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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

JUSTICE INVESTORS, LP, a California
limited partnership, PORTSMOUTH
SQUARE, INC., a California corporation,

Plaintiffs,

vs.

GEOFFREY M. PALERMO, an
individual, GMP MANAGEMENT INC, a
California corporation, and DOES 1-100,
inclusive,

Defendants.

Case No.: CGC-18-567094

FIRST AMENDED COMPLAINT FOR:

- 1) FRAUD
- 2) BREACH OF FIDUCIARY DUTY
- 3) CONVERSION
- 4) VIOLATION OF CALIFORNIA
PENAL CODE SECTION 496
- 5) CLAIM AND DELIVERY
- 6) BREACH OF CONTRACT
- 7) BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING
- 8) ACCOUNTING
- 9) RESCISSION OR
ALTERNATIVELY,
REFORMATION

DEMAND FOR JURY TRIAL

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/10/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

1 Plaintiff Portsmouth Square, Inc. (“Portsmouth”) and Justice Investors, LP
2 (“Justice”) (collectively, “Plaintiffs”) allege as follows for their amended Complaint
3 against Defendants Geoffrey M. Palermo (“Palermo”), GMP Management, Inc. (“GMP”),
4 and Does 1-100, inclusive (collectively, “Defendants”):

5 **INTRODUCTION**

6 1. Defendant Palermo breached his fiduciary duties to Plaintiffs as Justice’s
7 Managing Director (“MD”) and Portsmouth’s Assistant Secretary. For example:

8 (a) For his own self-interest, Palermo tricked Plaintiffs into signing an ill-
9 advised contract by taking advantage of the terminal illness of one of Portsmouth’s
10 officers.

11 (b) Palermo secretly caused Justice to make payments (tens of thousands,
12 if not hundreds of thousands, of dollars) to benefit his personal interests – (i) to his
13 daughter’s private school, (ii) for car events in furtherance of his car business and personal
14 interest in racing Ferraris, and (iii) for Palermo’s *own birthday party*.

15 2. Palermo’s breaches of his obligations to Plaintiffs as Justice’s MD and
16 Portsmouth’s Assistant Secretary were distinct from the breaches of the other named
17 Defendant, GMP, arising from its Management Services Agreement (“GMP MSA”) with
18 Justice. Palermo was Justice’s MD and Portsmouth’s Assistant Secretary before GMP
19 entered into the GMP MSA with Justice on or about December 19, 2013, and those
20 fiduciary duties to Plaintiffs on Palermo’s part were not derived from the GMP MSA. In
21 fact, his breaches of fiduciary duty began before the GMP MSA’s execution and after its
22 termination on or about June 8, 2016.

23 3. As a result, **the arbitration provision in the GMP MSA (“GMP**
24 **Arbitration Provision”)** **does not cover claims against Palermo arising from his**
25 **breaches of the duties owed to Plaintiffs as Justice’s MD and Portsmouth’s Assistant**
26 **Secretary.**

1 4. The GMP Arbitration Provision is unenforceable and invalid, and
2 Defendants have waived and forfeited the right to invoke the GMP Arbitration Provision
3 and are estopped from relying upon it for the following reasons, among others:

4 (a) The GMP MSA and its execution – including the GMP Arbitration
5 Provision – were induced by Palermo’s frauds and breaches of fiduciary duty against
6 Plaintiffs, as well as being contrary to public policy.¹

7 (b) The GMP Arbitration Provision provides for no meaningful
8 arbitration remedy to the extent it is construed as applying to disputes such as this one,²
9 and instead was intended as a wrongful tool to immunize Palermo’s company from
10 liability for Defendants’ wrongs against Justice. The claims asserted herein cannot
11 reasonably be resolved during a mere thirty days from submission of the dispute to
12 arbitration to conclusion, especially where Defendants have stolen the needed documents.
13 If applied to this matter, the GMP Arbitration Provision would impossibly require
14 Plaintiffs to unravel and arbitrate Defendants’ entire scheme during a brief thirty-day span,

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17 ¹ *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co., Inc.*, No. S232946, 2018
18 WL 4137013, at *3 (Cal. Aug. 30, 2018) (“If a contract includes an arbitration agreement,
19 and grounds exist to revoke the entire contract, such grounds would also vitiate the
20 arbitration agreement”; where the client had not consented in writing to the conflict of
interest, the entire engagement agreement was rendered unenforceable, including the
arbitration provision) (emphasis added).

21 ² *See, e.g., Saika v. Gold*, 49 Cal. App. 4th 1074 (1996) (“[T]he . . . public policy favoring
22 arbitration . . . is manifestly undermined by provisions in arbitration clauses which seek to
23 make the arbitration process itself an offensive weapon in one party’s arsenal. [¶] [P]ublic
24 confidence in arbitration in large part depends on the idea that arbitration provides a fair
25 alternative to the courts. . . . To uphold this clause would only encourage lawyers . . . to
26 find ways in which arbitration agreements could be structured to, in effect, load the dice in
27 favor of their clients. Alternative dispute resolution must be a genuine alternative to
28 litigation in the courts, not a sham process. . . . [¶] . . . [E]quitable principles govern the
specific performance of arbitration agreements, [and] govern clauses within arbitration
agreements. . . . [¶] Because it renders arbitration an illusory remedy for one party, the . . .
clause here contravenes the strong public policy in favor of arbitration despite the fact that
the [plaintiff] signed the agreement and may be presumed to have known of the clause.
Equity will not enforce this clause.”).

1 start to finish. The GMP Arbitration would not afford Plaintiffs of a fair opportunity to
2 prove their case. Of course, that was Defendants' plan.

3 (c) Portsmouth's approval of the GMP MSA as "Managing General
4 Partner of Justice" – which was an express condition precedent to the effectiveness of the
5 GMP MSA, including the GMP Arbitration Provision – was invalid and ineffective as a
6 product of Palermo's fraud and breach of fiduciary duty.³ Palermo was obligated but
7 failed to bring this provision to Portsmouth's attention before inducing Portsmouth to
8 approve it on Justice's behalf.⁴

9 (d) Instead, on information and belief, Palermo induced Portsmouth to
10 sign the GMP MSA on Justice's behalf without carefully reviewing it by misrepresenting
11 that Portsmouth's in-house counsel had reviewed and approved the proposed GMP MSA
12 and asked Palermo to instruct someone else at Portsmouth to sign it. On information and
13 belief, Palermo took advantage of the fact that Portsmouth's in-house counsel was very ill
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15 ³ *Benson Ford, Jr. v. Shearson Lehman Am. Express, Inc.*, 180 Cal. App. 3d 1011 (1986)
16 (plaintiff had sufficiently alleged in his complaint that the agreements were induced by
17 fraud which permeated the entire contract, including the arbitration provisions, and that his
18 assent to the agreements was not voluntary, so that the determination of whether such
19 fraud or undue influence ever occurred had to be initially determined by a court, and not
20 by arbitration); *Atchison, Topeka. & Santa Fe Ry. Co. v. West*, 176 Cal. 148 (1917)
(approval vitiated by fraudulent collusion between the contractor and plaintiff's employee
who was the contractor's brother-in-law).

21 ⁴ *See Brown v. Wells Fargo Bank, N.A.*, 168 Cal. App. 4th 938 (2008) (remanding the case
22 to the trial court to determine whether the defendant's failure to abide by its fiduciary duty
23 to the plaintiffs to make sure they understood the arbitration agreement resulted in
24 constructive fraud); *Davis v. Blue Cross of N. Cal.*, 25 Cal.3d 418 (1979) (given the special
25 relationship defendant had with the plaintiff, even though the plaintiff signed the
26 arbitration provision, the defendant was foreclosed from relying on the arbitration
27 provision because it failed to bring it to the plaintiff's attention); *Rosenthal v. Great W.
28 Fin. Secs. Corp.*, 14 Cal.4th 394 (1996) ("Claims that a party has employed fraud in
inducing consent specifically to the arbitration agreement (e.g., by actively concealing its
existence or misrepresenting its meaning or value) are . . . to be decided by the court,
because they go to the valid making of the arbitration clause itself. Claims that, due to
fraud in the execution of the agreement as a whole, the parties reached no contract
containing an arbitration clause, are also to be decided by the court.").

1 at the time (he died shortly thereafter) to defraud Portsmouth into signing and approving
2 the GMP MSA.

3 (e) Indeed, on information and belief, Palermo concealed that he had
4 switched out the in-house counsel's signature block from the proposed GMP MSA to
5 induce a newly-appointed Portsmouth Assistant Secretary and member of its board of
6 directors ("Signatory") to execute it.

7 (f) On information and belief, Palermo also misrepresented to
8 Portsmouth's President that a separate outside law firm that represented Justice in other
9 matters had reviewed the proposed GMP MSA for Plaintiffs and said it was acceptable for
10 them to proceed with it. Palermo also induced the Signatory to believe that that outside
11 law firm was representing Plaintiffs as well in the transaction.

12 (g) On information and belief, Palermo included the GMP Arbitration
13 Provision in the GMP MSA to further his fraudulent scheme against Justice. Palermo
14 included it as a wrongful tool in his effort to immunize his company GMP from liability
15 for future wrongs against Justice. Palermo intended to use it (in addition to other
16 fraudulent conduct and theft of Justice's books and records) to prevent Plaintiffs from
17 discovering and proving GMP's wrongs against Justice.

18 5. Defendants should be brought to justice in this Court and they should not be
19 permitted to avail themselves of the GMP Arbitration Provision in furtherance of their
20 efforts to immunize themselves from liability to Plaintiffs.

21 **PARTIES**

22 6. Justice is a California limited partnership with its principal place of business
23 in Los Angeles County, California. Justice owns through its wholly-owned subsidiaries
24 the Hilton Hotel located at 750 Kearny Street in San Francisco, California and the Hotel's
25 parking garage (collectively, the "Hotel").

26 7. Portsmouth is a California corporation and Justice's general partner.
27 Portsmouth's principal business is its approximate 93% limited partnership interest in
28 Justice. In or about 2014, Portsmouth became Justice's sole general partner. Then, later in

1 or about 2014, Portsmouth's interest in Justice increased to approximately 93% and has
2 remained at that approximate level since then. Portsmouth has been a general partner of
3 Justice for over a decade.

4 8. Palermo is an individual and, upon information and belief, a resident of
5 Novato, California. Since in or about 2008 until on or about June 8, 2016, Palermo was
6 the MD of Justice. On or about June 8, 2016, he resigned as the MD of Justice when he
7 abandoned his position. Since on or about December 5, 2013 until on or about May 12,
8 2016 when he expressly resigned his position, Palermo was the Assistant Secretary of
9 Portsmouth.

10 9. On information and belief, GMP is a California corporation with its
11 registered principal place of business at [REDACTED] in Novato, California. Palermo
12 has always been the owner, President and registered agent of GMP since its incorporation
13 on June 9, 2004. On or about December 19, 2013, GMP and Justice (by Portsmouth,
14 Justice's managing general partner) signed a "Management Services Agreement," with an
15 effective date of December 1, 2013 ("MSA" or "GMP MSA"). GMP terminated the MSA
16 on or about June 8, 2016.

17 10. Plaintiff does not know the true names and capacities of Defendants sued
18 herein as DOES 1 to 100, inclusive, and therefore sues these Defendants by such fictitious
19 names pursuant to section 474 of the California Code of Civil Procedure. Plaintiff will
20 amend its complaint to identify the true names and capacities of DOES 1 to 100 inclusive,
21 when ascertained. Plaintiff is informed and believes and based thereon alleges that each
22 fictitiously-named Defendant is liable to Plaintiff and that Plaintiff's damages were
23 directly and proximately caused by each of their conduct and/or omission.

24 **JURISDICTION AND VENUE**

25 11. This Court has jurisdiction over this dispute pursuant to California Code of
26 Civil Procedure Section 410.10, because the amount in controversy exceeds \$25,000.00,
27 significant actions upon which this Complaint is based occurred in the State of California,
28

1 and all parties have sufficient relationships and contacts with the State of California to
2 establish jurisdiction.

3 12. Venue is proper in this district under California Code of Civil Procedure
4 sections 395(a) and 395.5, because Justice and GMP are based in and conduct business
5 within this judicial district, because Palermo can be found and conduct business in this
6 judicial district, and because Palermo's and GMP's wrongful acts were committed, and
7 Justice suffered damages, within this judicial district.

8 **FACTUAL ALLEGATIONS (CONCERNING PALERMO AS JUSTICE'S MD AND**
9 **PORTSMOUTH'S ASSISTANT SECRETARY)**

10 13. In or about 2008, Justice and Palermo agreed that Palermo would serve as
11 Justice's MD to assist Justice's managing general partner. **There is no agreement to**
12 **arbitrate disputes related to that agreement.**

13 14. As Justice's MD, Palermo was responsible for managing Justice's operations
14 and holdings for the best interests of Justice, rather than his personal or other business
15 interests. Palermo held himself out as an officer of Justice's. Palermo oversaw the day to
16 day operations of Justice and its operations or activities, as well as Justice's infrastructure
17 generally. In that position, Palermo was responsible for the integrity of Justice's assets,
18 capital budgets, maintenance, cost containment, as well as timely, accurate and effective
19 reporting to Justice's general partners. His responsibilities to Justice and Justice's partners
20 as its MD included:

21 (a) Serving as the conduit of information about Justice to Justice's
22 general partner(s). Palermo was obligated to be honest and forthcoming, to act in good
23 faith, and to timely alert Justice's general partners to any problems or circumstances that
24 may have negative ramifications to Justice's business. Palermo was responsible for
25 maintaining Justice's financial and other business records accurately (and not misstating
26 them for his own interests).

27 (b) Submitting for approval to Justice or its general partner only proposed
28 expenses and budgets that were appropriate and in Justice's best interests.

1 (c) Monitoring Justice's business dealings with others to ensure that
2 Justice's interests were being protected and those with whom Justice was dealing were
3 adhering to their obligations to Justice and were not taking unfair advantage of Justice.

4 (d) Maintaining for Justice and its general partners, Justice's books and
5 records (including electronic ones) ("Justice Documents"). Palermo was bound to return
6 all Justice Documents upon request by Justice's managing general partner or when his
7 position as Justice's MD ended.

8 (e) Keeping track of the identities and ownership interests of Justice's
9 partners and administering and processing changes in their identities and/or ownership
10 interests.

11 (f) Signing on behalf of Justice contracts with others, including multi-
12 million loan agreements and agreements with Justice's professionals (such as attorneys).

13 15. As MD of Justice, Palermo was Justice's fiduciary. Palermo was in a position
14 of trust and was bound to be forthright and loyal, and to refrain from self-dealing.⁵ As
15 MD, Palermo was bound to act with the utmost good faith for the benefit of Justice and
16 Plaintiffs reposed a confidence in Palermo's integrity and Palermo voluntarily accepted
17 that confidence.⁶ As the MD of Justice, Palermo was entrusted with Justice's assets,
18 operations and finances, and he thus owed duty to act in the best interest of Justice, not to
19 conceal material information from Justice or its general partner, and not to make
20 misrepresentations to Justice's partners.

21 16. On or about December 5, 2013, Portsmouth and Palermo agreed that
22 Palermo would serve as an Assistant Secretary of Portsmouth. **There is no agreement to**

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24 ⁵ *Feresi v. The Livery, LLC*, 232 Cal.App.4th 419 (2015) ("The manager of an LLC has a
25 fiduciary duty. . .").

26 ⁶ *Benson Ford, Jr. v. Shearson Lehman Am. Express, Inc.*, 180 Cal. App. 3d 1011 (1986)
27 ("A confidential relationship 'may be said to exist whenever trust and confidence is
28 reposed by one person in the integrity and fidelity of another.' [Citations.] And where the
person in whom such confidence is reposed, by such confidence obtains any control over
the affairs of the other, a trust or fiduciary relationship is created. [Citations.]").

1 **arbitrate disputes related to that position.** In that Officer position, Palermo was
2 Portsmouth's fiduciary because Palermo was in a position of trust and was bound to be
3 forthright and loyal, and to refrain from self-dealing.

4 17. As Plaintiffs' fiduciary, Palermo was bound to act with the highest level of
5 good faith to them and not to obtain any advantage over them, including by any
6 misrepresentation, concealment or pressure. Where Palermo was proposing a transaction
7 where he was self-interested, he was bound to ensure it was fair to them and to disclose all
8 facts related to the proposed transaction in advance of putting forth the transaction for
9 approval.⁷ As alleged below, Palermo breached those duties and transactions that went
10 forward as a result of his breaches of duty must be set aside and he cannot be permitted to
11 benefit from them.

12 18. **Palermo's duties to Plaintiffs referenced above did *not* arise from the**
13 **GMP MSA.** Instead, Palermo's duties existed separate, apart, and before the GMP MSA.
14 Nor did the GMP MSA alter or negate Palermo's duties as Justice's MD and Portsmouth's
15 Assistant Secretary. **In fact, Palermo attempted to include in a draft of the GMP MSA**
16 **provisions about his role with Justice and Justice deleted it. Palermo also attempted**
17 **to make Portsmouth a party to the GMP MSA and Plaintiffs rejected that proposal as**
18 **well.** Palermo continued to act in those separate roles for Justice (MD) and for Portsmouth
19 (Assistant Secretary) after the GMP MSA was signed.

20 19. Palermo engaged in a fraudulent scheme spanning years to profit from his
21 breaches of fiduciary duty to Plaintiffs, including by taking advantage of and abusing their
22 trust in him, by concealment and by misrepresentation. That scheme permeated his control
23 over Justice's business, operations, assets, and his relationship with Plaintiffs, including
24 the transactions and communications with them identified herein.

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26 ⁷ *Id.* ("[W]here there exists a relationship of trust and confidence it is the duty of one in
27 whom the confidence is reposed to make full disclosure of all material facts within his
28 knowledge relating to the transaction in question and any concealment of material facts is a
fraud.") (citing Cal. Civ. Code §1573 [undue influence presumed where a fiduciary enters
into a transaction giving him an advantage over the beneficiary of his fiduciary duty]).

20. Palermo breached his duties as Justice's MD and Portsmouth's Assistant Secretary ("Palermo Breached Duties") by at least the following conduct:

(a) When his position as Justice's MD ended on or about June 8, 2016, he refused to return and instead misappropriated Justice Documents (both hard copy and electronic) that he was holding in trust for Plaintiffs. On or about then, he stole hundreds of boxes and thousands of records. Palermo failed to return to Plaintiffs the where Justice's electronic Justice Documents were maintained on their behalves and disclose to Plaintiffs where such servers were located and the passwords to access them. On information and belief, such a server or servers existed before Palermo resigned from his positions with Plaintiffs in mid-2016. The Justice Documents that have not been returned by Palermo are *not* confined to documents related to Justice's Hotel Property and GMP's services and instead include **documents that relate to other aspects of Justice's business before Justice entered into the MSA**. Plaintiffs, not Defendants, own the Justice Documents. At no time did Plaintiffs relinquish or transfer ownership of the Justice Documents to Defendants.

(b) In addition to stealing Justice documents, Palermo also spoliated or destroyed other Justice Documents. For example, based on information and belief, shortly before he resigned from his position as Justice's MD, Palermo deleted all Justice emails (e.g., email addresses associated with @justiceinvestors.com). But, Palermo did not return those email records which belonged to Plaintiffs when he left and instead deleted them and nor did he provide the passwords to @justiceinvestors.com email accounts. On information and belief, there are also likely other Justice Documents that Palermo wrongfully destroyed in violation of his duties to Plaintiffs.

21. Palermo's misappropriation and/or destruction of the Justice Documents has already injured Justice. Justice requires Palermo to return what they took in order to run its business. Plaintiffs also require the Justice Documents with which Palermo absconded in violation of his fiduciary duties to Plaintiffs to unravel the damage Defendants have

1 done to Justice over years. Palermo must return the Justice Documents immediately and
2 his failure to do so threatens to cause Plaintiffs irreparable harm.

3 22. Also, Palermo Breached Duties by intentionally obstructing Plaintiffs' ability
4 to discover his wrongs – past and ongoing – including by instructing persons who worked
5 at Justice's premises that they were not to talk to John Winfield (Portsmouth's President
6 and Chief Executive Officer since approximately 1996 to present), and that they were to
7 report to him (Palermo) everything Mr. Winfield said or did while at the premises and
8 where he went while there, and with whom Mr. Winfield met. Palermo threatened such
9 persons that they would be fired if they disobeyed his instructions and Palermo put
10 cameras around the premises to monitor employee interactions with Mr. Winfield. On
11 information and belief, these instructions were given and threats were made periodically in
12 or about 2014 (if not before) through June 8, 2016. Plaintiffs did not learn of these
13 instructions and threats by Palermo until after he terminated his relationship with Justice in
14 or about mid-June 2016 and until they investigated his activities after he absconded with
15 Justice's Documents.

16 23. Based on information and belief, Palermo engaged in this conduct to further
17 his own personal interests at Plaintiffs' expense and in violation of his fiduciary duties to
18 them as Justice's MD and Portsmouth's Assistant Secretary (e.g., in an effort to prevent
19 Plaintiffs from discovering Palermo's (and Defendants') wrongs against them and from
20 proving them, and in an effort to prevent Plaintiffs from cutting off access to and diversion
21 of Justice's assets).

22 24. Based on information and belief, Palermo concealed for months before he
23 terminated his relationship with Justice on or about June 8, 2016, that he planned to
24 terminate his relationship. Instead, Palermo misled Plaintiffs to believe that he would be
25 continuing his relationship with Justice (e.g., by pretending to be interested in renewing the
26 MSA). Based on information and belief, Palermo concealed the truth to facilitate his plan
27 to steal the Justice Documents when he left and, thus, cover up Palermo's (and
28 Defendants') wrongs against Justice and prevent Justice from proving them). Had

1 Plaintiffs known of Palermo's plans to terminate his relationship with Justice, they would
2 have required him to turn over the Justice Documents immediately and before he
3 terminated. Based on information and belief, Palermo concealed the truth from Plaintiffs
4 to induce them not to require him to turn over the Justice Documents. Plaintiffs reasonably
5 relied on Palermo to disclose such material information to them given he was their long-
6 standing trusted fiduciary.

7 25. Palermo Breached Duties to Plaintiffs also by the following conduct:

8 (a) Palermo used his position as Justice's MD to cause Justice (and/or its
9 wholly owned subsidiaries) to make payments to others and to cause Plaintiffs Justice and
10 to approve proposals (e.g., proposed budgets or expenditures), knowing that such
11 payments and/or proposals were inappropriate and not in Justice's best interests.⁸ Palermo
12 routinely submitted proposals to Plaintiffs for approval (e.g., budgets for Justice and
13 proposed expenditures). For example, Palermo made such submissions at the annual
14 budget meeting (typically, between November and February). At no time did Palermo
15 disclose that he was using his position as Justice's MD to cause Justice (and/or its wholly
16 owned subsidiaries) to make payments to others and causing Justice and Portsmouth to
17 approve proposed budgets or expenditures that were inappropriate and not in Justice's best
18 interests. Plaintiffs did not become aware of the impropriety of these payments and
19 proposals until after mid-June 2016 when they began to investigate Palermo's activities
20 after he abruptly terminated his position with Justice and took the Justice Documents and
21 other property with him. On information and belief, other improper payments and
22 proposals will be shown through the Justice Documents (once returned) and through
23 discovery. Justice and Portsmouth reasonably relied on Palermo – as their MD, Assistant
24 Secretary, and fiduciary – to ensure that Justice would not make inappropriate payments
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27 ⁸ See, e.g., *Bardis v. Oates*, 119 Cal. App. 4th 1 (2004) (manager of partnership breached
28 fiduciary duties by causing the partnership to pay him unauthorized management fees,
vendor invoices that he had marked up improperly, and invoices that were not chargeable
to the partnership).

1 and Justice and/or Portsmouth would not approve proposals that were not in Justice's best
2 interests. Yet, Palermo abused his positions with Plaintiffs to do exactly the opposite and
3 engaged self-dealing.

4 (b) Palermo concealed that Justice's assets and operations were not being
5 managed in the best interest of Justice, in order to induce Plaintiffs to allow Palermo
6 continued access to Justice's assets and operations. On information and belief, there are
7 likely additional concealed incidents of mismanagement Palermo concealed from Plaintiffs
8 that while he was Justice's BD, examples include:

9 (i) On information and belief, Palermo gave unwarranted perks
10 and authorized improper payments to his friends, cronies, his other businesses, himself and
11 family interests at Justice's expense. By way of examples:

12 (ii) In or about 2013, Palermo caused Justice to pay \$5,000 to
13 sponsor a golf tournament for San Domenico School, the private school that *his daughter*
14 attended. In or about 2014, Palermo caused Justice to pay \$10,000 to sponsor another golf
15 tournament at that school, and in or about 2015, Palermo caused Justice to pay \$20,000 to
16 for an "Athletic Center Fitness Room" project at that school.

17 (iii) In or about May 2014, Palermo caused Justice to pay \$3,000
18 *monthly* so that he could host an exotic car event from June to December 2014 at Pier 32,
19 Embarcadero *to benefit his car business* and personal interests. Palermo also caused
20 Justice to pay the following amounts for exotic car events: \$7,300 (in or about 2014), and
21 \$32,000 (in or about 2015). Similarly, Palermo caused Justice to pay the following
22 amounts to sponsor his Ferrari Owners Group events to benefit his car business and
23 personal interests as a Ferrari owner and racer: \$18,500 (in or about 2014), and over
24 \$63,000 (in 2015). Furthermore, in or about February 2016, Palermo caused Justice to
25 enter a contract with an architect which obligated Justice to pay \$3,300 to the architect for
26 a rendering for use at the Golden Gate Ferrari Festival at the San Francisco Civic Center *to*
27 *benefit Palermo's car business.*

1 (iv) In or about 2014, Palermo caused Justice to pay \$11,000 to
2 various vendors for *his own birthday party*.

3 (v) In or about July 2015, Palermo caused Justice to pay Michael
4 Yaki, Consultant, for consulting services relating to Covenants, Conditions & Restrictions
5 (CC&Rs) relating to a property (Bel Marin Keys) *unrelated to Justice's business*.

6 (vi) Similarly, Palermo caused Justice to pay for goods and/or
7 services not for the benefit of Justice (e.g., in or about April 2016, Palermo caused a
8 professional firm to invoice Justice over \$100,000, including charges for the preparation of
9 tax returns for entities *not* affiliated with Justice).

10 (c) Notwithstanding his obligation to be forthcoming with Plaintiffs with
11 material information, Palermo concealed from Plaintiffs his self-dealing and other
12 breaches of duty alleged above. On information and belief, there are likely other breaches,
13 concealments and misrepresentations that Plaintiffs will discover when Palermo returns the
14 Justice Documents. Justice and Portsmouth reasonably relied on and trusted Palermo – as
15 their fiduciary with admitted duty to be their conduit of information. Yet, Palermo
16 Breached Duties by affirmatively concealing such problems from Plaintiffs, including that
17 he was misusing Palermo's access to Justice's assets (e.g., his access to Justice's bank
18 account) so as to divert Justice's assets to himself, his other interests, and his friends and
19 relatives. Palermo concealed such material information from Plaintiffs so that they would
20 not cut off his access to Justice's assets and so he could continue his wrongful diversion of
21 Justice's assets for his own self-interests. Had Plaintiffs known the truth, they would have
22 cut off Palermo's access to Justice's assets, operations and finances.

23 (d) In addition to the Justice Documents, Palermo also stole other Justice
24 property when he terminated his relationship with Justice in or about mid-June 2016 (e.g.,
25 furniture, computer equipment, servers, cameras) ("Other Justice Property"). On
26 information and belief, Plaintiffs will likely discover additional pieces of Other Justice
27 Property that Palermo stole when Palermo returns the Justice Documents (e.g., reflecting
28 that Justice purchased other property that Palermo did not return).

1 (e) Notwithstanding his duties to Plaintiffs to be forthcoming and honest
2 and to put their interests above his own, Palermo concealed from Plaintiffs in 2013 that the
3 then proposed MSA with GMP was not in Justice's best interests and Palermo orally
4 misrepresented to Plaintiffs (through Mr. Nance and Mr. Winfield) in 2013 that the then
5 proposed MSA with GMP was in Justice's interests. On information and belief, Palermo
6 did so to induce Plaintiffs to execute the GMP MSA. But, for Palermo's
7 misrepresentations, Mr. Winfield and Mr. Nance would have objected to the GMP MSA,
8 **including its arbitration provision**, on Portsmouth's behalf. They reasonably relied on
9 Palermo's representations as true given Palermo's position as Justice's MD at the time.
10 Plaintiffs began to suspect that Palermo had intentionally lied to them about the
11 advisability of the GMP MSA only after Palermo abruptly terminated his position with
12 Justice and stole the Justice Documents in or about June 2016. Plaintiffs' investigation of
13 Palermo's wrongs against them and discovery of the true facts has been impeded by
14 Palermo's theft of the Justice Documents.

15 (f) In or about the end of November 2013 and the beginning of December
16 2013, Palermo orally misrepresented to William Nance (a member of Portsmouth's board
17 of directors) that Michael Zybala, then Plaintiffs' Justice's general counsel (in addition to
18 being Portsmouth's Vice President's and Secretary), had approved the GMP MSA and had
19 instructed Palermo to tell Mr. Nance to sign it on behalf of Justice. On information and
20 belief, that was not true and, in fact, Mr. Zybala had unaddressed concerns about the then
21 proposed draft of the GMP MSA. On information and belief, Palermo knew his
22 representation was false when made. On information and belief, before presenting the
23 proposed GMP MSA to Mr. Nance for signature, Palermo also changed Justice's signature
24 block from Mr. Zybala's signature to Mr. Nance's signature. Palermo made this change
25 without Mr. Zybala's, Mr. Nance's, or Mr. Winfield's knowledge or approval in order to
26 induce Plaintiffs to sign the GMP MSA. On information and belief, Palermo knew that if
27 Mr. Nance (as well as Mr. Winfield) believed the proposed MSA had not addressed Mr.
28 Zybala's concerns and did not have his approval, they would refuse to allow Plaintiffs to

1 execute it. But for Palermo's misrepresentations and concealments, Mr. Nance [and
2 Portsmouth] would not have signed the GMP MSA. Mr. Nance reasonably relied upon
3 Palermo's representation as true given Palermo's position as Justice's MD at the time.
4 Plaintiffs began to suspect that Palermo had lied to Mr. Nance about Mr. Zybala's approval
5 and instructions only after Palermo terminated his position with Justice and stole the
6 Justice Documents. Mr. Nance did not discuss the GMP MSA with Mr. Zybala after Mr.
7 Nance signed it; Mr. Zybala was very ill and died just a few months later from
8 Myelodysplastic syndromes cancer.

9 (g) In or about November/December 2013, Palermo misrepresented
10 orally to Mr. Winfield (and thus Portsmouth) by telephone that a separate outside law firm
11 that represented Justice in other matters had reviewed the proposed GMP MSA and said it
12 was acceptable for Justice to proceed with it. That outside law firm now claims to have
13 been representing GMP, not Justice/Portsmouth, in the negotiations and not to have
14 reviewed the GMP MSA with Justice's interests in mind. Further, Palermo failed to
15 disclose to Mr. Winfield that Justice/Portsmouth had not provided written consent to the
16 law firm's conflict of interest in representing GMP in the matter, as required by law.
17 Palermo also concealed that the outside lawyer, represented Palermo's other interests, such
18 Palermo's GMP Cars business had other conflicts of interest which Palermo should have
19 disclosed to Mr. Winfield. Palermo made the misrepresentation and concealed this
20 information so that Mr. Winfield would not object to the proposed MSA or insist on an
21 independent and unconflicted outside lawyer review and advise Plaintiffs about the MSA.
22 Mr. Winfield asked Palermo for the confirmation that outside counsel had reviewed the
23 proposed MSA on Justice/Portsmouth's behalf because Mr. Zybala therefore wanted
24 another lawyer to review and approve the proposed transaction. Palermo also led Mr.
25 Nance to believe that the outside lawyer was representing Justice/Portsmouth in the
26 transaction. Given Palermo's position as Justice's MD at the time, Mr. Winfield
27 reasonably relied on Palermo's misrepresentations. But for Palermo's misrepresentation
28 and concealment, Mr. Winfield would have objected to it on Portsmouth's behalf and

1 would not have permitted Portsmouth to sign it on Justice's behalf since Plaintiffs did not
2 have adequate representation. Plaintiffs began to suspect that Palermo had concealed the
3 truth only after Palermo terminated his position with Justice and stole the Justice
4 Documents. Mr. Winfield and Mr. Nance did not discuss the legal representation of the
5 GMP MSA with Mr. Zybala after the execution of the GMP MSA; Mr. Zybala was
6 terminally ill with cancer in the hospital after the GMP MSA was signed and died just a
7 few months later.

8 (h) In or about November and December 2013, Palermo concealed from
9 Portsmouth (including Mr. Winfield and Mr. Nance) his knowledge that, if the GMP MSA
10 were executed, Palermo and GMP would not faithfully manage the Hotel in the best
11 interest of Justice. On information and belief, Palermo knew before the GMP MSA was
12 executed that he and GMP would manage the Hotel in Palermo's and GMP's interests, not
13 Justice's. He concealed this information to induce Portsmouth to sign and approve on
14 behalf of Justice the GMP. But for Palermo's concealment, Portsmouth would not have
15 approved or signed the GMP MSA on Justice's behalf and Mr. Winfield and Mr. Nance
16 would have objected to the then proposed GMP MSA on Portsmouth's behalf, **including**
17 **its arbitration provision**. Plaintiffs reasonably believed that Palermo would have
18 disclosed such material information to Portsmouth given Palermo's fiduciary duties to
19 Plaintiffs, including before the GMP MSA was signed. Plaintiffs began to suspect that
20 Palermo had intentionally concealed Palermo's and GMP true intent only after Palermo
21 terminated his position with Justice and stole the Justice Documents. Plaintiffs'
22 investigation of Palermo's wrongs against them and discovery of the true facts has been
23 impeded by Palermo's theft of the Justice Documents.

24 26. None of Plaintiffs' claims against Palermo is barred by statutes of limitation.
25 Given Palermo's fraudulent concealments from Plaintiffs of his wrongs – including fraud
26 and breach of fiduciary duty, accrual of the claims were delayed until Plaintiffs' discovery
27 of the claims. Especially given Palermo's concealment of his wrongs and given that he
28 was Plaintiffs' fiduciary Plaintiffs could not have reasonably discovered their claims

1 sooner than they did. Plaintiffs were reasonably diligent and attempting to discover and
2 pursue their claims against Palermo (e.g., they repeatedly demanded that Palermo return
3 the Justice Documents; they tried to discover Palermo's wrongs from the few documents to
4 which they did have access. The statutes of limitations were tolled by Palermo's
5 fraudulent concealments. Palermo is equitably estopped from relying on any statute of
6 limitations to escape liability since Palermo induced Plaintiffs to delay filing their claims
7 through Palermo's affirmative conduct to prevent Plaintiffs from discovering and filing
8 their claims sooner. With respect to claims that have not yet been asserted, the discovery
9 rule continues to delay their accrual and the statute of limitations continues to be tolled and
10 Palermo continues to be equitably estopped from relying on any statutes of limitations as
11 Palermo continues to obstruct Plaintiffs' ability to discover their claims against him (e.g.,
12 by theft or destruction of Justice Documents).

13 27. Justice has suffered loss of and damage to money and other property
14 resulting from Palermo's wrongs. Palermo's wrongs have caused and threaten irreparable
15 harm.

16 **THE CLAIMS AGAINST PALERMO ARE NOT SUBJECT TO ARBITRATION**

17 28. There is no agreement between Justice and Palermo that disputes related to
18 his role as Justice's MD are subject to arbitration. There is no agreement between
19 Portsmouth and Palermo that disputes related to his role as Portsmouth's Assistant
20 Secretary are subject to arbitration.

21 29. Claims arising from or related to Palermo's duties as Justice's MD and
22 Portsmouth's Assistant Secretary are not subject to the GMP Arbitration Provision.

23 (a) Such claims are not within the scope of the provision. Rather, they
24 arise from Palermo's separate and distinct duties as Justice's MD and Portsmouth's
25 Assistant Secretary. Any ambiguities in the GMP Arbitration Provision are to be
26 construed against Palermo since he proposed to Plaintiffs the GMP Arbitration Provision,
27 including its language.

1 (b) In addition, the GMP Arbitration Provision is unenforceable as
2 providing for no meaningful arbitration remedy to the extent it is construed as applying to
3 disputes such as this one, which cannot fairly or reasonably be resolved during a mere
4 thirty-days from submission of the dispute to arbitration to conclusion.⁹ The GMP
5 Arbitration would not afford Plaintiffs of a fair opportunity to prove their case. This case
6 involves the hundreds of boxes of documents and electronic records spanning years (which
7 Defendants have stolen), and will need forensic accounting experts to plough through them
8 once obtained. It will also involve discovery given the volume of documents at issue,
9 determination of which documents are missing and which ones were destroyed, and a
10 complicated fraudulent scheme spanning years.

11 (c) Further, the execution of the GMP MSA was induced by fraud and
12 breach of fiduciary duty which permeate the entire GMP MSA, including the GMP
13 Arbitration Provision. Indeed, the GMP Arbitration Provision was a substantial part of
14 Palermo's fraudulent scheme. On information and belief, Palermo wrongfully intended to
15 use the GMP Arbitration Provision (in addition to his fraudulent conduct, theft and
16 destruction of Justice Documents) to prevent Plaintiffs from discovering and proving
17 GMP's wrongs. It is, thus, unenforceable.¹⁰

18 (d) Portsmouth's approval of the MSA as "Managing General Partner of
19 Justice" – which was an express condition precedent to the effectiveness of the MSA
20 [including the GMP Arbitration Provision] was invalid and ineffective because (i) that
21 approval was obtained through Palermo's fraud and breach of fiduciary duty.¹¹ Especially
22 given his then-existing plan to invoke it to attempt to immunize GMP from liability, bring
23 it to Portsmouth's attention. Instead, Palermo induced Mr. Nance to sign the MSA without
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25 ⁹ See *Saika v. Gold*, 49 Cal. App. 4th 1074 (1996).

26 ¹⁰ See *Benson Ford, Jr. v. Shearson Lehman Am. Express, Inc.*, 180 Cal.App.3d 1011
(1986).

27 ¹¹ See *Atchison, Topeka & Santa Fe Ry. Co. v. West*, 176 Cal. 148 (1917) (approval
28 vitiated by fraudulent collusion between the contractor and plaintiff's employee who was
the contractor's brother-in-law).

1 explaining to Mr. Nance that Defendants intended to use the GMP Arbitration Provision to
2 require arbitration of claims like those asserted herein that cannot be reasonably be fairly
3 prosecuted and proven within the thirty day period. Mr. Nance reasonably assumed that
4 GMP and Justice would not submit a dispute to arbitration that could not reasonably and
5 fairly be proven or defended against within the thirty-day period. Such understanding on
6 Mr. Nance's part was reasonable, including because:

7 (i) Palermo, who controlled GMP, had fiduciary duties to Justice,
8 including to act in Justice's best interests and to be forthcoming with all material
9 information.

10 (ii) The proposed GMP Arbitration Provision used permissive
11 language ("any Party may submit") rather than mandatory language, leading to the
12 assumption that the parties would file traditional litigation for those disputes that could not
13 reasonably or fairly be addressed in a streamlined arbitration. Any ambiguities in the
14 GMP Arbitration Provision are to be construed against GMP since it (through its President
15 Palermo) proposed to Justice the GMP Arbitration Provision, including its language. Mr.
16 Nance (and, thus Portsmouth) would not have signed or approved the MSA had Palermo
17 disclosed to him that he would attempt to use the GMP Arbitration Provision to require
18 arbitration of claims like those asserted herein that cannot reasonably and fairly prosecuted
19 and proven within the thirty-day period or take the position in the future that arbitration
20 was mandatory for all disputes.

21 (e) In light of Palermo's failure to bring to Plaintiffs' attention the GMP
22 Arbitration Provision and to disclose to Plaintiffs' (before the signing of the MSA)
23 Defendants' construction of it, Defendants have waived and forfeited the right to invoke
24 the GMP Arbitration Provision and are estopped from relying upon it.¹² Further,
25 Palermo's failure to make these disclosures to Plaintiffs before inducing them to approve
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28 ¹² *Davis v. Blue Cross of N. Cal.*, 25 Cal.3d 418 (1979); *Rosenthal v. Great W. Fin. Secs. Corp.*, 14 Cal.4th 394 (1996).

1 and sign the MSA constituted constructive fraud, making the GMP Arbitration Provision
2 void and unenforceable.¹³

3 **CAUSES OF ACTION (AGAINST PALERMO)**

4 **FIRST CAUSE OF ACTION**

5 **Fraud**

6 (Plaintiffs Against Palermo and Doe Defendants 1-50)

7 30. Plaintiffs re-allege paragraphs 1 through 29 as if fully set forth herein.

8 31. As Justice's MD and as Portsmouth's Assistant Secretary, Palermo had duty
9 not to make misrepresentations to or conceal material information from Plaintiffs.

10 32. Palermo repeatedly made false representations to and concealed material
11 information from them.

12 33. Palermo knew that his representations were false when made and that he was
13 concealing material information that he had a duty to disclose to Plaintiffs.

14 34. Palermo intended for Plaintiffs to rely on his representations and non-
15 disclosures of the facts.

16 35. Plaintiffs were unaware of the falsity of Palermo's representations and
17 instead, actually, reasonably and justifiably relied on them to their detriment. Plaintiffs
18 were unaware of the information that Palermo concealed and instead reasonably and
19 justifiably assumed to their detriment that Palermo would timely disclose to them all
20 material information.

21 36. Plaintiffs' detrimental reliance includes:

22 (a) The execution of the GMP MSA. Had Palermo disclosed the truth to
23 them before the execution of the GMP MSA, Plaintiffs would not have signed it or
24 retained GMP to provide management services.

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¹³ See *Brown v. Wells Fargo Bank, N.A.*, 168 Cal. App. 4th 938 (2008).

1 (b) Allowing Palermo continued access and control over Justice's assets,
2 finances and operations, the Justice Documents, and Other Property. Had Palermo
3 disclosed the truth to Plaintiffs, they would have cut off Palermo's access and control.

4 37. As a direct and proximate result of Palermo's fraudulent conduct, Plaintiffs
5 have and will continue to suffer damages in an amount to conform to proof at trial, but in
6 no event less than the jurisdictional minimum of this Court.

7 38. Plaintiffs allege based on information and belief that Palermo engaged in the
8 aforementioned fraudulent conduct with the intent to injure Plaintiff or with a willful and
9 conscious disregard of Plaintiffs' rights. Palermo's fraudulent conduct constitutes
10 despicable, outrageous, oppressive, and malicious conduct under Section 3294 of the
11 California Code of Civil Procedure and justifies an award of exemplary and punitive
12 damages against Palermo.

13 **SECOND CAUSE OF ACTION**

14 **Breach of Fiduciary Duty**

15 (Plaintiffs Against Palermo and Doe Defendants 1-50)

16 39. Plaintiffs re-allege paragraphs 1 through 38 as if fully set forth herein.

17 40. Palermo had fiduciary duties to Plaintiffs.

18 41. Palermo breached his fiduciary duties to Plaintiffs.

19 42. As a direct and proximate result of Palermo's wrongful conduct, Justice has
20 and will continue to suffer significant damages in an amount to conform to proof at trial,
21 but in no event less than the jurisdictional minimum of this Court.

22 43. Plaintiffs allege, based on information and belief, that Palermo engaged in
23 the aforementioned misconduct with the intent to injure Plaintiffs or with a willful and
24 conscious disregard of Plaintiffs' rights. Palermo's misconduct constitutes despicable,
25 outrageous, oppressive, and malicious conduct under Section 3294 of the California Code
26 of Civil Procedure and justifies an award of exemplary and punitive damages against
27 Palermo.
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1 **THIRD CAUSE OF ACTION**

2 **Conversion**

3 (Plaintiffs Against Palermo and Doe Defendants 1-50)

4 44. Plaintiffs re-allege paragraphs 1 through 43 as if fully set forth herein.

5 45. Justice was and is the owner with the right to possession of the Justice
6 Documents and Other Justice Property.

7 46. Palermo intentionally and substantially interfered with Justice's right to the
8 Justice Documents and Other Justice Property by illegally and improperly taking
9 possession of them, without Justice's consent, and now refusing to return them to Justice
10 or Portsmouth (Justice's general partner) despite Plaintiffs' repeated demands for their
11 return.

12 47. As a direct and proximate result of Palermo's wrongful conduct, Justice has
13 and will continue to suffer significant damages in an amount to conform to proof at trial,
14 but in no event less than the jurisdictional minimum of this Court. In fact, Palermo's
15 misconduct threatens irreparable harm.

16 48. Plaintiffs allege based on information and belief that Palermo engaged in the
17 aforementioned misconduct with the intent to injure Plaintiffs or with a willful and
18 conscious disregard of Plaintiff's rights. Palermo's misconduct constitutes despicable,
19 outrageous, oppressive, and malicious conduct under Section 3294 of the California Code
20 of Civil Procedure and justifies an award of exemplary and punitive damages against
21 Palermo.

22 **FOURTH CAUSE OF ACTION**

23 **Violation of California Penal Code Section 496**

24 (Plaintiffs Against Palermo and Doe Defendants 1-50)

25 49. Plaintiffs re-allege paragraphs 1 through 48, as if fully set forth herein.

26 50. On information and belief, Palermo violated California Penal Code Section
27 496 by knowingly taking possession of property that has been stolen and that has been
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1 obtained in any manner constituting theft and has concealed and withheld Justice's
2 property and has aided in concealing and withholding Justice's property from Justice.

3 51. Justice has been injured by Palermo's violation of California Penal Code
4 Section 496 in an amount to conform to proof at trial, but in no event less than the
5 jurisdictional minimum of this Court.

6 52. Pursuant to California Penal Code Section 496(c), Justice is entitled to three
7 times the amount of its actual damages in an amount to be proven at trial, cost of suit and
8 its reasonable attorneys' fees.

9 **FIFTH CAUSE OF ACTION**

10 **Claim and Delivery**

11 (Plaintiffs Against Palermo and Doe Defendants 1-50)

12 53. Plaintiffs re-allege paragraphs 1 through 52, as if fully set forth herein.

13 54. At all times herein mentioned, Justice and Portsmouth were and still are
14 entitled to the possession of the Justice Documents and Other Justice Property. Palermo
15 physically took them to an unknown location. Since that time, Palermo has been, and now
16 is, in wrongful possession of them in violation of Plaintiffs' right to immediate and
17 exclusive possession.

18 55. Despite Justice's repeated demands, Palermo has failed and refused to return
19 the said property.

20 56. As a direct and proximate result of Palermo's wrongful conduct, Plaintiffs
21 has and will continue to suffer significant damages in an amount to conform to proof at
22 trial, but in no event less than the jurisdictional minimum of this Court.

23 57. Plaintiffs pray for judgment against Palermo for possession of this property;
24 or if the property cannot be delivered, for its value in an amount according to proof at time
25 of trial.

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66. Palermo engaged in conduct alleged herein with malice, oppression and/or fraud. Plaintiffs are, therefore, entitled to recover exemplary and punitive damages in a sum sufficient to punish Palermo.

EIGHTH CAUSE OF ACTION

Accounting

(Plaintiffs Against Palermo and Doe Defendants 1-50)

67. Plaintiffs re-allege paragraphs 1 through 66, as if fully set forth herein.

68. By virtue of Palermo's positions as Justice's MD and Portsmouth's Assistant Secretary, Palermo had and has a duty to account to Plaintiffs.

69. Palermo received money that is due to Justice by engaging in fraudulent conduct alleged herein. As a result, Palermo has been unjustly enriched to the detriment of Justice.

70. Accordingly, Palermo has a duty to Plaintiffs to account for and make restitution to Justice of all monies, property, and all other benefits received or to be received, directly or indirectly, by Palermo as the result of his misconduct alleged herein.

71. The amount of money due from Palermo to Justice is unknown to Plaintiffs and cannot be ascertained without an accounting.

72. Plaintiffs have demanded an accounting from Palermo and payment of the amount due Justice, but to date Palermo has failed and refused, and continues to fail and refuse, to render such an accounting and to pay such sum.

73. By virtue of the conduct alleged herein, Palermo holds all proceeds and benefits derived from his wrongful conduct, as a constructive trustee for the benefit of Justice.

**FACTUAL ALLEGATIONS (CONCERNING CAUSES OF ACTIONS AGAINST
GMP MANAGEMENT)**

74. Under the GMP MSA, GMP agreed:

(a) to advise Justice in all aspects of the management and operation of the Hotel property;

1 (b) to timely provide to Justice financial and operating information
2 related to the Hotel property; and

3 (c) to manage and operate the Hotel property for Justice's benefit.

4 Under the GMP MSA, GMP, also agreed that Justice would reimburse GMP only the
5 "reasonable and necessary" costs and expenses incurred by GMP in performing GMP's
6 obligations and duties under the GMP MSA but not for costs and expenses incurred in
7 connection with any venture that is not related to the Hotel property or the business of
8 Justice. Under the GMP MSA, GMP agreed that its management fees were limited to a
9 certain amount each year.

10 75. To induce Justice to enter into this GMP MSA, GMP misrepresented to
11 Justice (i.e., Justice's general partner) that GMP would faithfully carry out its duties for
12 Justice in a professional and ethical manner at all times.

13 76. Based on these representations made by GMP and the representations and
14 promises made in the GMP MSA, Justice entrusted GMP with access and control of the
15 Hotel's key files, computer systems, servers, data, other property, and bank accounts, and
16 allowed GMP to manage the Hotel's operations, including its financial matters and Justice
17 also entrusted GMP with access to Justice's records (collectively, "Key Property").

18 77. Unbeknownst to Justice, GMP used that access and control over the Key
19 Property to engage in a sophisticated, calculated, and fraudulent scheme to embezzle large
20 sums of money from Justice over the years.

21 78. Among other things, unbeknownst to Justice, and on information and belief:

22 (a) GMP inflated and misrepresented the costs of the Hotel's capital
23 improvements made over the years and took kickbacks from contractors and construction
24 companies.

25 (b) GMP caused the Hotel and Justice to pay expenses and make other
26 payments that did not benefit the Hotel or Justice.

27 (c) GMP diverted personnel whose compensation Justice paid to perform
28 services that did not benefit the Hotel or Justice.

1 (d) GMP caused Justice to pay salaries and benefits for personnel who did
2 not perform any substantial work for Justice and/or worked for Palermo's other business
3 ventures.

4 (e) GMP caused Justice to reimburse expenses that were not reimbursable
5 under the MSA.

6 (f) GMP caused Justice to pay GMP management fees that were not due
7 to GMP.

8 79. On information and belief, GMP likely breached other obligations under the
9 GMP. Through such illegal conduct, GMP depleted Justice's and the Hotel's funds.

10 80. On information and belief, GMP purposefully concealed from Justice GMP's
11 misconduct.

12 81. GMP concealed its misconduct from Justice to induce Justice to pay
13 expenses and make other payments that Justice should not have had to pay – expenses that
14 did not benefit Justice but instead benefited GMP at Justice's expense. GMP also
15 concealed its misconduct so that Justice would continue to give GMP access and control
16 over the Key Property, allowing GMP to continue to embezzle from Justice. Justice did
17 not know the true facts at the time and detrimentally relied on GMP's misrepresentations
18 and non-disclosures, to continue to grant GMP access and control over the Key Property.
19 If GMP had disclosed the true information to Justice, as it was required to do, Justice
20 would have sought reimbursement from GMP for the wrongful payments and Justice
21 would not have given GMP continued access and control over the Key Property. Justice's
22 reliance was reasonable, including because GMP was in a position of trust and confidence
23 by the nature of its relationship with Justice, and the control and access given to it.

24 82. Further, when GMP's control and access over the Key Property and over the
25 Hotel's management ended on or around June 8, 2016, GMP sought to further cover up its
26 wrongful conduct by illegally taking Key Property to an unknown location, and now
27 refuses to return it to Justice, their rightful owner. On information and belief, GMP also
28 stole other property for its own use and likewise refuses to return it to Justice.

1 83. Justice repeatedly demanded that GMP return all Justice property taken by
2 GMP. To date, GMP has failed and refused to return the property it took.

3 84. Justice reasonably relied on GMP's promises to act in Justice's interest as
4 Justice's fiduciary and agent. Thus, Justice did not suspect and did not discover GMP's
5 misconduct until GMP terminated the GMP MSA on or about June 8, 2016.

6 85. Also, GMP intentionally obstructed and continues to obstruct Justice's
7 ability to discover its wrongs.

8 86. Based on information and belief, GMP engaged in this conduct to further its
9 own interests at Justice's expense and in violation of GMP's fiduciary duties to Justice
10 (e.g., in an effort to prevent Justice from discovering GMP's wrongs against Justice and
11 from proving them).

12 87. Based on information and belief, GMP concealed for months before it
13 terminated the GMP MSA on or about June 8, 2016 that GMP planned to terminate its
14 relationships with Justice. Instead GMP misled, Justice to believe that GMP would be
15 continuing its relationships with Justice (e.g., by pretending to be interested in renewing
16 the GMP MSA). Based on information and belief, GMP concealed the truth to facilitate its
17 plan to steal the Key Property when GMP terminated and, thus, cover up GMP's wrongs
18 against Justice and prevent Justice from proving them). Had Justice known of GMP's
19 plans to terminate its relationship with GMP, it would have required GMP to turn over the
20 Key Property immediately and before GMP terminated its relationship with Justice. Based
21 on information and belief, GMP concealed the truth from Justice to induce Justice not to
22 require GMP to turn over the Key Property. Justice reasonably relied on GMP to disclose
23 such material information to them given GMP was Justice's trusted fiduciary.

24 88. Based on information and belief, GMP also concealed its plan to terminate to
25 obtain from Justice on or about June 1, 2016 GMP management fees for the full month of
26 June 2016, knowing that GMP would terminate the relationship on or about June 8, 2016
27 and, thus, GMP would not be performing management services in June thereafter. Based
28 on information and belief, GMP concealed from Justice GMP's plan to terminate the

1 relationship with Justice so they would not object to the June 1, 2016 payment by Justice
2 to GMP. Had Justice known of GMP's plan to terminate its relationship with Justice, they
3 would not have permitted Justice to make the June 1, 2016 payment. Based on
4 information and belief, GMP concealed the truth from Justice's general partner to induce it
5 not to object to the June 1, 2016 payment. Justice (through its general partner) reasonably
6 relied on GMP to disclose such material information given GMP was Justice's fiduciary.

7 89. None of Justice's claims against GMP is barred by statutes of limitation.
8 Given GMP's fraudulent concealments from Justice (i.e. its general partner) of GMP's
9 wrongs – including fraud and breach of fiduciary duty, accrual of the claims were delayed
10 until Justice's discovery of the claims. Especially given GMP's wrongful conduct to
11 conceal its wrongs and given that GMP was Justice's fiduciary, Justice could not have
12 reasonably discovered their claims sooner than they did. Justice was reasonably diligent
13 and attempting to discover their claims against GMP (e.g., they repeatedly demanded that
14 GMP return the Key Property, including the documents that may allow them to discovery
15 their claims; they tried to discover GMP's wrongs from the documents to which they did
16 have access; but given the chaos that GMP left when it abruptly abandoned its position in
17 June 2016 and the scope of its wrongs over years and its efforts to conceal those wrongs,
18 Justice could not reasonably discovered GMP's wrongs sooner than they did). The statutes
19 of limitations were tolled by GMP's fraudulent concealments. GMP is equitably estopped
20 from relying on any statute of limitations to escape liability since GMP induced Justice to
21 delay filing its claims through GMP's active concealments, misrepresentations, and
22 breaches of fiduciary duty. With respect to claims that have not yet been asserted, the
23 discovery rule continues to delay their accrual, the statute of limitations continues to be
24 tolled, and GMP continues to be equitably estopped from relying on any statutes of
25 limitations as GMP continues to obstruct Justice ability to discover its claims against GMP
26 (e.g., by theft or destruction of the Key Property, including documents).

90. Justice has suffered loss of and damage to money and other property resulting from GMP's wrongs. GMP's conduct alleged above threatens irreparable harm to Plaintiffs.

THE CLAIMS AGAINST GMP MANAGEMENT ARE NOT SUBJECT TO
ARBITRATION

91. **The GMP Arbitration Provision is unenforceable as providing for no meaningful arbitration remedy** to the extent it is construed as applying to disputes such as this one, which cannot fairly or reasonably be resolved during a mere thirty-day from submission of the dispute to arbitration to conclusion.¹⁴ If the GMP Arbitration Provision were applied to the claims asserted in this complaint, the GMP Arbitration Provision would require Justice to unravel and arbitrate Defendants' entire scheme during thirty days, start to finish, even though the documents evidencing GMP's wrongs are in Defendants' possession (because they absconded with them), not Plaintiffs'. The GMP Arbitration would not afford Plaintiffs of a fair opportunity to prove their case. This case involves the hundreds of boxes of documents and electronic records spanning years before and after the effective date of the GMP MSA (which Defendants took), and Justice will need forensic accounting experts to plough through them once obtained. It will also involve discovery given the volume of documents at issue, determination of which documents are missing and which ones were destroyed, and a complicated fraudulent scheme spanning years.

92. **Further, the GMP Arbitration Provision is void. The execution of the GMP MSA, was induced by fraud and breach of fiduciary duty** which permeate the entire GMP MSA, including the GMP Arbitration Provision. Indeed, the GMP Arbitration Provision was a substantial part of Palermo's fraudulent scheme (in breach of his fiduciary duties to Plaintiffs [see paragraphs 4-5 and 25(e) – (h) above, which are incorporated by reference herein]) to divert to himself (and his other businesses, including GMP, as well as

¹⁴ See *Saika v. Gold*, 49 Cal. App. 4th 1074 (1996).

1 his cronies) Justice's assets and resources. On information and belief, GMP included the
2 GMP Arbitration Provision in an wrongful attempt to deprive Plaintiffs of a fair
3 opportunity to discover and prove what GMP knew were going to be wrongs against
4 Justice. It is, thus, unenforceable.¹⁵

5 93. **Portsmouth's approval of the GMP MSA as "Managing General**
6 **Partner of Justice" – which was an express condition precedent to the effectiveness of**
7 **the GMP MSA [including the GMP Arbitration Provision] was invalid and ineffective**
8 as a product of Palermo's breach of fiduciary duty.¹⁶ Although Palermo's fiduciary duties
9 to Plaintiffs required him to bring to Plaintiffs' attention the GMP Arbitration Provision he
10 was proposing on behalf of GMP he did not bring it to their attention. Instead, Palermo
11 induced Mr. Nance to sign the MSA without explaining to Mr. Nance that Defendants
12 intended to use the GMP Arbitration Provision to require arbitration of claims like those
13 asserted herein that cannot be reasonably and fairly prosecuted within the thirty-day
14 period. Palermo allowed Mr. Nance to sign the MSA even though Mr. Nance reasonably
15 assumed that GMP and Justice would not submit a dispute to arbitration that could not
16 reasonably and fairly be proven up or defended against within the thirty day period. Mr.
17 Nance would not have signed the MSA had Palermo disclosed to him that he would
18 attempt to use the GMP Arbitration Provision to require arbitration of claims like those
19 asserted herein that cannot reasonably and fairly prosecuted within the thirty-day period or
20 take the position in the future that arbitration was mandatory for all disputes. Nor did
21 Justice have adequate legal representation, as a result of Palermo's concealments,
22 misrepresentations and breach of fiduciary duties. In light of Palermo's failure to bring to
23 Plaintiffs' attention the GMP Arbitration Provision and to disclose to Plaintiffs (before the
24 signing of the MSA) Defendants' construction of it, GMP has waived and forfeited the

25 _____
26 ¹⁵ See *Benson Ford, Jr. v. Shearson Lehman Am. Express, Inc.*, 180 Cal. App. 3d 1011
(1986).

27 ¹⁶ See *Atchison, Topeka & Santa Fe Ry. Co. v. West*, 176 Cal. 148 (1917) (approval
28 vitiated by fraudulent collusion between the contractor and plaintiff's employee who was
the contractor's brother-in-law).

1 right to invoke the GMP Arbitration Provision and is estopped from relying upon it.¹⁷
2 Further, Palermo's failure to make these disclosures to Plaintiffs and inducing them to sign
3 the MSA constituted constructive fraud, making the GMP Arbitration Provision void and
4 unenforceable.¹⁸

5 NINTH CAUSE OF ACTION

6 Fraud

7 (Justice Against GMP and Doe Defendants 51-100)

8 94. Justice re-allege paragraphs 4-12 and 74-93, as if fully set forth herein.

9 95. GMP repeatedly made false representations to Justice that GMP would
10 faithfully manage the Hotel in the best interest of Justice and concealed material
11 information from Justice despite having a duty to disclose it, in order to induce Portsmouth
12 to approve the GMP MSA on behalf of Justice, and to allow GMP continued access to the
13 Hotel's operations and bank accounts as well as other Key Property. GMP also defrauded
14 Justice out of money.

15 96. As GMP knew all along, those representations were false when made and it
16 had a duty to disclose its wrongful conduct to Justice.

17 97. Justice reasonably and detrimentally relied on GMP's representations and
18 non-disclosures of the true facts.

19 98. GMP obtained Justice's consent to the GMP MSA by fraud and breach of
20 fiduciary duty, and thus, it is void and should be deemed rescinded and GMP should be
21 required to restore to Justice all benefits GMP received or took in connection with the
22 GMP MSA. Justice did not receive value from GMP under the GMP MSA (in fact, was
23 damaged by GMP's purported "performance" under the GMP MSA). Therefore, there is
24 nothing for Justice to restore to GMP in connection with the rescission of the GMP MSA.

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26
27 ¹⁷ *Davis v. Blue Cross of N. Cal.*, 25 Cal.3d 418 (1979); *Rosenthal v. Great Western Fin.*
Securities Corp., 14 Cal.4th 394 (1996).

28 ¹⁸ *See Brown v. Wells Fargo Bank, N.A.*, 168 Cal. App. 4th 938 (2008).

99. As a direct and proximate result of GMP's fraudulent conduct, Justice has and will continue to suffer damages in an amount to conform to proof at trial, but in no event less than the jurisdictional minimum of this Court.

100. Justice alleges based on information and belief that GMP engaged in the aforementioned fraudulent conduct with the intent to injure Justice or with a willful and conscious disregard of Justice's rights. GMP's fraudulent conduct constitutes despicable, outrageous, oppressive, and malicious conduct under Section 3294 of the California Code of Civil Procedure and justifies an award of exemplary and punitive damages against GMP.

TENTH CAUSE OF ACTION

Breach of Fiduciary Duty

(Justice Against GMP and Doe Defendants 51-100)

101. Justice re-alleges paragraphs 4-12 and 74-100, as if fully set forth herein.

102. By virtue of GMP's MSA with Justice and GMP's role as a managing agent of Justice entrusted with the operation and finances of the Hotel, GMP owed a fiduciary duty to manage Justice's business and finances in the best interests of Justice.

103. GMP breached its fiduciary duties to Justice.

104. GMP made misrepresentations to and concealed material facts from Justice (i.e., its general partner), engaged in self-dealing and was disloyal to Justice by engaging in the conduct described herein.

105. Moreover, GMP knowingly acted against Justice's interests. Justice (i.e., its general partner) did not give informed consent to GMP's illegal conduct as alleged herein.

106. As a direct and proximate result of GMP's wrongful conduct, Justice has and will continue to suffer significant damages in an amount to conform to proof at trial, but in no event less than the jurisdictional minimum of this Court.

107. Justice alleges, based on information and belief, that GMP engaged in the
aforementioned misconduct with the intent to injure Justice or with a willful and conscious
disregard of Justice's rights. GMP's misconduct constitutes despicable, outrageous,

oppressive, and malicious conduct under Section 3294 of the California Code of Civil Procedure and justifies an award of exemplary and punitive damages against GMP.

ELEVENTH CAUSE OF ACTION

Rescission Or, Alternatively, Reformation

(Justice Against GMP)

108. Justice re-alleges paragraphs 4-12 and 74-107, as if fully set forth herein.

109. Justice is entitled to and seeks rescission of the GMP MSA, including the GMP Arbitration Provision, and demands GMP return to Justice everything GMP has received or taken in connection with the GMP MSA.

110. Alternatively, to the extent the GMP MSA is not rescinded, including the GMP Arbitration Provision, Justice is entitled to and seeks reformation of the GMP MSA and the GMP Arbitration Provision as follows:

(a) The GMP Arbitration Provision is deemed excised from the GMP MSA, or alternatively,

(b) The GMP Arbitration Provision is deemed reformed as follows:

17. Arbitration. If a dispute, controversy or claim: (i) occurs, in law or in equity; (ii) is between GMP Management, Inc. and Justice Investors, LLP (the “Parties”); and (iii) arises under, out of, in connection with, or in relation to this Agreement or a breach of this Agreement (“Arbitrable Claims”), either Party may submit the dispute to JAMS arbitration in San Francisco, California, before a retired Superior Court judge, to be conducted pursuant to the JAMS Comprehensive Arbitration Rules & Procedures as modified. This arbitration provision shall not apply to or bind any parties other than the Parties (even if such parties are affiliated with the Parties) and shall not apply to any other disputes, controversies, or claims besides the Arbitrable Claims. If there is any dispute concerning the scope of Arbitrable Claims or the arbitrator has jurisdiction over a dispute, controversy, or claim, it shall be submitted to the Superior Court in San Francisco, California unless the Parties otherwise agree in writing. Judgment on the arbitration award may be

1 entered in any court having competent jurisdiction. This clause shall not preclude
2 Parties from seeking provisional remedies in aid of arbitration from a court of
3 competent jurisdiction, such as injunctive relief or enforcement of subpoenas (pre-
4 arbitration hearing discovery or arbitration hearing).

5 111. Such reformation is appropriate to reflect the true intent of the parties to the
6 GMP MSA to the extent it is not rescinded.

7 112. If the GMP MSA is not rescinded or reformed as sought above, Justice will
8 suffer unwarranted prejudice and pecuniary loss and, in fact, irreparable harm.

9 113. In addition to rescission and restoration to Justice of all benefits conferred on
10 GMP, Justice seeks all other relief to which it is entitled, including but not limited to
11 damages caused by GMP's wrongful conduct.

12 **TWELFTH CAUSE OF ACTION**

13 **Conversion**

14 (Justice Against GMP and Doe Defendants)

15 114. Justice re-alleges paragraphs 4-12 and 74-113, as if fully set forth herein.

16 115. Justice is the owner with the right to possession of the property alleged
17 herein, including the Key Property.

18 116. GMP intentionally and substantially interfered with Justice's right to
19 personal property by illegally and improperly taking possession of it, without Justice's
20 consent, and now refusing to return the property to Justice despite Justice's repeated
21 demands for its return.

22 117. As a direct and proximate result of GMP's wrongful conduct, Justice has and
23 will continue to suffer significant damages in an amount to conform to proof at trial, but in
24 no event less than the jurisdictional minimum of this Court.

25 118. Justice alleges based on information and belief that GMP engaged in the
26 aforementioned misconduct with the intent to injure Justice or with a willful and conscious
27 disregard of Justice's rights. GMP's misconduct constitutes despicable, outrageous,
28

1 oppressive, and malicious conduct under Section 3294 of the California Code of Civil
2 Procedure and justifies an award of exemplary and punitive damages against GMP.

3 **THIRTEENTH CAUSE OF ACTION**

4 **Violation of California Penal Code Section 496**

5 (Justice Against GMP and Doe Defendants)

6 119. Justice re-alleges paragraphs 4-12 and 74-118, as if fully set forth herein.

7 120. On information and belief, GMP violated California Penal Code Section 496
8 by knowingly receiving funds that were stolen from Justice, in the manner alleged herein.

9 121. Justice has been injured by GMP's violation of California Penal Code
10 Section 496 in an amount to conform to proof at trial, but in no event less than the
11 jurisdictional minimum of this Court.

12 122. Pursuant to California Penal Code Section 496(c), Justice is entitled to three
13 times the amount of its actual damages in an amount to be proven at trial, cost of suit and
14 its reasonable attorneys' fees.

15 **FOURTEENTH CAUSE OF ACTION**

16 **Claim and Delivery**

17 (Justice Against GMP and Doe Defendants)

18 123. Justice re-alleges paragraphs 4-12 and 74-122, as if fully set forth herein.

19 124. At all times herein mentioned, Justice was, and still is, entitled to the
20 possession of the property taken by GMP, including the Key Property. As described in
21 more detail above, GMP physically took such property to an unknown location. Since that
22 time, GMP has been, and now is, in wrongful possession of such property in violation of
23 Justice's right to immediate and exclusive possession.

24 125. Despite Justice's repeated demands, GMP has failed and refused to return
25 said personal property.

26 126. As a direct and proximate result of GMP's wrongful conduct, Justice has and
27 will continue to suffer significant damages in an amount to conform to proof at trial, but in
28 no event less than the jurisdictional minimum of this Court.

1 127. Justice prays for judgment against GMP for possession of the personal
2 property described above; or if the property cannot be delivered, for its value in an amount
3 according to proof at time of trial.

4 **FIFTEENTH CAUSE OF ACTION**

5 **Breach of Written Contract**

6 **(As An Alternative to the Rescission of the Contract)**

7 (Justice Against GMP and Doe Defendants)

8 128. Justice re-alleges paragraphs 4-12, 74-107, 110-111, and 114-127 as if fully
9 set forth herein.

10 129. Justice has fully performed all of the conditions of the GMP MSA to be
11 performed on its part except those which have been excused.

12 130. GMP breached the GMP MSA by engaging in the conduct described herein.

13 131. As a direct and proximate result of Defendants' breach of the GMP MSA,
14 Plaintiff has sustained general consequential and other incidental damages, in an amount to
15 conform to proof at trial, but in no event less than the jurisdictional minimum of this Court.

16 **SIXTEENTH CAUSE OF ACTION**

17 **Breach of Implied Covenant of Good Faith and Fair Dealing**

18 **(As An Alternative to the Rescission of the Contract)**

19 (Justice Against GMP and Doe Defendants)

20 132. Justice re-alleges paragraphs 4-12, 74-107, 110-111, and 114-131, as if fully
21 set forth herein.

22 133. To the extent that GMP's conduct did not violate the GMP MSA's expressed
23 or implied terms, it breached its implied covenant of good faith and fair dealing since such
24 conduct unfairly interfered with Justice's right to receive the benefits of the contract.

25 134. As a direct and proximate result of GMP's breach of the implied covenant of
26 good faith and fair dealing, Justice was harmed and has suffered injury and damages, in an
27 amount to conform to proof at trial, but in no event less than the jurisdictional minimum of
28 this Court.

1 135. GMP engaged in conduct alleged herein with malice, oppression and/or
2 fraud. Justice, therefore, is entitled to recover exemplary and punitive damages in a sum
3 sufficient to punish GMP.

4 **SEVENTEENTH CAUSE OF ACTION**

5 **Accounting**

6 (Justice Against GMP and Doe Defendants)

7 136. Justice re-alleges paragraphs 4-12 and 74-131, as if fully set forth herein.

8 137. By virtue of the GMP MSA and GMP's business relationship with Justice,
9 GMP had duty to care for and protect Justice's interests in the Hotel Property.

10 138. GMP received money that is due to Justice by engaging in fraudulent
11 conduct alleged herein. As a result, GMP has been unjustly enriched to the detriment of
12 Justice.

13 139. Accordingly, GMP has a duty to Justice to account for and make restitution
14 to Justice of all monies, property, and all other benefits received or to be received, directly
15 or indirectly, by GMP as the result of GMP's misconduct alleged herein.

16 140. The amount of money due from GMP to Justice is unknown to Justice and
17 cannot be ascertained without an accounting of the receipts and disbursements of the
18 aforementioned operations.

19 141. Justice has demanded an accounting of the aforementioned conduct from
20 GMP and payment of the amount due, but to date, GMP has failed and refused, and
21 continue to fail and refuse, to render such an accounting and to pay such sum.

22 142. By virtue of the conduct alleged herein, GMP holds all proceeds and benefits
23 derived therefrom, as a constructive trustee for the benefit of Justice.

24 [see next page]

1 **PRAYER FOR RELIEF**

2 **AGAINST PALERMO AND DOE DEFENDANTS**

3 **WHEREFORE**, Justice and Portsmouth pray for judgment against Palermo and
4 Doe Defendants, and for such other relief as follows:

5 1. For compensatory, special, and consequential damages according to proof at
6 trial;

7 2. For statutory damages in an amount of at least three times the amount of
8 actual damages suffered by Justice;

9 3. For prejudgment interest at the maximum legal rate;

10 4. For an award of exemplary or punitive damages in an amount appropriate to
11 punish and to make an example of these Defendants;

12 5. For temporary, preliminary, and permanent injunctive relief, including
13 requiring these Defendants to return the Justice Documents and all other Justice property
14 taken from or not returned to Justice;

15 6. For disgorgement of these Defendants' ill-gotten gains resulting from the
16 conduct alleged herein;

17 7. For an accounting of all monies, property, and all other benefits obtained by
18 these Defendants resulting from the conduct alleged herein;

19 8. For imposition of a constructive trust over these Defendants' ill-gotten gains
20 derived from the conduct alleged herein;

21 9. For orders requiring these Defendants to return the Justice Documents and
22 Other Justice Property;

23 10. For costs of suit incurred herein;

24 11. For all relief allowed by California Penal Code Section 496;

25 12. For restitution of all benefits these Defendants received by their wrongful
26 conduct alleged herein;

27 13. For costs of suit, including attorneys' fees as permitted by law, and for such
28 other and further relief as the Court deems just and proper.

1
2 **AGAINST GMP AND DOE DEFENDANTS**

3 **WHEREFORE**, Justice prays for judgment against GMP and Doe Defendants, and
4 for such other relief as follows:

5 14. For compensatory, special, and consequential damages according to proof at
6 trial;

7 15. For statutory damages in an amount of at least three times the amount of
8 actual damages suffered by Justice;

9 16. For prejudgment interest at the maximum legal rate;

10 17. For an award of exemplary or punitive damages in an amount appropriate to
11 punish and to make an example of these Defendants;

12 18. For rescission or, alternatively, reformation of the GMP MSA as sought
13 herein;

14 19. For temporary, preliminary, and permanent injunctive relief including
15 requiring these Defendants to return the Key Property and all Justice property taken from
16 or not returned to Justice;

17 20. For disgorgement of these Defendants' ill-gotten gains resulting from the
18 conduct alleged herein;

19 21. For an accounting of all monies, property, and all other benefits obtained by
20 these Defendants' resulting from the conduct alleged herein;

21 22. For imposition of a constructive trust over these Defendants' ill-gotten gains
22 derived from the conduct alleged herein;

23 23. For orders requiring these Defendants to return the Key Property and all
24 other Justice property;

25 24. For costs of suit incurred herein;

26 25. For all relief allowed by California Penal Code Section 496;


27 26. For restitution of all benefits these Defendants received by their wrongful
28 conduct alleged herein;

1 27. For costs of suit, including attorneys' fees as permitted by law, and for such
2 other and further relief as the Court deems just and proper.

3
4 Dated: September 10, 2018

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6
7 By



8 SEONG HIM

9 JAMES C. WALD


10 Attorneys for Plaintiffs Justice Investors, LP. and
11 Portsmouth Square, Inc.
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Dated: September 10, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By


SEONG H. KIM
JAMES C. WALD
Attorneys for Plaintiffs Justice Investors, LP. and
Portsmouth Square, Inc.

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On September 10, 2018, I served true copies of the following document(s) described as

1) FRAUD; 2) BREACH OF FIDUCIARY DUTY; 3) CONVERSION
4) VIOLATION OF CALIFORNIA PENAL CODE SECTION 496; 5) CLAIM
AND DELIVERY; 6) BREACH OF CONTRACT; 7) BREACH OF IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING; 8) ACCOUNTING;
9) RESCISSION OR ALTERNATIVELY, REFORMATION and DEMAND FOR
JURY TRIAL

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

Executed on September 10, 2018, at Los Angeles, California.

Pamela Crawford

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