

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

BALTIC FOURTH LLC, directly and derivatively on behalf of FOURTH AVENUE JV LLC, FOURTH AVENUE MEZZ, LLC, and FOURTH AVENUE PROPERTY OWNER LLC, and TONA CONSTRUCTION & MANAGEMENT LLC,

Plaintiffs,

v.

MICHAEL STERN, JDS FOURTH AVENUE LLC, and JDS CONSTRUCTION GROUP LLC,

Defendants,

FOURTH AVENUE JV LLC, FOURTH AVENUE MEZZ LLC, and FOURTH AVENUE PROPERTY OWNER LLC,

Nominal Defendants.

LARGO 613 BALTIC STREET PARTNERS LLC, directly and derivatively on behalf of JDS FOURTH AVENUE LLC, FOURTH AVENUE JV LLC, FOURTH AVENUE MEZZ LLC, and FOURTH AVENUE PROPERTY OWNER LLC,

Intervening Plaintiffs,

v.

MICHAEL STERN, JDS FOURTH AVENUE JV II LLC, JDS CONSTRUCTION GROUP LLC, JDS FOURTH AVENUE DEVELOPER LLC, and John Does 1-5.

Intervening Defendants,

JDS FOURTH AVENUE LLC, FOURTH AVENUE JV LLC, FOURTH AVENUE MEZZ LLC, and FOURTH AVENUE PROPERTY OWNER LLC,

Intervening Nominal Defendants

Index No. _____

Date Filed: June ___, 2020

VERIFIED COMPLAINT

Largo 613 Baltic Street Partners LLC (“Largo”), directly and derivatively on behalf of JDS Fourth Avenue LLC (“JDS Fourth”), Fourth Avenue JV LLC (“Baltic JV”), Fourth Avenue Property Owner LLC (“Property Owner”), and Fourth Avenue Mezz LLC (“Mezz”), by and through their counsel, Blank Rome LLP, allege as follows:

PRELIMINARY STATEMENT

1. This case arises from Defendant Michael Stern’s (“Stern”) scheme to fund his lavish lifestyle and make up shortfalls on unrelated projects by defrauding frequent and trusting business partners, Largo and their principals and affiliated entities, and intentionally violating contracts and abusing his fiduciary positions to divert the considerable profit and revenue from a luxury residential condominium development, located at 613 Baltic Street, Park Slope, Brooklyn, New York (the “Project”).

2. Not satisfied with lucrative construction and development-related fees in addition to what would have been a considerable, legitimate, percentage of profits of the substantially sold-off luxury condominium development, Stern resolved to convert revenues and profits owed to his investors and business partners for his own selfish benefit. Stern undertook such actions knowingly and intentionally and, apparently, never planned to honor his contractual and fiduciary relationships with his business partners.

3. Plaintiffs are not the only parties to be caught in the net of abuse by Stern and his companies because, unknown to Plaintiffs when the Project was being considered, Stern has an apparent pattern of defrauding his investors and real estate business partners given the flourish of recent, similar, litigation in which Stern and his companies have appeared as defendants.

4. Taking advantage of his simultaneous positions of trust as the manager of multiple project entities and the owner of the construction manager and developer on the Project, Stern proceeded to falsely inflate costs and blatantly overcharge the Project, including through inflating

“General Conditions” and overcharging the Project for expenses that did not exist, as a means to use the Project to cover shortfalls on Stern’s other projects and businesses and finance Stern’s lavish lifestyle of private jets, fancy car collections, and elaborate residences.

5. At the same time, Stern diverted funds from a series of entities for his own use rather than make mandatory distributions to equity holders, forcing additional and costly expenses to be incurred in connection with otherwise unnecessary loans.

6. During the same time period, Stern went on a personal spending spree, adding regularly to his collection of luxury cars, purchasing a Florida mansion in an exclusive neighborhood, and traveling by private jet; perhaps funded or aided by diverted Project funds and profits which should have gone to the Project investors.

7. Stern’s revenue diversion scheme not only purloined Largo’s share of the profits but also substantially bilked and depleted Largo’s initial capital investments in the Project made over several years at Stern’s request.

8. Confronted with the scheme, Stern has repeatedly acknowledged funds are owed to Largo, including, without limitation, all of Largo’s initial principal investment.

9. Stern has promised to make the payments immediately, only to default on these promises and devolve into serial excuse-making for non-payment.

10. In an effort to cover up the scheme, and despite sweeping contractual and statutory rights to access financial and business records related to the Project, Stern has stonewalled Largo’s access to such records regarding the business between Largo, JDS Fourth, Baltic JV, Property Owner, Mezz, and the Project.

11. Stern’s abuse of power also has exposed JDS Fourth, Baltic JV, Mezz, and Property Owner to claims filed by Baltic Fourth LLC by its principal member, Domenick Tonacchio

(“Tonacchio”), and Tonacchio’s company, Tona Construction & Management LLC, in the underlying action, alleging that Stern, acting directly and on behalf of these entities, forged loan documents, diverted funds, and failed to meet contractual obligations. These actions further expose the derivative Plaintiffs to liability arising from Stern’s nefarious conduct for which he is liable.

PARTIES

12. Plaintiff Largo is a Delaware limited liability company conducting business exclusively in New York.

13. Stern is an individual and real estate developer, principally residing in New York, New York.

14. JDS Construction Group LLC (“JDS Construction”) is a Delaware limited liability company which provides construction management services, with offices at 104 Fifth Avenue, 9th Floor, New York, New York 10011.

15. Stern is the sole beneficial member of JDS Construction or the sole member of one or more limited liability companies which individually or collectively own JDS Construction.

16. JDS Fourth Avenue JV II LLC (“Stern Holdings”) is a Delaware limited liability company, headquartered and conducting business exclusively in New York, which is a holding entity for its sole member, Stern, to hold Stern’s membership interest in JDS Fourth.

17. JDS Fourth is a Delaware limited liability company, headquartered and conducting business exclusively in New York. The sole members of JDS Fourth are Stern Holdings and Largo.

18. JDS Fourth Avenue Developer LLC (“JDS Developer”) is a Delaware limited liability company, headquartered and conducting business exclusively in New York.

19. Baltic JV is a Delaware limited liability company conducting business exclusively in New York. Baltic JV's sole members are JDS Fourth and Baltic Fourth LLC ("Tonacchio Holding").

20. Tonacchio Holding is a New York limited liability company which is owned and managed by Tonacchio and his family members. Tonacchio Holding is a holding entity formed for the purposes of holding Tonacchio's membership interest in Baltic JV.

21. Property Owner is a wholly owned subsidiary of Baltic JV and the owner of the property located at 613 Baltic Street, 615 Baltic Street, 617 Baltic Street, 107 Fourth Avenue, 109 Fourth Avenue, 109A Fourth Avenue, and 111-113 Fourth Avenue (Block 937, Lot 1) in Brooklyn, New York (collectively the "Property").

22. Mezz is a Delaware limited liability company conducting business exclusively in New York.

23. Upon information and belief, Defendants John Doe 1 through 5 are individuals whose names and addresses of residences are unknown.

JURISDICTION AND VENUE

24. The Court has personal jurisdiction over the Defendants, as the corporate Defendants are headquartered in New York, and Stern is a resident and domiciliary of New York. The Defendants all transact business within the State of New York.

25. Stern and JDS Construction have committed tortious acts as set forth herein causing injury to Largo.

26. The Court's jurisdiction over the parties does not offend traditional notions of fair play and substantial justice.

27. Venue is proper under CPLR § 503 because the center of gravity of all of the events is New York, New York; all of the corporate Defendants' respective members are residents of New York, New York; and Stern is a resident of New York, New York.

28. The parties also are subject to numerous forum-selection clauses in the contracts relevant to the matters described in this pleading, providing for exclusive jurisdiction in New York, including:

A. The October 26, 2015 Amended and Restated Limited Liability Company Agreement for JDS Fourth, executed by Stern, Stern Holdings, and Largo, among other parties, annexed as **Exhibit A** (the "LLCA"), § 11.16, providing "*exclusive jurisdiction of any state or federal court in the Southern District of New York.*"

B. The April 24, 2014 Amended and Restated Limited Liability Company Agreement for Baltic JV, annexed as **Exhibit B** (the "Baltic Agreement"), § 12.16, providing "*exclusive jurisdiction of any state or federal court in the Southern District of New York.*"

FACTS COMMON TO ALL COUNTS

I. BACKGROUND OF LARGO – JDS RELATIONSHIP

29. Stern is a real estate developer actively involved in developing, constructing, leasing, and selling high-rise, luxury residential and mixed-use properties in New York and Florida through a series of entities he owns and controls, directly and/or indirectly, which conduct business under the trade name "JDS."

30. Largo is one of several entities operated by Largo's principals conducting business as "Largo," a successful real estate development and investment firm focusing on the acquisition, development, and operation of luxury, multifamily, mixed-use, and retail properties in Manhattan and Brooklyn.

31. Stern and the Largo principals have previously contracted to work together on a series of prominent projects including: The American Copper Buildings (626 First Avenue, New York, New York), the Fitzroy (514 West 24th Street, New York, New York), and 50 North 1st Street, Brooklyn, New York.

II. PROPERTY ACQUISITION AND INITIAL DEAL STRUCTURE

A. Property Acquisition

32. In late 2013, the Property was owned by one or more entities controlled by developer and general contractor Tonacchio, whose company, 107 Fourth Avenue, LLC, ultimately filed for bankruptcy protection in February 2013, rendering the Property an asset in the bankruptcy proceeding.

33. Upon information and belief, Tonacchio solicited Stern to purchase the Property from the bankruptcy estate in order to develop the Property into luxury condominiums through a joint venture with Tonacchio.

34. Baltic JV was formed on December 13, 2013 as the vehicle to execute and manage the joint venture and the development of the Property. The sole members of Baltic JV are JDS Fourth and Tonacchio Holding, a special-purpose entity owned and controlled by Tonacchio and Tonacchio's family members.

35. Baltic JV acquired the Property on or about April 24, 2014, and entered the Baltic Agreement on or about the same date.

B. Baltic Agreement and Management

36. The "Manager" is defined under the Baltic Agreement as JDS Fourth.¹

¹ All capitalized terms not otherwise defined herein shall have the meaning provided in the respective referred to agreement.

37. The Manager is tasked with the day-to-day decision-making rights of Baltic JV and the authority to enter agreements, sign checks, and take a variety of other actions under the Baltic Agreement.

38. The Baltic Agreement provides for a 4% development fee (assessed on hard and soft costs) throughout the life of the Project, in addition to a flat fee of \$100,000 per month, paid to the developer on the Project during a preliminary period.

39. Stern's developer branch, JDS Developer, is identified under the Baltic Agreement as the Project "Developer."

40. The Baltic Agreement provides for the appointment of a construction manager for the Project to be compensated at a 3% construction management fee (assessed against hard costs only).

41. Under Baltic Agreement § 8.9, appointment of the construction manager is subject to lender approval, and Stern, acting through JDS Fourth, had the authority to terminate the construction manager at any time for any reason.

42. The parties agreed that Tonacchio Holding would contribute the Property, which had an agreed value of \$16,000,000 less the costs to Baltic JV for the acquisition loan.

43. Under Baltic Agreement § 4.2(b), JDS Fourth was to contribute \$1,000,000, plus commit to finance "Additional Capital Contributions" to be allocated to the first \$5,000,000 of "soft costs" associated with development and construction of the Property.

44. Baltic Agreement § 5.1 provided that Tonacchio Holding was to receive \$1,000,000 in cash from Baltic JV at the closing of the acquisition of the Property by Baltic JV.

45. The parties also agreed that Tonacchio Holding would receive an additional \$1,000,000 less certain bankruptcy-related transactions costs (defined in the Baltic Agreement as the “Overage Amount”) not less than thirty (30) days following the acquisition of the Property.

C. Capital Contributions to Baltic JV

46. Under Baltic Agreement p. 2 [definition of “Agreed Upon Value”], §§ 4.1 and 4.4(b), Tonacchio Holding’s sole capital contribution to Baltic JV was the Property, which had an “Agreed Upon Value” of \$16,000,000 less the amount of the contractually defined “Acquisition Loan.”

47. JDS Fourth funded an initial capital contribution of \$1 million in cash.

48. Upon information and belief, after the initial \$1,000,000 capital contribution, JDS Fourth directly funded at least \$8,059,702 in “Additional Capital Contributions,” as defined in Baltic Agreement § 4.2, between April 2014 and March 2018.

D. Distributions to Baltic JV Members

49. Under Baltic Agreement § 5.2, all “*Distributable Funds, if any, shall be distributed to the Members quarterly or more frequently from time to time as determined by Manager.*” (emphasis supplied)

50. “Distributable Funds” consists of gross cash receipt after operating expenses, debt service and other expenses, and, after holding back for any future working capital needs, expenses or obligations as determined by the Manager. (Baltic Agreement p. 5 [definition of “Distributable Funds”])

51. Pursuant to Baltic Agreement § 5.2, Distributable Funds are to be distributed according to a waterfall designed to return to Tonacchio Holding its initial contribution, before

paying JDS Fourth for the \$5 million of Additional Capital Contribution for soft costs and then splitting the remaining money by the then-existing membership percentage pro rata.

52. Baltic JV made an initial \$1 million distribution to Tonacchio Holding contemporaneous with the acquisition of the Property, while at the same time paying off all existing mortgage debt Tonacchio Holding owed to existing, pre-acquisition, mortgagees of the Property.

53. Upon information and belief, on or around May 24, 2015, the “Distribution Date,” Baltic JV distributed the agreed “Distribution Amount” of \$750,000 to Tonacchio Holding pursuant to, and as defined in, Baltic Agreement § 5.1.

54. Upon information and belief, since May 24, 2015, Baltic JV has distributed no less than \$3,300,000 in additional Distributable Funds to Tonacchio Holding.

55. Baltic JV has made no distributions of Distributable Funds to JDS Fourth.

III. STERN SYNDICATES DEAL TO LARGO THROUGH JDS FOURTH INVESTMENT

A. Structure and Purposes of JDS Fourth

56. Starting in or around November 2013, Stern approached Nissim Ben-Nun and Nicholas Werner to solicit them to invest, through their businesses operating as “Largo,” in the finance, development, and construction of luxury condominiums on the Property.

57. After conducting certain diligence, including confirmation that the Project was “bought out,” adding certainty to the anticipated construction costs and confirming through Stern certain representations and information such as financial projects and models of construction costs, Largo agreed to invest in the Project.

58. To structure Largo’s investment, Stern Holdings and Largo, the sole members of JDS Fourth, entered into the LLCA on October 26, 2015.

59. Section 2.1 of the LLCA provides that “*the rights and liabilities of the Members shall be determined pursuant to the [Delaware Limited Liability] Act and [the LLCA].*”

60. Since the LLCA was executed, Stern Holdings was and remains a 51% limited liability company member of JDS Fourth, and Largo was and remains a 49% limited liability company member.

61. The express purpose of JDS Fourth under the LLCA, among other things, is defined under Section 2.6:

A. “*to directly or indirectly own, finance, develop, entitle, construct, service, repair, maintain, improve, lease, operate and/or dispose of the Property*”; and

B. “*to act, directly or indirectly, as the managing member of Fourth Avenue JV and, indirectly, Property Owner [a “Subsidiary” (defined below) of JDS Fourth],*” as defined in Section 1.57.

62. The LLCA not only governed operation of JDS Fourth but also set forth specific obligations and rights with respect to Subsidiaries, and the interests in the Subsidiaries were held and managed solely for the ultimate benefit of JDS Fourth’s members, including Largo.

63. The term “Subsidiary” is defined under LLCA § 1.60 to include “*any direct or indirect wholly-owned subsidiary(ies) [that] direct or indirectly hold the Property,*” and thus includes: Baltic JV, Mezz, and Property Owner.

B. Stern’s Obligations and Powers Under the LLCA

64. Stern, acting through Stern Holdings, at all relevant times served as the “Managing Member,” defined in the LLCA, of JDS Fourth.

65. Stern Holdings’ LLCA obligations include, without limitation:

A. serving as the “Tax Matters Member” and providing tax returns and supporting documentation to each member, including Largo, under LLCA §§ 1.61 and 4.3(a);

B. determining and allocating “Profit . . . *on a daily, monthly or other basis, as determined by the Members, acting jointly . . .*” under LLCA § 5.5;

C. distributing Net Proceeds, defined under LLCA §§ 1.5, 1.22, and 1.42 to include the net proceeds of the sale of any real or personal property of JDS Fourth or its Subsidiaries, within five (5) business days from receipt of the Net Proceeds under LLCA § 6.1(a);

D. determining and distributing “Net Cash Flow,” defined under LLCA § 1.41 as “*all funds, other than Net Proceeds [Section 1.42], that [JDS Fourth] receives pursuant to [the LLCA],*” on “*not less frequently than monthly*” basis under LLCA §§ 6.1(a) and (b);

E. refraining from defrauding JDS Fourth and/or Largo and/or engaging in other intentional acts under LLCA § 7.3; and

F. indemnifying Largo for “*gross negligence, criminal acts, willful misconduct, fraud, . . . or any breach (including, failure an omission) of any provisions or representations of [the LLCA]*” under LLCA § 7.9(b).

66. Stern Holdings is not authorized under the LLCA to appoint or distribute to itself as Managing Member (or member) any benefits, payment, allocation of funds, direct or indirect advantages, allowances, or subsidies that are not specifically authorized in the LLCA.

67. The LLCA mandates the opening and maintaining of business accounts to operate JDS Fourth and its Subsidiaries, including Baltic JV, Mezz, and Property Owner, and limits withdrawals from those accounts to payments in accordance with the “Business Plan,” as defined in the LLCA.

68. The LLCA does not authorize Stern Holdings or Stern to distribute or allocate to any person, entity, or other project any funds, monies, or hard or soft costs designated for the Project under the Business Plan or otherwise.

C. Capital Contributions to JDS Fourth

69. JDS Fourth is required to maintain a “Capital Account” for all members pursuant to LLCA § 3.4.

70. The Managing Member, Stern Holdings, is required under LLCA §§ 3.4 and 5.1 to credit to Largo’s Capital Account: (i) the amount of cash and fair market value of any property contributed to Baltic JV by such member; and (ii) Largo’s allocable share of Profit, defined under LLCA § 1.54, and other categories of cash or allocations identified under LLCA § 3.4(a) subject to adjustment under LLCA § 3.4(b).

71. Upon information and belief, Stern Holdings, as Managing Member, has failed to timely comply with all of its Capital Account crediting and allocation obligations and notice requirements as required by the LLCA.

72. In or about October and November 2015, Largo made an initial capital contribution of approximately \$2,480,000, paid to JDS Fourth.

73. Largo also paid an admission fee of \$245,000 to Stern Holdings, as set forth in LLCA § 3.1(b).

74. Largo was allocated a 49% membership interest in JDS Fourth.

75. From 2016 through 2018, or thereabouts, Largo contributed an “Additional Capital Contribution” (defined under LLCA § 3.2(a)(i)) of well over \$2,500,000 in response to eight separate capital calls by Stern.

76. Thus, Largo has paid to date over \$5,000,000 in capital contributions, fees, and credits in connection with the Project.

77. Stern Holdings has refused to comply with its LLCA § 5.1 duties to allocate to Largo's Capital Account the requisite income, gains, losses, deductions, and credits of Baltic JV.

IV. STERN'S OPERATION AND MISMANAGEMENT OF THE PROJECT

A. Property Owner

78. Upon information and belief, Property Owner was formed on or about March 27, 2014 as a special purpose vehicle to hold the Property on behalf of Baltic JV and on behalf of its beneficial owners, including Largo.

79. Property Owner is a wholly owned subsidiary of Baltic JV.

80. Upon information and belief, the operation of Property Owner is currently governed by the April 24, 2014 Limited Liability Company Agreement ("Property Owner Agreement") annexed as **Exhibit C**.

81. Baltic JV is the sole "Member" of Property Owner and conducts its "business and affairs."

82. Baltic JV is the 100% interest holder under, and as defined in, the Property Owner Agreement §§ 7 and 10.

83. Therefore, JDS Fourth, as the Manager of Baltic JV, controls Property Owner.

84. Stern directly or through control of one or more other entities has effectively controlled Property Owner at all relevant times.

85. Property Owner is a limited purpose entity as set forth in Property Owner Agreement, Schedule 1.

86. The Property Owner Agreement Schedule 1(c) prohibits any agreements with companies owned or directly or indirectly controlled by Stern, including JDS Construction “*except upon terms and conditions that are intrinsically fair*” and otherwise in line with market terms.

87. Upon information and belief, Stern caused Property Owner to enter into agreements with JDS Developer to develop the Property.

88. Stern caused JDS Construction to manage construction on the Property.

89. JDS Construction managed construction on the Property.

90. Stern directly or indirectly controls JDS Construction.

91. Under Property Owner Agreement § 9, “*the Member shall cause [Property Owner] to distribute any cash held by it which is neither reasonably necessary for the operation of [Property Owner] nor in violation of the Act.*”

92. Property Owner, acting through its Managing Member, must “*maintain books and records and bank accounts separate*” from Baltic JV under Property Owner Agreement Schedule 1(h).

93. Property Owner served as the borrower on several of the third-party loans, as detailed in this pleading, in connection with the construction and development of the Property.

**B. Stern’s Unchecked Position as Construction Manager
Exposes Largo and Derivative Plaintiffs to Fraud and Abuse**

94. The Baltic Agreement renders the appointment of the construction manager subject to lender approval.

95. Stern maintains that on May 6, 2016, Baltic JV and the lenders approved the appointment of Stern’s construction arm to serve as the construction manager on the Project.

96. Stern, acting as Manager (through Baltic JV) of Property Owner, executed an April 28, 2016 Construction Management Agreement with Stern's own construction arm, JDS Construction (the "CMA"), annexed as **Exhibit D**.

97. Stern signed for both entities, and no other party executed the agreement.

98. Under CMA § 18.2, JDS Construction is required to exercise such controls as may be necessary for proper financial management, including "*processing of all requisitions, payroll records and invoice processing for all labor, materials and equipment utilized in the performance of the Work.*"

99. Pursuant to CMA § 2.1, JDS Construction is required to "*cause to be performed and provided through Trade Contractors, or its own forces with respect to general conditions work (as hereinafter provided), all labor, materials, equipment, tools and services . . . required for the complete construction of the Project . . . (the 'Work').*"

100. Under CMA § 2.2, JDS Construction must "*complete the Work in an expeditious and economical manner consistent with the interests and objectives of Owner.*"

101. JDS Construction assumed a heightened fiduciary duty to Property Owner under CMA § 3.1:

Relationship of Trust and Confidence. Construction Manager accepts the relationship of trust and confidence between it and Owner by this Agreement. The Construction Manager shall furnish efficient business administration, coordination, and management to cause the Work to be performed in the most expeditious and economical manner consistent with the interests of safety and the Owner. The Construction Manager shall cooperate with the Architect and Owner in furthering the interests of the Owner and the Project. (emphasis supplied)

102. JDS Construction served as an "at-risk construction manager" under the CMA, assuming the cost risk, not to just simply pass along the cost risk to Property Owner.

103. Largo and JDS Fourth are express beneficiaries under the CMA.

104. Largo and JDS Fourth are named insureds under CMA, Schedule 1 and directly protected under various provisions, including CMA § 12.2.4, and are expressly indemnified under CMA § 19.1.

105. JDS Construction was required under CMA § 3.4(a) to “*level each bid and conduct negotiations [with trade contractors] to obtain the most favorable price and terms consistent with the Owner’s goal of economy.*”

106. The CMA requires JDS Construction to propose a Guaranteed Maximum Price (“GMP”), which was to include under Section 7.1.1 “*[t]he sum of the Cost of the Work, inclusive of all Contract values, all add-alternate and Allowance items, plus the Contingency and Construction Manager’s Fees*” and provide Property Owner at least 90 days to accept the proposal, pursuant to CMA § 6.1.

107. Pursuant to CMA § 7.1.1, under the GMP, the costs were to be “*guaranteed by Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents.*”

108. As part of the GMP proposal, JDS Construction was required under CMA § 8.1 to set forth a statement of the General Conditions costs in the GMP.

109. The CMA only contemplates payment of General Conditions within the framework of an accepted GMP under CMA § 8.1.

110. If the GMP was not accepted by Property Owner, then JDS Construction could only be reimbursed for “Cost of the Work,” a term defined as the “*agreed sum of all Contract values, add-alternate and Allowance items identified as such,*” as set forth in CMA §§ 6.1 and 6.7.

111. The term “Contracts” is defined under CMA § 3.2 as “*materials and equipment supplied under contracts*” with trade contractors and expressly excludes “*general conditions,*

protections, cleaning, rubbish removal and other portions of the Work customarily performed by Construction Manager's own forces"

- 112. JDS Construction failed to submit a proposed GMP to Property Owner.
- 113. Property Owner did not approve a GMP.
- 114. JDS Construction failed to adhere to the guaranteed pricing under GMP as required by the CMA.
- 115. Without the parameters of a GMP, Stern caused JDS construction to charge exorbitant expenses to the Project that were generally outside fair market value for such expenses, a paradigm which was enabled by Stern's control of Property Owner, the construction manager, the developer, and certain of the labor forces on the Project.
- 116. Upon information and belief Stern also charged expenses for work not actually performed and/or expenses not actually incurred in connection with the Project, the details of which are in the exclusive possession of Stern.
- 117. Stern caused JDS Construction to charge and incur expenses that JDS Construction or another entity controlled by Stern used for other property development projects involving Stern or companies controlled by Stern.

C. Stern's Use of Construction and Development of the Property to Bilk Money from the Project for His Personal Use and Benefit

- 118. As gleaned from Largo's years of experience in construction and development in the New York City area, coupled with Stern's statement of overall "General Conditions" costs, JDS Construction charged Property Owner extraordinary General Conditions costs, which are well above market.
- 119. Although the phrase General Conditions is a term of art in the construction industry that generally includes: site management, project management, and other expenses not involving

the physical construction of the project (such as clean up, safety costs, trailers and the like), the precise scope of what is included in that category varies from project to project.

120. The CMA does not define a scope of General Conditions but does outline that General Conditions are solely compensable in the context of a proposed GMP, accepted by Property Owner.

121. JDS Construction was not authorized by Largo, Property Owner, or JDS Fourth's Subsidiaries to charge for General Conditions outside of an accepted GMP and/or for expenses that were not General Conditions expenses, as that phrase is commonly used in the industry.

122. Nonetheless, JDS Construction charged Property Owner exceedingly high charges that Stern alleges were General Conditions without providing any breakdown of those expenses or for the expenses, which far exceed typical General Condition expenses associated with a project of this nature.

123. Not only were the General Condition costs unauthorized, but they continued to increase disproportionately to the costs of the job, without any explanation.

124. For example, by May 2018, the General Conditions had ballooned over 340% to nearly \$5,000,000 from the initial budget without any corresponding material increase in the complexity of performing installation or other work on the Project that would justify these increases in General Conditions costs.

125. Budgets provided by Stern to lenders demonstrate that certain expenses traditionally considered as General Conditions, like "temporary protection" (at least \$670,439 as of May 31, 2018) and "cleaning" (at least \$275,714 as of May 31, 2018), both payments to JDS, were budgeted as line items for "hard" and "soft" costs separate and apart from the already-inflated General Conditions charged.

126. Stern abused his position of trust and the opportunity presented by executing these items of work directly with JDS Construction (or affiliated companies), thereby artificially and fraudulently inflating the charges, which were above fair market value and were not legitimately incurred for the Project.

127. At the same time, other categories of hard costs include budgeted sums as of May 2018 that are grossly in excess of the range of typical market costs for such items, including, by way of example only, exterior facade and roofing, stone and tile expenses, and grossly-inflated costs for luxury kitchens inconsistent with the Brooklyn market, among other hard trade costs. Stern either inflated these costs; incurred the costs for materials designated for other projects, or otherwise increased the costs to personally benefit at the expense of the Project and JDS Fourth.

128. Similarly, certain categories of “soft costs” were budgeted as of May 2018 to include clearly unnecessary and inflated expenses and/or expenses that benefited solely or primarily Stern and his entities. For example, over \$2,700,000 were spent on “sales” or “marketing” related expenses, which are on top of the broker fees paid to brokers to market and sell the individual condominium units.

129. Upon information and belief, these sales expenses were paid to Stern or affiliated parent companies of Stern.

130. Upon information and belief, Stern also charged the Project for expenses which were not project-specific (like insurance policies that covered all of Stern’s affiliated businesses and projects) or properly allocable to the Project.

131. The foregoing charges and expenses are non-exhaustive examples of clear abuse in the construction and development of the Property to benefit Stern, which will be supplemented

through discovery and in the event Stern complies with his books and records disclosure obligations.

132. In an effort to hide Stern's financial abuse, Stern has refused to provide Largo either a substantiation or an accounting of the CMA expenses charged to Property Owner, the payments to JDS Construction by Property Owner, or any substantiation of General Conditions or other trade costs.

D. Third-Party Debt History for Project

i. Acquisition Loan and Buyout

133. Upon information and belief, Baltic JV initially funded the purchase of the Property through April 24-25, 2014 acquisition loans from G4 18133, LLC ("G4") totaling an initial amount of \$9,000,000 (\$6,780,00, \$1,305,062, \$914,938 respectively) by its subsidiary, Property Owner (collectively, the "Acquisition Loan").

134. Upon information and belief, the proceeds of the Acquisition Loan were used to satisfy the existing mortgages on the Property while it was in bankruptcy.

135. On or around August 10, 2015, G4 loaned Property Owner an additional \$2,100,000 (\$1,300,000 and \$800,000 respectively) and extended the initial \$9,000,000, thereby raising the total Acquisition Loan to \$11,100,000.

ii. Construction Loan

136. On May 6, 2016, Property Owner procured a separate construction loan from G4 consisting of:

- (i) \$26,423,162 (the "Building Loan"); and
- (ii) \$3,476,839 (the "Project Loan," and collectively with the Building Loan, the "Construction Loan").

137. On or around May 6, 2016, G4 agreed to an extension of the initial \$11,100,000 Acquisition Loan, bringing the total Acquisition Loan and Construction Loan financing on the project to \$41,000,000.

138. G4 conditioned the Construction Loan on Property Owner maintaining a certain level of equity and cash reserves in the Project.

139. To fund the cash injection mandated as part of the Construction Loan, Stern (acting through subsidiaries) took out a mezzanine loan at the same time, on or around May 6, 2016.

140. Mezzanine lender Savanna Fund, through its special purpose entity, 613 Baltic Mezz Lender III, LLC, provided \$12,300,000 in mezzanine funding that was secured by membership interests in Property Owner (the “Mezz Loan”), bringing the total debt on the property combined with the Acquisition Loan and Construction Loan to \$53,300,000 as of May 6, 2016.

141. To structure the Mezz Loan, Stern transferred Baltic JV’s membership interest in Property Owner to a special purpose entity, Mezz, which served as the borrower on the Mezz Loan.

142. Upon information and belief, the proceeds from the Acquisition Loan, Construction Loan, and/or Mezz Loan were used to finance the construction and development of the Project.

iii. Arden Inventory (i.e., Warehouse) Loan

143. Once the Project matured, the building substantially completed, and certain units were already sold off, Property Owner refinanced to lower interest rates.

144. Specifically, Property Owner procured a loan from Arden Credit Fund, L.P. (“Arden”) in the sum of a \$34,100,000 loan secured by the remaining condominium inventory (the “Arden Loan”).

145. The Arden Loan proceeds were used to pay off the remaining balance on the Acquisition Loan, Construction Loan, and Mezz Loan.

146. The Arden Loan proceeds were further subject to an interest reserve of \$1,278,750 and a \$235,809.01 operating cost holdback.

147. Upon information and belief, the Arden Loan has been fully paid down through the sales of the condominium units on the Property.

148. Upon information and belief, there is currently no outstanding debt secured by the Property.

149. Upon information and belief, Property Owner, Baltic JV, Mezz, and JDS Fourth do not have any outstanding loans to any third parties.

150. As with the underlying expenses on the Project, the fees and expenses attributable to financing costs for the Acquisition Loan, Construction Loan, and Arden Loan are exorbitant.

151. Expenses and fees incurred, according to Stern, include almost \$600,000 in legal and accounting fees associated solely with the May 2016 Construction Loan and related Mezz Loan financing.

152. By comparison, the total legal costs for the \$34 million Arden Loan was \$160,000.

153. While differences in collateral and structure could account for differences in legal costs, Stern cannot account for \$600,000 in legitimate legal fees solely in connection with the Project.

154. Similarly, Stern incurred expenses associated with the Mezz Loan, including a pre-payment penalty over \$1 million (separately from an origination and exit fees totaling almost \$250,000, among other fees and servicing costs), all of which were caused because of the lack of capital remaining after Stern had plundered the Project.

155. Upon information and belief, these exceedingly high fees and expenses are above market and demonstrate mismanagement and/or intentional misconduct by Stern in carrying out

his duty as Manager and Managing Member of JDS Fourth and through JDS Fourth, its Subsidiaries, including Property Owner, Baltic JV, and Mezz.

E. Sales of Condominiums and Unexplained Holdback of Funds

156. Upon information and belief, as of the date of this pleading, sales of the units on the Property have generated over \$72,200,000 net of broker fees, transfer taxes, legal, recording, concessions, and lender exit fees. At least one remaining retail unit and one residential unit remain to be sold, which sales are expected to net at least \$3,500,000 in addition to these sums.

157. Accounting for the equity contributed to the deal in the form of capital contributions of cash and property, the proceeds from the sale of the units, combined with existing equity, exceed even Stern's fraudulently inflated claimed construction and development expenses by millions of dollars in unaccounted-for sums.

158. Income from the Property, after construction, development, and other expenses, far exceed any actual or anticipated operating costs for Property Owner, Mezz, and/or Baltic JV.

159. Income from the Property, after construction, development, and other expenses, far exceed the remaining initial tranche of Distributable Funds due to Tonacchio Holding under the waterfall.

160. Upon information and belief, Stern (i) is holding these funds in one or more accounts of Property Owner and/or Baltic JV without any legitimate or anticipated operating expense; or (ii) has diverted all or part of the funds to himself, his companies, or otherwise for his own benefit without LLCA, Largo, contractual, or legal authority.

V. STERN ADMITS PAYMENT OWED TO LARGO AND EMPTY PROMISES TO REMIT FUNDS

161. Faced without any explanation for the failure to distribute funds, Stern has admitted the outstanding funds but engaged in repeated delay tactics and stonewalling.

162. In early 2020, Stern repeatedly acknowledged verbally to Largo's principals that the money was currently due and outstanding to Largo as a member of JDS Fourth in connection with the Project. Stern offered Largo a complete return of Largo's investment to satisfy, in part, the amounts due Largo under the LLCA.

163. In or around February 2020, Stern promised to make an immediate and initial wire of \$500,000, with the balance of the initial investment paid within sixty (60) days.

164. Largo provided wiring instruction and repeatedly inquired, after Stern failed to cause any payment to Largo, as to the whereabouts of the funds.

165. Stern made repeated promises that the money was forthcoming before simply refusing to respond to Largo's inquiries and going "dark."

166. Stern's delay tactics are part of an apparent pattern. According to Tonacchio, Stern allegedly promised to share construction management fees, offering first on June 26, 2018 to split the construction management fee with Tonacchio and on August 22, 2018, to provide an initial payment of approximately \$550,000.

167. According to Tonacchio, when wiring instructions were provided, Stern simply delayed and went silent, failing to make good on the wire payment.

**VI. STERN HIDES FINANCIAL RECORDS IN VIOLATION OF
DISCLOSURE OBLIGATIONS TO COVER UP SELF-DEALING**

168. While Stern has produced sporadic, unsupported, and unverified budgets when mandated by lenders, Stern has repeatedly refused to provide Largo any meaningful (let alone accurate) financial records of JDS Fourth, Baltic JV, Property Owner and/or construction or other costs related to the Property.

169. Under the LLCA and the Baltic Agreement, Stern, acting through Stern Holdings, is required to maintain detailed books and records.

170. Under LLCA § 4.1, Stern, acting through Stern Holdings, is required to maintain “complete, up-to-date and accurate books of account and records for [JDS Fourth] and each Subsidiary,” (which includes Baltic JV, Mezz, and Property Owner) which includes, without limitation “financial statements of the [JDS Fourth] for the six (6) most recent years” kept on a cash or accrual basis.

171. The LLCA § 4.1 endows Largo with broad access to the “books of account and records of [JDS Fourth] and each Subsidiary,” including the books and records of Baltic JV, Mezz, and Property Owner.

172. LLCA § 4.2(c) incorporates by reference the obligation to prepare “financial reports, required pursuant to the [Baltic] Agreement and in compliance with the time frames set forth therein.”

173. Under Baltic Agreement § 7.1, JDS Fourth, acting through Stern, is required to “keep, or cause to be kept, complete, up-to-date and accurate books of account and records of the [Baltic JV] and each Subsidiary, including, without limitation, Property Owner” and “use commercially reasonable efforts to . . . cause [the books and records] to be delivered to [a Member upon written request].”

174. Under Baltic Agreement § 7.2, the Manager is required to provide regular reporting to Baltic JV’s members (an obligation applicable to Largo under the LLCA), including “the financial statements of [Baltic JV] for such Fiscal Year accurately reflecting the financial condition and results of operations of [Baltic JV], including a balance sheet, a statement of changes in Members’ capital and a profit and loss statement.”

175. In addition, under CMA § 3.4(b), JDS Construction was required to “prepare and maintain, on a current basis, an on-site record-keeping system, including, but not limited to: (i)

records of all changes in the Work necessitated by Change Orders; (ii) Construction Schedules; (iii) submittal log; and (iv) daily/weekly reports, which [] record manpower breakdowns on a Trade Contractor-by-Trade Contractor basis with a description of the Work being performed each day by each Trade Contractor, accidents, weather conditions, and other Work-related information.”

176. Pursuant to CMA § 18.1, JDS Construction is also required to “*keep full and detailed*” books and records of its work on the Project, including a general ledger when requested by Property Owner, and daily logs, requisitions, invoices and the like related to the construction on the Project.

177. Largo has repeatedly requested financial records and information, but Stern has refused to cause such records and information to be made available to Largo.

178. On May 18, 2020, Largo served a formal request for books and records, which is attached as **Exhibit E**.

179. Stern refuses to provide financial statements, financial information, and other books and records such as construction records and bank records, which would allow Largo to understand the current balance sheet and the flow of funds in and out of JDS Fourth and its Subsidiaries, including Baltic JV, Mezz, and Property Owner, and with respect to the Project and the Property.

180. Without substantiating books and records, Stern has prevented Largo’s ability to confirm whether capital contributions were made on behalf of JDS Fourth to Baltic JV and the extent to which expenses were charged or paid in connection with the construction and/or management of the Project.

181. Without the requisite books and records Largo has legitimately requested, Largo cannot discern the flow of funds in and out of the various entities associated with the Project.

182. Given Stern's clear contractual (and statutory) obligations to maintain, preserve and produce such records to Largo, upon information and belief, Stern is refusing to produce the same solely as a means to shelter discovery of his own wrongdoing.

CLAIM I

BREACH OF LLCA

(by Largo against Stern Holdings)

183. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

184. The LLCA is a binding and enforceable agreement between Largo and Stern Holdings.

185. Largo fully performed all of its obligations under the LLCA, including, without limitation, the obligation to fund capital contributions.

186. Stern Holdings, acting through Stern, has materially breached the LLCA by, among other breaches:

A. failing and refusing to determine JDS Fourth's actual and true and correct "Profit," as defined in the LLCA, and to allocate Profit to Largo as required under the LLCA, in violation of LLCA §§ 5.1 and 5.5, among other provisions;

B. refusing and declining to properly determine Net Cash Flow and distribute the properly determined sum of Net Cash Flow to Largo on a "not less frequently than monthly" and/or "not less than five (5) Business Days after receipt of Net Proceeds" in violation of LLCA § 6.1(a);

C. failing to inform Largo that it withheld any Net Cash Flow or Net Proceeds in violation of LLCA § 6.5;

D. returning Capital Contributions in a manner that prioritized Stern Holdings over Largo in violation of LLCA § 7.5(c);

E. abusing its position as Managing Member of JDS Fourth to confer benefits to Stern Holdings in connection with the construction, development, financing, marketing, and sale of the Property in violation of LLCA § 7.8;

F. causing JDS Fourth to make an indirect or direct, but hidden from Largo, loan to JDS Developer and/or to Stern in violation of LLCA § 3.7, among other provisions;

G. failing to accurately and completely file tax returns on behalf of JDS Fourth reflecting the cash deposits and allocations that were made (or properly should have been made) on behalf of Largo in violation of LLCA §§ 1.61 and 4.3(a), among other provisions;

H. causing JDS Fourth to engage in activities outside of the authorized purposes in the LLCA in violation of LLCA § 2.6;

I. engaging in activities outside of the enumerated powers of JDS Fourth and in a manner to benefit Stern Holdings, Stern, and Stern's affiliated companies and not in furtherance of the purposes of JDS Fourth in violation of LLCA § 2.7;

J. improperly performing the duties of Managing Member and carrying out the acts of JDS Fourth in a manner that violated the representations under LLCA § 2.9;

K. failing to open and maintain accurate bank accounts for JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner) and deposit funds received for such parties and otherwise making withdrawals from bank accounts without authorization in violation of LLCA § 4.6(a);

L. providing compensation to Stern Holdings in violation of LLCA § 7.8;

M. failing to perform the duties of Managing Member in accordance with the duty of care to Largo set forth in LLCA § 7.3;

N. failing to create, maintain, and/or deliver to Largo a business plan and/or budget, including, without limitation, as required by the Baltic Agreement, for JDS Fourth and/or its Subsidiaries (including Baltic JV, Mezz, and Property Owner) in violation of LLCA § 8.1; and

O. engaging in further activities and omissions which, upon information and belief, constitute additional breaches of the LLCA to be determined through discovery.

187. As a direct and proximate result of each of Stern Holdings' breaches of the LLCA, Largo has been harmed in an amount to be determined at trial but no less than \$7,000,000 in direct, consequential, and special damages. Largo is separately entitled to attorneys' fees, costs and expenses pursuant to LLCA § 11.18.

CLAIM II

DECLARATORY JUDGMENT: DISTRIBUTIONS UNDER MULTIPLE AGREEMENTS

(by Largo, directly and derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, against Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner)

188. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

189. Stern is the sole owner of and/or controls Stern Holdings.

190. Largo is a 49% member of JDS Fourth.

191. JDS Fourth is controlled by Stern through Stern Holdings.

192. Baltic JV is controlled by Stern through JDS Fourth.

193. Baltic JV is or was the sole owner of Mezz, which during part of the relevant time was the sole owner of Property Owner.

194. Baltic JV is and was the sole owner of Property Owner during such time as Mezz was not the sole owner of Property Owner.

195. Property Owner is also controlled by Stern, through JDS Fourth, as Manager of Baltic JV.

196. Thus, Largo asserts claims hereunder, directly as well as derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, as noted in the header of each claim, and the allegations of derivative standing are incorporated into each of the claims as if fully set forth therein.

197. Stern, as the individual controlling JDS Fourth, Baltic JV, Mezz, and Property Owner, is arbitrarily withholding funds in one or more of these entities which are to be distributed to the members in accordance with their respective agreements.

198. Under the Property Owner Agreement §§ 7 and 9, Stern (acting through Baltic JV) is required to distribute all cash to Baltic JV which is not “reasonably necessary for the operation of [Property Owner].”

199. Upon information and belief, Stern is refusing to distribute cash from Property Owner even though such cash is not reasonably necessary for the operation of Property Owner.

200. Under Baltic Agreement § 5.2 all “*Distributable Funds, if any, shall be distributed to the Members quarterly or more frequently from time to time as determined by Manager.*” (emphasis supplied)

201. Under the Baltic Agreement, “Distributable Funds” consists of gross cash receipts after operating expenses, debt service and other expenses, and after holding back for any future working capital needs, expenses or obligations as “reasonably determined” by the Manager.

202. Stern is withholding Distributable Funds under the Baltic Agreement unreasonably and without any corresponding reasonably anticipated operating expenses or disproportionate to such any anticipated operating expenses.

203. Under LLCA § 6.1, “[a]ll Net Cash Flow and Net Proceeds derived from transaction . . . shall be applied and distributed” within 5 business days of receipt, including the net proceeds of the sale of any real or personal property of JDS Fourth or its Subsidiaries (including Baltic JV, Mezz, and Property Owner), under LLCA § 6.1(a) and “*all funds . . . that [JDS Fourth] receives pursuant to [the LLCA] . . .*”

204. Stern (through his control of Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner) has failed to distribute Net Cash Flow and Net Proceeds, including such funds generated by sale of “Assets” (including condominium and retail units) on the Property.

205. An actual and justiciable controversy exists by and between Largo directly and derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, against Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner as to the mandatory distribution of funds from Property Owner, Mezz, Baltic JV, and JDS Fourth to its members in accordance with the Property Owner Agreement, Baltic Agreement, and LLCA.

206. Demand to pursue this claim would be futile as Stern will not pursue such claim against himself and the entities controlled by Stern arising out of his own conduct.

207. Thus, demand is excused by reason of Stern’s, Stern Holdings’, JDS Fourth’s, Baltic JV’s, Mezz’s, and Property Owner’s conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

208. By reason of the foregoing, Largo, directly and derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, is entitled to a court declaration ordering that Stern,

acting through Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner, must immediately:

A. distribute all Net Cash Flow and Net Proceeds due under the LLCA, including, without limitation, such Net Cash Flow and Net Proceeds generated in connection with the sale of assets on the Property;

B. distribute all Distributable Funds under the Baltic Agreement to the Baltic JV members, including funds which are not reasonably needed for operating expenses as determined by the Court; and

C. direct Property Owner to distribute all distributable cash to Baltic JV, subject to only reasonable expenses of Property Owner as determined by the Court.

CLAIM III

DECLARATORY JUDGMENT: INDEMNIFICATION UNDER LLCA § 7.9

**(by Largo, directly and derivatively on
behalf of JDS Fourth, against Stern and Stern Holdings)**

209. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

210. JDS Fourth is controlled by Stern through Stern Holdings.

211. Largo is a 49% member of JDS Fourth.

212. Under the LLCA, Stern (a signatory in a personal capacity to LLCA § 7.9) and Stern Holdings (a signatory to the LLCA) have an obligation to indemnify JDS Fourth, Largo, and “Affiliated Persons” under LLCA § 7.9(b).

213. Certain claims have been actually asserted against JDS Fourth and/or its Subsidiaries directly and derivatively.

214. Stern is alleged to (and has) directly, and through entities he controls, engaged in acts of gross negligence, criminal acts, willful misconduct, fraud and/or a breach of the LLCA, Baltic Agreement, Property Owner Agreement and/or other agreements of JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner) and/or affiliates.

215. As a result of the claims in this action, among other actual or potential claims, a justiciable controversy exists as to Stern (a signatory in a personal capacity to LLCA § 7.9) and Stern Holdings' (a signatory to the LLCA) obligation to indemnify JDS Fourth, Largo, and "Affiliated Persons" under LLCA § 7.9(b).

216. Demand would be futile as Stern will not file claims against himself or entities he controls, and thus demand is excused.

217. By reason of the foregoing, Largo, directly and derivatively on behalf of JDS Fourth, is entitled to a court declaration ordering that Largo and JDS Fourth shall be indemnified by Stern and Stern Holdings pursuant to LLCA § 7.9(b) to the extent of any "loss, damage, or claims" in connection with the Property or in carrying out any act on behalf of JDS Fourth and/or its Subsidiaries including, without limitation, for claims asserted by any party in this action, or any other asserted or unasserted claims.

CLAIM IV

BREACH OF FIDUCIARY DUTY

**(by Largo, directly and derivatively on behalf of
JDS Fourth, against Stern and Stern Holdings)**

218. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

219. Stern Holdings owes Largo a fiduciary duty of care and loyalty under Delaware Limited Liability Company Act § 18-1104 as Managing Member of JDS Fourth to refrain from

acts or omissions which involve fraud, intentional misconduct, and/or a knowing violation of the law.

220. Stern Holdings is obligated to refrain from transactions which benefit Stern and Stern Holdings to the exclusion of Largo, unless otherwise authorized in writing.

221. Stern Holdings, acting by and through Stern, breached its fiduciary duties to Largo by engaging in a series of transactions not authorized by the LLCA or the governing documents of Baltic JV and Property Owner in carrying out the role as JDS Fourth Managing Member, which included roles in managing the Subsidiaries (including Baltic JV, Mezz, and Property Owner).

222. Stern, acting for JDS Fourth, caused Baltic JV, Mezz, and/or Property Owner to divert funds to Stern and Stern-affiliated entities, including, without limitation, JDS Construction and/or other entities affiliated with Stern.

223. Stern managed and operated the Project to divert funds to himself and entities he owns and controls through inflated and improper construction charges, dealing with various trades, sales, and other vendors who charged Property Owner inflated prices to enrich Stern and his affiliated entities at the costs of Property Owner and its beneficial owners.

224. Stern also retained legal counsel loyal to Stern, to represent both Stern and his wholly owned entities, as well as JDS Fourth, despite clearly divergent (indeed directly adverse) interests between Stern (and his entities) and JDS Fourth, so as to benefit Stern at the expense of JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner) and minority member, Largo.

225. Stern diverted and/or arbitrarily withheld cash from JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner) for his own use and the use of his affiliated entities.

226. Stern was aware of the fiduciary duties owed by Stern Holdings to Largo as a signatory to the LLCA.

227. Stern knowingly caused, allowed, and/or induced Stern Holdings (and the entities it controlled) to carry out the interested transactions to benefit himself and generally engage in fraud and other intentional misconduct as detailed in this pleading at the cost of Largo.

228. Stern is not reasonably expected to be likely to sue himself or act against companies he controls, and demand therefore is excused by reason of Stern's and Stern Holdings' conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

229. By reason of the foregoing, Largo, directly and derivatively on behalf of JDS Fourth, is entitled to damages in an amount to be determined at trial but separate and apart from (and over and above) any other damages claimed hereunder, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action.

CLAIM V

FRAUD

(by Largo, directly and derivatively on behalf of Property Owner, against Stern, Stern Holdings, JDS Construction, JDS Developer, and John Does 1-5)

230. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

231. Stern is the sole owner of and/or controls Stern Holdings.

232. JDS Fourth is controlled by Stern through Stern Holdings.

233. Baltic JV is controlled by Stern through JDS Fourth.

234. Baltic JV is or was the sole owner of Mezz, which during part of the relevant time was the sole owner of Property Owner.

235. Baltic JV is and was the sole owner of Property Owner during such time as Mezz was not the sole owner of Property Owner.

236. Stern, working in concert with John Does (one or more third parties to be determined through discovery), individually and on behalf of JDS Construction, intentionally and with the purpose of deceiving Property Owner, misrepresented expenses legitimately incurred on the Project for hard costs, soft costs, General Conditions, and other costs that each knew to be false and inaccurate.

237. Upon information and belief, these fabricated expenses were either incurred in connection (in whole or part) with other projects or were artificially inflated beyond the actual, agreed, and/or fair market costs, including, without limitation, for exterior facade and roofing, stone and tile expenses, inaccurate payroll records and timecards, and other trade costs.

238. Upon information and belief, John Does, in concert with Stern, knowingly falsified construction records which reflected expenses for the Project that were actually associated with other projects or were not associated with any project.

239. Stern knew such misrepresentations and omissions were false and would cause payment by Property Owner and/or its lenders, as Stern controlled the entire process, including the submission of the payment requisitions for alleged construction costs, the sham oversight and approval by JDS Developer, and ultimate payment by Property Owner or lenders at its request.

240. Stern and Stern Holdings misrepresented financial expenses on the project to Largo and Property Owner through provision of a fabricated “budget” in connection with one or more loans on the Project which included line items that Stern knew inaccurately reflected actual costs already incurred on the Project and omitted key information about expenses, their source and the bidding and budgeting process.

241. Stern's intentional conduct and/or omissions regarding the construction expenses on the Project are reinforced by Stern's refusal to maintain and/or produce proper financial records and accounts or provide Largo access to such records in an effort to obscure Stern's wrongdoing.

242. JDS Developer, controlled by and acting through Stern, either repeated the misrepresentations to Property Owner, made through pay applications and other paperwork submitted on the Project, or omitted information which would correct Property Owner's reliance on the false and fabricated construction records with knowledge of the falsity (and/or insufficiency) of such information.

243. JDS Developer affirmatively misrepresented and/or omitted the actual costs incurred in connection with the construction on the Project.

244. Stern and the various entities he controlled, including Stern Holdings, JDS Construction, and JDS Developer, had superior knowledge to Property Owner and Largo regarding the expenses on the Project given Stern's exclusive domination and control of the construction and development process to the exclusion of Largo and Property Owner.

245. Property Owner reasonably relied on the representations, statements, and, as it turns out, misrepresentations by Stern, JDS Construction, and JDS Developer by rendering (or causing others on its behalf to render) payment for such expenses.

246. Largo relied on the affirmative representations and omissions in the limited "budgets" and financial records which were produced in connection with loans on the Project by continuing to fund capital contributions (which have not been returned) and which were necessitated by such false expenses and co-signing and authorizing mezzanine and other loans in connection with the Project, and by otherwise staying in the deal by, for example, declining to trigger buy-sell rights under the LLCA when Stern sought indemnity from Largo's principals in

connection with certain loans (a “Major Decision” under the LLCA which could have triggered a Buy-Sell Offer).

247. Property Owner is also controlled by Stern, through JDS Fourth, as Manager of Baltic JV, and Stern will not pursue such claims against himself or his affiliated entities on behalf of Property Owner.

248. Thus, demand is excused by reason of Stern’s, Stern Holdings’, JDS Construction’s, JDS Developer’s, and John Does’ conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

249. Property Owner’s reasonable reliance on the misrepresentations and/or omissions by Stern, Stern Holdings, JDS Construction, John Does, and JDS Developer resulted in damage, including, without limitation, from overpayments and reduced revenue paid to Property Owner (and thus reduced distributions to Baltic JV) in an amount to be determined at trial.

250. Largo’s reasonable reliance on the misrepresentations and/or omissions by Stern, Stern Holdings, JDS Construction, and JDS Developer resulted in loss of capital contributions and increased risk of debt for which Largo and Property Owner suffered direct damage.

251. Stern, Stern Holdings, JDS Construction, JDS Developer, and John Does must account for these damages and disgorge profits resulting from the fraud.

252. Largo and Property Owner are entitled to a constructive trust to secure such ill-gotten gains resulting from the fraud.

CLAIM VI

BREACH OF FIDUCIARY DUTY

**(by Largo, derivatively on behalf of Property Owner,
against Stern, JDS Developer, and JDS Construction)**

253. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

254. Baltic JV is and was the sole owner of Property Owner during such time as Mezz was not the sole owner of Property Owner.

255. JDS Developer served as Property Owner's agent for the purpose of overseeing the development of the Project and overseeing JDS Construction's work under the CMA, as set forth, among other sources, in CMA § 2.3.1.

256. As Property Owner's agent, JDS Developer, and Stern through his control of JDS Developer, had a fiduciary duty of care, good faith, and loyalty to Property Owner.

257. JDS Developer's fiduciary role is described, in part, in CMA § 2.3 to include:

managing Construction Manager's performance of this Agreement, reviewing and advising Owner with regard to the Work performed or to be performed hereunder, reviewing and advising Owner with respect to Applications for Payment, changes in the Work, and any other matters regarding the construction and completion of the Project (or portion thereof)

258. JDS Construction at all relevant times owed Property Owner fiduciary duties based on a "relationship of trust and confidence between [JDS Construction] and Owner," under CMA § 3.1.

259. JDS Developer and Stern, through his control of JDS Developer, breached their fiduciary duties to Property Owner by failing to diligently oversee, manage, and supervise JDS Construction and the work JDS Construction performed on the Project.

260. JDS Developer instead allowed JDS Construction, its affiliate and an entity under common ownership and control, to improperly charge the Project for inflated costs, which were not incurred on the Project, and/or were not specific to the Project, and/or were unnecessary costs which could have been avoided through an arm's length and regular bidding process, in order to benefit Stern and his affiliated entities at the cost and expense of Property Owner.

261. Stern, JDS Construction, and JDS Developer conspired to refrain conveying any GMP to Property Owner in an effort to proceed with the construction costs without cost constraints.

262. JDS Construction and Stern, through his control of JDS Construction, improperly charged the Project for inflated costs, costs which were not incurred on the Project, and/or were not specific to the Project, and/or unnecessary costs which could have been avoided through an arm's length and regular bidding process, in order to benefit Stern and his affiliated entities at the cost and expense of Property Owner.

263. Stern is personally liable for aiding and abetting the fiduciary duty breaches by JDS Construction and JDS Developer.

264. As the signatory to the CMA, and the primary responsible party in charge of JDS Construction and JDS Developer, Stern was aware of the fiduciary relationship between each of these entities and Property Owner.

265. Upon information and belief, Stern personally and knowingly induced and/or participated in JDS Developer's and JDS Construction's breaches of the fiduciary duties owed to Property Owner by affirmatively causing and assisting JDS Construction in improperly managing, supervising, and executing the work resulting in inflated and improperly charges to the Project and causing JDS Developer to fail to carry out the review and approval of pay applications and JDS Construction's work for the benefit and protection of Property Owner.

266. Demand would be futile as Stern will not file suit against himself or affiliated entities.

267. Demand is excused by reason of Stern's, JDS Developer's, and JDS Construction's conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

268. As a direct and proximate result of each of these breaches of fiduciary duty, Property Owner has been harmed in an amount to be determined at trial, but no less than \$7,500,000 in direct, consequential, and special damages.

269. Property Owner is further entitled to disgorgement of profits from Stern and his affiliated entities procured as a result of the foregoing fiduciary duty breaches.

CLAIM VII

BREACH OF CMA

**(by Largo, derivatively on behalf of Property Owner,
against JDS Construction)**

270. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

271. The CMA constitutes a valid and binding agreement between JDS Construction and Property Owner.

272. Property Owner performed all of its material obligation under the CMA.

273. JDS Construction breached the CMA by, among other breaches, and by way of non-exhaustive example only:

A. failing to construct, administer, and/or manage the Project in an efficient and economical manner consistent with budgetary considerations and objectives of Property

Owner in violation of CMA §§ 2.2 and 3.1 by overcharging and inflating trade costs and other hard costs, soft costs, and other expenses on the Project;

B. failing to competitively bid various portions of the Project or to conduct negotiations with “Trade Contractor,” as defined in the CMA, in a manner so as to limit costs on the Project and obtain the most favorable price and terms in violation of CMA § 3.4(a);

C. failing to properly supervise the “Trade Contractors,” “Architect,” and “Design Team members,” and properly review and approve requisitions in violation of CMA §§ 3.4(b) and 3.4(c);

D. failing to timely render a GMP proposal in violation of CMA § 6.1, including a specified statement of “General Conditions” as required under Section 8.1, despite an obligation to do so given the completion of all conditions triggering such proposal obligation under the CMA, or in the alternative, to the extent such conditions were not met, the failure to meet such conditions resulting from JDS Construction’s breach of the implied covenant of good faith and fair dealing to cause such conditions to be met;

E. charging Property Owner for costs outside of the compensable scope for non-GMP work and beyond the “Cost of the Work” in violation of CMA §§ 6.1 and 6.7, or alternatively in excess of the guaranteed price under § 7.1.1;

F. charging Property Owner for work, including “General Conditions,” which is categorically not authorized under the CMA, outside of a GMP as set forth in CMA §§ 6.1, 6.7, and 8.1;

G. performing unauthorized services with its own contractors or subcontractors, as opposed to independent trade contractors procured through a competitive

bidding process, at an inflated cost over what the third-party contractors would provide in violation of CMA §§ 2.1 and 2.2;

H. failing to administer, coordinate, manage, and/or complete the contractually defined work in an expeditious and economical manner consistent with the interest and objectives of Property Owner in violation of CMA §§ 2.1 and 2.2;

I. failing to assume the risk of an “at-risk construction manager” as contemplated by the CMA and set forth in the preamble;

J. charging Property Owner for “General Conditions” which were not authorized expenses outside of an accepted GMP in violation of CMA §§ 3.2 and 8.1;

K. failing to carry out the requisite accounting and financial management for the Project as required under CMA §§ 18.1.1 and 18.2;

L. failing to maintain a collaborative working relationship with Property Owner or to render the benefit of JDS Construction’s knowledge, skill, judgment, insight, experience and/or abilities to benefit Property Owner (as opposed to JDS Construction) in violation of CMA § 2.2;

M. failing to include in the defined “Contract Documents” the complete scope of “Work,” as defined in the CMA, and carrying out Work outside the Contract Documents in violation of CMA §§ 1.1 and 1.3 and without proper authorization as required by the CMA;

N. allowing acts, errors and omissions of “Trade Contractors” arising out of contracts, including improperly charging for work performed and failing to properly bid and execute the work in accordance with the contracts for which JDS Construction is directly responsible under CMA § 3.2; and

O. engaging in other breaches to be ascertained through discovery.

274. Stern, through Stern Holdings and as the Managing Member of JDS Fourth and Manager of Baltic JV, will not pursue claims against himself and his own companies, including JDS Construction.

275. Thus, demand is excused by reason of Stern's and JDS Construction's conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

276. As a direct and proximate result of each of the breaches of the CMA, Property Owner is entitled to damages in an amount to be determined at trial, but in no event less than \$15,000,000, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action.

CLAIM VIII

DECLARATORY JUDGMENT: INDEMNIFICATION UNDER CMA § 19.1

**(Largo, directly and derivatively on behalf of
Property Owner, Baltic JV, Mezz, and JDS Fourth, against JDS Construction)**

277. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

278. As a result of the claims asserted in this case, among other actual or potential claims, a justiciable controversy exists as to whether JDS Construction must indemnify Largo, JDS Fourth, Baltic JV, Mezz, and/or Property Owner for "*claims, actions, damages, losses and expenses . . . arising out of resulting from performance of the Work*" on the Property pursuant to CMA § 19.1.

279. Largo, Property Owner, Baltic JV, Mezz, and JDS Fourth, are each entitled to an order declaring that each is entitled to indemnification by JDS Construction under CMA § 19.1 for claims asserted in this action, and/or asserted or unasserted claims associated with construction on the Property by JDS Construction or its affiliates.

CLAIM IX

BOOKS AND RECORDS

**(by Largo, directly and derivatively on behalf of JDS Fourth,
against Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner)**

280. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

281. Under LLCA §§ 4.1 and 4.2, JDS Fourth is required to maintain and make available to Largo books and records, including financial statements, for the past six (6) years, and “*complete, up-to-date and accurate books of account*” for JDS Fourth and each of the Subsidiaries, including Baltic JV, Mezz, and Property Owner, as well as financial reports of Baltic JV.

282. Largo has the right to financial records of JDS Fourth’s Subsidiaries (including Baltic JV, Mezz, and Property Owner), including records which must be kept, for example, under Baltic Agreement §§ 7.1 and 7.2 and Property Owner Agreement, Schedule 1(h).

283. CMA §§ 3.4(b) and 18.1 require JDS Construction to prepare and maintain detailed records for the benefit of Property Owner associated with the construction work on the Property.

284. To the extent each Defendant individually or collectively maintain that the books and records rights under the LLCA are different in scope than Largo’s statutory books and records rights, Largo demands access to books and records pursuant to Delaware Limited Liability Company Act § 18-305.

285. Largo has repeatedly demanded the books and records of JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner), and Stern has refused to produce complete, accurate, and supported records.

286. For example, on May 18, 2020, Largo served a books and records demand under Delaware Limited Liability Company Act § 18-305 and the LLCA, but Stern and/or Stern Holdings declined to provide sufficient records.

287. Demand to Stern and the entities he owns and controls would be futile as Stern himself is responsible for preventing production of these records.

288. Thus, demand is excused by reason of Stern's, Stern Holdings', JDS Fourth's, Baltic JV's, Mezz's, and Property Owner's conduct, which constitutes blatant self-dealing that cannot be the product of sound business judgment.

289. Largo, directly and derivatively on behalf of JDS Fourth, is entitled to an order directing Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner to produce books and records of JDS Fourth and its Subsidiaries (including Baltic JV, Mezz, and Property Owner) under the LLCA and JDS Construction under the CMA, including, without limitation, those books and records already demanded by Largo and such books and records required to be produced by the LLCA, Baltic Agreement, and Property Owner Agreement.

CLAIM X

EQUITABLE ACCOUNTING

(by Largo, directly and derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, against Stern and Stern Holdings)

290. Plaintiffs repeat and reallege all of the allegations set forth in this Complaint as if fully set forth herein.

291. Stern and Stern Holdings owed fiduciary duties to Largo as a member of JDS Fourth, and to JDS Fourth as an entity.

292. Stern, as the party directly and/or indirectly managing Baltic JV, Mezz, and Property Owner, owes each of those entities fiduciary duties of care and loyalty in accordance with

and subject to the Baltic Agreement and Property Owner Agreement.

293. Stern, directly or through Stern Holdings, must account to Largo, JDS Fourth, Baltic JV, Mezz, and Property Owner so that each of these entities and Largo can have full and complete information regarding the financial affairs of these entities.

294. Demand to pursue this claim would be futile because Stern, through Stern Holdings, is in control of the entities and will not pursue claims against himself and affiliated entities. Thus, demand is excused.

295. By reason of the foregoing, Largo, directly and derivatively on behalf of JDS Fourth, Baltic JV, Mezz, and Property Owner, is entitled to an equitable accounting directing Stern and Stern Holdings, and entities under Stern's direction and control, to produce financial records in their possession as to each of the entities, explain how the money was expended, and return pilfered funds in Stern's or Stern Holdings' possession or in possession of individuals and entities under their control.

WHEREFORE, Largo demands relief as follows:

A. On Claim I for Breach of the LLCA against Stern Holdings, compensatory and consequential damages in an amount to be determined at trial, but no less than \$7,000,000, in addition to those fees and costs entitled to the prevailing party under LLCA § 11.18, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action;

B. On Claim II for Declaratory Judgment, an order declaring that Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner must immediately: (i) distribute all Net Cash Flow and Net Proceeds due under the LLCA, including without limitation, Net Cash Flow and Net Proceeds generated in connection with the sale of assets on the Property, pursuant to Section 6.1(a) of the LLCA; (ii) distribute all Distributable Funds under the Baltic Agreement to the Baltic JV members, including, without limitation, funds which are not reasonably needed for operating expenses as determined by the Court, pursuant to Section 5.2 of the Baltic Agreement; and (iii) distribute all distributable cash to Baltic JV, subject to only reasonable expenses of Property Owner as determined by the Court, pursuant to Sections 7 and 9 of the Property Owner Agreement;

C. On Claim III for Declaratory Judgment, an order declaring that Stern and Stern Holdings must indemnify Largo and JDS Fourth to the extent of any "loss, damage, or claims" in

connection with the Property or in carrying out any act on behalf of JDS Fourth and/or its Subsidiaries, including, without limitation, for claims asserted by any party in this action, or any other asserted or unasserted claims, pursuant to Section 7.9(b) of the LLCA;

D. On Claim IV for Breach of Fiduciary Duty against Stern and Stern Holdings, compensatory and consequential damages in an amount to be determined at trial but separate and apart from (and over and above) any other damages claimed hereunder, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action;

E. On Claim V for Fraud against Stern, Stern Holdings, JDS Construction, JDS Developer, and John Does 1-5, compensatory and consequential damages in an amount to be determined at trial, but no less than \$10,000,000, plus prejudgment interest, and attorneys' fees, costs, and expenses incurred in connection with this action;

F. On Claim VI for Breach of Fiduciary Duty against Stern, JDS Developer, and JDS Construction, compensatory and consequential damages in an amount to be determined at trial, but no less than \$7,500,000, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action;

G. On Claim VII for Breach of the CMA against JDS Construction, compensatory and consequential damages in an amount to be determined at trial, but no less than \$15,000,000, plus prejudgment interest and attorneys' fees, costs, and expenses incurred in connection with this action;

H. On Claim VIII for Declaratory Judgment, an order declaring that JDS Construction must indemnify Largo, JDS Fourth, Baltic JV, Mezz, and/or Property Owner for claims asserted in this action, this intervening action, and/or asserted or unasserted claims associated with construction on the Property by JDS Construction or its affiliates pursuant to Section 19.1 of the CMA;

I. On Claim IX for Books and Records, an order directing Stern, Stern Holdings, JDS Fourth, Baltic JV, Mezz, and Property Owner to produce the books and records for JDS Fourth, Baltic JV, Mezz, and Property Owner, plus attorneys' fees, costs, and expenses incurred in connection with this action;

J. On Claim X for an Accounting, an order directing Stern, Stern Holdings, and entities under Stern's direction and control to account to Largo, JDS Fourth, Baltic JV, Mezz, and Property Owner by producing and explaining records and the flow and location of funds, and to account and make entities whole for any unauthorized transaction;

K. Granting attorneys, costs, and expenses to be paid to the Plaintiffs; and

L. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
June _____, 2020

BLANK ROME LLP

By: _____

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