1981, in the said County of Contra Costa, in which said property is situated, in full accordance with the laws of the State of California, and the terms of said Deed of Trust. Said second party, being the highest bidder at such sale, became the purchaser of said property and paid therefor to said Trustee the amount bid, being $130,000.00 in lawful money of the United States.

Description: Contra Costa,CA Document-Book.Page 10569.198 Page: 1 of 3
Order: 123 Comment:

IN WITNESS WHEREOF, the said first party has executed this conveyance this 22nd day of September, 1981.

CONTRACTORS CAPITAL CORP.
a California corporation

By: _____
Barry R. Gross, President

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

On September 22, 1981, before me, the undersigned, a Notary Public in and for said State, personally appeared Barry R. Gross, known to me to be the President of the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

OFFICIAL SEAL
ELAINE YATES
NOTARY PUBLIC-CALIFORNIA
Principal Office in ALAMEDA County
My Commission Expires May 24, 1985

_____
Elaine Yates, Notary Public in and for said State

Description: Contra Costa,CA Document-Book.Page 10569.198 Page: 2 of 3
Order: 123 Comment:

EXHIBIT "A"

PORTION OF LOTS 2, 3, 4 and 5 Block 8, Map No. 1, Lafayette Homesites, by R. N. Burgess Company, a portion of The Rancho Laguna De Los Palos Colorados, filed on October 6, 1914, Map Book 12, Page 266, Contra Costa County Records, described as follows:

BEGINNING ON THE South line of the County Road known as Golden Gate Way at the Northwest corner of the parcel of land described in the deed from Sewall Smith, et ux, to John S. Martino, et ux, recorded February 15, 1946, Book 882, Page 248, Official Records; thence from said point of beginning, along said South line South 59 degrees 58 minutes 45 seconds West, 76.81 feet; thence leaving said South line, South 30 degrees 09 minutes 15 seconds East, 116.83 feet to the center line of Walnut Creek, as shown on said map; thence along said center line as follows: North 22 degrees 06 minutes 30 seconds East, 18.24 feet; thence North 55 degrees 32 minutes East, 49.85 feet and South 62 degrees 53 minutes East, 21.77 feet to the West line of said Martino Parcel (882 Official Records 248); thence North 30 degrees 09 minutes 15 seconds West, along said West line 119.89 feet to the point of beginning.

Assessor's Parcel No.: 233-051-016

END OF DOCUMENT

10569 PAGE 200

81-113816

81 113816 SEP 11 1981

RECORDED AT REQUEST OF:

Contractors Capital Corp.

RECORDING REQUESTED BY:

Contractors Capital Corp.

WHEN RECORDED RETURN TO:

Contractors Capital Corp.
2030 Franklin Street
Sixth Floor
Oakland, California 94612

SURVEY MONUMENT FUND
$10

SEP 11 1981
AT 12 O'CLOCK M.
CONTRA COSTA COUNTY RECORDS
J. R. OLSSON
COUNTY RECORDER
FEE: Good

1. Amount of Unpaid Debt: $15,548.53
2. Amount of Bid: $11,666.67
3. Location: 3425 Golden Gate Way, Lafayette, California
4. Parcel No.: 233-051-016
5. City Tax: -0-
6. County Tax: -0-
7. Grantee: Leonard A. Gross, A Professional Corporation

No City or County Tranafer Tax due. Property was taken at sale on behalf of the beneficiary. I declare under penalty of perjury that the foregoing is true and correct.

Barry K. Gross

TRUSTEE'S DEED

Contractors Capital Corp., a California corporation as Trustee, under the Deed of Trust hereafter particularly described, the first party, hereby grants, without warranty to: Leonard A. Gross, A Professional Corporation, all of the real property situated in the City of Lafayette, County of Contra Costa, State of California, described as follows:

PORTION OF LOTS 2, 3, 4, and 5 Block 8, Map No. 1, Lafayette Homesites, by R. N. Burgess Company, a portion of The Rancho Laguna De Los Palos Colorados, filed on October 6, 1914, Map Book 12, Page 266, Contra Costa County Records, described as follows:

BEGINNING ON THE South line of the County Road known as Golden Gate Way at the Northwest corner of the parcel of land described in the deed from Sewall Smith, et ux, to John S. Martins, et ux, recorded February 15, 1946, Book 882, Page 248, Official Records; thence from said point of beginning, along said South line South 59 degrees 58 minutes 45 seconds West, 76.81 feet; thence leaving said South line, South 30 degrees 09 minutes 15 seconds East, 116.83 feet to the center line of Walnut Creek, as shown on said map; thence along said center line as follows: North 22 degrees 06 minutes 30 seconds East, 18.24 feet; thence North 55 degrees 32 minutes East, 49.85 feet and South 62 degrees 53 minutes

Description: Contra Costa,CA Document-Book.Page 10486.146 Page: 1 of 3
Order: 123 Comment:

minutes East, 21.77 feet to the West line of said Martino Parcel (882 Official Records 248); thence North 30 degrees 09 minutes 15 seconds West, along said West line 119.89 feet to the point of beginning.

This conveyance is made pursuant to the powers conferred upon first party, by that certain Deed of Trust Between SCOTT VINCENT MONROE, to Contractors Capital Corp., a California corporation as Trustee, and LEONARD A. GROSS, A Professional Corporation, as Beneficiary, dated June 4, 1980, and recorded July 3, 1980, in the Office of the County Recorder of Contra Costa County, State of California, as Series No. 80-80065, in Book 9900, at Page 407, Official Records of said County, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

1. Default was made in the obligations for which such transfer in trust was given as security, and Notice of Default was recorded in the Office of the County Recorder of each county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being that recited in said Notice of Default. Such default still existed at the time of sale.

2. Not less than three months elapsed between the recordation of said Notice of Default and the posting and first publication of the Notice of Sale of said property.

3. The beneficiary made due and proper demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust.

4. Said Trustee gave notice of the time and place of the sale of said property in accordance with the laws of the State of California, and the terms of said Deed of Trust.

5. All requirements of law regarding the mailing, publication and delivery of copies of the Notice of Default and of all other notices have been complied with.

6. Said property was sold by said Trustee at public auction on August 19, 1981, in the said County of Contra Costa, in which said property is situated, in full accordance with the laws of the State of California, and the terms of said Deed of Trust. Said second party, being the highest bidder at such sale, became the purchaser of said property and paid therefor to said Trustee the amount bid, being $11,666.67 in lawful money of the United States.

IN WITNESS WHEREOF, the said first party has executed this conveyance this 19th day of August, 1981.

CONTRACTORS CAPITAL CORP.
a California corporation

By: (Barry Weinstein, President)

STATE OF CALIFORNIA } ss.

County of ALAMEDA

CORPORATION ACKNOWLEDGEMENT

On this 19th day of August in the year one thousand nine hundred and eighty-one before me Elaine Yates, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared Barry R. Gross known to me to be the President of the corporation described in and that executed the within instruments, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.

OFFICIAL SEAL
ELAINE YATES
NOTARY PUBLIC-CALIFORNIA
Principal Office in ALAMEDA County
My Commission Expires May 24, 1984

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

Elaine Yates
Notary Public in and for said County and State

My Commission Expires

END OF DOCUMENT

Form C. A. - Hopkins Legal Forms, 2166 Fitzgerald Ave., Oakland, CA 94601 — Phone 532-1977

Recorded 1984 Book 10486 Page 146

Description: Contra Costa,CA Document-Book.Page 10486.146 Page: 3 of 3
Order: 123 Comment:

Exhibit B

Peacock's Grant Deed

RECORDING REQUESTED BY

TRANSAMERICA TITLE INSURANCE COMPANY

AND WHEN RECORDED MAIL TO

Name William H. Peacock
Street Address Post Office Box 1818
City State Zip Lafayette, California

410054

87 251010 RECORDED REQUEST OF

TRANSAMERICA TITLE CO.

NOV 30 1987

AT 8 O'CLOCK A.M.

CONTRA COSTA COUNTY RECORDS

J.R. OLSSON

COUNTY RECORDER

FEE $ 5.00

TRANSFER TAX PAID $ 605.55

LAF

SURVEY MONUMENT FUND $10

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BOOK 14043 PG 535

MAIL TAX STATEMENTS TO

Name
Street Address
City State Zip

same as above

DOCUMENTARY TRANSFER TAX $ 605.55

XX COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,

OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.

THE UNDERSIGNED

Signature of Declarant or Agent determining tax. Firm Name

25971

GRANT DEED

(Escrow No. 25971)

By this instrument dated November 2, 1987, for a valuable consideration,

LEONARD A. GROSS

hereby GRANTS to

WILLIAM H. PEACOCK and YOLANDA M. PEACOCK, husband and wife, as community property

the following described Real Property in the State of California, County of Contra Costa

City of Lafayette

Portion of Lots 2, 3, 4 and 5, Block 8, Map No. 1, Lafayette Homesites, by R.M. Burgess Company, a portion of the Rancho Laguna de los Palos Colorados, filed on October 6, 1914, Map Book 12, Page 266, Contra Costa County Records, described as follows:

BEGINNING on the south line of the County Road known as Golden Gate Way at the northwest corner of the parcel of land described in the deed from Sewall Smith, et ux, to John S. Martino, et ux, recorded February 15, 1946, Book 882, Page 248, Official Records; thence from said point of beginning, along said south line 59°58'45" west, 76.81 feet; thence leaving said south line, south 30°09'15" east, 116.83 feet to the center line of Walnut Creek, as shown on said map; thence along said center line as follows: north 22°06'30" east, 18.24 feet; thence north 55°32' east, 49.85 feet and south 62°53' east, 21.77 feet to the west line of said Martino Parcel (882 Official Records 249); thence north 30°09'15" west, along said west line, 119.89 feet to the point of beginning.

ASSESSOR'S PARCEL NO.: 233-051-016

Leonard A. Gross

LEONARD A. GROSS

STATE OF CALIFORNIA
COUNTY OF ALAMEDA } ss.

On November 25, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Leonard A. Gross

proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same.

Notary's Signature

OFFICIAL SEAL
ELAINE YATES
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ALAMEDA COUNTY
My Commission Expires May 24, 1989

Form No. 1 Rev. Revised 5-67

MAIL TAX STATEMENTS AS DIRECTED ABOVE

END OF DOCUMENT

Description: Contra Costa,CA Document-Year.DocID 1987.251010 Page: 1 of 1
Order: 123 Comment:

Exhibit C

Gross/Stewarts Commercial Lease Agreement

COMMERCIAL LEASE

PREAMBLE - PARTIES, DATE, and PREMISES

BY THIS LEASE dated April 1, 1986, LEONARD A. GROSS, owner, herein called "LESSOR", leases to TOMMY LEE and JEANNE KAY STEWART, herein called "LESSEE", that certain real property, herein called "PREMISES", in the County of Contra Costa, State of California, described as follows:

Commonly known as 3425 Golden Gate Way, Lafayette, California, presently occupied by HAMLIN CLEANERS.

1. Received from LESSEE the sum of $3,611.16 as a deposit which, upon acceptance of this lease, shall belong to LESSOR and be applied as follows:

Rent for the period from April 1, 1986 to April 30, 1986	$1,511.16
Security Deposit for the faithful performance of this lease	2,100.00
Total	3,611.16

2. Term of Lease - The term of this lease shall be for a period of seven (7) years commencing at 12:01 a.m. on April 1, 1986, and ending at 11:59 p.m. on March 31, 1993.

3. Rent and Taxes - LESSEE agrees to pay to LESSOR as rent for the use and occupancy of said premises during the first twelve months of this lease specified in Paragraph 2 of this lease $1,511.16 per month, payable as follows:

Rent is due on the first of each and every month. A late charge of ~~$100.00~~ 100.00 will also be due if monies are received after the ~~5th~~ 15th day of each and every month. Procedures for the recovery of the premises and/or the recovery of rent may be instituted any

time after the 1st day of each month if the rent has not been paid.

For the period April 1, 1987 through March 31, 1988, the monthly rent shall be $2,096.15 plus the annual cost of living increase based on the San Francisco Bay Area Consumer Price Index for all goods and services, with February 1986 statistics as the base month.

Monthly rent, begining on April 1, 1988 and each April 1st thereafter and continuing each year to the end of the lease, shall increase proportionately to the annual Cost of Living increase based on the change in the San Francisco Bay Area Consumer Price Index for all Goods and Services, with February 1986 statistics as the base month.

All rents shall be paid to LESSOR or his authorized agent, at the following address:

2030 Franklin Street, Sixth Floor
Oakland, CA 94612

or at such other places as may be designated by LESSOR from time to time.

Tax Increase - In the event there is any increase in real estate taxes during any year of the term of this lease in the City, County, or State over and above the amount such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, LESSEE shall pay to LESSOR upon presentation of paid tax bills fifty and eleven-hundreds percent (50.11%) of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending

beyond the term of the lease, the obligation of LESSEE shall be proportionate to the portion of the lease term included in such year.

4. Use - The PREMISES are to be used for the operation of a Dry Cleaning Business, and for no other purpose, without prior written consent of LESSOR.

5. Uses Prohibited - LESSEE shall not use any portion of the PREMISES for purposes other than those specified hereinabove, and no use shall be made or permitted to be made upon the PREMISES, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property, except in the ordinary course of business.

6. Compliance with Law - Said PREMISES shall not be used or permitted to be used in violation of any law or ordinance. LESSEE shall maintain said PREMISES in a clean and sanitary manner and in compliance with all laws, ordinances, rules, and regulations applicable to said premises enacted or promulgated by any public or governmental authority or agency having jurisdiction over said PREMISES.

7. Assignment and Subletting - LESSEE shall not assign this lease or sublet any portion of the PREMISES without prior written consent of the LESSOR, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the LESSOR, may terminate this lease.

8. Repairs and Maintenance - LESSEE agrees and hereby stipulates with LESSOR that said premises are in good and tenant-

Sidewalks & [illegible] Also Front Door, needs to be repaired. [illegible]
able condition on the date of this lease. LESSEE shall, at his own expense and at all times, maintain the interior of the PREMISES in good and safe condition as received, normal wear andptear excepted. No improvement or alteration of the premises shall be made without the prior written consent of the LESSOR. Prior to the commencement of any substantial repair, improvement, or alteration, LESSEE shall give LESSOR at least two days written notice in order that LESSOR may post appropriate notices to avoid any liability for liens.

9. Repairs by LESSOR - During the term of this lease, LESSOR shall, at LESSOR's own cost and expense, keep the exterior roof, sidewalls, structural supports, and foundations of the building on said premises in good repair and make all necessary repairs to, or replacements of, the plumbing, heating, air conditioning, and electrical systems on said premises; provided, however, LESSOR shall not:

1) Be required to make any repairs to the exterior roof, sidewalls, structural supports, and foundations of the building on said premises that are rendered necessary by the negligence or abuse of such property by LESSEE or any employees, agents, sublessees, or permittees of LESSEE; or

2) Be liable for any damages resulting from LESSOR's failure to make any repairs required by this section to be made by LESSOR unless LESSEE gives written notice to LESSOR specifying the need for the repairs.

10. LESSOR's Right f Inspection - LESSOR or LESSOR's duly appointed agent may enter said PREMISES at any and all reasonable times during the term of this lease to determine whether LESSEE is complying with the terms and conditions of this lease or to perform any other acts authorized by this lease to be performed by LESSOR reasonably necessary to protect LESSOR's rights under the lease.

11. Surrender of PREMISES - On expiration or sooner termination of the lease, LESSEE shall promptly surrender possession of said PREMISES to LESSOR. LESSEE, at any time within sixty (60) days prior to the expiration of the lease shall allow LESSOR to place and maintain reasonable "To Let" or "For Sale" signs on said PREMISES.

12. Abandonment of PREMISES - LESSEE shall not vacate or abandon the PREMISES at any time during the term hereof, and if LESSEE shall abandon or vacate the PREMISES, or be dispossessed by process of law, or otherwise, any personal property belonging to LESSEE left upon the PREMISES for a period of over sixty (60) days shall be deemed to be abandoned, at the option of LESSOR.

13. Condemnation - If any part of the PREMISES shall be taken or condemned for public use, and a part thereof remains which is susceptible to occupation hereunder, this lease shall, as to the part taken, terminate as of the date the condemnor takes possesion, and thereafter LESSEE shall be required to pay such proportion of the rent for the remaining term as the value of the PREMISES remaining bears to the total value of the PREMISES at the date of condemnation, provided however, that LESSOR may at his option terminate this lease as of the date the condemnor acquires

possession. In the event that the demised PREMISES are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use hereunder, this lease shall terminate on the date upon which the condemnor acquires possession. LESSEE shall be entitled to retain any amount awarded to him for his trade fixtures or moving expenses.

14. Trade Fixtures - Any and all improvements made to the PREMISES during the term hereof shall belong to the LESSOR, except trade fixtures and dry cleaning equipment of the LESSEE. LESSEE may, upon termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the premises occasioned by such removal.

15. Insolvency - In the event that a receiver shall be appointed to take over the business of the LESSEE, or in the event that the LESSEE shall make a general assignment for the benefit of creditors, or LESSEE shall take or suffer any action under any insolvency or bankruptcy act, the same shall constitute breach of this lease by LESSEE.

16. Six-Month Termination - Should any damage or destruction as described above render said PREMISES only partially untenantable for the uses permitted by this lease, LESSOR shall take such steps as will avoid any unreasonable interference with the use of said PREMISES by LESSEE for such uses during the period LESSOR is repairing or replacing the damaged or destroyed improvements on said PREMISES, provided, however, that should LESSOR be unable to restore full use of all of said PREMISES to LESSEE for the uses permitted by this lease within six (6) months from the date of occurrence of damage or destruction to any improvements on

said PREMISES, LESSEE may terminate this lease by giving written notice of termination to LESSOR.

17. Hold-Harmless Clause/Indemnity from Liability - LESSEE shall indemnify and hold LESSOR and the property of LESSOR, including said PREMISES, free and harmless from any and all liability, claims, loss, damages, or expenses, including counsel fees and costs, arising by reason of the death or injury of any person, including LESSEE or any person who is an employee or agent of LESSEE, or by reason of damage to or destruction of any property, including property owned by LESSEE or any person who is an employee or agent of LESSEE, caused or allegedly caused by:

a) Any cause whatsoever while such person or property is in or on said PREMISES or in any way connected with said PREMISES or with any improvements or personal property on said PREMISES, except for negligence of LESSOR;

b) Some condition of said PREMISES or some building or improvement on said PREMISES, except for negligence of LESSOR;

c) Some negligent act or omission on said PREMISES of LESSEE or any person in, on, or about said PREMISES with the permission and consent of LESSEE; or

d) Any matter connected with LESSEE's occupation and use of said PREMISES.

18. Excepted Acts of LESSOR - Notwithstanding the provisions of the previous section, LESSEE shall be under no duty to indemnify and hold LESSOR harmless from any liability, claims, or damages arising because of LESSOR's failure to make any repairs required by this lease to be made by LESSOR or because of any intentional or willful acts of LESSOR or any person who is an

agent or employee of LESSOR acting in the course and scope of their agency or employment.

19. Liability Insurance - LESSEE shall, at LESSEE's own cost and expense, secure promptly after the execution of this lease and maintain during the entire term of this lease and any renewal or extension of such term, a broad form comprehensive coverage policy of public liability insurance issued by an insurance company acceptable to LESSOR insuring LESSEE and LESSOR against loss or liability caused or connected with LESSEE's occupation and use of said PREMISES under this lease in amounts not less than:

a) $1,000,000 for injury to or death of one person, and subjected to such limitation for the injury to or death of one person, of not less than $1,000,000 for injury to or death of two or more persons as a result of any one accident or incident; and

b) $25,000 for damage or destruction to any property of others.

20. Default by LESSEE. All covenants and agreements contained in this lease are declared to be conditions to this lease and to the term hereby demised to LESSEE. LESSEE shall breach this lease, giving LESSOR the remedies specified above, should:

a) Any rent be unpaid when due and remain unpaid for five (5) days after written notice to pay such rent or surrender possesson of said PREMISES is served on LESSEE or his agents or employees by LESSOR; or

b) LESSEE default in the performance or breach of any other covenant, condition, or agreement contained in this lease

and such default or breach is not cured within twenty (20) days after written notice thereof is given by LESSOR to LESSEE.

21. Cumulative Remedies - The remedies given to LESSOR in this lease shall not be exclusive but shall be cumulative and in addition to all other remedies now or hereafter allowed by law or authorized elsewhere in this lease.

22. Waiver of Breach - No failure of LESSOR to enforce any term hereof shall be deemed to be a waiver, nor shall the waiver by LESSOR of any breach by LESEE of any of the provisions of this lease constitute a continuing waiver or a waiver of any subsequent default or breach by LESSEE either of the same or of a different provision of this lease.

23. Utilities - LESSEE shall pay all charges incurred for the furnishing of gas, electricity, water, telephone service, garbage or refuse service, and other public utilities to said PREMISES during the term of this lease or any renewals or extensions thereof for that portion of the premises under its exclusive use and the common grounds.

24. Notices - Except as otherwise expressly provided by law, any and all notices or other communiciations required or permitted by this lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed or to any managing employee or officer of such party, or, in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to LESSEE, 3425 Golden Gate Way, Lafayette, California, or to Leonard A. Gross, Lessor, 2030

Franklin Street, 6th Floor, Oakland, California, 94612. Either party, LESSOR or LESSEE, may change their address for purposes of this section by giving written notice of such change to the other party in the manner provided in this section.

25. Attorneys Fees - Should any litigaton, including arbitration proceedings, be commenced between the parties to this lease concerning said PREMISES, this lease, or the rights and duties of either in relation thereto, the party, LESSOR or LESSEE, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for his attorneys fees in the litigation which shall be determined by the Court in such litigation or in a separate action brought for that purpose.

26. Binding on Heirs and Successors - This lease shall be binding on and shall enure to the benefit of the heirs, executors, administrators, successors, and assigns of each of the parties hereto, LESSOR and LESSEE, but nothing contained in this acton shall be construed as a consent by LESSOR to any assignment of this lease or any interest in this lease by LESSEE.

27. Time of Essence - Time is expressly declared to be of the essence of this lease.

28. Holding over - Any holding over after the expiration of this lease, with the consent of LESSOR, shall be construed as a month-to-month tenancy at the rental rate existing just prior to the expiration of the lease, to increase in accordance with the terms previously stated, as applicable.

29. Arbitration - Should any dispute arise between LESSEE and LESSOR concerning said PREMISES, any provisions of this lease,

or the rights and duties of either in regard thereto, the dispute shall be settled by arbitration as provided in this section, except non-payment of rent. Each party, LESSOR and LESSEE, shall appoint an arbitrator and give the other written notice of the name and address of such arbitrator on the other party within five (5) days after a written demand to do so has been served on the party making the appointment by the other party to this lease. The two arbitrators so appointed shall, within twenty (20) days after their appointment, appoint a third arbitrator. If they cannot agree on the appointment of a third arbitrator, the Presiding Judge of the Contra Costa Superior Court shall appoint the third arbitrator. The decision in writing of any two of the three arbitrators so appointed shall be binding and conclusive on both parties to this lease. The arbitrators may apportion the costs and expenses of the arbitration proceeding, including counsel fees and arbitrators fees, between the parties to this lease in such a manner as any two of the three arbitrators deem just.

30. Sole and Only Agreement - This instrument constitutes the sole and only agreement between LESSOR and LESSEE respecting said PREMISES, the leasing of said PREMISES to LESSEE, or the lease terms herein specified, and correctly sets forth the obligations of LESSOR and LESSEE to each other as of its date. Any agreements or representations respecting said premises or their leasing by LESSOR to LESSEE not expressly set forth in this instrument are null and void. Any prior agreements regarding the subject premises, oral or written, known or unknown to LESSOR at

the time of the execution of this agreement, are rendered null and void.

31. This lease is contingent upon close of escrow whereby lessee is to acquire the assets of Hamlin Golden Gate Cleaners on or before April 30, 1986. If such sale is not completed before said date, this agreement shall be void and all deposits shall be returned. In this event, lessor shall not return the rent received for April, 1986, but may retain said payment as rental for said month. Upon close of escrow, as additional consideration, lessee shall pay to lessor the sum of $5,400.00. This amount is non-refundable and is additional consideration for executing this lease.

EXECUTED on the date specified below, at the City of Oakland, County of Alameda, State of California.

Date: 4/9/86

Leonard A. Gross, Lessor

Date: 4/9/86

Tammy Lee Stewart

Date: 4/9/86

Jeanne Kay Stewart

TO: Leonard A. Gross, Lessor and Tommy Lee Stewart and Jeanne Kay Stewart, Lessee.

In re: 3425 Golden Gate Way, Lafayette, California
Hamlin Golden Gate Cleaners

I/We hereby approve the lease dated April 1, 1986 and addendum thereto dated August 7, 1986, copies of which are attached hereto, and agree that the lease of the premises to Ronald Monroe is hereby cancelled.

Dated :

Exhibit D

Gross's Unlawful Detainer Lawsuit

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS) (415) 834-5020 TELEPHONE

KAREN T. FRIEDMAN, ESQ.
Attorney at Law
2030 Franklin Street, Sixth Floor
Oakland, California 94612

ATTORNEY FOR (NAME) Leonard A. Gross

Insert name of court, judicial district or branch court, if any, and post office and street address

Contra Costa Superior Court
725 Court Street
Martinez, California 94553

FOR COURT USE ONLY

FILED
APR 4 - 1984
J. R. ROSSON, County Clerk
CONTRA COSTA COUNTY
By W. Coker, Deputy

PLAINTIFF: Leonard A. Gross

TRAN 007330 04/04/84
CASE# 258066
DEPT:COMPLAINTS
RECEIP# 006414 C# 02
TOTAL DUE $96.00

DEFENDANT: Ronald D. Monroe DBA Hamlin's Cleaners

DOES 1 TO 10

SUMMONS ISSUED

COMPLAINT—Unlawful Detainer

CASE NUMBER 258066

1. This pleading including attachments and exhibits consists of the following number of pages 5
2. a. Plaintiff is [XX] an individual over the age of 18 years [ ] a partnership [ ] a public agency [ ] a corporation [ ] other (specify)
   b. [ ] Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):
3. Defendants named above are in possession of the premises located at (street address, city and county)
   3425 Golden Gate Way, Lafayette, California 94549
4. Plaintiff's interest in the premises is [X] as owner [ ] other (specify)
5. The true names and capacities of defendants sued as Does are unknown to plaintiff
6. a. On or about (date): April 12, 1982 defendants (names) Ronald D. Monroe DBA Hamlin's Cleaners
   agreed to rent the premises for a [ ] month-to-month tenancy [X] other tenancy (specify) Commercial Lease
   at a rent of $1,300.00 payable [X] monthly [ ] other (specify frequency).
   due on the [X] first of the month [ ] other day (specify):
   b. This [X] written [ ] oral agreement was made with
   [X] plaintiff [ ] plaintiff's predecessor in interest
   [ ] plaintiff's agent [ ] other (specify)
   c. [ ] The defendants not named in item 6 a are
   [ ] sublenants [ ] assignees [ ] other (specify)
   d. [X] The agreement was later changed as follows (specify):
   Rent was increased effective April 1, 1983 to $1,306.50 per month.
   e. [X] A copy of the written agreement is attached and labeled Exhibit A
7. Plaintiff has performed all conditions of the rental agreement
8. [X] a. The following notice was served on defendant (name) Sharyn Clifton
   [X] 5-day notice to pay rent or quit [ ] 3-day notice to quit
   [ ] 3-day notice to perform covenant or quit [ ] 30-day notice to quit
   [ ] other (specify)
   b. The period stated in the notice expired on (date) March 9, 1984 and defendants failed to comply with the requirements of the notice by that date
   c. All facts stated in the notice are true
   d. [X] The notice included an election of forfeiture
   e. [X] A copy of the notice is attached and labeled Exhibit B

(Continued)

Form Approved by the Judicial Council of California Effective January 1, 1982 Rule 982.1(90)

SHORT TITLE. Gross vs. Monroe	CASE NUMBER

COMPLAINT—Unlawful Detainer

9. [X] a. The notice referred to in item 8 was served
   - [ ] by personally handing a copy to defendant on *(date)*:
   - [X] by leaving a copy with *(name or description)* Sharyn Clifton a person of suitable age or discretion, on *(date)* March 3, 1984 at defendant's [ ] residence [X] business AND mailing a copy to defendant at his place of residence on *(date)* March 2, 1984 because defendant cannot be found at his residence or usual place of business
   - [ ] by posting a copy on the premises on *(date)* [ ] and giving a copy to a person residing at the premises) AND mailing a copy to defendant at the premises on *(date)*
     - [ ] because defendant's residence and usual place of business cannot be ascertained OR
     - [ ] because no person of suitable age or discretion can there be found
   - [ ] *(not for 3-day notice. See Civil Code section 1946 before using)* by sending a copy by certified or registered mail addressed to defendant on *(date)*

   b. [ ] Information about service of the notice on the other defendants is contained in attachment 9

10. [ ] Plaintiff demands possession from each defendant because of expiration of a fixed term lease
11. [X] At the time the 3-day notice to pay rent or quit was served, the amount of rent due was $ 1,306.50
12. [X] The fair rental value of the premises is $ 60.00 per day
13. Plaintiff is entitled to immediate possession of the premises
14. [ ] Defendants' continued possession is malicious, and plaintiff is entitled to treble damages *(State specific facts supporting this claim in attachment 14.)*
15. [X] A written agreement between the parties provides for attorney fees.
16. [ ] Defendants' tenancy is subject to the local rent control or eviction control ordinance of *(city or county, title of ordinance, and date of passage)*.

    Plaintiff has met all applicable requirements of the ordinances.
17. [ ] Other allegations are stated in attachment 17
18. Plaintiff remits to the jurisdictional limit, if any, of the court.

19. PLAINTIFF REQUESTS
    - a. possession of the premises
    - b. [X] costs incurred in this proceeding.
    - c. [X] past due rent of $1,306.50
    - d. [X] damages at the rate of $ 60.00 per day
    - e. [ ] treble the amount of rent and damages found due.
    - f. [X] reasonable attorney fees
    - g. [X] forfeiture of the agreement
    - h. [X] other *(specify)*: For such other and further relief as the court may deem proper.

Karen T. Friedman
(Type or print name)

Karen T.
(Signature of plaintiff or attorney)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that this complaint is true and correct.

Date. April 3, 1984

Leonard A. Gross
(Type or print name)

Leonard A. Gross
(Signature of plaintiff)

JS 00751

RONALD D. MONROE
3199 Danville Blvd.
Alamo, California 94507
(415) 831-1340

Attorney Pro Per

FILED
MAY 1 1984
J.R. OLSSON, County Clerk
CONTRA COSTA COUNTY
By S. CORDOVA, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

LEONARD A. GROSS,
Plaintiff

vs

RONALD D. MONROE, DBA
Hamlin's Cleaners,
Defendant

ANSWER TO UNLAWFUL DETAINER

CASE #258066

#1. Defendant agrees with Paragraphs #1 through #6-e of subject Unlawful Detainer, copy attached, known as Exhibit "1".

#2. Defendant denies Paragraph #7 of Unlawful Detainer, as Plaintiff has not complied with terms of leases, even though Plaintiff prepared and executed subject lease. Lease is attached and known as Exhibit "A".

#3. Defendant denies Paragraph #8-a, stating a 5-Day Notice was served on Sharyn Clifton, as this said person was not on subject premises on March 3rd, 1984. A signed affidavit made by Sharyn Clifton is attached, and known as Exhibit "B". Defendant further denies that Sharyn Clifton had any vested interest in the leased establishment as an owner or manager, at time of alledged serving of notice.

TRAN 012710 05/02/84
CASE# 258066
DEPT: ANSWER
RECEIPT# 011406 C# 01
TOTAL DUE $122.00
JS 00774

#4. Defendant denies Paragraph #8-b, as lease allows for a 10-day grace period from first of the month; noted under terms of lease as stated in Section 3, Paragraph 2, Page 1 and continued on Paragraph 1 of Page 2. (Shown on Exhibit "A")

#5. Defendant denies Paragraph #9-a, as Sharyn Clifton was not on premises at time of alledged serving.

#6. Defendant denies the fair market value is $60.00 per day. Lease states $43.53 per day.

#7. Defendant requests that the Court does not allow money costs noted under Paragraph 19-d, as fair market value is not $60.00 per day.

#8. Defendant requests that the Court not allow attorney fees for the Plaintiff as no suit should have been filed agninst Defendant.

#9. Defendant request the Court not to honor 19-g as the Plaintiff had no grounds to ask for forfeiture of the agreement, as the Defendant has complied with the terms of the subject lease.

Dated: May 1st, 1984

Ronald D. Monroe

RONALD D. MONROE
Attorney, Pro Per