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Attorneys for Claimant **Dr. Roy Lubit, MD Ph.D.** as an individual and derivatively on behalf of 7760 Romaine, LLC and 1159 Formosa, LLC

ADR SERVICES, INC.

DR. ROY LUBIT, MD PH.D., as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC,

Claimant,

vs.

FMB DEVELOPMENT, LLC; FMB CONSULTING, LLC; ILAN KENIG; ELIM MANAGEMENT, INC.; JOEL HAGGIN; and DOES 1 through 50, inclusive,

Respondents,

and

7760 ROMAINE, LLC, a California limited liability company, and 1159 FORMOSA, LLC, a California limited liability company,

Nominal Respondents.

CASE NO.: ADRS CASE NO. 23-6474-GSR
BEFORE HON. GERALD S. ROSENBERG

DEMAND FOR ARBITRATION AND STATEMENT OF CLAIM OF CLAIMANT FOR:

1. **DECLARATORY RELIEF;**
2. **BREACH OF WRITTEN AGREEMENT;**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
4. **BREACH OF FIDUCIARY DUTIES;**
5. **JUDICIAL DISSOCIATION PURSUANT TO CORPORATIONS CODE § 17706.02(E);**
6. **ACCOUNTING;**
7. **EQUITABLE INDEMNITY;**
8. **CONTRIBUTION;**
9. **CONVERSION;**
10. **TRESPASS TO CHATTELS;**
11. **SPECIFIC PERFORMANCE;**
12. **CONSTRUCTIVE TRUST;**
13. **IMPOSITION AND FORECLOSURE OF EQUITABLE LIEN;**
14. **NEGLIGENCE;**
15. **QUASI-CONTRACT;**
16. **MONEY HAD AND RECEIVED;**
17. **VIOLATOIN OF BUSINESS & PROFESSIONS CODE § 17200;**
18. **VIOLATION OF CORPORATIONS CODE §§ 17701.13, 17702.09(A), AND 17702.09(D);**
19. **VIOLATION OF CORPORATIONS CODE § 17701.13; AND**
20. **VIOLATION OF CORPORATIONS CODE §§ 17704.10 AND 17701.13(D).**

Pursuant to the Arbitration Management Order, Claimant Dr. Roy Lubit, MD Ph.D., as an individual directly and derivatively on behalf of 7760 Romaine, LLC, a California limited liability company, and derivatively on behalf of 1159 Formosa, LLC, a California limited liability company, ("**Claimant**") submits the following demand for arbitration with statement of claim ("**Demand**") against Respondents alleging the following:

PARTIES

1. Dr. Roy Lubit, MD Ph.D. ("**Dr. Lubit**") is an individual residing and domiciled in New York City, New York. Dr. Lubit is and has been a member of 7760 Romaine, LLC and 1159 Formosa, LLC since their formations.

2. 7760 Romaine, LLC ("**Romaine LLC**") is a California limited liability company (File No. 201420910439) registered and in good standing with the California Secretary of State with its principal place of business in Los Angeles County. Romaine LLC is the sole owner of the real property located at 7760 Romaine Street, West Hollywood, CA 90046.

3. 1159 Formosa, LLC ("**Formosa LLC**") is a California limited liability company (File No. 201414310078) registered and in good standing with the California Secretary of State with its principal place of business in Los Angeles County. Formosa LLC is the sole owner of the real property located at 1159 Formosa Avenue, West Hollywood, CA 90046.

4. Collectively, the Formosa LLC and the Romaine LLC are referred to as the "**LLCs**".

5. FMB Development, LLC ("**FMB Development**") is a California limited liability company (File No. 201409210424) registered and in good standing with the California Secretary of State with its principal place of business in Los Angeles County. FMB Development had obligations pursuant to the Romaine Joint Venture Agreement and Formosa Joint Venture Agreement (defined *infra*) to co-manage the LLCs. FMB Development is also a member of the LLCs.

6. FMB Consulting, LLC ("**FMB Consulting**") is a California limited liability company (File No. 201414110105) registered and in good standing with the California Secretary of State with its principal place of business in Los Angeles County. FMB Consulting was listed as the sole Manager of the Romaine LLC pursuant to a Statement of Information filed with the California Secretary of State's office. Upon information and belief, FMB Consulting is not a member of the LLCs.

7. Ilan Kenig ("**Kenig**") is an individual who, on information and belief, resides in Los Angeles, California. Kenig, on information and belief, is the CEO and the sole member of FMB Development and FMB Consulting. Kenig was also the Manager and CEO of the LLCs, and he also represented himself as a member of the LLCs.

8. Elim Management, Inc. ("**Elim**") is an Oregon corporation. Elim had obligations pursuant to the Romaine Joint Venture Agreement and Formosa Joint Venture Agreement (defined *infra*) to co-manage the LLCs. Elim is also a member of the LLCs.

9. Joel Haggin ("**Haggin**") is an individual who, on information and belief, resides in Florida. Haggin is, on information and belief, the CEO and the sole shareholder of Elim. Haggin had obligations pursuant to the Romaine Joint Venture Agreement (defined *infra*) to co-manage the Romaine LLC. Haggin is also a member of the LLCs.

10. Claimant does not know the true names, capacities, whether individual, corporate, associate, or otherwise, or basis for liability of Respondents sued in this action as DOES 1 through 50, inclusive, and will amend this Demand when that information is ascertained. Claimant is informed and believe, and on that basis allege, that each of the fictitiously named Respondents was in some manner intentionally, negligently, recklessly, or as a result of extra hazardous activities, responsible and/or the cause of the events, happenings, and occurrences alleged in this Demand that resulted in damage and injury to the LLCs.

11. FMB Development, FMB Consulting, Kenig, Elim, Haggin, and Does 1 through 50 are collectively referred to as "**Respondents**" and individually as a "**Respondent**."

12. Claimant is informed and believes, and on that basis alleges, that at all times relevant to this Demand, Respondents, including any Respondent fictitiously named, were acting as the agent, servant, subsidiary, member, associate, representative, employee, partner, or joint venturer of each other Respondent in doing the things alleged, was acting within the course and scope of such agency, service, relationship, membership, association, representation, employment, partnership, or joint venture with the knowledge and consent or ratification of each other Respondent in doing the things alleged, and is responsible in some manner for the damages claimed by the LLCs.

13. Claimant is informed and believes, and thereon alleges, that at all relevant times

Respondents entered into a conspiracy in furtherance of the wrongful acts alleged in this Demand. Each Respondent was aware that the other Respondents planned to commit these wrongful acts. Each Respondent agreed with the other Respondents and intended that these wrongful acts be committed.

14. Claimant is informed and believes, and thereon alleges, that at all relevant times each Respondent aided and abetted the other Respondents in their commission of the wrongful acts alleged in this Demand. Each Respondent knew that the wrongful acts alleged in this Demand were being committed and/or were going to be committed by the other Respondents against the LLCs. Each Respondent gave substantial assistance and/or encouragement to the other Respondents in furtherance of these alleged wrongful acts. Each Respondent's conduct was a substantial factor in causing harm to the LLCs.

15. Claimant is informed and believes, and based thereon alleges, that, at all times alleged herein, there existed a unity of interest and ownership between Respondents FMB Development and FMB Consulting and Respondent Kenig such that the separate personalities of Respondents FMB Development and FMB Consulting and Respondent Kenig ceased and no longer exists and that, if the acts herein are treated as those of Respondents FMB Development and FMB Consulting alone, then an inequitable result will follow.

16. Claimant is informed and believes, and based thereon alleges, that, at all times alleged herein, there existed a unity of interest and ownership between Respondent Elim and Respondent Haggin such that the separate personalities of Elim and Haggin ceased and no longer exists and that, if the acts herein are treated as those of Elim alone, then an inequitable result will follow.

DERIVATIVE STANDING

17. Dr. Lubit, as a member of the Formosa LLC and as a member of the Romaine LLC since their formations, and brings this action in his individual capacity and derivatively on behalf of LLCs in compliance with Corporations Code § 17709.02.

18. In compliance with Corporations Code § 17709.02(a)(2), Dr. Lubit made efforts prior to the filing of this Demand to secure from all the known managers, as indicated in the Romaine Joint Venture Agreement and Formosa Joint Venture Agreement and as indicated in filings with the California Secretary of State of the LLCs, the action that Dr. Lubit desired, namely, the filing of a

complaint against the Respondents in substantial conformance with this Demand.

19. In compliance with Corporations Code § 17709.02(a)(2), Dr. Lubit informed in writing by email the LLCs by and through their organizers, CEOs, Presidents, all known members, and all known managers as indicated in the Romaine Joint Venture Agreement and Formosa Joint Venture Agreement and as indicated in filings with the California Secretary of State of the ultimate facts of each cause of action against each Respondent. Attached to the email was a draft complaint.

20. Respondents did not respond that they would not agree to cause the LLCs, as appropriate, to bring actions to enforce the rights of these LLCs against Respondents as alleged in this Demand.

21. Regardless, pursuant to Corporations Code § 17709.02(a)(2), such efforts by Dr. Lubit were excused as futile as Respondents, as co-managers of the subject LLCs and/or as the sole owners of the same entity co-managers, must agree to enforce the rights of the LLCs, and Respondents are neither disinterested nor independent.

STATEMENT OF FACTS

22. Claimant lives in New York City, New York and was enticed by the representations of Respondents FMB Development, Kenig, Elim, and Haggin in 2014 to invest roughly $800,000 in two joint ventures for the development of two properties in West Hollywood.

23. Claimant was told that Respondent FMB Development was a knowledgeable developer in Los Angeles able to complete the projects as promised.

24. Respondent Elim is run by Claimant's former friend, Joel Haggin, who promised to actively watch over the development of two properties in West Hollywood, facilitate their development, and, in particular, watch the use of funds to make sure that no improprieties occurred.

25. Claimant was told that the development of two properties in West Hollywood would be completed in 2018 or 2019 and that there would be roughly a 100% return.

26. Based on these representations, on or about May 20, 2014, Claimant and Respondents FMB Development, Elim, and Haggin entered into a written contract entitled "Joint Venture Agreement for Real Estate Investment" ("**Formosa Joint Venture Agreement**") for the "purchase, new construction and sale of the real property located at 1159 Formosa Avenue, West Hollywood, CA

90046" ("**Formosa Property**") and "opening a new California LLC to hold 100% of the property named 1159 Formosa, LLC." A true and correct copy of the Formosa Joint Venture Agreement is attached as **Exhibit A**.

27. Section 3.1 of the Formosa Joint Venture Agreement provided that, upon the signing of the Formosa Joint Venture Agreement by all parties, "all parties shall immediately become members of the LLC".

28. Section 3.2 of the Formosa Joint Venture Agreement provided that "FMB [Development] will be the managing member of the LLC" and that it will be "[t]he responsibility of both FMB [Development] and Elim in the LLC" to, *inter alia,* "manage the property purchase (FMB [Development] Only)," "manage all of the project development", "manage the day to day activity of the LLC," "oversee the budget until property is completed and sold," "oversee and supervise the construction in the field until property is completed and sold," and "manage all books and records".

29. Article IV of the Formosa Joint Venture Agreement provided that "The purchase price of the [Formosa] property is - $1,200,000" and that "The new construction of 4,200 sqft. [sic] [c]ost is approximately $1,520,000". Thus, the total purchase and construction cost of the Formosa Property by the Formosa LLC was to be **<u>$2,720,000</u>**.

30. Article IV of the Formosa Joint Venture Agreement listed contributions of **<u>$2,820,000</u>** by the parties to the same; $1 of that sum was shown as being contributed by Respondent Elim in exchange for a 20% "Share[] of the LLC's Profit".

31. Section 5.1 of the Formosa Joint Venture Agreement provided that "All property of the joint venture shall be held 100% in the name [t]he [Formosa] LLC".

32. Article VIII of the Formosa Joint Venture Agreement provided that "All major decisions affecting the sale of the [Formosa] property will be made by all partners [sic] of [t]he [Formosa] LLC".

33. On or about May 21, 2014, Kenig formed 1159 Formosa, LLC by the filing of Articles of Organization with the California Secretary of State

34. In violation of the Formosa Joint Venture Agreement, on September 12, 2014, a grant deed was recorded on the Formosa Property granting the Formosa Property to "FMB Development, Inc. [sic], a California Limited Liability Company" instead of to the Formosa LLC.

35. Also on or about September 12, 2014, a deed of trust was recorded on the Formosa Property with FMB Development as the "Trustor". Section 1.3 of the deed of trust expressly stated that "Trustor represents and warrants that Trustor lawfully holds and possesses fee simple title absolute to the Subject Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Subject Property". Section 2.1 of the deed trust stated that the deed of trust secured "Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured by Deeds of Trust ... dated as of September 2, 2014 in the principal amount of Four Million Dollars ($4,000,000) executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender". Upon information and belief, this deed of trust has not been reconveyed.

36. On or about September 17, 2014, after the recording of the deed of trust above, FMB Development recorded a grant deed conveying the Formosa Property to 1159 Formosa, LLC subject to the deed of trust.

37. Upon information and belief, FMB Development had the following ten loans secured on the Formosa Property:

(1) The **$4,000,000 loan** with FMB Development as the borrower referenced above – **on information and belief, this loan has not been reconveyed**;

(2) A $910,000 loan secured on or about July 31, 2015 between 1159 Formosa, LLC and Genesis Capital Master Fund III, LLC - on information and belief, this loan was reconveyed;

(3) A **$3,000,000 loan** secured on or about September 2, 2016 between 1159 Formosa, LLC and Banc of California, National Association - **on information and belief, this loan has not been reconveyed**;

(4) A $1,000,000 loan secured on or about February 16, 2017 between 1159 Formosa, LLC and Tnuvot Sivan Projects 2016, LP – on information and belief, this loan was reconveyed;

(5) A $1,000,000 loan secured on or about March 29, 2017 between 1159

Formosa, LLC and Ofek Loans L.A. 1 Limited Partners – on information and belief, this loan was eventually reconveyed;

(6) A $4,393,815 loan secured on or about August 2, 2018 between 1159 Formosa, LLC and Goldman Sachs Bank USA – on information and belief, this loan was reconveyed;

(7) A $4,372,500 loan secured on or about May 29, 2020 between 1159 Formosa, LLC and Anchor Loans, LP – on information and belief, this loan was reconveyed;

(8) A $1,760,000 loan secured on or about June 30, 2020 between 1159 Formosa, LLC and Marom Kislev Loans 6 Limited Partnership – on information and belief, this loan was reconveyed;

(9) A **$5,808,000 loan** secured on or about December 3, 2021 between 1159 Formosa, LLC and Aureus Finance Group, LLC – **on information and belief, this loan was not reconveyed**; and

(10) A **$1,360,000 loan** secured on or about February 7, 2022 between 1159 Formosa, LLC and Marom Kislev Loans 6 Limited Partnership LLC – **on information and belief, this loan was not reconveyed**.

38. Based on the foregoing, on information and belief, FMB Development has **$14,168,000** in loans presently secured on the Formosa Property, of which $4,000,000 was for a loan in its own name. This roughly $14 million sum is roughly **5 times** the $2,720,000 purchase and construction estimate provided by FMB Development in the Formosa Joint Venture Agreement.

39. Moreover, **the Formosa Property was tax defaulted** with **$15,396.61** due and owing as of January 31, 2022. On information and belief, the tax default issue was resolved.

40. Further, in violation of the Formosa Joint Venture Agreement, Kenig filed Statements of Information for 1159 Formosa, LLC in 2016 and 2021 denoting ***himself personally and individually*** as the "Chief Executive Officer" and "Manager" of the entity and signing as a "Member" in 2016 and as the "President" of the LLC in 2021.

41. On October 5, 2021, while Kenig was the CEO and Manager of 1159 Formosa, LLC, the Secretary of State suspended 1159 Formosa, LLC.

42. Based on the same representations referenced above for the Formosa Joint Venture Agreement, on or about September 9, 2014, Claimant and Respondents FMB Development, Elim, and Haggin entered into a second written contract entitled "Joint Venture Agreement for Real Estate Investment" ("**Romaine Joint Venture Agreement**") for the "purchase, new construction and sale of the real property located at 7760 Romaine Street, West Hollywood, CA 90046" ("**Romaine Property**") and "opening a new California LLC to hold 100% of the property named 7760 Romaine, LLC.". A true and correct copy of the Romaine Joint Venture Agreement is attached as **Exhibit B.**

43. Section 3 of the Romaine Joint Venture Agreement provided that, upon the signing of the Romaine Joint Venture Agreement by all parties, "all parties shall immediately become members of the LLC".

44. Section 4 of the Romaine Joint Venture Agreement provided that "FMB [Development], and Elim and/or Joel will be the managing members of The LLC" and that it will be "[t]he responsibility of both FMB [Development] and Joel in the LLC" to, *inter alia,* "manage the property purchase (FMB [Development] Only)," "manage all of the project development", "manage the day to day activity of the LLC," "oversee the budget until property is completed and sold," "oversee and supervise the construction in the field until property is completed and sold," and "manage all books and records".

45. Sections 6 and 7 of the Romaine Joint Venture Agreement provided that "The purchase price of the [Romaine] property is - $1,450,000" and that "The new construction is of 9,000 Sqft. Cost of new construction is estimated to be approximately $2,150,000 including $80,000 estimated cost of the entitlement process". Thus, the total purchase and construction cost of the Romaine Property by the Romaine LLC was to be **$3,600,000**.

46. Section 8 of the Romaine Joint Venture Agreement listed contributions of **$3,600,000** by the parties to the same.

47. Section 10 of the Romaine Joint Venture Agreement provided that "All property of the joint venture shall be held 100% in the name [t]he [Romaine] LLC".

48. Section 19 of the Romaine Joint Venture Agreement provided that "All major decisions affecting the sale of the [Romaine] property will be made by all partners [sic] of [t]he [Romaine] LLC".

49. Kenig formed 7760 Romaine, LLC on July 23, 2014 by the filing of Articles of Organization with the California Secretary of State. Per the Articles, the entity was managed by one manager.

50. In violation of the Romaine Joint Venture Agreement, on September 15, 2014, a grant deed was recorded on the Romaine Property granting the Romaine Property to "FMB Development, LLC, a California Limited Liability Company" instead of to the Romaine LLC.

51. Also on or about September 15, 2014, a deed of trust was recorded on the Romaine Property with FMB Development as the "Trustor". Section 1.3 of the deed of trust expressly stated that "Trustor represents and warrants that Trustor lawfully holds and possesses fee simple title absolute to the Subject Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Subject Property". Section 2.1 of the deed trust stated that the deed of trust secured "Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured by Deeds of Trust … dated as of September 2, 2014 in the principal amount of Four Million Dollars ($4,000,000) executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender". Upon information and belief, this deed of trust has not been reconveyed.

52. On or about September 18, 2014, after the recording of the deed of trust above, FMB Development recorded a grant deed conveying the Romaine Property to 7760 Romaine, LLC subject to the deed of trust.

53. Upon information and belief, FMB Development had the following eleven loans secured on the Romaine Property:

(1) The **$4,000,000 loan** with FMB Development as the borrower referenced above – **on information and belief, this loan has not been reconveyed**;

(2) A $1,100,000 loan secured on or about August 11, 2015 between 7760 Romaine, LLC and Genesis Capital Master Fund III, LLC – on information and belief, this loan was reconveyed;

(3) A $1,000,000 loan secured on or about January 11, 2017 between 7760 Romaine, LLC and Los Angeles 104 Projects 2016 limited partnership – on information and belief, this loan was reconveyed;

(4) A $3,550,000 loan secured on or about March 14, 2017 between 7760 Romaine, LLC and Genesis Capital Master Fund II, LLC – on information and belief, this loan was reconveyed;

(5) A $1,550,000 loan secured on or about March 16, 2017 between 7760 Romaine, LLC and Angel 105 Projects 2017 limited partnership – on information and belief, this loan was reconveyed;

(6) A $4,390,000 loan secured on or about April 17, 2019 between 7760 Romaine, LLC and Arixa Fund III, LP – on information and belief, this loan was reconveyed;

(7) A $1,550,000 loan secured on or about September 4, 2019 between 7760 Romaine, LLC and Los Angeles 105 Projects 2017 limited partnership – on information and belief, this loan was reconveyed;

(8) A **$4,990,000 loan** secured on or about August 6, 2020 between 7760 Romaine, LLC and Anchor Loans, LP – **on information and belief, this loan was not reconveyed**;

(9) A **$1,600,000 loan** secured on or about August 31, 2020 between 7760 Romaine, LLC and Los Angeles 105 Projects 2017, LP – **on information and belief, this loan was not reconveyed**;

(10) A **$6,004,000 loan** secured on or about October 21, 2021 between 7760 Romaine, LLC and Property Advance LLC DBA Aureus Finance – **on information and belief, this loan was not reconveyed**; and

(11) A **$1,400,000 loan** secured on or about October 22, 2021 between 7760 Romaine, LLC and Los Angeles 105 Projects 2017 LP – **on information and belief, this loan was not reconveyed**.

54. Based on the foregoing, on information and belief, FMB Development has **$17,994,000** in loans presently secured on the Romaine Property, of which $4,000,000 was for a loan in its own name. This roughly $18 million sum is roughly **5 times** the $3,600,000 purchase and construction estimate provided by FMB Development in the Romaine Joint Venture Agreement.

55. Moreover, on information and belief, **the Romaine Property was currently tax defaulted** with **$30,309.23** due and owing as of January 31, 2022. On information and belief, the tax default issue was resolved.

56. Further, in violation of the Romaine Joint Venture Agreement, Kenig filed a Statement of Information for 7760 Romaine, LLC in 2020 denoting ***himself personally and individually*** as the "Chief Executive Officer" and "Manager" of the entity and signing as a "Member".

57. Further, in violation of the Romaine Joint Venture Agreement, Kenig filed a Statement of Information for 7760 Romaine, LLC in 2021 denoting ***himself personally and individually*** as the "Chief Executive Officer" and FMB Consulting, LLC as the "Manager" of the entity.

58. Collectively, the construction on the Formosa Property and the Romaine Property are referred to as the "**Projects**".

59. Not long after the Projects began, Haggin went to Israel to work on other projects and essentially ceased his work on the Projects, violating his and Elim's promises, the Formosa and Romaine Joint Venture Agreements, and his and Elim's fiduciary duties to Claimant and the LLCs.

60. Claimant contacted FMB Development and Mr. Kenig [who is, on information and belief, the CEO and manager/sole member of FMB Consulting] multiple times during 2019, 2020, and 2021 asking about the state of the Projects, when the Projects would be finished, and requesting the founding documents of the LLCs. FMB Development and Mr. Kenig told Claimant that things were continuing, that they were working on the Projects every day, and that the Projects were in the last phase of construction and would be finished in the summer of 2020; when summer 2020 passed without the Projects being finished, FMB Development and Mr. Kenig told Claimant that they would be finished in early 2021.

61. Claimant continued asking about the status of the Projects and for information into 2022, but FMB Development and Mr. Kenig ceased responding to his requests for documents and

information. For instance, in January, July, and September of 2022 Claimant asked for information concerning (1) "the current state of the [P]rojects including why it is years behind schedule, what needs to be done, and when it will be done", (2) why the "building cost[s] [were] 3x what was expected", and (3) when the Projects will be "on the market to sell". FMB Development, FMB Consulting, and Kenig failed to respond to even *one* of these emails, or otherwise provide the information requested.

62. On January 9, 2023 Claimant sent a *lengthy* demand letter to FMB Development and Kenig (who is the CEO and, on information and belief, the sole member of FMB Consulting) outlining the same's failures to Claimant and the LLCs. In that letter, Claimant's counsel specifically requested on behalf of Claimant information on the Projects and a copy of the information required to be maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d), including:

- The expected sale date for the projects;
- A detailed explanation for why the construction on the projects is four-plus years behind schedule;
- A detailed construction schedule that runs from the date of this letter through the completion of construction;
- A detailed list of all the expenses for the projects to date and a detailed estimate of all future expenses for the projects through the sale of the same;
- A detailed explanation for why the expenses for the projects so greatly exceeded the figures in the Joint Venture Agreements;
- Detailed information (and copies of all related documents) as to all the secured (and unsecured) loans on - and relating to - the Formosa and Romaine Properties, the LLCs, and/or the Joint Ventures, including the lenders, the outstanding balance, term, interest rate, and expected pay-off;
- Detailed information as to all the voluntary and involuntary liens on - and relating to - the Formosa and Romaine Properties, the LLCs, and/or the Joint Ventures, including the creditors, the outstanding

balance, interest rate, and expected pay-off;

- A detailed account of the fair market value of the projects once completed;
- A detailed account of the expected profit distribution to Dr. Roy and the other venturers once the projects are sold;
- The current financials for the Joint Ventures and the LLCs;
- The fully executed Joint Venture Agreements and any amendments to the same as well as any related executed powers of attorney;
- The fully executed Articles of Organization, Operating Agreements, Organizer Resolutions, Manager Resolutions, and Member Resolutions of the LLCs and any related executed amendments and/or powers of attorney;
- The name, address, contributions, and shares in the profits and losses for each joint venturer in the Joint Venture and member and/or holder of a transferable interest in the LLCs;
- The name, address, and dates of service for every manager of the LLCs;
- Copies of the Joint Ventures and LLCs' federal, state, and local tax returns or information returns and reports for 2020 and 2021; and
- Copies of all books, records, financial statements, balance sheets, income statements, P&Ls, statements of cash flows, and annual reports of the Joint Ventures and LLCs for the years 2014 through and including 2022.

63. On or about January 23, 2023, counsel for FMB Development and Kenig sent a responsive letter to counsel for Claimant. Counsel for FMB and Kenig attached to this responsive letter Preliminary Reports from Provident Title Company dated January 4, 2023 ***<u>that showed the Formosa and Romaine Properties as tax defaulted, millions in secured, non-reconveyed loans, and tens of thousands of dollars in mechanic's liens secured on the property</u>***. Further, none of the documents Claimant's counsel requested pursuant to the

Corporations Code were provided.

64. On or about January 24, 2023, Claimant sent a letter to counsel for FMB Development and Kenig outlining the issues and inadequacies with the January 23, 2023 responsive letter. In that letter, Claimant's counsel specifically noted FMB Development and Kenig's failures to provide the documents required to be maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d). Claimant's counsel reiterated that this demand remains outstanding and that this apparent refusal to provide documents evidenced an attempt to hide the truth from Claimant about the LLCs and the Formosa and Romaine Properties.

65. On or about February 16, 2023, Claimant's counsel demanded by email that Respondents arbitrate Claimant's direct claims against them and select an arbitration company.

66. On or about February 23, 2023, counsel for Respondents FMB Development and Kenig refused to select an arbitration company, which was effectively a refusal to arbitrate even though the joint venture agreements clearly provided for resolution of disputes through binding arbitration.

67. The refusal to select an arbitrator seemed strategic to delay and frustrate the discovery and resolution process by effectively denying Claimant's right to arbitrate, which is outrageous - if not unconscionable – and a blatant obstruction of justice and a bad faith stalling tactic designed to cover up the truth, shelter assets, and perpetrate a continuing fraud.

68. On or about February 23, 2023, counsel for Claimant emailed Respondents FMB Development, Kenig, Elim, and Haggin asking for them to reconsider and warning of the need for a Petition to Compel Arbitration.

69. On March 23, 2023, Claimant, in his individual capacity, filed a Petition To Compel Arbitration against Respondents FMB Development, Kenig, Elim, and Haggin, which was assigned Los Angeles County Superior Court Case No. 23STCP00793 (the "**Direct Action**").

70. On May 25, 2023, the Petition in the Direct Action was heard and granted.

71. On June 13, 2023, Claimant, derivatively on behalf of 7760 Romaine, LLC and 1159 Formosa, LLC, filed a Petition To Compel Arbitration against Respondents FMB Development, FMB Consulting, Kenig, Elim, and Haggin, which was assigned Los Angeles County Superior Court Case No. 23STCP02068 (the "**Derivative Lawsuit**").

72. Respondents FMB Development, FMB Consulting, and Kenig ultimately stipulated to the arbitrate the Derivative Lawsuit.

73. On July 31, 2023, FMB Development filed Statements of Information with the California Secretary of State for the LLCs. FMB Development was named as the Manager of the LLCs and Kenig was named as the CEO of the LLCs.

74. On December 1, 2023, the Petition in the Derivative Lawsuit was heard and granted as to Respondents Haggin and Elim.

75. On December 18, 2023, the Agents for Service of Process for the LLCs resigned. As of the filing of this Demand, the LLCs have **<u>no</u>** registered Agent for Service of Process.

76. As of the filing of this Demand, Respondents have failed to provide the required documents pursuant to Corporations Code §§ 17704.10 and 17701.13(d).

<u>FIRST CAUSE OF ACTION</u>

(Declaratory Relief)

(By Claimant as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Joel Haggin, Ilan Kenig, and Elim Management, Inc.)

77. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

78. An actual controversy has also arisen and now exists between Claimant and Respondents FMB Development, Kenig, Elim, and Haggin as to the LLCs' and the same Respondents' respective rights and duties as to the Romaine and Formosa Joint Venture Agreements *constituting the operating agreements of the LLCs.*

79. Corporations Code § 17701.02(s) defines "operating agreement" as "the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company … concerning [(1) the relations among the members as members and between the members and the limited liability company, (2) the rights and duties under the Corporations Code of a person in the capacity of manager, (3) the activities of the limited liability company and the conduct of those activities, and (4) the means and conditions

for amending the operating agreement].” Corporations Code § 17701.02(s) further provides that, “The term ‘operating agreement’ may include, without more, an agreement of all members to organize a limited liability company pursuant to this title.”

80. Corporations Code § 17701.11(c) provides that, “Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement”.

81. Claimant contends that the Romaine and Formosa Joint Venture Agreements are the operating agreements of the LLCs not only pursuant to Corporations Code § 17701.02(s) because the Romaine and Formosa Joint Venture Agreements are written records of all the members of the LLCs concerning the matters required by Corporations Code § 17701.02(s) but also pursuant to Corporations Code § 17701.11(c) as the parties to the Romaine and Formosa Joint Venture Agreements clearly and impliedly intended that the Romaine and Formosa Joint Venture Agreements would constitute the operating agreements of the LLCs upon formation of the same.

82. Consequently, Claimant contends that the LLCs are bound by the Romaine and Formosa Joint Venture Agreements and may enforce the same as the LLCs’ operating agreements pursuant to Corporations Code § 17701.11(a).

83. Should this Court not find that the Romaine and Formosa Joint Venture Agreements are the operating agreements of the LLCs, Claimant contends that the LLCs are intended third-party beneficiaries of the Romaine and Formosa Joint Venture Agreements and may enforce the same.

84. An actual controversy has also arisen and now exists between Claimant and Respondents Kenig and Elim on the other side concerning their respective rights and duties under the Romaine and Formosa Joint Venture Agreements as to their membership, or lack thereof, in the LLCs and the LLCs respective rights and duties to Respondents Kenig and Elim as to the same.

85. Per Respondent Kenig’s filed 2016 and 2021 Statements of Information for Formosa LLC, Respondent Kenig has represented that he is a member of Formosa LLC.

86. Claimant, however, contends that Respondent Kenig is not a member of the Formosa LLC.

87. Per Respondent Kenig’s filed 2021 Statement of Information for Romaine LLC,

Respondent Kenig has represented that he is a member of Romaine LLC.

88. Claimant, however, contends that Respondent Kenig is not a member of the Romaine LLC.

89. Respondent Elim Management, Inc., by and through Respondent Haggin, has contended that Elim is an owner of 20% of the Formosa LLC as Elim provided a $1 contribution.

90. Claimant, however, contends that, because the Formosa Joint Venture Agreement required Elim to co-manage the Formosa LLC and the development of the Formosa Property without any provision of compensation, such co-management and development services were essentially implied contributions necessary for Elim to be granted a 20% membership interest in the Formosa LLC.

91. Claimant further contends that, since Elim failed to co-manage the Formosa LLC and develop the Formosa Property, Elim failed to provide the necessary contribution to the Formosa LLC to warrant the provision of 20% of the membership interest in the same.

92. Claimant consequently contends that Elim owns 0% of the membership interest in Formosa LLC.

93. Claimant further contends that any purported sale of Elim's purported membership interest in the Formosa LLC did not create, establish, or evidence any ownership interest of Elim in the Formosa LLC and that no membership interest in the Formosa LLC was conveyed in the sale.

94. An actual controversy has also arisen and now exists between Claimant and Respondents Kenig and FMB Consulting concerning their respective rights and duties under the Romaine and Formosa Joint Venture Agreements as to their management of the LLCs and the LLCs respective rights and duties to Respondents Kenig and FMB Consulting as to the same.

95. Per Respondent Kenig's filed 2016 and 2021 Statements of Information for Formosa LLC, Respondent Kenig has represented that he is the manager of Formosa LLC.

96. Per Respondent Kenig's filed 2020 Statement of Information for Romaine LLC, Respondent Kenig has represented that he is the manager of Romaine LLC.

97. Per Respondent Kenig's filed 2021 Statement of Information for Romaine LLC, Respondent Kenig has represented that FMB Consulting, LLC is the manager of Romaine LLC.

98. Corporations Code § 17701.10(a) provides that, "Except as otherwise provided in this section, the operating agreement governs all of the following: … (2) The rights and duties under this title of a person in the capacity of manager. (3) The activities of the limited liability company and the conduct of those activities."

99. Claimant contends that, pursuant to Corporations Code § 17701.10(a) and because Kenig and FMB Consulting represented themselves (and acted as) as managers of the LLCs, Kenig and FMB Consulting are bound by the Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting.

100. Claimant contends that, at all times alleged herein, there existed a unity of interest and ownership between Respondents FMB Development and FMB Consulting and Respondent Kenig such that the separate personalities of Respondents FMB Development and FMB Consulting and Respondent Kenig ceased and no longer exists and that, if the acts herein are treated as those of Respondents FMB Development and FMB Consulting alone, then an inequitable result will follow.

101. Claimant contends that, at all times alleged herein, there existed a unity of interest and ownership between Respondent Elim and Respondent Haggin such that the separate personalities of Elim and Haggin ceased and no longer exists and that, if the acts herein are treated as those of Elim alone, then an inequitable result will follow.

102. Claimant desires a judicial determination and declaration that the Formosa and Romaine Joint Venture Agreements are the operating agreements of the LLCs, that the LLCs are bound by the Formosa and Romaine Joint Venture Agreements, respectively, and may enforce the same, that, should this Court not find the foregoing, the LLCs are intended third party beneficiaries of the Formosa and Romaine Joint Venture Agreements and may enforce the same, that Respondent Kenig is not a member of the LLCs, that Respondent Elim does not own 20% of the membership interest in Formosa LLC due to his failure to provide the necessary contribution, that any purported sale by Respondent Elim of any purported 20% membership interest in Formosa LLC actually conveyed no interest in the Formosa LLC to the buyer, that Kenig and FMB Consulting are bound by the Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may

enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting, that Respondents FMB Development and FMB Consulting and Respondent Kenig are alter egos of one another, and that Respondent Elim and Respondent Haggin are alter egos of one another.

103. The judicial determination and declaration are necessary and appropriate at this time so that the Claimant, the LLCs, the parties to the Formosa and Romaine Joint Venture Agreements, and Respondents Kenig and Elim can determine their obligations and duties under the Formosa and Romaine Joint Venture Agreements. No other remedies are adequate to resolve these particular disputes.

SECOND CAUSE OF ACTION

(Breach of Written Agreement)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, Elim Management, Inc., Joel Haggin, and Ilan Kenig)

104. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

105. Claimant and Respondents FMB Development, Elim, and Haggin entered into the Formosa and Romaine Joint Venture Agreements.

106. Per Respondent Kenig's filed 2016 and 2021 Statements of Information for Formosa LLC, Respondent Kenig has represented that he is the manager of Formosa LLC.

107. Per Respondent Kenig's filed 2020 Statement of Information for Romaine LLC, Respondent Kenig has represented that he is the manager of Romaine LLC.

108. Per Respondent Kenig's filed 2021 Statement of Information for Romaine LLC, Respondent Kenig has represented that FMB Consulting, LLC is the manager of Romaine LLC.

109. Corporations Code § 17701.10(a) provides that, "Except as otherwise provided in this section, the operating agreement governs all of the following: … (2) The rights and duties under this title of a person in the capacity of manager. (3) The activities of the limited liability company and the conduct of those activities."

110. Kenig and FMB Consulting as represented managers of the LLCs are bound by the

Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting.

111. Claimant and the LLCs are bound by and may enforce the Formosa and Romaine Joint Venture Agreements as their respective operating agreements. Alternatively, the LLCs are intended third-party beneficiaries of the Formosa and Romaine Joint Venture Agreements and are entitled to enforce the same.

112. Claimant and the LLCs did all, or substantially all, of the significant things the Formosa and Romaine Joint Venture Agreements required them to do, respectively.

113. Respondent FMB Development, FMB Consulting, and/or Kenig breached the Formosa and Romaine Joint Venture Agreements by, *inter alia*:

- In violation of the Romaine and Formosa Joint Venture Agreements, **conveyed the Formosa and Romaine Properties to FMB Development** (of which Kenig is the sole member) instead of the LLCs as required by the Romaine and Formosa Joint Venture Agreements;
- Prior to conveying the Formosa and Romaine Properties to their respective entities, had recorded deeds of trust on the Romaine and Formosa Properties securing a $4,000,000 loan **with FMB Development as the Borrower (again, Kenig is the sole member)**, which was not an act permitted by the Romaine and Formosa Joint Venture Agreements;
- Secured no less than 10 loans on the Formosa Property and 11 loans on the Romaine Property **without seeking – much less attaining – the permission of all the members of the respective LLCs** as required by the Formosa and Romaine Joint Venture Agreements;
    - Presently, on information and belief, **$14,168,000** of those loans remain secured on the Formosa Property, which is roughly **5 times** the $2,720,000 purchase and

construction estimate provided by FMB Development in the Formosa Joint Venture Agreement and which, on information and belief, leaves the Formosa Property underwater; and

  - Presently, on information and belief, **<u>$17,994,000</u>** of those loans remain secured on the Romaine Property, which is roughly **<u>5 times</u>** the $3,600,000 purchase and construction estimate provided by FMB Development in the Romaine Joint Venture Agreement and which, on information and belief, leaves the Formosa Property underwater.

- Allowed the Romaine and Formosa Properties **<u>to be tax defaulted</u>**, with tens of thousands of dollars owed, which violated the obligations to manage the LLC under the Romaine and Formosa Joint Venture Agreements;
- **<u>Refused, intentionally delayed, and/or been unable to complete the development of the Projects</u>** despite almost a decade of time;
- **<u>Allowed the Formosa LLC to be suspended</u>** by the Secretary of State, which violated the obligations to manage the LLC under the Romaine and Formosa Joint Venture Agreements;
- **<u>Failed to file Statements of Information</u>** with the Secretary of State for the LLCs by the 2020 deadline for the Formosa LLC and the 2022 deadline for the Romaine LLC;
- **<u>Failed to maintain an Agent for Service of Process</u>** with the Secretary of State for the LLCs;
- Permitted the filing of formal documents with the Secretary of State by its CEO and sole member Ilan Kenig **<u>showing Kenig individually</u>**

<u>and personally as a Member and as the Manager and CEO of the LLCs and FMB Consulting as the Manager of the Romaine LLC in violation of the Romaine and Formosa Joint Venture Agreements</u>; and

- **<u>Ignored Claimant's repeated and basic requests as a member of the LLCs for updates and information</u>** (including by counsel), which violated its obligations to manage the LLC under the Romaine and Formosa Joint Venture Agreements.

114. Respondents Elim and Haggin breached the Formosa and Romaine Joint Venture Agreements by, *inter alia*, ceasing involvement in the LLCs and the Projects despite being required to manage the same by the Romaine and Formosa Joint Venture Agreements. By their failure to co-manage as required, Respondents FMB Development and Kenig were able to perform the above wrong-doings.

115. The foregoing breaches by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

116. The LLCs and Claimant also seek restitution, disgorgement, and constructive trust of any and all sums owed to the LLCs.

<u>THIRD CAUSE OF ACTION</u>

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Joel Haggin, and Ilan Kenig)

117. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

118. Claimant and Respondents FMB Development, Elim, and Haggin entered into the Formosa and Romaine Joint Venture Agreements.

119. Per Respondent Kenig's filed 2016 and 2021 Statements of Information for Formosa LLC, Respondent Kenig has represented that he is the manager of Formosa LLC.

120. Per Respondent Kenig's filed 2020 Statement of Information for Romaine LLC, Respondent Kenig has represented that he is the manager of Romaine LLC.

121. Per Respondent Kenig's filed 2021 Statement of Information for Romaine LLC, Respondent Kenig has represented that FMB Consulting, LLC is the manager of Romaine LLC.

122. Corporations Code § 17701.10(a) provides that, "Except as otherwise provided in this section, the operating agreement governs all of the following: … (2) The rights and duties under this title of a person in the capacity of manager. (3) The activities of the limited liability company and the conduct of those activities."

123. Kenig and FMB Consulting as represented managers of the LLCs are bound by the Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting.

124. The LLCs and Claimant are bound by and may enforce the Formosa and Romaine Joint Venture Agreements as their respective operating agreements. Alternatively, the LLCs are intended third-party beneficiaries of the Formosa and Romaine Joint Venture Agreements and are entitled to enforce the same.

125. The LLCs and Claimant did all, or substantially all, of the significant things the Formosa and Romaine Joint Venture Agreements required them to do, respectively.

126. Respondents prevented the LLCs and Claimant from receiving the benefits of the Formosa and Romaine Joint Venture Agreements and violated their fiduciary duties to the LLCs and Claimant.

127. In doing so, Respondents did not act fairly and in good faith.

128. The foregoing breaches by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

129. The LLCs and Claimant also seek restitution, disgorgement, and constructive trust of any and all sums owed to the LLCs and Claimant.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duties)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Ilan Kenig, Elim Management, Inc., and Joel Haggin)

130. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

131. Respondents FMB Development, Elim, and/or Haggin were, pursuant to the Romaine Joint Venture Agreement, required and obligated to co-manage the Romaine LLC.

132. Respondents FMB Development, Elim, and Haggin co-managed the Romaine LLC and acted on behalf of the Romaine LLC until Haggin left for Israel.

133. Despite the Romaine Joint Venture Agreement requiring otherwise, Respondent Kenig represented Respondent FMB Consulting as the "Manager" of the Romaine LLC.

134. On information and belief, FMB Consulting was a manager of the Romaine LLC and acted on behalf of the Romaine LLC.

135. Despite the Romaine Joint Venture Agreement requiring otherwise, Respondent Kenig represented himself as the "Manager" of the Romaine LLC.

136. On information and belief, Kenig was a manager of the Romaine LLC and acted on behalf of the Romaine LLC.

137. Although the Formosa Joint Venture Agreement stated that FMB Development would be the "managing member" of the LLC, both Respondents FMB Development and Elim had management responsibility in the Formosa LLC, including the management of the day-to-day activity of the Formosa LLC.

138. On information and belief, similar to the Romaine LLC, Elim and Haggin were co-managers of the Formosa LLC and acted on behalf of the Formosa LLC until Haggin left for Israel.

139. Despite the Formosa Joint Venture Agreement requiring otherwise, Respondent Kenig

represented himself as the "Manager" of the Formosa LLC.

140. On information and belief, Kenig was a manager of the Formosa LLC and acted on behalf of the Formosa LLC.

141. On information and belief, Respondents FMB Development, Elim, Haggin, FMB Consulting, and Kenig engaged in grossly negligent or reckless conduct, intentional misconduct, and/or a knowing violation of law.

142. Respondents FMB Development, Elim, Haggin, and Kenig engaged in grossly negligent or reckless conduct, intentional misconduct, and/or a knowing violation of law.

143. Respondents FMB Development, Elim, Haggin, FMB Consulting, and Kenig failed to account to the Romaine LLC and Claimant and hold as trustee any property, profit, or benefit derived by the same Respondents in the conduct of the activities of the Romaine LLC or derived from a use by the same Respondents of the Romaine LLC's property and did not refrain from dealing with the Romaine LLC and Claimant in the conduct of the activities of the Romaine LLC as or on behalf of a person having an interest adverse to the Romaine LLC and Claimant.

144. On information and belief, Respondents FMB Development, Elim, Haggin, and Kenig failed to account to the Formosa LLC and Claimant and hold as trustee any property, profit, or benefit derived by the same Respondents in the conduct of the activities of the Formosa LLC or derived from a use by the same Respondents of the Formosa LLC's property and did not refrain from dealing with the Formosa LLC and Claimant in the conduct of the activities of the Formosa LLC as or on behalf of a person having an interest adverse to the Formosa LLC and Claimant.

145. The Romaine LLC and Claimant did not give consent to the actions of Respondents alleged herein as to the Romaine LLC and Claimant.

146. The Formosa LLC and Claimant did not give consent to the actions of Respondents alleged herein as to the Formosa LLC and Claimant.

147. The foregoing breaches by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

148. The LLCs and Claimant also seek restitution, disgorgement, and constructive trust of any and all sums owed to the LLCs and Claimant.

149. The actions taken by Respondents were in all respects oppressive, fraudulent, and malicious, and the LLCs and Claimant are accordingly entitled to an award of punitive and exemplary damages in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

(Judicial Dissociation Pursuant to Corporations Code § 17706.02(e))

(By Claimant, derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, Elim Management, Inc., Joel Haggin, and Ilan Kenig)

150. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

151. Respondents FMB Development, Elim, and Haggin were, pursuant to the Formosa and Romaine Joint Venture Agreements, listed as members of the LLCs.

152. Respondent Kenig represented himself as a "Member" of the LLCs on documents he had filed with the California Secretary of State.

153. Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member of the LLCS) have, individually and collectively, engaged in and are engaging in wrongful conduct that has adversely and materially affected and will adversely and materially affect the LLCs' activities.

154. Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member of the LLCS) have, individually and collectively, willfully or persistently committed, and/or are willfully and persistently committing, a material breach of the operating agreements of the LLCs and/or the Respondents' duties and/or obligations under Corporations Code § 17704.09.

155. Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member of the LLCS) have, individually and collectively, engaged in, or are engaging in, conduct relating to the LLC's activities that make it not reasonably practicable to carry on the activities with the person as a member.

156. Consequently, the LLCs apply for and seek a judicial order expelling Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member of the LLCS) as members.

SIXTH CAUSE OF ACTION

(Accounting)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Ilan Kenig, Elim Management, Inc., and Joel Haggin)

157. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

158. Respondents FMB Development, FMB Consulting, Kenig, Elim, and Haggin have or have had a fiduciary relationship to the LLCs and Claimant.

159. Respondents FMB Development, FMB Consulting, Kenig, Elim, and Haggin have damaged the LLCs and Claimant, including, but not limited to, by breaching their fiduciary duties to the LLCs and Claimant.

160. Further, Respondents FMB Development, FMB Consulting, Kenig, Elim, and Haggin failed to provide the documents requested by Claimant, including, but not limited to, the financials of the LLCs.

161. Judicial intervention is necessary to determine the amount owed by Respondents FMB Development, FMB Consulting, Kenig, Elim, and Haggin to the LLCs and Claimant as, on information and belief, only those Respondents have the documents and information about, concerning, relating to, the LLCs, including, but not limited to, financial and business records.

SEVENTH CAUSE OF ACTION

(Equitable Indemnity)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

162. Claimant realleges and incorporates each and every paragraph alleged as if fully set

forth in this cause of action.

163. Corporations Code § 17701.13(a) provides that, "A limited liability company shall designate and continuously maintain in this state … (2) An agent for service of process."

164. Corporations Code § 17702.09(a) requires the filing of a statement of formation biennially after the formation of an LLC. Per subsection (2) of the same, the required Statement of Information must list the agent for service of process for the LLC.

165. Corporations Code § 17702.09(d) requires the filing of a statement of formation whenever changing its agent for service of process.

166. As of June 13, 2023, which is after Claimant filed the Direct Action and the Derivative Action, the required Statements of Information for the LLCs had yet to be filed.

167. As of June 13, 2023, which is after Claimant filed the Direct Action and the Derivative Action, the Formosa LLC had no agent for service of process registered with the Secretary of State.

168. Since December 18, 2023 and to the filing of this Demand, the LLCs have had no registered Agent for Service of Process.

169. Prior to the filing of the Direct Action and the Derivative Action, Claimant informed Respondents of the need to file Statements of Information and requested pursuant to Corporations Code § 17713.06 that they file the necessary Statements of Information and register an agent for service of process for the Formosa LLC.

170. Respondents failed to respond to Claimant that they would act as requested prior to the filing of the Direct Action and the Derivative Action.

171. Rather, *only after the filing of the Direct Action and Derivative Action,* did Respondents file the necessary Statements of Information and register an Agent for Service of Process.

172. However, Respondents must file new Statements of Information for the LLCs designating a new Agent for Service of Process.

173. By this Demand, Claimant hereby renews its demand that Respondents file the necessary Statements of Information for the LLCs with Agents for Service of Process.

174. Should the Respondents refuse and/or fail to file the Statements of Information within a reasonable time, Claimant, as a member of the LLCs, has a basis to sue the LLCs and the Respondents

pursuant to Corporations Code § 17713.06 to secure a court order directing the filing of the new Statements of Information for the LLCs designating a new Agent for Service of Process and to pay attorney's fees for only filing the necessary Statements of Information *after the Direct and Derivative Actions were filed.*

175. As the court in such action would be empowered pursuant to Corporations Code § 17713.06(d) to award Claimant reasonable expenses, including attorney's fees, for bringing the suit as to the filing of the Statements of Information, the LLCs stand to be liable to Claimant for the payment of such fees.

176. Further, Claimant, as a member of the LLC, requested that Respondents keep or cause to be kept or maintained the documents, books, and records required by Corporations Code § 17701.13 to be kept or maintained.

177. On information and belief, Respondents have neglected, failed, or refused to keep or cause to be kept or maintained the documents, books, and records required by Corporations Code § 17701.13 to be kept or maintained.

178. Consequently, Claimant, as a member of the LLCs, has a basis to sue the LLCs and the Respondents pursuant to Corporations Code § 17713.07(a).10 to secure a court order directing the payment of a penalty for which the LLCs stand to be liable for paying to Claimant.

179. Further, Claimant, as a member of the LLCs and for purposes reasonably related to his interest in the LLCs, has requested certain documents and information from Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig that he is entitled to and those required to be kept and/or maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d).

180. Respondents failed to provide and make available to Claimant the documents and information he is entitled to and those required to be kept and maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d).

181. Consequently, Claimant, as a member of the LLCs, has a basis to sue the LLCs and the Respondents pursuant to Corporations Code § 17704.10 to secure a court order directing the making and delivering of the documents and information.

182. As the court in such action would be empowered pursuant to Corporations Code §

17704.10(g) to award Claimant reasonable expenses, including attorney's fees, for bringing the suit as to the documents and information, the LLCs stand to be liable to Claimant for the payment of such fees.

183. Respondents have also committed personal wrongs to Claimant as managers of the LLC that would entitle Claimant to seek recovery from the LLCs.

184. Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig failed to use reasonable care in performing the work required by the Corporations Code above and as required by the Formosa and Romaine Joint Venture Agreements and had no justification in acting as such.

185. Respondents' conduct harmed the LLCs and Claimant and was a substantial factor in causing harm to the LLCs and Claimant.

186. The bases for liability above and the resulting damages were primarily, actively, and ultimately caused by the acts and omissions of Respondents, and each of them, in performing or failing to properly perform as required.

187. The LLCs also have no obligation to indemnify the Respondents.

188. Based on the contractual relationship between the LLCs and the Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member), the LLCs are entitled as a matter of equity to total implied contractual indemnity by Respondents FMB Development, Elim, Haggin, and Kenig for any sums, awards, and/or penalties due to Claimant and for the LLCs' reasonable expenses, including attorney's fees, incurred in defending Claimant's actions. Pursuant to Corporations Code § 1021.6, the LLCs are also entitled to attorney's fees.

189. Further, Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig, and each of them, because of their joint and several liability to the Claimant with the LLCs, in equity and good conscience, are required to equitably indemnify the LLCs for any judgment damages that are recovered against the LLCs by Claimant and the LLCs are entitled to apportionment of liability and judgment against Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig, and each of them, according to their respective fault, in an amount according to proof.

<u>EIGHTH CAUSE OF ACTION</u>

(Contribution)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

190. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

191. The bases for liability to Claimant above and the resulting damages to the same were primarily, actively, and ultimately caused by the acts and omissions of Respondents, and each of them, in performing or failing to properly perform as required.

192. Because of the foregoing, the LLCs are entitled to an apportionment of liability among Respondents, and each of them, and contribution from each of the same for his or its prorata share of judgment damages that are recovered against the LLCs by the Claimant, in an amount according to proof.

NINTH CAUSE OF ACTION

(Conversion)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

193. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

194. The LLCs owned, possessed, and/or had a right to possess personal property, including, but not limited to, various monies received by Respondents on information and belief on behalf of the LLCs, including, but not limited to, sums received based on loans secured on the Formosa and Romaine Properties.

195. Claimant owned, possessed, and/or had a right to possess personal property, including, but not limited to, various monies received by Respondents, including, but not limited to, sums received pursuant to the Joint Venture Agreements.

196. On information and belief, Respondents substantially interfered with the LLCs' property by knowingly or intentionally taking possession of the personal property, preventing the LLCs from

having access to the personal property, destroying the personal property, or refusing to return the personal property of the LLCs.

197. On information and belief, Respondents substantially interfered with Claimant's property by knowingly or intentionally taking possession of the personal property, preventing the Claimant from having access to the personal property, destroying the personal property, or refusing to return the personal property of Claimant.

198. The LLCs and Claimant did not give consent to the above.

199. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

200. The LLCs and Claimant also seek restitution, disgorgement, and constructive trust of any and all sums owed to the LLCs and Claimant.

201. The actions taken by Respondents were in all respects oppressive, fraudulent, and malicious, and the LLCs and Claimant are accordingly entitled to an award of punitive and exemplary damages in an amount according to proof at the time of trial.

TENTH CAUSE OF ACTION

(Trespass to Chattels)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

202. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

203. The LLCs owned, possessed, and/or had a right to possess personal property, including, but not limited to, various monies received by Respondents on information and belief on behalf of the LLCs, including, but not limited to, sums received based on loans secured on the Formosa and Romaine Properties.

204. Claimant owned, possessed, and/or had a right to possess personal property, including,

but not limited to, various monies received by Respondents, including, but not limited to, sums received pursuant to the Joint Venture Agreements.

205. On information and belief, Respondents intentionally interfered with the LLCs' use or possession of personal or damaged the same.

206. On information and belief, Respondents intentionally interfered with Claimant's use or possession of personal or damaged the same.

207. The LLCs and Claimant did not give consent to the above.

208. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

209. The actions taken by Respondents were in all respects oppressive, fraudulent, and malicious, and the LLCs and Claimant are accordingly entitled to an award of punitive and exemplary damages in an amount according to proof at the time of trial.

<u>ELEVENTH CAUSE OF ACTION</u>

(Specific Performance)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

210. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

211. Claimant and Respondents FMB Development, Elim, and Haggin entered into the Formosa and Romaine Joint Venture Agreements.

212. Per Respondent Kenig's filed 2016 and 2021 Statements of Information for Formosa LLC, Respondent Kenig has represented that he is the manager of Formosa LLC.

213. Per Respondent Kenig's filed 2020 Statement of Information for Romaine LLC, Respondent Kenig has represented that he is the manager of Romaine LLC.

214. Per Respondent Kenig's filed 2021 Statement of Information for Romaine LLC,

Respondent Kenig has represented that FMB Consulting, LLC is the manager of Romaine LLC.

215. Corporations Code § 17701.10(a) provides that, "Except as otherwise provided in this section, the operating agreement governs all of the following: … (2) The rights and duties under this title of a person in the capacity of manager. (3) The activities of the limited liability company and the conduct of those activities."

216. Kenig and FMB Consulting as represented managers of the LLCs are bound by the Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting.

217. The LLCs are bound by and may enforce the Formosa and Romaine Joint Venture Agreements as their respective operating agreements. Alternatively, the LLCs are intended third-party beneficiaries of the Formosa and Romaine Joint Venture Agreements and are entitled to enforce the same.

218. The Formosa and Romaine Joint Venture Agreements are sufficiently certain.

219. The Formosa and Romaine Joint Venture Agreements are supported by adequate consideration, are just, and are reasonable.

220. The LLCs and Claimant did all, or substantially all, of the significant things the Formosa and Romaine Joint Venture Agreements required them to do, respectively.

221. The Respondents breached the express provisions of the Formosa and Romaine Joint Venture Agreements and the implied covenant of good faith and fair dealing of the same.

222. The LLCs and Claimant were harmed by Respondents' breaches of the Formosa and Romaine Joint Venture Agreements, and the same breaches were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

223. Despite Claimant's protestations and demands, Respondents have failed to fulfill their obligations under the Romaine and Formosa Joint Venture Agreements.

224. The LLCs and Claimant are entitled to specific performance of the terms, conditions, and

provisions of the Romaine and Formosa Joint Venture Agreements.

225. The LLCs and Claimant have no adequate legal remedy to obtain the Respondents' compliance with the terms, conditions, and provisions of the Romaine and Formosa Joint Venture Agreements except by this action for specific performance.

226. To that end, the LLCs and Claimant seek a court order that Respondents:

a. Have the Formosa and Romaine Properties released from the deed of trust securing the $4,000,000 for which it is the Borrower;

b. Return to the LLCs all monies held by the Respondents for the benefit of the LLCs or owned by the LLCs or for which the LLCs are entitled to possess;

c. Return to Claimant all monies held by the Respondents for the benefit of Claimant or owned by Claimant or for which Claimant is entitled to possess;

d. Finish the Projects subject to the supervision to the Court;

e. File the necessary Statements of Information for the LLCs with the Secretary of State;

f. Make and maintain the documents and information required under the Corporations Code and pursuant to the Romaine and Formosa Joint Venture Agreements;

g. Provide Claimant, as a member of the LLCs, the documents and information to which he is entitled under the Corporations Code and pursuant to the Romaine and Formosa Joint Venture Agreements; and

h. To perform each and all of their other obligations under the Romaine and Formosa Joint Venture Agreements.

TWELFTH CAUSE OF ACTION

(Constructive Trust)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

227. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

228. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of the LLCs or otherwise assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs to the unjust detriment of the LLCs.

229. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of Claimant or otherwise assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs to the unjust detriment of Claimant.

230. On information and belief, Respondents used the property, monies, and profits of the LLCs or intended for the LLCs to purchase real and personal property, including, but not limited to, 627 N. Vista St., Los Angeles, CA 90036.

231. On information and belief, Respondents used the property, monies, and profits of Claimant or intended for Claimant to purchase real and personal property, including, but not limited to, 627 N. Vista St., Los Angeles, CA 90036.

232. The Respondents have been unjustly enriched by said improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs and the LLCs have been unjustly deprived of property, monies, and/or profits.

233. The Respondents have been unjustly enriched by said improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of Claimant and Claimant has been unjustly deprived of property, monies, and/or profits.

234. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

235. Claimant seeks a Court order declaring that:

a. The LLCs are the beneficiaries of a constructive trust on the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

b. Claimant is the beneficiary of a constructive trust on the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

c. The LLCs are the beneficiaries of a constructive trust on the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

d. Claimant is the beneficiary of a constructive trust on the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

e. The LLCs are the beneficiaries of a constructive trust on the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

f. Claimant is the beneficiary of a constructive trust on the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

g. The LLCs are the beneficiaries of a constructive trust on the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

h. Claimant is the beneficiary of a constructive trust on the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

236. Claimant also seeks a Court order requiring Respondents to:

a. Transfer, convey, and/or provide to the LLCs the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

b. Transfer, convey, and/or provide to Claimant the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

c. Transfer, convey, and/or provide to the LLCs the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

d. Transfer, convey, and/or provide to Claimant the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

e. Transfer, convey, and/or provide to the LLCs the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

f. Transfer, convey, and/or provide to Claimant the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

<u>THIRTEENTH CAUSE OF ACTION</u>

(Imposition and Foreclosure of Equitable Lien)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

237. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

238. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of the LLCs or otherwise

assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs to the unjust detriment of the LLCs.

239. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of Claimant or otherwise assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of Claimant to the unjust detriment of Claimant.

240. On information and belief, Respondents used the property, monies, and profits of the LLCs or intended for the LLCs to improve and/or purchase real and personal property, including, but not limited to, 627 N. Vista St., Los Angeles, CA 90036.

241. On information and belief, Respondents used the property, monies, and profits of Claimant or intended for Claimant to improve and/or purchase real and personal property, including, but not limited to, 627 N. Vista St., Los Angeles, CA 90036.

242. The Respondents have been unjustly enriched by said improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs and Claimant and the LLCs and Claimant have been unjustly deprived of property, monies, and/or profits.

243. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

244. Claimant seeks a Court order imposing an equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained as of the date of earlier of the date of the improvement and/or purchase.

245. Claimant seeks a Court order imposing an equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained as of the date of earlier of the date of the improvement and/or purchase.

246. Claimant seeks a judicial foreclosure of its equitable lien on the real and personal

property improved and/or purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

247. Claimant seeks a judicial foreclosure of its equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

FOURTEENTH CAUSE OF ACTION

(Negligence)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

248. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

249. The Respondents had duties to the LLCs and Claimant pursuant to the Formosa and Romaine Joint Venture Agreements and pursuant to the Corporations Code.

250. The Respondents breached their duties to the LLCs and Claimant under the Formosa and Romaine Joint Venture Agreements and under the Corporations Code.

251. The foregoing by Respondents harmed the LLCs Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

252. The actions taken by Respondents were in all respects oppressive, fraudulent, and malicious, and the LLCs and Claimant are accordingly entitled to an award of punitive and exemplary damages in an amount according to proof at the time of trial.

FIFTEENTH CAUSE OF ACTION

(Quasi-Contract)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and

derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

253. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

254. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of the LLCs or otherwise assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs to the unjust detriment of the LLCs.

255. On information and belief, Respondents, and each of them, improperly took, appropriated, obtained, and/or retained property, monies, and/or profits of Claimant or otherwise assisted in the improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of Claimant to the unjust detriment of Claimant.

256. The Respondents have been unjustly enriched by said improper taking, appropriating, obtaining, and/or retaining the property, monies, and/or profits of the LLCs and Claimant and the LLCs and Claimant have been unjustly deprived of property, monies, and/or profits.

257. Claimant seeks restitution for the LLCs from the Respondents of the property, monies, and/or profits improperly taken, appropriated, obtained, and/or retained by the Respondents and an order of this Court disgorging any and all property, monies, and profits property, monies, and/or profits of the LLCs improperly taken, appropriated, obtained, and/or retained by the Respondents.

258. Claimant seeks restitution from the Respondents of the property, monies, and/or profits improperly taken, appropriated, obtained, and/or retained by the Respondents and an order of this Court disgorging any and all property, monies, and profits property, monies, and/or profits of Claimant improperly taken, appropriated, obtained, and/or retained by the Respondents.

259. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

SIXTEENTH CAUSE OF ACTION

(Money Had and Received)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

260. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

261. On information and belief, Respondents, and each of them, received property, monies, and/or profits that were intended to be used for the benefit of the LLCs or otherwise assisted in the receipt of property, monies, and/or profits that were intended to be used for the benefit of the LLCs.

262. On information and belief, Respondents, and each of them, received property, monies, and/or profits that were intended to be used for the benefit of Claimant or otherwise assisted in the receipt of property, monies, and/or profits that were intended to be used for the benefit of Claimant.

263. The property, monies, and/or profits received that were intended to be used for the benefit of the LLCs were not used for the benefit of the LLCs.

264. The property, monies, and/or profits received that were intended to be used for the benefit of Claimant were not used for the benefit of Claimant.

265. Claimant demanded the provision of such property, monies, and/or profits received by Respondents that were intended to be used for the benefit of the LLCs were not used for the benefit of the LLCs.

266. Claimant demanded the provision of such property, monies, and/or profits received by Respondents that were intended to be used for the benefit of Claimant were not used for the benefit of Claimant.

267. Respondents have not given the property, monies, and/or profits received that were intended to be used for the benefit of the LLCs to the LLCs.

268. Respondents have not given the property, monies, and/or profits received that were intended to be used for the benefit of Claimant to Claimant.

269. Respondents are indebted to the LLCs for the property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of the LLCs that were not used for the

benefit of the LLCs.

270. Respondents are indebted to Claimant for the property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of Claimant that were not used for the benefit of Claimant.

271. Claimant seeks restitution for the LLCs from the Respondents of the property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of the LLCs that were not used for the benefit of the LLCs and an order of this Court disgorging to the LLCs any and all property, monies, and profits property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of the LLCs that were not used for the benefit of the LLCs.

272. Claimant seeks restitution from the Respondents of the property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of Claimant that were not used for the benefit of Claimant and an order of this Court disgorging to Claimant any and all property, monies, and profits property, monies, and/or profits received by the Respondents that were intended to be used for the benefit of Claimant that were not used for the benefit of Claimant.

273. The foregoing by Respondents harmed the LLCs and Claimant and were a substantial factor in causing such harm. The LLCs and Claimant have suffered and will continue to suffer, without limitation, economic injury and general and special damages in an amount to be determined at trial but well in excess of the jurisdictional minimum of this Court.

<u>SEVENTEETH CAUSE OF ACTION</u>

(Violation of Business & Professions Code § 17200)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

274. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

275. On information and belief, Respondents, and each of them, have engaged in, facilitated, furnished the means to commit and/or conspired to engage in acts of unfair competition as defined in California Business & Professions Code section 17200 by engaging in unlawful, unfair, and/or

fraudulent business acts and/or practices.

276. On information and belief, Respondents, and each of them, have engaged in, facilitated, furnished the means to commit and/or conspired to engage in acts of unfair competition as defined in California Business & Professions Code section 17200 by committing acts prohibited by California Business & Professions Code § 17500.

277. Pursuant to Business & Professions Code § 17203, Claimant is entitled to injunctive relief and restitution as deemed necessary by the Court to restore to the LLCs any money Respondents acquired by means of such unfair competition.

EIGHTEENTH CAUSE OF ACTION

(Violation of Corporations Code §§ 17701.13, 17702.09(a), and 17702.09(d))

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

278. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

279. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

280. Corporations Code § 17701.13(a) provides that, "A limited liability company shall designate and continuously maintain in this state … (2) An agent for service of process."

281. Corporations Code § 17702.09(a) requires the filing of a statement of formation biennially after the formation of an LLC. Per subsection (2) of the same, the required Statement of Information must list the agent for service of process for the LLC.

282. Corporations Code § 17702.09(d) requires the filing of a statement of formation whenever changing its agent for service of process.

283. As of June 13, 2023, which is after Claimant filed the Direct Action and the Derivative Action, the required Statements of Information for the LLCs had yet to be filed.

284. As of June 13, 2023, which is after Claimant filed the Direct Action and the Derivative Action, the Formosa LLC had no agent for service of process registered with the Secretary of State.

285. Since December 18, 2023 and to the filing of this Demand, the LLCs have had no registered Agent for Service of Process.

286. Prior to the filing of the Direct Action and the Derivative Action, Claimant informed Respondents of the need to file Statements of Information and requested pursuant to Corporations Code § 17713.06 that they file the necessary Statements of Information and register an agent for service of process for the Formosa LLC.

287. Respondents failed to respond to Claimant that they would act as requested prior to the filing of the Direct Action and the Derivative Action.

288. Rather, *only after the filing of the Direct Action and Derivative Action,* did Respondents file the necessary Statements of Information and register an Agent for Service of Process.

289. However, Respondents must file new Statements of Information for the LLCs designating a new Agent for Service of Process.

290. By this Demand, Claimant hereby renews its demand that Respondents file the necessary Statements of Information for the LLCs with Agents for Service of Process as required by Corporations Code §§ 17701.13(a), 17702.09(a), and 17702.09(d).

291. Should the Respondents refuse and/or fail to file the Statements of Information within a reasonable time, i.e., the time by which they must file their answering statement to this Demand, Claimant, as a member of the LLCs, requests, pursuant to Corporations Code § 17713.06, a court order directing the filing of the new Statements of Information for the LLCs designating a new Agent for Service of Process and to pay attorney's fees for this action and the filed Petitions to Compel Arbitration in the Direct and Derivative Actions.

<u>NINETEENTH CAUSE OF ACTION</u>

(Violation of Corporations Code § 17701.13)

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against the LLCs, Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

292. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

293. Claimant, as a member of the LLC, requested that Respondents keep or cause to be kept or maintained the documents, books, and records required by Corporations Code § 17701.13 to be kept or maintained.

294. On information and belief, Respondents have neglected, failed, or refused to keep or cause to be kept or maintained the documents, books, and records required by Corporations Code § 17701.13 to be kept or maintained.

295. Consequently, Claimant, as a member of the LLCs, requests, pursuant to Corporations Code § 17713.07(a), a court order directing the payment of the statutory penalty for which the LLCs are liable.

TWENTIETH CAUSE OF ACTION

(Violation of Corporations Code §§ 17704.10 and 17701.13(d))

(By Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC, against Respondents FMB Development, FMB Consulting, Elim Management, Inc., Ilan Kenig, and Joel Haggin)

296. Claimant realleges and incorporates each and every paragraph alleged as if fully set forth in this cause of action.

297. Claimant, as a member of the LLCs and for purposes reasonably related to his interest in the LLCs, has requested certain documents and information from Respondents that he is entitled to and those required to be kept and/or maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d).

298. Respondents failed to provide and make available to Claimant the documents and information he is entitled to and those required to be kept and maintained pursuant to Corporations Code §§ 17704.10 and 17701.13(d).

299. Consequently, Claimant, as a member of the LLCs, requests, pursuant to Corporations Code § 17704.10, a court order directing the making and delivering of the documents and information and reasonable expenses, including attorney's fees, pursuant to Corporations Code § 17704.10(g).

PRAYER

WHEREFORE, Claimant, as an individual and derivatively on behalf of 7760 Romaine, LLC and 1159 Formosa, LLC, prays for judgment against Respondent as follows:

1. General and compensatory damages according to proof, but in an amount not less than the jurisdictional minimum of this Court against Respondents;
2. Special and consequential damages according to proof against Respondents;
3. Exemplary and punitive damages against Respondents;
4. Restitution, disgorgement, and the return of any and all property, monies, and/or profits wrongfully taken, appropriated, obtained, retained, and/or received by Respondents as to the LLCs;
5. Restitution, disgorgement, and the return of any and all property, monies, and/or profits wrongfully taken, appropriated, obtained, retained, and/or received, retained by Respondents as to Claimant;
6. For a judicial declaration that the Formosa and Romaine Joint Venture Agreements are the operating agreements of the LLCs, respectively;
7. For a judicial declaration that the LLCs are bound by the Formosa and Romaine Joint Venture Agreements, respectively, and may enforce the same, respectively, and, should this Court not find the foregoing, that the LLCs are intended third party beneficiaries of the Formosa and Romaine Joint Venture Agreements and may enforce the same;
8. For a judicial declaration that Respondent Kenig is not a member of the LLCs;
9. For a judicial declaration that that Respondent Elim does not own 20% of the membership interest in Formosa LLC due to his failure to provide the necessary contribution;
10. For a judicial declaration that any purported sale by Respondent Elim of any purported 20% membership interest in Formosa LLC actually conveyed no interest in the Formosa LLC to the buyer;
11. For a judicial declaration that Kenig and FMB Consulting are bound by the Romaine and Formosa Joint Venture Agreements as the operating agreements of the LLCs and the LLCs and Claimant may enforce the Romaine and Formosa Joint Venture Agreements against Kenig and FMB Consulting;
12. For a judicial declaration that Respondents FMB Development and FMB Consulting and

Respondent Kenig are alter egos of one another, and that Respondent Elim and Respondent Haggin are alter egos of one another;

13. An order expelling Respondents FMB Development, Elim, Haggin, and Kenig (to the extent he is found to be a member of the LLCS) as members of the LLCs;
14. That the Court render an accounting between the LLCs and Respondents FMB Development, Elim, Haggin, and Kenig determining the amount that the same Respondents owe the LLCs;
15. For a judicial declaration that, on the basis of implied contractual indemnity, Respondents FMB Development, Elim, Haggin, and Kenig are responsible for and must totally indemnify and hold the LLCs harmless from any judgment damages recovered by Claimant against the LLCs and all liability, penalties, costs, expenses, consultant fees, and attorney fees reasonably incurred by the LLCs in defending Claimant's direct claims and that the LLCs have no obligation to indemnify the Respondents;
16. For a declaration of the percentage of fault of each of Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig and of the amount of judgment damages for which each of the same Respondents are obligated to equitably indemnify the LLCs as to Claimant's direct claims and that the LLCs have no obligation to indemnify the Respondents;
17. For a judicial declaration of the amount of contribution required from each of Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig for its prorata share of judgment damages that are recovered against the LLCs by the Claimant;
18. For a decree of specific performance requiring Respondents, and each of them, to:
    a. Have the Formosa and Romaine Properties released from the deed of trust securing the $4,000,000 for which it is the Borrower;
    b. Return to the LLCs all monies held by the Respondents for the benefit of the LLCs or owned by the LLCs or for which the LLCs are entitled to possess;
    c. Return to Claimant all monies held by the Respondents for the benefit of Claimant or owned by Claimant or for which Claimant is entitled to possess;

d. Finish the Projects subject to the supervision to the Court;

e. File the necessary Statements of Information for the LLCs with the Secretary of State;

f. Make and maintain the documents and information required under the Corporations Code and pursuant to the Romaine and Formosa Joint Venture Agreements;

g. Provide Claimant, as a member of the LLCs, the documents and information to which he is entitled under the Corporations Code and pursuant to the Romaine and Formosa Joint Venture Agreements; and

h. To perform each and all of their other obligations under the Romaine and Formosa Joint Venture Agreements.

19. For an order declaring that:

a. The LLCs are the beneficiaries of a constructive trust on the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

b. Claimant is the beneficiary of a constructive trust on the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

c. The LLCs are the beneficiaries of a constructive trust on the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

d. Claimant is the beneficiary of a constructive trust on the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

e. The LLCs are the beneficiaries of a constructive trust on the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

f. Claimant is the beneficiary of a constructive trust on the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

g. The LLCs are the beneficiaries of a constructive trust on the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

h. Claimant is the beneficiary of a constructive trust on the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

20. For an order requiring Respondents to:

i. Transfer, convey, and/or provide to the LLCs the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

j. Transfer, convey, and/or provide to Claimant the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

k. Transfer, convey, and/or provide to the LLCs the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

l. Transfer, convey, and/or provide to Claimant the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

m. Transfer, convey, and/or provide to the LLCs the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained; and

n. Transfer, convey, and/or provide to Claimant the proceeds from the sale of the real and personal property purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained.

21. An order imposing an equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained as of the date of earlier of the date of the improvement and/or purchase;

22. An order imposing an equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained as of the date of earlier of the date of the improvement and/or purchase;

23. An order judicial foreclosing the LLCs' equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of the LLCs or intended for the LLCs that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

24. An order judicial foreclosing Claimant's equitable lien on the real and personal property improved and/or purchased by Respondents using the property, monies, and profits of Claimant or intended for Claimant that Respondents, and each of them, improperly took, appropriated, obtained, and/or retained;

25. For an order that Respondents restore any money or property, real or personal, acquired by Respondents by means of unfair competition;

26. For an order, pursuant to Corporations Code § 17713.06, directing the filing of the new Statements of Information for the LLCs designating a new Agent for Service of Process;

27. For an order, pursuant to Corporations Code § 17713.07(a), directing the payment of the statutory penalty for which the LLCs are liable;

28. For an order, pursuant to Corporations Code § 17704.10, a court order directing the making

and delivering of the documents and information;

29. Reasonable expenses, attorneys' fees, and costs against Respondents as permitted by law, statute, or contract;

30. That the Court issue, as appropriate in this case, a temporary restraining order, a temporary injunction, or both a preliminary and a permanent injunction restraining Respondents FMB Development, FMB Consulting, Elim, Haggin, and Kenig and their agents, attorneys, successors, and representatives, and all persons acting in concert or participating with them, from:

    a. Paying, in whole or in part, any of the deeds of trust securing the $4,000,000 loan with FMB Development as the Borrower using the property, monies, and/or assets of the LLCs without a prior specific court order;

    b. Committing or permitting any waste of the Romaine and Formosa Properties or any part thereof, or suffering or committing or permitting any act on the Romaine and Formosa Properties or any part thereof in violation of law, or removing, transferring, encumbering, or otherwise disposing of any of the Romaine and Formosa Properties or any part thereof without a prior specific court order;

    c. Expending, disbursing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in, encumbering, concealing or in any manner whatsoever dealing in or disposing of the whole or any part of the Romaine and Formosa Properties without prior specific court order; and

    d. Doing any act which will, or which will tend to, impair, defeat, divert, prevent, or prejudice the preservation of the Romaine and Formosa Properties;

31. For an order of the Court appointing a receiver to protect and preserve the LLCs and the Formosa and Romaine Properties;

32. Interest at the maximum legal rate against Respondents;

33. Costs of suit; and

34. Such other and further relief as the Court may deem just and proper by law or equity.

Dated: February 28, 2024

SEVERANCE LAW, PC

By: ______________________________

Dominick Severance, Esq.
Attorneys for Claimant Dr. Roy Lubit, MD Ph.D. as an individual and derivatively on behalf of 7760 Romaine, LLC and 1159 Formosa, LLC

Exhibit A

JOINT VENTURE AGREEMENT FOR REAL ESTATE INVESTMENT

ARTICLE I. INTRODUCTION

Section 1.1. This Joint Venture Agreement for Real Estate Investment ("Agreement") is entered into as of May 20, 2014, among **FMB Development, LLC**, ("FMB"), **Elim Management, Inc.** ("Elim"), and **Roy Lubit and Joel Haggin and Others** ('Equity Partner') for the purpose of carrying on a joint venture in the State of California.

ARTICLE II. PURPOSE OF JOINT VENTURE

Section 2.1. The purpose of the joint venture shall be for the purchase, new construction and sale of the real property located at **1159 N. Formosa, West Hollywood, Los Angeles**, CA for profit ("Project") and opening a new California LLC to hold 100% of the property named - **11159 Formosa, LLC** ("The LLC")

ARTICLE III. DUTIES OF THE PARTIES

Section 3.1. FMB is presently the sole member of The LLC. Pursuant to the terms of this Agreement, and upon signing by all parties, all parties shall immediately become members of The LLC and all parties will own shares pursuant to the description listed in Article IV of this Agreement.

Section 3.2. FMB will be the managing member of The LLC. The responsibility of both FMB and Elim in the LLC will be the following:

- **a.** Manage the property purchase (FMB Only)
- **b.** Complete loan process with a lender for 65% LTV (FMB Only)
- **c.** Manage all of the project development
- **d.** Manage architectural and design tasks
- **e.** Manage plans preparation
- **f.** Submit for city approval
- **g.** Hire contractor and subcontractors
- **h.** Manage the day to day activity of the LLC
- **i.** Oversee the budget until property is completed and sold.
- **j.** Oversee and supervise the construction in the field until property is completed and sold.
- **k.** Manage all books and records.
- **l.** Manage the sale of the property and distribute profit to all partners of the LLC

Section 3.3.

ARTICLE IV. CONTRIBUTIONS

The purchase price of the property is - $1,200,000
The new construction of 4,200 sqft. Cost is approximately $1,520,000
The parties shall contribute the following and will own percentage ownership shares in The LLC as described below:

Name	Amount	Shares In the LLC's Profit
1. Equity Partner(s) - cash to close escrow and for the development. Equity required for the construction	$520,000 $432,000	40%
2. FMB Development, LLC – Loan	$780,000*	40 %
	$1,088,000	
3. FMB Development, LLC –construction loan	$1,868,000	
4. Elim Management, LLC	$1	20%
TOTAL	$2,820,000	100%

Section 4. left blank intentional

ARTICLE V. OWNERSHIP OF VENTURE PROPERTY

Section 5.1. Title to Property.

All property of the joint venture shall be held 100% in the name of The LLC

Section 5.2. Interest in Property.

The beneficial interest of each party in such property, unless changed pursuant to the terms of this Agreement, shall be as follows: 100% The LLC*
In the event that the parties or other parties will contribute some or all of the equity required to the LLC the interest of the equity partners will divided among the equity partners proportionally to their respective equity cash investment.

*IN THE EVENT THAT PURCHASE ESCROW DOE'S NOT CLOSE FOR ANY REASON ALL CASH MONEY INVESTED BY THE "EQUITY PARTNER" WILL BE IMMIDIATLY RELEASED AND DISTRIBUTED BACK TO THEM.

ARTICLE VI. TERM

Section 6.1. The term of the Joint Venture will commence on the date of the Agreement. The death of any one venturer will not operate to terminate the joint venture, but the interest of the decedent venturer will pass to the decedent's legal representative. The joint venture will terminate on the death of the last surviving venturer under this agreement, specifically excluding any decedent venturer's representative in determining the existence of the last surviving venturer.

ARTICLE VII. DISTRIBUTIONS; ALLOCATION OF PROFITS AND LOSSES

Section 7.1. Division or Share of Profits.

Any profits of the joint venture shall be allocated among the joint venturers in the following priority unless that percentage is changed pursuant to the terms of this Agreement:

a. Equity Partner shall receive the principal amount invested.
b. The remaining profits shall be distributed to the members of the LLC according to their ownership percentage described in Article IV of this Agreement respectively.

Section 7.2. Calculation of Profits.

For the purposes of this Agreement, the profits of the joint venture shall be calculated as follows:

a. The expenses of conducting the joint venture shall be deducted from the income of the joint venture. The expenses of conducting the joint venture shall include all expenses customarily incurred by businesses similar to the joint venture including but not limited to the following: Purchase price, recording fees, escrow fees, brokerage fees and commissions paid to third parties, all conventional and construction loans and interest, general and sub-contractors costs, building material costs, license and permit fees, legal services, accounting services, taxes, etc.

b. After the payment of all expenses as described above, parties who have contributed cash money shall be first entitled, proportionally, to distributions of the capital they have contributed.

c. After all cash contributions have been returned and payment of all the expenses, the remaining profit shall be distributed to the parties pursuant to Section 7.1. Managing partners shall be responsible for the computation and distribution of the net profits or apportionment of loss and will provide a final accounting thereof within 60 days after close of escrow when the Project is successfully sold.

Section 7.3. Apportionment or Share of Loss.

Should a loss be sustained as a result of the joint venture, the parties shall bear the loss in their ownership percentages in the project LLC

Section 7.4. Computation of Loss.

In computing any loss as between the parties, deductions shall be made from any assets remaining in the same manner as computing profits in Section 7.2, that is, deductions shall first be made to pay expenses, and any remaining sums shall be allocated on a pro rata percentage basis to contributions, as set forth in Section 7.2 for computing profits..

ARTICLE VIII. MANAGEMENT STRUCTURE

All major decisions affecting the sale of the property will be made by all partners of The LLC.

ARTICLE IX. TERMINATION

Section 9.1. Date of Termination.

This Agreement shall be terminated six months after:

The final distribution of profits or allocation of loss to the parties after the Project is sold; or in the event of any of the following occur:

a. Any act or event which makes the continuation of the business of the joint venture impossible or impracticable;

b. The bankruptcy or insolvency of the parties to this Agreement; or

Section 9.2. Effect of Termination.

On the termination of this joint venture, the joint venture and the "project LLC" shall be dissolved and wound up in accordance with the provisions of the California Uniform Partnership Act (Corp. Code, §§ 16100 et seq.), except as otherwise specifically provided in this Agreement or any amendment to this Agreement.

ARTICLE X. ARBITRATION

Section 10.1. Any dispute arising under this Agreement, or under any instrument made to carry out the terms of this Agreement, shall be submitted to arbitration in accordance with the arbitration laws of the State of California (Civ. Proc. Code, §§ 1280 et seq.).

ARTICLE XI. NOTICES

Section 11.1. All notices to the joint venturers pursuant to this Agreement shall be in writing and shall be deemed effective when given by personal delivery, certified mail, fax or email.

ARTICLE XII. APPLICABLE LAW

Section 12.1. To the extent not otherwise provided in the Agreement, the terms of this joint venture and the relationship of the joint venturers to each other shall be governed by the provisions of the California Uniform Partnership Act (Corp. Code, §§ 16100 et seq.), and any amendments or successor statute to that Act.

ARTICLE XIII. AMENDMENTS

Section 13.1. This Agreement may be amended only by the written agreement of all of the joint venturers.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

____

FMB Development, LLC by Ilan Kenig, its managing member

____

Elim Management, LLC

Roy Lubit May 27, 2014

'Equity Partner'

____

'Equity Partner'

Exhibit B

JOINT VENTURE AGREEMENT FOR REAL ESTATE INVESTMENT

INTRODUCTION

1. This Joint Venture Agreement for Real Estate Investment (hereinafter "Agreement") is entered into as of **Sep 09, 2014**, among FMB Development, LLC (hereinafter "FMB"), Joel Haggin or entity on his behalf ("Joel") together hereinafter "Managing Members",, and Elim Management, Inc. (hereinafter "Elim"), and Roy Lubit and/or others (hereinafter "Equity Partners") for the purpose of carrying on a real-estate development joint venture in the State of California.

PURPOSE OF JOINT VENTURE

2. The purpose of the joint venture shall be for the purchase, new construction and sale of the real property located at **7760 Romaine Street, West Hollywood, Los Angeles**, CA 90046 for profit ("Project") and opening a new California LLC to hold 100% of the property named - **7760 Romaine, LLC** (hereinafter "The LLC").

DUTIES OF THE PARTIES

3. FMB is presently the sole member of the LLC. Pursuant to the terms of this agreement, and upon signing by all parties, all parties shall immediately become members of The LLC and all parties will own shares pursuant to the description listed in Article 6Article 4 of this Agreement.
4. FMB, and Elim and/or Joel will be the managing members of The LLC. The responsibility of both FMB and Joel in the LLC will be the following:
   - Manage the property purchase (FMB Only)
   - Complete loan process with a lender for 65% LTV (FMB Only)
   - Manage all of the project development
   - Manage architectural and design tasks
   - Manage plans' preparation
   - Submit for city approval
   - Hire contractor and subcontractors
   - Manage the day to day activity of the LLC

- Oversee the budget until property is completed and sold.
- Oversee and supervise the construction in the field until property is completed and sold.
- Manage all books and records.
- Manage the sale of the property and distribute profit to all partners of the LLC

5. Equity partners will make a minimum contribution required to complete the purchase and planning phase of the venture as detailed in Article Article 4 below, in the total amount of $520,000. Thereafter the equity partners may continue to contribute or FMB will being additional equity partners into the JV.

[redacted] CONTRIBUTIONS

6. The purchase price of the property is $1,450,000.
7. The new construction is of 9,000 Sqft. Cost of new construction is estimated to be approximately $2,150,000 including $80,000 estimated cost of the entitlement process.
8. The parties shall contribute the following and will own percentage ownership shares in The LLC as described below:

Name	**Amount**	**Shares in LLC's Profit or Loss**
Equity Partner(s) - cash to close escrow and for the development. Equity required for the construction	$478,500 $621,000	50.00%
Managing Members – Loan for Purchase	$971,500*	50.00 %
Managing Members – Construction Loan	$1,529,000	
TOTAL	**$3,600,000**	**100%**

[redacted] NEW EQUITY PARTNERS, EQUITY PARTNER'S "WORKING CAPITAL" OPTION

9. It is agreed between the parties that the managing members intend to introduce new equity partners into the LLC that will invest the entire equity required. Should the managing members of the LLC introduce new equity partner into the LLC, then the existing equity partner shall have the option to keep an investment level in the LLC of up to 10% of the

original equity invested by them, and have double the amount of profit sharing participation as was originally intended for this investment level. The additional profit participation shares will be at the expense of the managing members.

By way of example, if the equity amount invested by the original equity partners to this agreement was $558,500 (i.e. the equity that was required for the purchase and entitlements stages), hence entitling them for 25.4% profit participation (the ratio of $558,500 out of a total of $1,099,500 equity required), then with the introduction of new equity partners by the managing members, the original equity partners will have the option to keep up to $55,850 invested in the LLC's equity in return for 5.8% profit participation (2.54% X 2), and in that case the managing members' total profit participation will reduce from 50% to 47.46% allowing for the extra 2.54% profit participation allocated to the original equity investors.

[redacted] OWNERSHIP OF VENTURE PROPERTY

10. Title to Property: All property of the joint venture shall be held 100% in the name of The LLC
11. Interest in Property: The beneficial interest of each party in such property, unless changed pursuant to the terms of this Agreement, shall be as follows: 100% The LLC*
12. In the event that the parties or other parties will contribute some or all of the equity required to the LLC, the interest of the equity partners will divided among the equity partners proportionally to their respective equity cash investment.
13. IN THE EVENT THAT PURCHASE ESCROW DOE'S NOT CLOSE FOR ANY REASON ALL CASH MONEY INVESTED BY THE "EQUITY PARTNER" WILL BE IMMEDIATELY RELEASED AND DISTRIBUTED BACK TO THEM.

[redacted] TERM

14. The term of the Joint Venture will commence on the date of the Agreement. The death of any one venturer will not operate to terminate the joint venture, but the interest of the decedent venturer will pass to the decedent's legal representative. The joint venture will terminate on the death of the last surviving venturer under this agreement, specifically excluding any decedent venturer's representative in determining the existence of the last

surviving venturer.

[redacted]DISTRIBUTIONS, ALLOCATION OF PROFITS AND LOSSES

15. **Division or Share of Profits**: Any profits of the joint venture shall be allocated among the parties in the following priority unless that percentage is changed pursuant to the terms of this Agreement:
    a. Equity Partner shall receive the principal amount invested.
    b. The remaining profits shall be distributed to the members of the LLC according to their ownership percentage described in Article 6of this Agreement respectively.
16. **Calculation of Profits**: For the purposes of this Agreement, the profits of the joint venture shall be calculated as follows:
    a. The expenses of conducting the joint venture shall be deducted from the income of the joint venture. The expenses of conducting the joint venture shall include all expenses customarily incurred by businesses similar to the joint venture including but not limited to the following: Purchase price, recording fees, escrow fees, brokerage fees and commissions paid to third parties, all conventional and construction loans and interest, general and sub-contractors costs, building material costs, license and permit fees, legal services, accounting services, taxes, etc.
    b. After the payment of all expenses as described above, parties who have contributed cash money shall be first entitled, proportionally, to distributions of the capital they have contributed.
    c. After all cash contributions have been returned and payment of all the expenses, the remaining profit shall be distributed to the parties pursuant to Section 7.1. Managing partners shall be responsible for the computation and distribution of the net profits or apportionment of loss and will provide a final accounting thereof within 60 days after close of escrow when the Project is successfully sold.
17. **Apportionment or Share of Loss**: Should a loss be sustained as a result of the joint venture, the parties shall bear the loss in their ownership percentages in the project LLC.
18. **Computation of Loss**: In computing any loss as between the parties, deductions shall be made from any assets remaining in the same manner as computing profits in Section 7.2, that is, deductions shall first be made to pay expenses, and any remaining sums shall be

allocated on a pro rata percentage basis to shares, as set forth in Section 7.2 for computing profits.

[redacted] MANAGEMENT STRUCTURE

19. All major decisions affecting the sale of the property will be made by all partners of The LLC.

[redacted] TERMINATION

20. **Date of Termination**: This Agreement shall be terminated six months after: The final distribution of profits or allocation of loss to the parties after the Project is sold; or, in the event of any of the following occurs:
    a. Any act or event which makes the continuation of the business of the joint venture impossible or impracticable;
    b. The bankruptcy or insolvency of the parties to this Agreement;
21. **Effect of Termination**. On the termination of this joint venture, the joint venture and the "project LLC" shall be dissolved and wound up in accordance with the provisions of the California Uniform Partnership Act (Corp. Code, §§ 16100 et seq.), except as otherwise specifically provided in this Agreement or any amendment to this Agreement.

[redacted] ARBITRATION

22. Any dispute arising under this Agreement, or under any instrument made to carry out the terms of this Agreement, shall be submitted to arbitration in accordance with the arbitration laws of the State of California (Civ. Proc. Code, §§ 1280 et seq.).

[redacted] NOTICES

23. All notices to the joint venturers pursuant to this Agreement shall be in writing and shall be deemed effective when given by personal delivery, certified mail, fax or email.

[redacted] APPLICABLE LAW

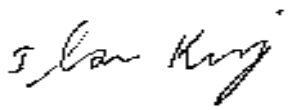
24. Section 12.1. To the extent not otherwise provided in the Agreement, the terms of this

joint venture and the relationship of the joint venturers to each other shall be governed by the provisions of the California Uniform Partnership Act (Corp. Code, §§ 16100 et seq.), and any amendments or successor statute to that Act.

[redacted] **AMENDMENTS**

25. This Agreement may be amended only by the written agreement of all of the joint venturers.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.



____

FMB Development, LLC by Ilan Kenig, its managing member

____

Elim Management, LLC, By Joel Haggin

____

‘Equity Partner’

PROOF OF SERVICE

I, the undersigned, certify:

I am an active member of the State Bar of California and am not a party to this action. My business address is **2173 Salk Ave., Suite 250, Carlsbad, CA 92008**.

On the date executed below, I served the foregoing document(s) entitled

DEMAND FOR ARBITRATION AND STATEMENT OF CLAIM OF CLAIMANT FOR:

1. **DECLARATORY RELIEF;**
2. **BREACH OF WRITTEN AGREEMENT;**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
4. **BREACH OF FIDUCIARY DUTIES;**
5. **JUDICIAL DISSOCIATION PURSUANT TO CORPORATIONS CODE § 17706.02(E);**
6. **ACCOUNTING;**
7. **EQUITABLE INDEMNITY;**
8. **CONTRIBUTION;**
9. **CONVERSION;**
10. **TRESPASS TO CHATTELS;**
11. **SPECIFIC PERFORMANCE;**
12. **CONSTRUCTIVE TRUST;**
13. **IMPOSITION AND FORECLOSURE OF EQUITABLE LIEN;**
14. **NEGLIGENCE;**
15. **QUASI-CONTRACT;**
16. **MONEY HAD AND RECEIVED;**
17. **VIOLATOIN OF BUSINESS & PROFESSIONS CODE § 17200;**
18. **VIOLATION OF CORPORATIONS CODE §§ 17701.13, 17702.09(A), AND 17702.09(D);**
19. **VIOLATION OF CORPORATIONS CODE § 17701.13; AND**
20. **VIOLATION OF CORPORATIONS CODE §§ 17704.10 AND 17701.13(D)**,

on all interested parties in this action as follows:

☒ BY ELECTRONIC SERVICE – I caused the document(s), described above, to be transmitted in PDF version to be sent to the persons at the electronic service address(es) listed below, and the transmission was reported as complete and without error. My electronic service address is Dominick@SeveranceLaw.com.

Ilan Kenig
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Representing Respondents FMB Development, LLC, FMB Consulting, LLC, and Ilan Kenig

Alexander Ayzenberg
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Joel Haggin
In Propria Persona
81 Southlake Drive
Palm Coast, Florida 32137
joel.haggin@gmail.com
(646) 770-0071
Representing Respondents Joel Haggin and Elim Management, Inc.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **Wednesday, February 28, 2024**, at Carlsbad, California.

Dominick Severance, Esq.