

- 1 2. Plaintiff is a registered domestic limited liability corporation authorized to conduct
2 business in Guam at the Premises for commercial space rental.
- 3 3. Prior to Plaintiff taking ownership of the Premises, Defendant entered into a written
4 agreement on or around May 10, 2005 with Angelo and Cecilia Gombar (hereinafter,
5 “the Gombars”), the former owners of the property for rental of said Premises.
- 6 4. The written agreement consists of two signed documents, one titled “Lease Agreement”
7 (hereinafter, “Lease Agreement I”), and the other titled “Commercial Lease and Deposit
8 Receipt” (hereinafter, “Lease Agreement II”), which includes similar provisions.³ (Def.’s
9 Trial Ex. A & B; see also Verified Compl. Ex. A, Oct. 9, 2015.)
- 10 5. Lease Agreement I was signed contemporaneously with Lease Agreement II on or
11 around May 10, 2005.
- 12 6. Both Lease Agreement I and Lease Agreement II (collectively, “Lease Agreement”)
13 defined the term for lease of the Premises as a period of ten (10) years, commencing on
14 June 15, 2005 and terminating on December 31, 2015. (Verified Compl. Ex. A, at 1 ¶ 1,
15 15 ¶ 1, Oct. 9, 2015.)
- 16 7. The Premises consists of a building with multiple floors that are being used for the
17 operation of the Wise Owl Veterinary Clinic and the residence of Defendant.
- 18 8. The Lease Agreement contains a provision granting Defendant with an option to extend
19 the term of the Lease Agreement for an additional five (5) years, provided that written
20 notice is given to the lessor – i.e., the Gombars or their successors in interest – prior to
21 expiration of the lease term and provided that lessee – i.e., Defendant – is not in default
22 of any term of the lease. (Verified Compl. Ex. A, at 1 ¶ 1, 17 ¶ 33, Oct. 9, 2015.)

23
24 ³ The Court notes discrepancies between the lease agreements admitted during the evidentiary hearing on
25 April 8, 2016 – Def.’s Exhibit A and B – and the agreements which are identified as Exhibit A and attached to
26 the Verified Complaints in CV0949-15 and CV1182-15. The discrepancies, however, are inconsequential to
27 the Court’s disposition of these cases as this Court’s findings rests on the undisputed portions of the
28 agreements. For purposes of consistency, this Court adopts the lease agreements attached to the Verified
Complaint in CV0949-15 as the controlling Lease Agreement in these Findings of Fact and Conclusions of
Law.

- 1 9. According to the Lease Agreement, Defendant was obligated to pay rent in the amount
2 of \$3,500 per month for the relevant time period. (Verified Compl. Ex. A, at 19 ¶ 4, Oct.
3 9, 2015.)
- 4 10. The Lease Agreement requires Defendant to maintain the Premises “in a good and safe
5 condition” and to return the premises at termination of the lease “in as good condition as
6 received.” (Id. at 16 ¶ 8). Defendant is also responsible for all repairs required during the
7 term of lease, except for those areas enumerated in the agreement which shall be the
8 responsibility of the lessor – i.e. Plaintiff. (Id.)
- 9 11. The Lease Agreement requires Plaintiff to maintain the roof, exterior walls, structural
10 foundations, parking lot, air conditioning units, as well as the property adjacent to the
11 Premises. (Id.)
- 12 12. At some point in June 2015, the Premises were sold to Plaintiff by the Gombars,
13 thereafter becoming successors in interest with respect to the Premises and the Lease
14 Agreement.
- 15 13. From July 2015 through November 2015, Defendant defaulted in the payment of rent by
16 providing check payments in the amount of \$300 for each month, rather than the
17 monthly rental amount of \$3,500 due under the Lease Agreement. Plaintiff has not
18 cashed or deposited any of these checks due to concerns that cashing or depositing the
19 checks would constitute an accord and satisfaction under the Uniform Commercial Code
20 (“UCC”).
- 21 14. On October 2, 2015, Defendant was served by Plaintiff with a notice stating that he
22 owed \$14,000 in back rent for the months of July 2015 through October 2015 (\$3,500 x
23 four (4) months). (Verified Compl. Ex. B, Oct. 9, 2015.) The notice was delivered to
24 Defendant’s place of business and left with a receptionist. (Testimony of Mr. Ronald
25 Ponce, April 8, 2016.) The notice was also sent via mail to Defendant’s place of
26 residence. (Testimony of Mr. Harmohanjit Sachdez, April 8, 2016.)
- 27 15. After five days elapsed and Defendant failed to pay the rent due for the period stated in
28 the notice provided on October 2, 2015, Plaintiff filed a Verified Complaint for
Unlawful Detainer (hereinafter “*Tri-Mani I*” or “CV0949-15”) on October 9, 2015.
16. In a Decision and Order issued on October 28, 2015, this Court originally dismissed *Tri-*
Mani I without prejudice after it was determined that “Plaintiff [did] not have a business

1 license to lease the premises, pursuant to 11 G.C.A. § 70131(b).” (Dec. and Order 3:10-
2 12, Oct. 28, 2015.) A judgment was contemporaneously filed dismissing the case. (J. of
3 Dismissal, Oct. 28, 2015.) This Court later vacated the judgment after Plaintiff submitted
4 evidence of its newly acquired rental business license. (Dec. and Order 3:6-9, Feb. 22,
5 2016.)

6 17. On December 2, 2015, Defendant was inadequately served with a notice stating that he
7 owed \$3,500 in rent for the month of December 2015. A subsequent Verified Complaint
8 (hereinafter, “*Tri-Mani II*” or “CV1139-15”) was filed on December 9, 2015. *Tri-Mani*
9 *II* was dismissed without prejudice after a court determined that service was improper.⁴
10 See *Tri-Mani, LLC v. Dr. Joel Joseph*, Civil Case No. 1139-15, *Judgment of Dismissal*
11 (Jan. 19, 2016).

12 18. On December 21, 2015, Defendant was personally served with a notice stating that he
13 owed \$3,500 in rent for the month of December 2015. (Verified Compl. Ex. B-C, Dec.
14 31, 2015.) Thereafter, Plaintiff filed a Verified Complaint for Unlawful Detainer
15 (hereinafter, “*Tri-Mani III*” or “CV1182-15”) on December 31, 2015.

16 19. After service of the notice in *Tri-Mani III*, Defendant attempted to make rental payments
17 on December 22, 2015 to Plaintiff via his attorney for the full amount due for December
18 2015, as stated in the notice provided on December 21, 2015, including rent for the
19 month of January 2016. (Def.’s Trial Ex. J; see also Testimony of Vanessa Santos-
20 Pinkney, April 8, 2016.)

21 20. Defendant provided rental payments to Plaintiff in the amount of \$3,500 for the months
22 of February 2016 through April 2016. (Def.’s Trial Ex. J.)

23 21. For the months after delivery of the notice in *Tri-Mani III*, Plaintiff either refused to
24 accept delivery of the checks, such as for the months of December 2015 and January
25 2016, or accepted the checks but have yet to cash or deposit them due to UCC concerns.
26 (Id.)

27 ⁴ The determination that service was not proper in CV1139-15 under 21 G.C.A. §§ 21103(b), 21105 and that
28 dismissal without prejudice was appropriate was made by Judge Vernon G. Perez before the matter was
reassigned to this Court.

1 22. Defendant continues to remain in possession of the Premises despite Plaintiff's multiple
2 notices concerning unpaid rent.

3 23. At all relevant times Defendant was in possession of the Premises, there was no
4 functioning sewage system. Defendant has needed to retain the services of Todu Mauleg
5 for maintenance of the Premises' septic tank system, primarily for septic tank pumping.
(Def.'s Trial Ex. F.)

6 24. At some time in 2014, the roof of the Premises began to leak water causing puddling and
7 damage to various areas around the Premises. (Def.'s Trial Ex. D.) The roof leakage was
8 reported by Defendant to the Gombars, as well as to Plaintiff on multiple occasions.

9 25. Plaintiff has not made any known repairs to the roof, nor taken any measures to rectify
10 the lack of a functioning sewage system.

11 CONCLUSIONS OF LAW

12 The Court now issues the following conclusions of law on the matters:

13 I. Unlawful Detainer

- 14 1. Plaintiff claims in *Tri-Mani I* and *Tri-Mani III* that Defendant is guilty of unlawful
15 detainer under 21 G.C.A. § 21103(b) for violating the rental provisions of the Lease
16 Agreement.
- 17 2. In order to maintain a valid unlawful detainer action, "[Plaintiff] must establish that the
18 [Defendant] has defaulted in the payment of rent, is in possession of the property without
19 the [Plaintiff's] permission, and that the [Defendant] has been served with a valid notice
20 demanding payment or surrender of possession." Archbishop of Guam v. G.F.G. Corp.,
1997 Guam 12 ¶ 11.
- 21 3. For the default notice to be valid, "it must be served at least five days prior to the filing
22 of the action, must state the amount of rent which is due, and must be served within one
23 year of the date that the rent became due." Id.; See generally 21 G.C.A. § 21103(b).
- 24 4. The five day notice required under the unlawful detainer statute may be served either by
25 personal service to the Defendant, or if the Defendant "is absent from his place of
26 residence, and from his usual place of business, by leaving a copy with some person of
27 suitable age and discretion at either place, and sending a copy through the mail
28 addressed to the [Defendant] at his place of residence." 21 G.C.A. § 21105.

- 1 5. The Supreme Court of Guam has stated that “[p]roceedings in an unlawful detainer
2 action are intended to be summary in nature and are required to be expedited. Also,
3 because an unlawful detainer action is a summary remedy, the unlawful detainer statute
4 must be complied with strictly.” Archbishop of Guam, 1997 Guam 12 ¶ 10. See also 21
5 G.C.A. § 21120.
- 6 6. In applying these legal principles, the Court finds that service relative to *Tri-Mani I* was
7 adequate. Defendant argues that personal service of the notice is required under the
8 unlawful detainer statute. Defendant, however, fails to acknowledge that the statute
9 contemplates service of the required notice by means other than personal service. See 21
10 G.C.A. § 21105. Here, the Court received evidence that the notice dated October 2, 2015
11 was served by Plaintiff to Defendant not by personal service, but by delivery to
12 Defendant’s place of business with someone of suitable age and discretion and then
13 through subsequent mailing of the notice to Defendant’s place of residence. Such service
14 was appropriate and allowable under the statute.
- 15 7. After service of the notice in *Tri-Mani I*, Defendant failed to pay the outstanding rent
16 due pursuant to the Lease Agreement. According to the Lease Agreement, Defendant
17 was obligated to pay rent in the amount of \$3,500 per month for the relevant time period.
18 (Verified Compl. Ex. A, at 19 ¶ 4, Oct. 9, 2015.) Rather than paying such amount,
19 Defendant paid only \$300 per month for the months of July 2015 through November
20 2015.
- 21 8. After failing to pay the full rent due under the Lease Agreement following proper service
22 of the notice in *Tri-Mani I*, Defendant continued to be in possession of the Premises
23 without Plaintiff’s permission. This is undisputed.
- 24 9. With respect to *Tri-Mani III*, the Court recognizes that service was adequate as
25 Defendant was personally served. The Court, however, finds that Defendant attempted to
26 pay rent subject to the provisions of the Lease Agreement the day after the notice in *Tri-*
27 *Mani III* was served on Defendant. Therefore, Defendant cannot be said to have
28 defaulted on rent and subsequently cannot be in unlawful detainer in *Tri-Mani III*.
10. In summary, Plaintiff has been able to demonstrate with respect to *Tri-Mani I* that the
notice requirements under 21 G.C.A. § 21103(b) were met, that Defendant defaulted on
the payment of rent due pursuant to the Lease Agreement, and that Defendant is still in

1 possession of the Premises without Plaintiff's permission. Accordingly, Plaintiff has
2 provided sufficient evidence to support a finding that Defendant is in unlawful detainer
3 with respect to *Tri-Mani I* (CV0949-15)

4 11. In summary, Plaintiff has not been able to demonstrate with respect to *Tri-Mani III* that
5 Defendant defaulted on the payment of rent due pursuant to the Lease Agreement as
6 Defendant attempted to make checks payments specifically for the amount contained in
7 the notice relevant to *Tri-Mani III* (CV1182-15).⁵ As noted previously, Plaintiff refused,
8 via their attorney, delivery of the check payments for the amount specifically contained
9 in the notice relevant to *Tri-Mani III*.

10 **II. Rent from June 1, 2015 to September 23, 2015.**

11 12. Even if there is a basis for unlawful detainer with respect to *Tri-Mani I*, Plaintiff cannot
12 collect rent for any period which they did not have a business license.

13 13. In *Tri-Mani I*, Plaintiff contends specifically that Defendant owes rent in the amount of
14 \$14,000 for the months of July 2015 through October 2015. However, this includes a
15 period of time for which Plaintiff did not have a valid business license.⁶

16 14. Guam's Business License Law provides that "[a]ny person engaging in ... business on
17 Guam without a business license . . . may not maintain a proceeding in any Court on
18 Guam until it obtains a business license." 11 G.C.A. § 70131(b). Furthermore, a
19 business "which consists of a combination of two (2) or more . . . classes . . . shall be
20 required to take out a separate license for each such classification," 11 G.C.A. § 70123,
21 and "[w]here one (1) person operates or conducts businesses in two (2) or more locations
22 in Guam, the person shall be required to obtain a license for each location," 11 G.C.A. §
23 70121.

24 15. The Supreme Court explained that "if [a] person does not have a business license, then
25 he is foreclosed from utilizing the courts of Guam to sue for rent or evict anyone from
26

27 ⁵ There is no reason for this Court to doubt the sufficiency of the funds behind the attempted check payments
28 that were made the day after the notice in *Tri-Mani III* was served on Defendant. Had those checks been
received and deposited accordingly, Defendant would have essentially complied with the notice's
requirements therefore precluding any action for unlawful detainer relative to that specific month.

⁶ This Court previously determined that Defendant did not have a valid business license to lease the Premises.
(Dec. and Order 3:10-12, Oct. 28, 2015.)

1 leased property for any breach during any period of time that the lessor or landlord did
2 not have a business license.” Taijeron v. Kim, 1999 Guam 16 ¶ 10. Accordingly, a
3 defendant can maintain an action for the breach of a lease that occurred during the time
4 they were in possession of a business license, however, it cannot sue for breaches that
5 occurred prior. Arashi & Co., Inc. v. Nakashima Enterprises, Inc., 2005 Guam 21 ¶ 26
(citing Taijeron, 1999 Guam 16 ¶ 26).

6 16. In light of the aforementioned principles, the Court finds that Plaintiff is unable to
7 collect rent for any period when Defendant did not have any business license
8 whatsoever.⁷ Here, Plaintiff only obtained a business license on September 23, 2015. It
9 is undisputed that Plaintiff did not have a business license prior to this date.

10 17. Although the business license obtained on September 23, 2015 was not the correct
11 license, the Court is mindful of its Decision and Order in vacating the Judgment of
12 Dismissal in *Tri-Mani I*, which stated that “Plaintiff moreover had a business license at
13 the time of the case’s filing . . . and made good faith efforts to obtain the proper license.
14 Substantial justice would thus result were the Court to deny Plaintiff’s Motion [to Vacate
15 Judgment] and it is appropriate for the case to proceed to the merits.” (Dec. and Order
16 3:6-9, Feb. 22, 2016.)

17 **III. Violations of the Implied Warranty of Habitability**

18 18. Having found there to be an adequate basis for unlawful detainer with regard to *Tri-*
19 *Mani I*, the Court will now determine whether Defendant can state a defense.

20 19. Generally, “because an unlawful detainer action is a summary proceeding designed to
21 facilitate owners in obtaining possession of their real property, counterclaims, cross-
22 complaints, and affirmative defenses are inadmissible.”⁸ S.P. Growers Assn. v.
Rodriguez, 552 P. 2d 721, 723 (Cal. 1976).

23
24 ⁷ Plaintiff has largely conceded this point stating that “[i]t may be that this Honorable Court may determine
25 that Plaintiff is not entitled to collect rent for any period before Plaintiff obtained the business license on
26 September 23, 2015... Plaintiff is clearly entitled to collect rent from the date of the license...” (Opp’n to Def.
27 M. Re: Business License 6:2-8, Oct. 23, 2015.)

28 ⁸ Although nothing in Guam’s unlawful detainer statute prohibits the raising of counterclaims and affirmative
defenses, the Court finds instructive California’s treatment of this issue given that Guam’s statute was derived
from California’s former unlawful detainer statute.

- 1 20. The purpose of this prohibition barring counterclaims, cross-complaints, and affirmative
2 defenses in unlawful detainer actions is to “prevent tenants who have violated the
3 covenants of their leases from frustrating the ordinary and summary remedy provided by
4 statute for the restitution of the premises.” Union Oil Co. v. Chandler, 84 Cal. Rptr. 756,
5 760 (Ct. App. 1970).
- 6 21. There are some exceptions to the general rule disallowing affirmative defenses in
7 unlawful detainer actions, namely, breach of the implied warranty of habitability. See
8 Lau v. Bautista, 598 P.2d 161, 165 (Haw. 1979) (“where a landlord brings an action for
9 summary possession based on a tenant's failure to pay rent, the tenant may assert the
10 landlord's breach of an implied warranty of habitability as an affirmative defense.”);
11 Green v. Superior Court, 517 P.2d 1168 (Cal. 1974) (finding that a tenant may properly
12 raise the defense of the breach of the warranty of habitability in an unlawful detainer
13 action); Foisy v. Wyman, 515 P.2d 160, 164 (Wash. 1973) (holding “that in all contracts
14 for the renting of premises, oral or written, there is an implied warranty of habitability
15 and breach of this warranty constitutes a defense in an unlawful detainer action.”).
- 16 22. Asserting the implied warranty of habitability as a defense in unlawful detainer actions
17 exists because “[t]he tenant's obligation to pay rent and the landlord's duty to maintain
18 the premises in habitable condition are mutually dependent.” Lau, 598 P.2d at 165.
- 19 23. The implied warranty of habitability basically requires a landlord to maintain property,
20 used for the purpose of human habitation, in a habitable condition during the term of the
21 lease. Green, 517 P.2d at 1175.
- 22 24. Should a landlord violate the implied warranty of habitability, a tenant may withhold
23 rent until there has been a judicial determination as to the fair rental value of the
24 premises as they were during occupancy by tenant in the uninhabitable condition. Id. at
25 1184
- 26 25. Although our Supreme Court has not explicitly recognized the implied warranty of
27 habitability, Guam law hints to this concept, and imposes a statutory duty on landlords to
28 make dwellings habitable. Pursuant to 18 G.C.A. § 51101, a “lessor of a building
intended for the occupation of human beings must, in the absence of an agreement to the
contrary, put it into a condition for such occupation, and repair all subsequent
dilapidations thereof, which render it untenable”. Should a landlord violate this

1 statutory duty imposed by 18 G.C.A. § 51101, a tenant may, after notice and failure by
2 the landlord to make the repairs, make the necessary repairs and deduct those costs from
3 the rent owed or vacate the premises. 18 G.C.A. § 51102.

4 26. Guam's statutory duty on landlords to make dwellings habitable is identical to California
5 Civil Code §§ 1941, 1942. In interpreting these provisions with respect to the implied
6 warranty of habitability, the California Supreme Court determined that such statutes
7 were "not intended as the exclusive remedy for tenants in this field and does not
8 preclude the recognition of a common law implied warranty of habitability in residential
9 leases." Green, 517 P.2d at 1178.

10 27. Based on the foregoing, the Court finds there to be an implied warranty of habitability in
11 residential leases, and that such warranty may be used as a defense in an unlawful
12 detainer action.

13 28. In applying the aforementioned principles, the Court determines that Plaintiff's failure to
14 repair the roof despite Defendant's repeated requests constitutes a breach of the implied
15 warranty of habitability for the residential portion of the Premises.⁹

16 29. According to evidence received by the Court, Defendant has provided ample and
17 adequate notice to Plaintiff and the Gombars of the problems associated with water leaks
18 arising from the bad condition of the roof. The water leaks from the roof have caused
19 constant puddling in stairways, hallways, and rooms; sever water damage to interior and
20 exterior walls, ceilings and floors; and damage to electrical lines and outlets. (Def.'s
21 Trial Ex. C & D.)

22 30. The bad condition of the roof and the ensuing water leaks have begun to affect the
23 structural integrity of the Premises and are a health and safety hazard.

24 31. The failure of Plaintiff to repair the roof is also in contravention of the Lease
25 Agreement.¹⁰

26 ⁹ The Court will not make a determination as the adequateness of the Premises' sewage facilities or septic
27 tank system. Although such problems have some bearing with respect to the implied warranty of habitability,
28 the bulk of the evidence on this issue points to a dispute on liability over the (1) costs and maintenance of the
septic tank system and (2) the cost of connecting the Premises to the sewer system, which are contractual
disputes.

1 32. Given Plaintiff's breach of the implied warranty of habitability, Defendant may
2 rightfully assert this beach as an affirmative defense for these unlawful detainer actions.

3 33. The Court, however, finds this defense is not a complete defense because the implied
4 warranty of habitability only applies to the residential portion of the Premises. See
5 Kachian v. Aronson, 475 N.Y.S. 2d 214, 218-219 (1984) (recognizing that when
6 premises are used for both commercial and residential purposes, a court may pro-rate
7 rent based on the landlord's breach of the warranty of habitability) See also Four Seas
8 Inv. Corp. v. Int'l Hotel Tenants Ass'n, 81 Cal. App. 3d 604, 613 (1978). Therefore, this
9 defense does not absolve Defendant's duty to pay rent for the portion of the Premises
10 that are used for commercial operations, namely, the Wise Owl Veterinarian Clinic.
11 Thus, Plaintiff is still in unlawful detainer relative to *Tri-Mani I* for defaulting on the
12 payment of rent.

13 34. In summary, Plaintiff may only collect rent from September 23, 2015 and onwards. The
14 rental payments, however, for the residential portion of the Premises will be abated due
15 to violations of the implied warranty of habitability. The total amount determined for
16 rent on both the business and residential portion (with abatement) will be determined
17 upon the parties' submission of information regarding the square footage for the
18 business and residential portions of the Premises.

19 **IV. UCC Concerns Regarding Check Payments Made**

20 35. Plaintiff has brought up concerns regarding the check payments for rent that have been
21 received thus far but have yet been cashed or deposited due to concerns that cashing the
22 checks would constitute an accord and satisfaction under the UCC. The Court looks to
23 the Lease Agreement to clarify this issue.¹¹

24 ¹⁰ The Lease Agreement states that "Lessee will be responsible for all repairs required during the term of the
25 lease, except the following which will be maintained by the lessor: roof, exterior walls, structural
26 foundations. . ." (Verified Compl. Ex. A, at 16 ¶ 8, Oct. 9, 2015.) The Court reads use of the word "will" in
27 the aforementioned section of the Lease Agreement as a mandatory duty.

28 ¹¹ A contractual party's obligation in a contract is usually determined by the contract itself as long as the
contract is clear, unambiguous, valid, and in writing. See, e.g., 6 G.C.A. §2511 (If a contract is in writing, no
extrinsic evidence of the contract terms should be considered except for where there is a mistake, ambiguity
or imperfection in the writing); 18 G.C.A. § 87104 ("The language of a contract is to govern its interpretation,

1 26. The Court notes that the Lease Agreement contains an accord and satisfaction provision
2 which states as follows: “No payment by Lessee or receipt by Lessor of a lesser amount
3 than the monthly rent herein stipulated and required to be paid shall be deemed to be
4 other than on account of rents due, no[r] shall any endorsement or statement on any
5 check or any letter accompanying any check or payment of rent be deemed an accord
6 and satisfaction, and Lessor may accept such check or payment without prejudice to
7 Lessor’s right to recover the balance of such rent or pursue any remedy provided in this
8 Lease or by law.” (Verified Compl. Ex. A, at 11 ¶ 27, Oct. 9, 2015.)

9 36. Given this provision, Plaintiff’s deposit or cashing of the checks would not have
10 constituted an accord and satisfaction exonerating the Defendant from paying the full
11 rental amount due under the Lease Agreement.

11 **V. Current Status of the Defendant**

12 37. As stated previously, the Lease Agreement contains a provision granting Defendant with
13 an option to extend the term of the Lease Agreement for an additional five (5) years,
14 provided that written notice is given to the lessor – i.e. the Gombars or their successors
15 in interest – prior to expiration of the lease term and provided that lessee – i.e.,
16 Defendant – is not in default of any term of the lease. (Verified Compl. Ex. A, at 1 ¶ 1,
17 17 ¶ 33, Oct. 9, 2015.)

18 38. Having found that that the Defendant was in default in *Tri-Mani I* for not paying rent
19 pursuant to the Lease Agreement, Defendant could not exercise his option to renew.

20 39. Even if the Plaintiff was not in default, the Lease Agreement requires that the option be
21 exercised by written notice to the Lessor. (Id.)

22 40. The Court finds that there is insufficient evidence¹² to establish that Defendant gave
23 formal written notice to Plaintiff, or his predecessors – the Gombars, exercising the
24 option to renew in the Lease Agreement.

25 if the language is clear and explicit, and does not involve an absurdity”); 18 G.C.A. 87105 (“When a writing
26 is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. . .”).

27 ¹² Apart from Defendant’s testimony, the only other evidence before this Court to suggest that Defendant
28 exercised his option to renew is a letter dated February 1, 2015 from Plaintiff to the prior owners of the
Premises stating that “I have already given you our intent to use the option of staying here the next 5 years.
Hopefully, we will be out of here in 2-3 years as we are coming close to closing on some property (fingers

1 41. Further, Guam law provides that “[i]f a lessee of real property remains in possession
2 thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties
3 are presumed to have renewed the hiring on the same terms and for the same time, not
4 exceeding one month when the rent is payable monthly, not in any case one year.” 18
G.C.A. § 51105.

5 42. Accordingly, Defendant’s status as of January 1, 2016 is a holdover tenant, on a month
6 to month to basis.

7 **VI. Defendant’s Request for Repossession**

8 43. Having determined above that Defendant was in unlawful detainer with respect to *Tri-*
9 *Mani I*, there is still the matter of Defendant’s request for repossession of the Premises

10 44. Equitable principles generally apply to forfeiture requests in actions for unlawful
11 detainer. See Scheweiger v. Superior Court, 3 Cal.3d 507, 514 (Cal. 1970) (finding that
12 equitable principles apply where forfeiture is sought in an unlawful detainer action and
13 that a court must examine the equities involved before awarding forfeiture).

14 45. In applying such principles, the Court recognizes that Plaintiff has not received a full
15 rental payment from Defendant since becoming successors in interest of the Premises in
16 2015. For Defendant to continue staying in the Premises would be unfair to Plaintiff,
17 particularly as Defendant has refused to pay the full rent as required by the Lease
18 Agreement and has refused to vacate the Premises. Further, there is no evidence that
19 either Plaintiff acted maliciously in refusing to make the repairs that were requested or
20 that Defendant acted maliciously with respect to the Premises’ deteriorating conditions.
21 The crux of the dispute and the souring relationship between the parties arise out of a
22 disagreement concerning interpretation of the Lease Agreement and the relative
23 responsibility of the parties in performing their respective obligations. Further, the
24 problems associated with the Premises and interpretation of the obligations of the parties
25 in the Lease Agreement existed long before Plaintiff purchased the Premises from the
26 Gombars.

27 crossed).” (Def.’s Ex. D-10.) There is no evidence that the letter itself, or the previous expression of intent to
28 renew that is referenced in the letter, was ever received by the Gombars or by Defendant at some time after
they purchased the Premises in 2015.

1 46. The Court notes that Defendant, rather than enduring the uninhabitable conditions, could
2 have vacated the premises in accordance with 18 G.C.A. § 51102 after Plaintiff
3 purportedly failed to live up to their obligation to maintain the premises in accordance
4 with the Lease Agreement and after Defendant's repeated requests to fix the problems
5 surrounding the roof and sewage system. Instead, Defendant has chosen to remain on the
6 Premises for the full duration of the Lease Agreement, even insisting that he exercised
7 his option to renew for an additional five years after December 2015. Further, Defendant
8 has had ample time to secure alternative commercial and residential arrangements since
9 the roof leaks were first reported in 2014 and since the problems relative to the
Premises' lack of a sewage system persisted.

10 47. Based on the foregoing, the Court finds that forfeiture of the Lease Agreement and that
11 repossession of the premises by Plaintiff is the most practical solution given the strained
12 nature of the relationship between the parties and the amount of time that has passed
13 since the complaints for unlawful detainer were first lodged. The Court recognizes
14 Defendant's rights, pursuant to 21 G.C.A. § 21119, for relief against forfeiture in cases
of hardship.

15 **VII. Attorney's Fees and Costs**

16 48. Having found that Defendant is in unlawful detainer in *Tri-Mani I*, but not in *Tri-Mani*
17 *III*, the Court will now address the issue of attorney's fees for those respective cases.

18 49. In determining whether to award attorney's fees to a party, courts in United States
19 jurisdictions, including Guam, apply what is commonly referred to as the "American
20 Rule." Fleming v. Quigley, 2003 Guam 4 ¶ 35 ("the American Rule applies in Guam").
21 "Under the American Rule, parties bear their own litigation expenses, including
22 attorney's fees." Id. at ¶ 7. There are several exceptions to the American Rule which
23 include matters "where attorney's fees are: (1) authorized by statute, (2) authorized by
contract, or (3) allowed in judicially-established circumstances." Id.

24 50. Here, there exists a provision relative to attorney's fees in the Lease Agreement. The
25 provision states as follows: "[i]n any action, arbitration, or other proceeding involving a
26 dispute between Lessor and Lessee arising out of this Lease, the prevailing party will be
27 entitled to reasonable attorney['s] fee[s], expert witness fees, and costs." (Verified
28 Compl. Ex. A, at 17 ¶ 26, Oct. 9, 2015.)

1 51. Accordingly, the Court finds that attorney’s fees to a “prevailing party” are authorized
2 by virtue of the Lease Agreement signed between Plaintiff and Defendant. The Court,
3 however, still must determine whether Defendant qualifies as a “prevailing party”.

4 52. The Supreme Court of Guam has determined that “the prevailing party to a suit, for the
5 purpose of determining who is entitled to attorney[’]s fees, is the one who successfully
6 prosecutes the action or successfully defends against it, prevailing on the merits of the
7 main issue.”¹³ Rahmani v. Park, 2011 Guam 7 ¶ 61.

8 53. As Defendant was found to be in unlawful detainer of the Premises in *Tri-Mani I*
9 (CV949-15), the Court finds that Plaintiff is the prevailing party. Accordingly, Plaintiff
10 is entitled to attorney’s fees and court costs for that matter which Defendant is ordered to
11 pay.

12 54. As Defendant was not found to be in unlawful detainer of the Premises in *Tri-Mani III*
13 (CV1182-15), the Court finds that Defendant is the prevailing party. Accordingly,
14 Defendant is entitled to attorney’s fees and court costs for that matter which Plaintiff is
15 ordered to pay.

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20 ¹³ It is worth noting that some jurisdictions award attorney’s fees and costs to a prevailing party in matters
21 when there has been no adjudication on the merits, such as in cases where dismissal was based on procedural
22 grounds. See Arias v. Kardoulis, 207 Cal. App. 4th 1429, 144 Cal. Rptr. 3d 599, 604 (2012) (listing cases
23 where courts have awarded attorney’s fees to a prevailing party upon a dismissal based on procedural
24 grounds); Oahu Publications, Inc. v. Abercrombie, 134 Haw. 16, 24 (2014) (stating that there is “no
25 requirement that the judgement in favor of the prevailing party be a ruling on the merits”). In other
26 jurisdictions, however, it is necessary for there to be an adjudication on the merits in order to be entitled
27 attorney’s fees as a prevailing party. See HNA Properties v. Moore, 848 N.W. 2d 238, 242 (“a prevailing
28 party must be more than successful to some degree, and instead must prevail on the merits in the underlying
action”) (internal citation marks omitted); Thanks But No Tank v. Dept. of Environmental Protection, 2013
ME 114 (the determination of a successful party for allocating attorney’s fees and costs is to be based on
success upon the merits). Our Supreme Court has adopted the latter rule that a prevailing party, for purposes
of awarding attorney’s fees and costs, is one who is successful on the merits. Rahmani, 2011 Guam 7 ¶ 61.

CONCLUSION

Based on the above findings of fact and conclusions of law, the Court finds the Defendant in unlawful detainer in *Tri-Mani I* (CV0949-15), but not in *Tri-Mani III* (CV1182-15). Pursuant to 21 G.C.A. § 21115, the Court orders Defendant to vacate the Premises within thirty (30) days and the Court terminates the Lease Agreement. The Court further orders the parties to submit within ten (10) working days a brief which details the square footage of the Premises which are being used for commercial and residential purposes in order to aid the Court in determining the amount of rent due for unlawful detainer. After a review by this Court of such documents, Defendant will be ordered to pay Plaintiff a sum, at an amount to be determined, for reasonable rent due under the lease from September 23, 2015 through December 31, 2015, and for each month thereafter that Defendant has remained in possession of the property. The Court further orders Plaintiff to submit a brief and proposed order within ten working (10) days in support of attorney's fees and costs incurred in *Tri-Mani I* (CV0949-15). Finally, the Court orders Defendant to submit a brief and proposed order within ten (10) working days in support of attorney's fees and costs incurred in *Tri-Mani III* (CV1182-15). A status hearing will be held on August 29, 2016 at 2 p.m. to ensure that the documents requested by this Court have been submitted.

IT SO ORDERED, on this day of August 4, 2016.

Original Signed By:
Hon. Alberto C. Lamorena III

HONORABLE ALBERTO C. LAMORENA III
Presiding Judge, Superior Court of Guam

I do hereby certify that the foregoing is a
full true and correct copy of the ORIGINAL
as it is in the Office of the Clerk of
Court, Superior Court of Guam

AUG - 4 2016

JERIMIE H. OUBENAG
CLERK, Superior Court of Guam