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25 [Additional counsel appear on signature page.]

26 UNITED STATES DISTRICT COURT  
27 NORTHERN DISTRICT OF CALIFORNIA  
28 SAN JOSE DIVISION

29 ECLECTIC PROPERTIES EAST, LLC, a  
30 California Limited Liability Company,  
31 RISOLA FAMILY LP II, a Florida Limited  
32 Partnership, CECA 3000, LP, a Nevada  
33 Limited Partnership, CHEATHAM  
34 PROPERTIES, LLC, a California Limited  
35 Liability Company, successor in the interest of  
36 John and Mary Cheatham, VAS  
37 ENTERPRISES I LLC,

38 [Caption continued on following page.]

**ORIGINAL FILED**

FEB - 4 2009

Richard W. Wieking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

**ADR**

**E-filing**

**RMW**

**C09 00511**

**RS**

**COMPLAINT FOR:**

1. Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(c)-(d);
2. Negligent Misrepresentation;
3. Fraudulent Concealment, Cal. Civ. Code §1710, *et seq.*;
4. Unjust Enrichment and Imposition of a Constructive Trust;
5. Money Had and Received;
6. Violation of California Business & Professions Code §17200, *et seq.*; and
7. Violation of California Business & Professions Code §17500, *et seq.*

**DEMAND FOR JURY TRIAL**

1 a California Limited Liability Company, )  
AMNON DANUS and RIVKA DANUS, )  
2 FRED ENGELBERG, LINDA FARRELL, )  
JOSEPH W. AMIRKHAS, JOSEPH W. )  
3 AMIRKHAS, as Trustee under The Amirkhas )  
Trust, dated January 14, 2000, JUSTUS L. )  
4 AHREND and SUSAN W. AHREND, )  
Trustees of The Justus and Susan Ahrend )  
5 Trust, dated December 6, 1990, KEVORK )  
BELIKIAN and SYLVIA S. BELIKIAN, )  
6 Trustees under The Kevork Belikian and Sylvia )  
S. Belikian Living Trust, dated July 10, 2000, )  
7 MANI ETEMAD and SUSAN )  
KHOSHNOOD, Trustees of the Mani Etemad )  
8 and Susan Khoshnood 2001 Revocable Trust, )  
EUGENIA GAGNON, Trustee of the Genie )  
9 Debs Revocable Trust, dated October 10, 1995, )  
THOMAS H. LINDEN and SYLVIA E. )  
10 LINDEN, Trustees of The Thomas H. Linden )  
and Sylvia E. Linden Family Trust, dated )  
11 September 19, 2000, JOHANNES )  
MODERBACHER and EILEEN STARR )  
12 MODERBACHER, as Trustees of The )  
Moderbacher Family Trust, Established by )  
13 Declaration of Trust, dated February 1, 2006, )  
RICHARD W. SIEBERT and DEBRA M. )  
14 SIEBERT, Trustees of The Siebert Family )  
Trust U/D/T, dated January 13, 2003, ALLEN )  
15 ERNEST HOM, Trustee for The Allen Ernest )  
Hom Trust, dated August 19, 1992, and )  
16 LINDA J. CALL, Trustee for The Linda )  
Jeanne Call Family Trust, dated September 12, )  
17 2002, )

18 Plaintiffs, )

19 vs. )

20 THE MARCUS & MILLICHAP COMPANY, )  
a California corporation, MARCUS & )  
21 MILLICHAP REAL ESTATE INVESTMENT )  
SERVICES INC., a California corporation, )  
22 MARCUS & MILLICHAP REAL ESTATE )  
INVESTMENT BROKERAGE COMPANY, a )  
23 California corporation, SOVEREIGN )  
INVESTMENT COMPANY, a California )  
24 corporation, SOVEREIGN SCRANTON LLC, )  
a Delaware Limited Liability Company, )  
25 SOVEREIGN CC, LLC, a Delaware Limited )  
Liability Company, SOVEREIGN JF, LLC, )  
26 )

27 [Caption continued on following page.]

1 a California Limited Liability Company, PAUL )  
A. MORABITO, individually and as the alter- )  
2 ego of Eureka Petroleum Inc., a New York )  
corporation, Tibarom Inc., a Delaware )  
3 corporation, Tibarom NY LLC, a Nevada )  
Limited Liability Company, Tibarom PA LLC, )  
4 a Nevada Limited Liability Company, Scranton )  
Lube, LLC, a Delaware Limited Liability )  
5 Company, NY Seven Lube, LLC, a Delaware )  
Limited Liability, New York Lube Number 3, )  
6 LLC, a Delaware Limited Liability Company, )  
Rochester Lube, LLC, a Delaware Limited )  
7 Liability Company, Baruk Management, Inc., a )  
California corporation, EUREKA )  
8 PETROLEUM INC., a New York corporation, )  
TIBAROM INC., a Delaware corporation, )  
9 TIBAROM NY LLC, a Nevada Limited )  
Liability Company, TIBAROM PA LLC, a )  
10 Nevada Limited Liability Company, )  
SCRANTON LUBE, LLC, a Delaware Limited )  
11 Liability Company, NY SEVEN LUBE, LLC, )  
a Delaware Limited Liability, NEW YORK )  
12 LUBE NUMBER 3, LLC, a Delaware Limited )  
Liability Company, ROCHESTER LUBE, )  
13 LLC, a Delaware Limited Liability Company, )  
BARUK MANAGEMENT, INC., a California )  
14 corporation, JACK WAELTI, individually and )  
as the alter-ego of The QSR Group One, LLC, )  
15 a Florida Limited Liability Company, The QSR )  
Group, LLC, a Florida Limited Liability )  
16 Company, and The QSR Group II, LLC, a )  
Florida Limited Liability Company a/k/a The )  
17 QSR Group Two, LLC, THE QSR GROUP )  
ONE, LLC, a Florida Limited Liability )  
18 Company, THE QSR GROUP, LLC, a Florida )  
Limited Liability Company, and THE QSR )  
19 GROUP II, LLC, a Florida Limited Liability )  
Company a/k/a THE QSR GROUP TWO, )  
20 LLC, PGP VALUATION, INC., an Oregon )  
corporation, GLEN D. KUNOFSKY, )  
21 MARCUS MUIRHEAD, ALEXANDER )  
MICKLE, SEAN PERKIN, DONALD EMAS, )  
22 ANDREW LESHER, STEWART WESTON, )  
BRICE HEAD, DAIZY GOMEZ, and BRET )  
23 KING, )

24 Defendants. )

25 )  
26 )  
27 )  
28 )

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1 Plaintiffs Eclectic Properties East, LLC, Risola Family Limited Partnership II, CECA 3000,  
2 LP, Cheatham Properties, LLC, VAS Enterprises I LLC, Amnon Danus and Rivka Danus, Fred  
3 Engelberg, Linda Farrell, Joseph W. Amirkhas, Joseph W. Amirkhas, as Trustee under The  
4 Amirkhas Trust, dated January 14, 2000, Justus L. Ahrend and Susan W. Ahrend, Trustees of The  
5 Justus and Susan Ahrend Trust, dated December 6, 1990, Kevork Belikian and Sylvia S. Belikian,  
6 Trustees under The Kevork Belikian and Sylvia S. Belikian Living Trust, dated July 10, 2000, Mani  
7 Etemad and Susan Khoshnood, Trustees of the Mani Etemad and Susan Khoshnood 2001 Revocable  
8 Trust, Eugenia Gagnon, Trustee of The Genie Debs Revocable Trust, dated October 10, 1995,  
9 Thomas H. Linden and Sylvia E. Linden, Trustees of The Thomas H. Linden and Sylvia E. Linden  
10 Family Trust, dated September 19, 2000, Johannes Moderbacher and Eileen Starr Moderbacher, as  
11 Trustees of The Moderbacher Family Trust, Established by Declaration of Trust, dated February 1,  
12 2006, Richard W. Siebert and Debra M. Siebert, Trustees of The Siebert Family Trust U/D/T, dated  
13 January 13, 2003, Allen Ernest Hom, Trustee for The Allen Ernest Hom Trust, dated August 19,  
14 1992, and Linda J. Call, Trustee for The Linda Jeanne Call Family Trust, dated September 12, 2002  
15 (collectively "Plaintiffs"), by and through their attorneys, bring this action against Defendants The  
16 Marcus & Millichap Company, Marcus & Millichap Real Estate Investment Services Inc., Marcus &  
17 Millichap Real Estate Investment Brokerage Company, Sovereign Investment Company, Sovereign  
18 Scranton LLC, Sovereign CC, LLC, Sovereign JF, LLC, Paul A. Morabito (individually and as the  
19 alter-ego of Eureka Petroleum Inc., Tibarom Inc., Tibarom NY LLC, Tibarom PA LLC, Scranton  
20 Lube LLC, NY Seven Lube LLC), Eureka Petroleum Inc., Tibarom Inc., Tibarom NY LLC, Tibarom  
21 PA LLC, Scranton Lube LLC, NY Seven Lube LLC, LLC, New York Lube Number 3, LLC,  
22 Rochester Lube, LLC, Baruk Management, Inc., Jack Waelti (individually and as the alter-ego of  
23 The QSR Group, LLC, The QSR Group One, LLC, The QSR Group II, LLC a/k/a The QSR Group  
24 Two, LLC), The QSR Group, LLC, The QSR Group One, LLC, The QSR Group II, LLC a/k/a The  
25 QSR Group Two, LLC, PGP Valuation, Inc., Glen D. Kunofsky, Marcus Muirhead, Alexander  
26 Mickle, Sean Perkin, Donald Emas, Andrew Leshner, Stewart Weston, Brice Head, Daizy Gomez and  
27 Bret King (collectively "Defendants"), and allege as follows:  
28

1 I. INTRODUCTION

2 1. Plaintiffs are victims of a far-reaching real estate scam, perpetrated by Defendants,  
3 through the implementation of a uniform and well-executed conspiracy over several years and  
4 involving at least 22 commercial properties in four states. A complete list of the locations of the  
5 properties purchased by Plaintiffs as a result of Defendants' fraudulent scheme (referenced herein  
6 individually as a "Property" or collectively as the "Properties") is attached hereto and made a part  
7 hereof as Exhibit "A."

8 2. Using a carefully orchestrated plan in which certain of the individual and corporate  
9 Defendants acted as shills or dummy corporations to hide the true nature of the transactions,  
10 Defendants artificially inflated the value of the properties they marketed and sold to Plaintiffs as  
11 safe, fairly-valued, income-producing investments. In order to artificially inflate the value of the  
12 properties – as much as doubling their actual value in many instances – Defendants entered into  
13 sham leases with shill tenants (at rental rates that were, unbeknownst to Plaintiffs, significantly  
14 higher than the legitimate rental rates that real tenants would pay in arm's-length transactions),  
15 generated and disseminated false and misleading marketing materials, financial information and  
16 projections, and, in some instances, caused the creation and use of fraudulent appraisals.

17 3. After artificially inflating the values of the properties, Defendants convinced  
18 Plaintiffs to invest tens of millions of dollars (including, in some instances, their entire retirement  
19 savings) to purchase the properties, each of which was accompanied by a lease with a tenant  
20 installed by Defendants. Invariably, sometime after Plaintiffs completed their purchases of the  
21 fraudulently-valued properties, the shill "tenants" abandoned the properties and disappeared.  
22 Thereafter, Plaintiffs – who subsequently attempted to sell or re-lease the properties – gradually  
23 learned that they had been defrauded into purchasing properties at artificially inflated prices.

24 4. Through this fraudulent scheme, Defendants swindled Plaintiffs out of tens of  
25 millions of dollars. When the shill tenants abandoned Plaintiffs' properties, not only were the fair  
26 market values of Plaintiffs' properties instantly devalued, but Plaintiffs were also deprived of 15 to  
27 25 year income streams of present and future lease payments that Plaintiffs were relying on to  
28 sustain their retirement dreams.

1           5.     To implement this elaborate shell game, Defendants first approached owners of  
2 commercial rental properties containing franchises such as Jiffy Lube or Church's Chicken and  
3 offered to purchase their properties and franchises. Defendants then conspired to artificially inflate  
4 the purported fair market values of those commercial rental properties by entering into sham leases  
5 with dummy corporations that Defendants controlled.

6           6.     On paper, these leases guaranteed investors 15 to 25 years of consistent rental income  
7 at, unbeknownst to Plaintiffs, approximately twice the rent that had been previously paid in  
8 connection with each property. Because commercial rental property is appraised using the value of  
9 any long-term leases on the property, the sham leases had the direct and intended effect of doubling  
10 the apparent values of the commercial rental properties to twice the legitimate fair market values of  
11 those properties (*i.e.*, a commercial rental property that was actually worth \$1,000,000.00 had its  
12 "paper" fair market value artificially inflated to \$2,000,000.00).

13           7.     Defendants never disclosed to Plaintiffs that the fair market rent for each property  
14 was significantly less than the rent reflected in the sham leases, or that the apparent fair market  
15 values of the properties that Plaintiffs were being asked to purchase had been artificially inflated. To  
16 the contrary, Defendants marketed these properties to Plaintiffs as excellent investments by touting  
17 their (artificially inflated) fair market values, their (sham) long-term leases, and, as described more  
18 particularly below, the purported successes and "business" acumen of defendants Paul Morabito and  
19 Jack Waelti, whom supposedly would be the long-term "tenants" on Plaintiffs' properties.

20           8.     Defendants The Marcus & Millichap Company, Marcus & Millichap Real Estate  
21 Investment Services Inc., Marcus & Millichap Real Estate Investment Brokerage Company, and  
22 their agents, Marcus Muirhead, Alexander Mickle, Sean Perkin, Donald Emas, Andrew Leshner,  
23 Stewart Weston, Brice Head, Daizy Gomez, Glen Kunofsky and Bret King acted as the real estate  
24 brokers on these transactions and convinced Plaintiffs that they were representing Plaintiffs and were  
25 protecting their interests. Reasonably relying on Defendants' promises of financial stability,  
26 conservative risks and secure retirement income, Plaintiffs took Defendants' bait, hook, line, and  
27 sinker.





- 1           27.   Joseph W. Amirkhas is an individual who resides in San Francisco County,  
2 California.
- 3           28.   Justus L. Ahrend is an individual who resides in Los Angeles County, California.
- 4           29.   Susan W. Ahrend is an individual who resides in Los Angeles County, California.
- 5           30.   Kevork Belikian is an individual who resides in Los Angeles County, California.
- 6           31.   Sylvia S. Belikian is an individual who resides in Los Angeles County, California.
- 7           32.   Mani Etemad is an individual who resides in Santa Clara County, California.
- 8           33.   Susan Khoshnood is an individual who resides in Santa Clara County, California.
- 9           34.   Eugenia Gagnon is an individual who resides in Charlotte County, Florida.
- 10          35.   Thomas H. Linden is an individual who resides in Lee County, Florida.
- 11          36.   Sylvia E. Linden is an individual who resides in Lee County, Florida.
- 12          37.   Johannes Moderbacher is an individual who resides in Alameda County, California.
- 13          38.   Eileen Starr Moderbacher is an individual who resides in Alameda County,  
14 California.
- 15          39.   Richard W. Siebert is an individual who resides in Sonoma County, California.
- 16          40.   Debra M. Siebert is an individual who resides in Sonoma County, California.
- 17          41.   Allen Ernest Hom is an individual who resides in Orange County, California.
- 18          42.   Linda J. Call is an individual who resides in Riverside County, California.

19 **Defendants**

20           43.   The Marcus & Millichap Company ("M&M") is a California corporation with its  
21 principal place of business located at 777 California Avenue, Palo Alto, California 94304. M&M  
22 holds itself out to the public as "the premier provider of investment real estate brokerage services,"  
23 noting that "[o]ur 37-year history of maintaining investor relationships in local markets enables us to  
24 be the best information source and transaction service provider nationally." M&M also represents to  
25 the public that "our investment professionals are able to provide clients with an unparalleled  
26 perspective on the investment real estate market locally, regionally and nationally." M&M is the  
27 parent company of defendant Sovereign Investment Company and a co-conspirator in Defendants'  
28 scheme. M&M, among other things, provided false information to investors and marketed the

1 commercial real properties despite its knowledge that their fair market values were artificially  
2 inflated and that the rental rates reflected in their leases were significantly higher than the fair market  
3 rental rates and were not sustainable.

4 44. Marcus & Millichap Real Estate Investment Services Inc. ("M&M Investment") is a  
5 California corporation with its principal place of business located at 777 California Avenue, Palo  
6 Alto, California 94304. M&M Investment is a wholly owned subsidiary of M&M. M&M  
7 Investment was a co-conspirator in Defendants' scheme by, among other things, providing false  
8 information to investors and marketing the commercial real properties despite its knowledge that  
9 their fair market values were artificially inflated and that the rental rates reflected in their leases were  
10 significantly higher than the fair market rental rates and were not sustainable.

11 45. Marcus & Millichap Real Estate Investment Brokerage Company ("M&M Real  
12 Estate") is a California corporation with its principal place of business located at 777 California  
13 Avenue, Palo Alto, California 94304. M&M Real Estate is a subsidiary of M&M Investment.  
14 M&M Real Estate was a co-conspirator in Defendants' scheme by, among other things, providing  
15 false information to investors and marketing the commercial real properties despite its knowledge  
16 that their fair market values were artificially inflated and that the rental rates reflected in their leases  
17 were significantly higher than the fair market rental rates and were not sustainable.

18 46. Sovereign Investment Company ("Sovereign Investment") is a California corporation  
19 with its principal place of business located at 777 California Avenue, Palo Alto, California 94304.  
20 Sovereign Investment was formed by M&M in May 2003 as a private capital acquirer of net lease  
21 properties. Sovereign Investment is one of the principal investing platforms and a wholly owned  
22 subsidiary of M&M. Sovereign Investment holds itself out to the public as "a private principal  
23 equity investment firm focused on unlocking the value of real estate through net lease portfolio  
24 transactions," noting that Sovereign Investment "leverages the experience of a 30-year investment  
25 history, investing its own capital to offer a variety of terms and structures, providing unparalleled  
26 service, pricing and execution for our transaction partners." Sovereign Investment took title to one  
27 or more of the commercial rental properties and entered into fraudulent long-term leases with one or  
28

1 more of the other Defendants, before those properties were sold to unwitting investors, including  
2 Plaintiffs.

3 47. Sovereign Scranton, LLC (“Sovereign Scranton”) is a Delaware Limited Liability  
4 Company with its principal place of business located at 777 California Avenue, Palo Alto, California  
5 94304. Upon information and belief, Sovereign Scranton is a subsidiary of Sovereign Investment.  
6 Sovereign Scranton took title to one or more of the commercial rental properties, including the bogus  
7 leases for each, before they were sold to unwitting investors, including Plaintiffs.

8 48. Sovereign CC, LLC (“Sovereign CC”) is a Delaware Limited Liability Company with  
9 its principal place of business located at 777 California Avenue, Palo Alto, California 94304. Upon  
10 information and belief, Sovereign CC is a subsidiary of Sovereign Investment. Sovereign CC took  
11 title to one or more of the commercial rental properties, including the bogus leases for each, before  
12 they were sold to unwitting investors, including Plaintiffs.

13 49. Sovereign JF, LLC (“Sovereign JF”) is a California Limited Liability Company with  
14 its principal place of business located at 777 California Avenue, Palo Alto, California 94304. Upon  
15 information and belief, Sovereign JF is a subsidiary of Sovereign Investment. Sovereign JF took  
16 title to one or more of the commercial rental properties, including the bogus leases for each, before  
17 they were sold to unwitting investors, including Plaintiffs.

18 50. Defendants Sovereign Investment, Sovereign Scranton, Sovereign CC, and  
19 Sovereign JF are sometimes hereinafter referred to collectively as the “Sovereign Entities.”

20 51. M&M is the ultimate parent company and owner of 100% of the company stock of  
21 both M&M Investment and Sovereign Investment. Indeed, George Marcus and William Millichap,  
22 the founders and co-chairmen of M&M, are the registered principals of M&M Investment and  
23 Sovereign Investment. M&M, M&M Investment and Sovereign Investment occupied the same  
24 corporate headquarters, share many of the same employees and agents, and share the same corporate  
25 philosophy and operating principles. M&M exercises dominion and control over the affairs and  
26 actions of M&M Investment and Sovereign Investment, and there existed a unity of interest and  
27 ownership between all of these companies.

28

1           52.     M&M Investment and Sovereign Investment, as well as their other sister subsidiary  
2 corporations, were formed by M&M to service specific segments of the real estate industry.  
3 M&M Investment was formed as a real estate sales and services arm of M&M, and it purportedly  
4 provides investment sales, financing and research and advisory services. Similarly, Sovereign  
5 Investment was formed as a real estate investment arm of M&M, and it purportedly provides  
6 investment services concerning long-term, net-leased retail, restaurant, office and industrial assets,  
7 including services related to sale/leaseback transactions. Under these circumstances, M&M  
8 Investment and Sovereign Investment are, and at all times herein mentioned, were the  
9 instrumentalities, conduits and agents through which M&M carried on its real estate and investment  
10 business throughout the United States.

11           53.     At all times alleged herein, M&M owned, managed, maintained, and controlled the  
12 activities of its agents M&M Investment and Sovereign Investment, as well as those entities'  
13 subsidiaries and affiliates. Therefore, the activities, acts, and omissions of M&M Investment and  
14 Sovereign Investment were and are, in reality, the activities, acts, and omissions of M&M.  
15 Accordingly, M&M is fully responsible and liable for the wrongdoing of its agents as alleged in this  
16 Complaint.

17           54.     Paul A. Morabito ("Morabito") is an individual residing in Reno, Nevada. Upon  
18 information and belief, at all times material to this litigation, Morabito was the Chief Executive  
19 Officer of Eureka Petroleum Inc. and President, Secretary and Treasurer of Tibarom, Inc. Morabito  
20 is a former Member of Tibarom PA, LLC, Tibarom NY, LLC, Scranton Lube, LLC, NY Seven Lube  
21 LLC, New York Lube Number 3, LLC, Rochester Lube LLC and Baruk Management, Inc.  
22 Morabito was a co-conspirator in connection with Defendants' fraudulent scheme and controlled  
23 various bogus tenants on Plaintiffs' investment properties, which tenants walked away from and  
24 abandoned Plaintiffs' investment properties, wiping out the income streams they had been promised  
25 by Defendants.

26           55.     Eureka Petroleum Inc. ("Eureka") is a New York corporation with its principal place  
27 of business located at 318 Barkley Circle, Hanover, Pennsylvania 17331. Eureka was, at all relevant  
28 times, controlled by, and the alter-ego of, Morabito.

1           56.     Tibarom Inc. (“Tibarom”) is a Delaware corporation with its principal place of  
2 business located at 668 North Coast Highway, Suite 517, Laguna Beach, CA 92651. Tibarom was at  
3 all relevant times, controlled by, and the alter-ego of, Morabito.

4           57.     Tibarom NY LLC (“Tibarom NY”) is a Nevada Limited Liability Company with its  
5 principal place of business located at 668 North Coast Highway, Suite 517, Laguna Beach, CA  
6 92651. Tibarom NY was, at all relevant times, controlled by, and the alter-ego of, Morabito.

7           58.     Tibarom PA LLC (“Tibarom PA”) is a Nevada Limited Liability Company with its  
8 principal place of business located at 668 North Coast Highway, Suite 517, Laguna Beach, CA  
9 92651. Tibarom PA was, at all relevant times, controlled by, and the alter-ego of, Morabito.

10          59.     Scranton Lube LLC (“Scranton Lube”) is a Delaware Limited Liability Company  
11 with its registered agent located at 615 S. Dupont Highway, Dover, Delaware 19901. Scranton Lube  
12 was, at all relevant times, controlled by, and the alter-ego of, Morabito.

13          60.     NY Seven Lube LLC (“NY Seven Lube”) is a Delaware Limited Liability Company  
14 with its registered agent located at 615 S. Dupont Highway, Dover, Delaware 19901. NY Seven  
15 Lube was, at all relevant times, controlled by, and the alter-ego of, Morabito.

16          61.     New York Lube Number 3, LLC (“New York Lube 3”) is a Delaware Limited  
17 Liability Company with its registered agent located at 615 S. Dupont Highway, Dover, Delaware  
18 19901. New York Lube 3 was, at all relevant times, controlled by, and the alter-ego of, Morabito.

19          62.     Rochester Lube, LLC (“Rochester Lube”) is a Delaware Limited Liability Company  
20 with its principal place of business located at 668 North Coastal Highway, Suite 517, Laguna Beach,  
21 CA 92651. Rochester Lube was at all relevant times, controlled by, and the alter-ego of, Morabito.

22          63.     Baruk Management, Inc. (“BMI”) is a California corporation with its principal place  
23 of business located at 668 North Coastal Highway, Suite 517, Laguna Beach, CA 92651. BMI was  
24 at all relevant times, controlled by, and the alter-ego of, Morabito.

25          64.     At all relevant times, Morabito controlled and dominated the affairs of Eureka,  
26 Tibarom, Tibarom PA, Tibarom NY, Scranton Lube, NY Seven Lube, New York Lube 3, Rochester  
27 Lube and BMI, directed the business and financial activities of those entities, used assets of the  
28 corporate entities for his personal use, and caused assets of those entities to be transferred to him

1 personally without adequate consideration as well as to other business entities which he controlled.  
2 At all relevant times, each of those entities was a mere shell, instrumentality and conduit through  
3 which Morabito carried on his business, including their participation as co-conspirators in  
4 Defendants' scheme.

5 65. Jack Waelti ("Waelti") is an individual residing in Clay County, Florida. Upon  
6 information and belief, at all times material to this litigation, Waelti was the Chief Executive Officer  
7 and sole Member of The QSR Group, LLC, The QSR Group One, LLC and The QSR Group II,  
8 LLC. Waelti was a co-conspirator in connection with Defendants' fraudulent scheme and controlled  
9 various bogus tenants on Plaintiffs' investment properties, which tenants walked away from and  
10 abandoned Plaintiffs' investment properties, wiping out the income streams they had been promised  
11 by Defendants.

12 66. The QSR Group, LLC ("QSR") is a Florida Limited Liability Company with its  
13 principal place of business located at 1542 Kingsley Avenue, Suite 132, Orange Park, Florida 32073.  
14 QSR was, at all relevant times, controlled by, and the alter-ego of, Waelti.

15 67. The QSR Group One, LLC ("QSR One") is a Florida Limited Liability Company  
16 with its principal place of business located at 1542 Kingsley Avenue, Suite 132, Orange Park,  
17 Florida 32073. QSR One was, at all relevant times, controlled by, and the alter-ego of, Waelti.

18 68. The QSR Group II, LLC a/k/a The QSR Group Two, LLC ("QSR II") is a Florida  
19 Limited Liability Company with its principal place of business located at 1542 Kingsley Avenue,  
20 Suite 131, Orange Park, Florida 32073. QSR II was, at all relevant times, controlled by, and the  
21 alter-ego of, Waelti.

22 69. At all relevant times, Waelti controlled and dominated the affairs of QSR, QSR One,  
23 and QSR II, directed the business and financial activities of those entities, used assets of the  
24 corporate entities for his personal use, and caused assets of those entities to be transferred to him  
25 personally without adequate consideration as well as to other business entities which he controlled.  
26 At all relevant times, each of those entities were a mere shell, instrumentality and conduit through  
27 which Waelti carried on his business, including his participation as a co-conspirator in Defendants'  
28 scheme.

1           70.     PGP Valuation, Inc. (“PGP”) is an Oregon corporation with its principal place of  
2 business located at 110 SW Yamhill Street, Suite 200, Portland, Oregon 97204. PGP is a co-  
3 conspirator in connection with Defendants’ fraudulent scheme and prepared appraisals of various  
4 investment properties purchased by the Plaintiffs, which appraisals improperly reflected the  
5 artificially inflated fair market values manipulated by Defendants.

6           71.     Glen D. Kunofsky (“Kunofsky”) is an individual residing in New York County, New  
7 York. Kunofsky is a First Vice President of Investments and Senior Director of the Net Leased  
8 Properties Group of M&M Real Estate. M&M Real Estate held Kunofsky out as “one of the most  
9 knowledgeable investment specialists in the nation,” “an authority in the field of net lease and sale-  
10 leaseback transactions,” “a consummate professional” and indicated that Kunofsky’s “focus on client  
11 services has earned him a high degree of loyalty and respect from investors as well as his peers.”

12           72.     Marcus Muirhead (“Muirhead”) is an individual residing in Maricopa County,  
13 Arizona. At all times relevant to this litigation, Muirhead was a senior associate at M&M Real  
14 Estate.

15           73.     Alexander Mickle (“Mickle”) is an individual residing in San Diego County,  
16 California. At all times relevant to this litigation, Mickle was an investment associate at M&M Real  
17 Estate.

18           74.     Sean Perkin (“Perkin”) is an individual residing in San Bernardino, California. At all  
19 times relevant to this litigation, Perkin was a Senior Associate at M&M Real Estate.

20           75.     Donald Emas (“Emas”) is an individual residing in San Bernardino, California. At all  
21 times relevant to this litigation, Emas was a First Vice President of Investments, a Senior Director on  
22 the Net Leased Properties Group, and a Director of the National Retail Group of M&M Real Estate.

23           76.     Andrew Leshner (“Leshner”) is an individual residing in Mariposa County, California.  
24 At all times relevant to this litigation, Leshner was a Senior Associate at M&M Real Estate.

25           77.     Stewart Weston (“Weston”) is an individual residing in Los Angeles County,  
26 California. At all times relevant to this litigation, Weston was a Vice President of Investments and  
27 Senior Director of the National Multi-Housing Group of M&M Real Estate.

28           78.     Brice Head (“Head”) is an individual residing in Los Angeles County, California.



1 the Sovereign Entities. The ultimate goal was to artificially inflate the values of the Properties and  
2 then quickly flip the Properties to unwitting investors, such as Plaintiffs.

3 87. Prior to or shortly after the consummation of each purchase by one of Morabito or  
4 Waelti's alter-ego shell companies, that entity would enter into a sale/leaseback agreement with one  
5 of the other Defendants at a rental rate that was significantly higher than the reasonable, fair market,  
6 arms-length rental rate previously in place. A sale/leaseback agreement is an agreement whereby an  
7 owner of property on which a building is located sells the real estate to an outside purchaser who  
8 then leases it back to the original owner.<sup>1</sup>

9 88. There are two important financial considerations in a sale/leaseback agreement:  
10 (1) the sale price of the property, and (2) the rental rate and term of the lease. These considerations  
11 are the key negotiating factors in a sale/leaseback transaction. The typical guide with respect to sale  
12 price is the market value of the property. In typical circumstances, the seller will have the property  
13 valued by an independent professional appraiser. The appraiser will consider recent sales of similar  
14 properties (as well as the reasonable rental rates of those properties) within a market area as a guide  
15 to market value. The lease rate, which represents the amount of rent the seller/tenant will pay, is  
16 largely dependent on the financial strength or credit of the tenant, the type of business the tenant is  
17 involved in, where the property is located, and the general financial markets. Other factors affecting  
18 this rate are the buyer/lessor's cost of funds, estimated residual value of the property at the end of the  
19 lease, and the tax benefits that the lessor receives.

20 89. In Defendants' scheme, the sale/leaseback would include a bogus lease *with a rental*  
21 *rate that was significantly higher than the arm's-length market lease rate for the particular*  
22 *property*. The property would then be marketed by M&M, the M&M Brokers, Morabito and/or

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25 <sup>1</sup> When utilized in a non-fraudulent manner, a sale/leaseback transaction has obvious, and  
26 subtle, implications for business owners. First, it frees up capital for expansion and other purposes.  
27 Second, a sale/leaseback transaction, if properly structured, can improve a company's debt-to-equity  
28 ratio and reduce interest and depreciation expense. Finally, the sale/leaseback transaction allows the  
owner to concentrate its resources as opposed to having its funds tied-up in a non-liquid asset.

1 Waelti to unsuspecting investors, including Plaintiffs, at the artificially inflated prices and including  
2 the bogus leases.

3 90. In many instances, Defendants, aided and abetted by PGP and/or other entities acting  
4 as appraisers, would cause an appraisal to be created to bolster the credibility of the scam. The  
5 property would be appraised based upon, “the as-is market value of the leased fee interest . . . .” In  
6 other words, the property would be appraised based upon the inflated lease rate set forth in the sham  
7 long-term lease, and using comparables provided by Defendants of other properties with artificially-  
8 inflated values – causing the appraised value of the property at issue to be artificially inflated.

9 **VII. THE BAIT IS CAST – THE MISREPRESENTATIONS**

10 91. Immediately after the purchase of each property by Morabito and Waelti’s alter-ego  
11 shell companies, M&M, the M&M Brokers and/or one of the Sovereign Entities, with the assistance,  
12 in some instances, of one or more of the other Defendants, would promptly begin marketing the  
13 property to 1031 investors, like Plaintiffs.<sup>2</sup> In each case, the investment was presented to potential  
14 investors as a triple-net lease – a long-term lease of 15 to 25 years, the terms of which required the  
15 tenant to pay all expenses of the property, including maintenance, building insurance, and property  
16 taxes (*i.e.*, the three “nets”). Thus, in connection with the marketing and sales of the Properties,  
17 Defendants explicitly, and uniformly, represented to Plaintiffs that “Tenants Pay All Expenses,” that  
18 there were “No Landlord Responsibilities,” and that an investment in one of the Properties was  
19 “extremely safe and secure.”

20 92. Defendants also represented that the Properties would generate a Capitalization Rate  
21 (“cap rate”) of between 7.75% and 9.00%, indicating a solid enough return on net operating income  
22  
23

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24  
25 <sup>2</sup> Section 1031 of the Internal Revenue Code provides that no gain or loss shall be recognized  
26 on the exchange of property held for productive use in a trade or business, or for investment. A tax-  
27 deferred exchange is a method by which a property owner trades one or more relinquished properties  
28 for one or more replacement properties of “like-kind,” while deferring the payment of federal  
income taxes and some state taxes on the transaction. To avoid taxation, the 1031 investor must  
reinvest the proceeds of the initial sale within six months.

1 relative to the property price to make it an attractive investment.<sup>3</sup> Further, M&M, the M&M  
2 Brokers, the Sovereign Entities and/or in some instances, one or more of the other Defendants, made  
3 both oral and written misrepresentations – over the telephone, through e-mail, through the U.S. mail,  
4 and in person – to the Plaintiffs regarding the value, income, income stream, and stability of each  
5 property, together with other information material to Plaintiffs’ decisions whether or not to invest.

6 93. For example, with regard to the Jiffy Lube franchises, Defendants made material  
7 misrepresentations concerning, among other things, the fact that the rental income for each property  
8 was supported by the revenue generated by the franchise on each property, that the properties had  
9 high cap rates compared to the market, existing sales on the Properties, number of cars serviced per  
10 day, rent, quicklube sales, cost of goods, labor, square footage, general and administrative fees,  
11 royalties and advertising fees. These representations were made orally and in writing, over the  
12 phone, in person, using e-mail and the U.S. mail, and are more particularly set forth below.

13 94. With regard to the Church’s Chicken franchises, Defendants made material  
14 misrepresentations concerning, among other things, the fact that the rental income on each property  
15 was supported by the revenue generated by the franchises, that the properties had high cap rates  
16 compared to the market, the extent of renovations to be made on the Properties, liens on the  
17 Properties, traffic in the stores, the proper rent/sales ratio of the franchises, the tenants’ history as  
18 franchisees on the Properties, and the financial stability of the tenants. These representations were  
19 made orally and in writing, over the phone, in person, using e-mail and the U.S. mail, and are more  
20 fully set forth below.

21 95. At all times relevant to this litigation, the representations made by Defendants with  
22 respect to the present and/or future anticipated income generated by the Properties and the leases  
23 associated therewith, the financial stability of the tenants, the existing sales on the Properties, and the  
24 cap rates, among other representations, were known or should have been known by Defendants to be

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25  
26 <sup>3</sup> Cap rates are a measure of the ratio between the cash flow produced by an asset (usually real  
27 estate) and its capital cost (the original price paid to buy the asset) or alternatively its current market  
28 value. Cap rates are an indirect measure of how fast an investment will pay for itself in net cash  
flows; each year, the percentage amount of the cap rates will be repaid.

1 false, with the true facts being that the actual fair market rent reasonably expected from the  
2 Properties multiplied by the cap rates would have justified purchase prices significantly less than  
3 what Plaintiffs were fraudulently induced to pay.

4 96. M&M, the M&M Brokers, and in some instances, one or more of the other  
5 Defendants, held themselves out to the public in general and the Plaintiffs specifically as having  
6 particular knowledge and expertise with respect to triple net leases, including those included with the  
7 Franchises located on the Properties, as well as with regard to the values of the Properties and the  
8 underlying leases.<sup>4</sup> At no time did Defendants disclose to Plaintiffs that they were using shell  
9 companies, shell tenants, bogus leases and artificially inflated appraisals to dupe Plaintiffs out of tens  
10 of millions of dollars.

11 97. Through the fraudulent scheme described above, Defendants were able to sell  
12 unwitting 1031 investors dozens of commercial properties at grossly inflated prices. Plaintiffs alone  
13 purchased 22 of the artificially inflated Properties. In many instances, M&M and the M&M Brokers  
14 acted as the broker for the purchases by Morabito and Waelti's alter-ego companies, and as broker  
15 for both the buyer and the seller in the sales by the Defendants to Plaintiffs – assuring Plaintiffs in  
16 most cases that there was no conflict of interest with M&M and the M&M Brokers representing  
17 parties on all sides of the transactions. Indeed, Plaintiffs were led to believe that M&M and the  
18 M&M Brokers were representing them and would look out for their best interests. Plaintiffs  
19 reasonably relied on M&M and the M&M Brokers to insure that their investments were safe and  
20 secure.

#### 21 VIII. THE PAYOFF – THE SCAM WORKS

22 98. Once the sales were completed and Defendants had Plaintiffs' monies in hand, all  
23 Defendants had to do to accomplish their goal of defrauding Plaintiffs was to walk away. Thus, in  
24 furtherance of the conspiracy, following the sale of the one of the Properties to one of the Plaintiffs,  
25 the shell tenant would operate the franchise for anywhere from a few months to over a year, paying  
26

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27 <sup>4</sup> See, e.g., Exhibit "B."  
28

1 the double rental rate used to induce Plaintiffs to invest. Thereafter, Morabito (or one of his alter-  
2 ego shell companies), Waelti (or one of his alter-ego shell companies), or in some cases, a purported  
3 assignee who was also in on the fraudulent scheme, would call the Plaintiff that owned that  
4 particular Property and ask for either a reduction in rent or offer to buy the Property for a price  
5 significantly less than the price that was paid for the property by the Plaintiff.

6 99. In instances in which the Plaintiff was unwilling to reduce the rental rate, or to sell the  
7 property for significantly less than what the Plaintiff paid for it just a short time earlier, Morabito (or  
8 one of his alter-ego shell companies), Waelti (or one of his alter-ego shell companies), or the  
9 purported assignee, would continue to operate the business for a short period of time and then  
10 abandon the property (sometimes even stripping the building of trade fixtures) – leaving the Plaintiff  
11 with no tenant, no income stream and a vastly devalued piece of property.

12 100. Even in instances where Morabito (or one of his alter-ego shell companies), Waelti  
13 (or one of his alter-ego shell companies), or a purported assignee did not seek reduced rent or a  
14 discounted sale, they would still abandon the property, leaving the plaintiff with no tenant, no  
15 income stream and a devalued piece of property.

16 101. In every single one of the 22 transactions referenced in this Complaint, Morabito,  
17 Waelti and the purported assignees failed to honor the original, inflated lease terms put in place by  
18 Defendants as part of the scam to steal Plaintiffs' investment monies and thereafter, abandoned the  
19 Properties. Notwithstanding this fact, M&M, the M&M Brokers, and the Sovereign Entities  
20 continued to market certain of the Properties and other triple-net properties with fraudulent leases,  
21 thereafter, with specific knowledge that Morabito, Waelti and the purported assignees had and would  
22 continue to walk away.

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1           **IX. THE PARTICULARS OF DEFENDANTS' FRAUDULENT SCHEME**

2           **A. How Mani Etemad Got Scammed<sup>5</sup>**

3           **1. M&M Real Estate and Muirhead Cast the Bait**

4           102. Mani Etemad ("Etemad") had never before invested in a triple-net lease property.  
5 Indeed, Etemad first learned of the concept from Muirhead at M&M Real Estate in July 2005 when  
6 he was first introduced to Muirhead by Etemad's former real estate partners, Joseph Amirkhas  
7 ("Amirkhas") and Eileen and Johannes Moderbacher (the "Moderbachers").

8           103. Muirhead, as an agent of M&M Real Estate, explained to Etemad the basics of triple-  
9 net lease investing. Muirhead told Etemad that triple-net lease investments have less risk when the  
10 operators on the properties operate a large number of franchises. Muirhead also recommended that  
11 Etemad purchase a property with a long-term lease in place, noting that leases that had annual rent  
12 increases were even better investments. Muirhead further counseled Etemad on the cap rates he  
13 should be looking for when he evaluated a potential triple-net property.

14           104. Etemad was initially concerned about buying a property in a state other than  
15 California, where Etemad and his wife lived. In order to allay Etemad's concerns, Muirhead advised  
16 Etemad that triple-net lease investments did not have to be local because they had long-term leases  
17 and the tenants paid all the maintenance and other expenses. As Muirhead described them to  
18 Etemad, triple-net lease investments sounded extremely secure.

19           105. Thereafter, Muirhead began suggesting specific potential triple-net investments to  
20 Etemad. Etemad questioned Muirhead about the investment opportunities, and relied on Muirhead's  
21 answers, believing that Muirhead and M&M Real Estate were acting in Etemad's best interests.

22           106. Several of the properties that Muirhead presented to Etemad were Jiffy Lube  
23 locations operated by Morabito. Etemad became very interested in the Jiffy Lube properties as a  
24 result of the significant amount of information provided by M&M Real Estate and Muirhead. M&M  
25 Real Estate and Muirhead represented to Etemad that Morabito and his entities – Eureka and

26 \_\_\_\_\_  
27 <sup>5</sup> Mani Etemad and his wife, Susan Khoshnood, took title to the property as Trustees of The  
28 Mani Etemad and Susan Khoshnood 2001 Revocable Trust.

1 Tibarom (which were alter-egos of Morabito) – were successful and financially sound, in part  
2 because Morabito/Eureka/Tibarom was backed by Shell Oil Products US (“SOPUS”). Muirhead  
3 made the Jiffy Lube investments sound so secure that Etemad believed that nothing could go wrong  
4 short of a natural disaster.

5 107. By this time, Muirhead had convinced Etemad that Muirhead was very trustworthy  
6 and that M&M Real Estate was a reputable company. When Muirhead advised Etemad how to  
7 analyze the quality of a triple-net lease investment, Muirhead did not tell Etemad to look at the  
8 performance of the particular store he was considering buying. Instead, Muirhead consistently  
9 directed Etemad to focus on the operator who was guaranteeing the lease, not the actual size of the  
10 store or how the particular store was performing.

11 108. Consequently, at Muirhead’s urging, Etemad always focused on the fact that  
12 Morabito/Eureka/Tibarom operated 56 stores and was purportedly financially sound. Etemad was  
13 led to believe that – should he purchase one of the Jiffy Lube properties – Morabito/Eureka/Tibarom  
14 would continue to operate the locations and that Morabito/Eureka/Tibarom’s continued involvement  
15 made an investment in one of the Jiffy Lube properties even more safe and secure.

16 109. Thereafter, around August 11, 2005, Muirhead provided Etemad with a copy of  
17 M&M Real Estate’s marketing brochure for a Jiffy Lube property in Kingston, Pennsylvania.  
18 Sovereign Scranton was the seller, asking \$2,339,879.00 for the property. Kunofsky, of M&M Real  
19 Estate’s New York office, was the listing agent for the Kingston Jiffy Lube property.

20 110. The original lease term for Morabito/Eureka/Tibarom under the lease in place on the  
21 Kingston Jiffy Lube property was for 25 years with one ten-year option. The rent was \$16,086.67  
22 per month with annual rent increases of 1.6%, and a cap rate of 8.25%.<sup>6</sup> The M&M Real Estate  
23 marketing materials noted that “Tibarom, Inc. is the fastest growing franchisee in Shell Oil  
24

25 <sup>6</sup> M&M Real Estate and Muirhead consistently steered Etemad towards the Jiffy Lube  
26 properties. Towards that end, M&M Real Estate represented to Etemad that these properties had just  
27 come on the market, leading him to believe that he and his investment partners (Amirkhas, and the  
28 Moderbachers) were privileged to have the properties available to purchase. Muirhead told them  
that they had to move quickly because the investments were hot and would sell fast.

1 Companies' store Jiffy Lube International, Inc. subsidiary." The marketing materials further noted  
2 that "Tibarom operates 56 stores throughout the United States." Muirhead and M&M Real Estate  
3 also represented to Etemad that Morabito not only had a fast growing stable of properties with 56  
4 stores, but planned to expand his operations much further.

5 111. To further reassure Etemad, Muirhead advised Etemad that Etemad's lender would  
6 look into the quality of the investment and Muirhead concurred with Etemad's understanding that  
7 the lender's examination of the investment was extra protection for Etemad. Each time Etemad had  
8 questions about the Kingston Jiffy Lube property, Muirhead assured him that the investment was  
9 secure, and put him at ease that the investment was a great deal and nothing could go wrong.  
10 Muirhead represented that the Kingston Jiffy Lube property was a safe, low-risk investment. Based  
11 on M&M Real Estate, Muirhead and Sovereign Scranton's representations, Etemad felt very  
12 comfortable with the investment by the end of the process.

13 **2. Etemad Takes the Bait**

14 112. On August 30, 2005, Etemad sent a letter of intent to purchase the Kingston Jiffy  
15 Lube property for \$2,339,897.00. Thereafter, Etemad continued conducting due diligence by  
16 reviewing information provided by M&M Real Estate, Muirhead, and Sovereign Scranton.

17 113. On September 12, 2005, Etemad sent an e-mail to Muirhead asking questions related  
18 to the financial strength of Morabito/Eureka/Tibarom.<sup>7</sup> Muirhead once again assured Etemad that  
19 Morabito/Eureka/Tibarom was financially solid. On September 14, 2005, Muirhead wrote an e-mail  
20 to Etemad, Amirghas and the Moderbachers, noting that:

21 I will be spending the balance of the day looking at due diligence items on each of  
22 your deals to make sure there are no surprises. I will consult with Brandon  
23 [Harrington] today and see what level of commitment the lender can give at this  
24 stage and by the time we are scheduled to remove our due diligence materials. Once  
25 I hear something from the Listing Agent regarding the questions we covered  
26 yesterday I will contact you . . . the Seller said they were never late with rent,  
27 Sovereign never had any issues with that.

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<sup>7</sup> Etemad requested Morabito/Eureka/Tibarom's tax returns but was told by Muirhead that he  
could not have access to them.

1           114. Then on September 21, 2005, Muirhead wrote in an e-mail to Etemad that “Glen  
2 [Kunofsky] is working hard to get us a response from the Seller on the Jiffy Lube in Kingston on the  
3 questions you asked.”

4           115. On September 22, 2005, Etemad wrote an e-mail to Muirhead indicating he had read  
5 the franchise agreement closely and wanted to confirm that the franchise agreement term matched  
6 the lease length, with options. He also wrote:

7           [p]lease look at the page 41, is Paul Morabito representing many companies (one of  
8 them is Tibarom)? There are many companies listed in the page. What is the  
9 relationship between these companies? If they are all related, then that means the  
Operator is much bigger that what we originally thought!

10 Muirhead wrote an e-mail back to Etemad the same day confirming Etemad’s understanding of the  
11 dates and noting:

12           This is one of the strongest franchises in the Jiffy Lube system and to my  
13 conversations with Glen Kunofsky one of the fastest growing franchisees. From my  
14 understanding all of the all of the [sic] LLC’s listed are under the same operator.  
15 They have set up different LLC’s for each market they enter into or have existing  
properties. For example, I believe Eureka Petroleum, LLC handles the west coast  
operations and Tibarom, Inc. handles the east coast operations, yet the managing  
members and directors, such as Paul Morabito are the same.

16           116. Thereafter, Etemad wrote to M&M Real Estate about a planned Tibarom merger with  
17 another company that Etemad had heard about. Kunofsky responded through e-mail that there was  
18 “nothing new to report on this point. This would in effect be a ‘bonus’ to the deal if they merge with  
19 this other company. Tibarom is a very financially sound company.”

20           117. Muirhead, purportedly on behalf of Etemad, also asked Kunofsky about the  
21 assignment clause in the lease agreement:

22           In Paragraph 10 of the leases it talks about assignment of interest in the property.  
23 How is the assignee’s financial strength measured? For example Tibarom/Eureka  
24 appear to be very financially strong at this point. Let’s say their financial condition  
25 declines over the couple of years and they are in a position to assign their interest in  
26 this lease over to a new Jiffy Lube franchisee. Tibarom/Eureka’s financial strength  
at the time of assigning to a new entity will be of a lower grade than they are today.  
So, the buyer’s question is when is the financial condition of Tibarom/Eureka  
measured as a benchmark to ensure that the new Jiffy Lube franchisee is of equal or  
greater standing?

27 Kunofsky answered through e-mail that:

28           This does not appear to be an issue as there is language in the lease that basically  
states you as landlord have the ultimate authority to approve/disapprove a new

1 franchisee from taking over. If you have any further questions, please contact me to  
2 discuss.

3 118. Throughout the sales process, Muirhead portrayed Kunofsky as one of the most  
4 knowledgeable and powerful people at M&M Real Estate, re-confirming Etemad's belief that he was  
5 being represented by triple-net lease experts. On October 26, 2005, Muirhead advised Etemad,  
6 Amirkhas and the Moderbachers in an e-mail that Kunofsky told him that they could use the 1031  
7 exchange funds to pay transfer taxes. Muirhead further wrote in the e-mail that he trusted  
8 "[Kunofsky's] opinion as he closed 25 Uni-Marts, earlier this year, most of which were in  
9 Pennsylvania and sells more Single Tenant NNN properties than anyone in our company."<sup>8</sup>

10 119. During the sales process, and at the behest of M&M Real Estate, PGP prepared an  
11 appraisal of the Kingston Jiffy Lube property. The appraisal included comparables provided by  
12 M&M Real Estate and Morabito/Eureka/Tibarom which comparables were also based on leases with  
13 inflated rents, making the appraisal wholly unreliable. Of course, none of this information was  
14 disclosed to Etemad.

15 120. Etemad eventually closed on the Kingston Jiffy Lube property in mid-November  
16 2005, at a purchase price of \$2,271,058.00. Etemad, Muirhead, Kunofsky, M&M Real Estate,  
17 Sovereign Scranton and Morabito used fax, e-mail, phone, and U.S. mail by and between California  
18 and New York to negotiate the transaction.

### 19 **3. The Jiffy Lube Sale Was a Scam**

20 121. On October 13, 2006, Salvatore ("Sam") Morabito (Paul Morabito's brother) sent a  
21 letter to Etemad via certified mail notifying him that the lease on the Kingston Jiffy Lube property  
22 had been assigned to Tibarom PA, notwithstanding the fact that Etemad had not consented to this  
23 assignment. Etemad called Morabito/Eureka/Tibarom to find out why they purportedly made this  
24 assignment and was told that "it was just a technical thing to put more focus on these companies and  
25

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26  
27 <sup>8</sup> Following Kunofsky's sale of the Uni-Mart triple-net lease properties, Uni-Mart filed for  
28 Chapter 11 bankruptcy protection, leaving the purchasers without tenants on their properties.

1 make sure we address things better.” After that time, Etemad began receiving rent checks from  
2 Tibarom PA.

3 122. On December 14, 2006, California Credit Union, Etemad’s lender, sent Etemad a  
4 copy of a physical inspection that the lender had requested on the Kingston Jiffy Lube property. The  
5 report, which included photos and text information, listed the building square footage as 3,000 sq. ft.  
6 The PGP appraisal and initial marketing materials from M&M both claimed that the square footage  
7 on the Kingston Jiffy Lube property was 4,225 sq. ft.<sup>9</sup>

8 123. On April 24, 2007, Etemad wrote to Morabito/Eureka/Tibarom because the rent check  
9 for that month had bounced. Etemad was told that the check bounced due to a bank mistake.

10 124. On November 23, 2007, Etemad wrote to Morabito/Eureka/Tibarom to complain  
11 about recent rent delivery problems, and he requested a financial statement. Morabito/Eureka/  
12 Tibarom promised to provide the financial statement, but never did. Thereafter, Etemad received  
13 rent for December 2007 – the last rent payment that Etemad would receive from Morabito/Eureka/  
14 Tibarom.

15 125. Subsequently, on January 5, 2008, Etemad received a phone call from David Macchia  
16 (“Macchia”), who identified himself as the new owner of Tibarom, and Etemad’s new tenant.  
17 Macchia told Etemad that he was coming to meet with Jiffy Lube owners in San Francisco on  
18 January 9, 2008, and that he would like to meet with Etemad, Amirkhas and the Moderbachers.

19 126. At the meeting, Etemad asked Macchia how and when he became the owner of  
20 Tibarom as Etemad had not received any notice of such a transfer. Macchia told them that he took  
21 over the operations of their Jiffy Lube locations on approximately December 22, 2007. Macchia  
22 asked Etemad, Amirkhas and the Moderbachers all to take the largest rental reduction that they could  
23 possibly take so that Macchia could continue to operate the properties.

24 127. On January 10, 2008 – the day after the meeting with Macchia – Morabito called  
25 Etemad to “find out how everything is going.” During the call, Morabito attempted to intimidate

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27 <sup>9</sup> If the inspection report is accurate, then there is an approximate 30% discrepancy between  
28 claimed and actual square footage, making the price per square foot dramatically higher.

1 Etemad, stating that “I know a lot of powerful people, this whole thing is bullshit.” Morabito also  
2 stated that “I know where you live, it is Saratoga [California] right? You must have a lot of money.”  
3 When Etemad told Morabito that he worked at Oracle, Morabito said that he knew Oracle CEO  
4 “Larry Ellison and he was a jerk.” Etemad got the impression that Morabito was trying to scare him  
5 and show him how well-connected Morabito was.

6 128. Thereafter, on February 11, 2008, Tibarom employee Greg Breen (“Breen”) sent  
7 Etemad an e-mail stating that Tibarom did not plan to pay property taxes going forward on the  
8 Kingston Jiffy Lube property. Then, on February 16, 2008, Breen sent Etemad an e-mail attaching  
9 Jiffy Lube sales trend data going back to 2000 showing *serious declines in sales since*  
10 *approximately 2001*. This information was in direct conflict with representations made by  
11 Muirhead, M&M Real Estate, Kunofsky, Morabito and Sovereign Scranton when they were  
12 convincing Etemad to invest in the Kingston Jiffy Lube property.

13 129. Shortly thereafter, Macchia proposed to pay rent equivalent to 50% of profits from  
14 operations. Macchia proposed leasing the property on a month-to-month basis with the rent varying  
15 each month based on profits to be divided after paying expenses. The proposed lease document also  
16 included a very broad release of claims against Macchia, his predecessors and successors. Etemad  
17 did not sign the release and did not agree to the new lease terms.

18 130. Macchia ultimately abandoned the store at the end of April 2008. In order to mitigate  
19 his damages, Etemad re-let the property to a new tenant, Snowdon, LLC d/b/a Valvoline Instant Oil  
20 Change (“Snowdon”), on May 1, 2008 at \$5,500.00 per month – significantly less than the  
21 Morabito/Eureka/Tibarom lease. This figure is not enough to cover Etemad’s monthly mortgage  
22 payment of \$8,819.17.

23 131. Throughout the course of his relationship with M&M Real Estate, Muirhead,  
24 Kunofsky, Sovereign Scranton, Morabito and the various other members of the M&M Enterprise,  
25 Defendants made false and misleading statements and omissions regarding the fair market value,  
26 future rents, business prospects, security and stability of Etemad’s investment – exploiting the  
27 relationship of trust that they had intentionally built with Etemad. During this time, Defendants  
28 knew that the fair market value of the investment property was artificially inflated, that the purported

1 long-term lease was a farce, and that the “tenant” would walk away, abandoning the property,  
2 wiping out the artificial inflation in the fair market value of the property, and eviscerating the future  
3 rents.

4           132. So, like every other investor, Defendants’ conspiracy to scam Etemad was a complete  
5 success. With mathematical precision, Defendants artificially inflated the value of the property that  
6 Etemad was induced to purchase, which value plummeted when the Defendants walked away. As a  
7 result, Etemad suffered severe financial damages, including the loss of fair market value of his  
8 investment, future rents and out-of-pocket damages, all of which he is entitled to recover.

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**Chronology of Etemads' purchase of the Jiffy Lube located at 175 S. Wyoming Avenue, Kingston, Pennsylvania 18704**

**JUNE 30, 2004**  
Morabito/Scranton Lube purchased the Kingston Jiffy Lube property from Millett 21<sup>st</sup> Century Ventures, LP for \$924,000.00



**JUNE 30, 2004**  
Sovereign Scranton purchased the Kingston Jiffy Lube property from Morabito/Scranton Lube for \$1,960,000.00



**JULY 1, 2004**  
Sovereign Scranton and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of \$15,833.33 with a 1.60% increase per annum through June 30, 2029



**NOVEMBER 11, 2005**  
Etemad purchased the Kingston Jiffy Lube property from Sovereign Scranton for \$2,271,058.00 and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of \$15,833.33



**DECEMBER 22, 2007**  
Morabito/Eureka/Tibarom purportedly assigned the lease to Macchia



**APRIL 2008**  
Macchia abandoned the property



**MAY 1, 2008**  
Etemad mitigated his damages and signed a new lease with Snowdon for 35 months at a rental rate of \$5,500.00 per month

1 **B. How Michael and Sally Wiley Got Scammed<sup>10</sup>**

2 **1. M&M Real Estate and Weston Cast the Bait**

3 133. In 2003, Mike and Sally Wiley (the "Wileys") agreed, at Weston's (an agent working  
4 out of M&M Real Estate's Long Beach office) solicitation and recommendation, to sell a 16-unit  
5 apartment building they owned in Long Beach, California. Weston told the Wileys that they had  
6 gained a great deal of equity in the property since purchasing it and that equity would be put to much  
7 better use by selling the property and reinvesting in another property via a 1031 exchange. The  
8 Wileys had a previous successful experience with Weston, who represented them in a 1031 exchange  
9 in 2000, and trusted his judgment. Weston represented the Wileys on both the sell and buy ends of  
10 that transaction.

11 134. The Wileys eventually sold the Long Beach property in September 2003 for  
12 \$1,850,000.00. Thereafter, the Wileys again sought Weston's advice regarding the reinvestment of  
13 the proceeds. Weston strongly recommended that the Wileys "graduate" from apartment building  
14 investing and move into a commercial triple-net property investment, where there would be minor  
15 owner responsibilities and a stable and secure income, relative to the apartment business. Weston  
16 said that this was a common progression of investment strategy for apartment owners.

17 135. While the Wileys liked the concept of investing in a triple-net lease property, they  
18 were concerned about the risk of having a single tenant. Weston assured the Wileys that having a  
19 single tenant was not cause for concern, noting that one of the benefits of a triple-net lease was that  
20 the single tenant would be responsible for all repairs, taxes, insurance and any other expenses on the  
21 property. In fact, Weston told the Wileys that investors in triple-net lease properties received their  
22 rent checks "automatically" through electronic deposit.

23 136. Weston's representations were very appealing to the Wileys, as they had experienced  
24 numerous problems with past tenants of the apartment buildings that they previously owned. Based  
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26 <sup>10</sup> Michael and Sally Wiley took title to the property as Trustees of the Wiley/Fimiani Family  
27 Trust, dated November 18, 1998. On August 17, 2004, they transferred the title of the property to  
28 Eclectic Properties East, LLC, a California Limited Liability Company.

1 on Weston's representations, the Wileys decided to move forward and look for a triple-net lease  
2 property.

3 137. Thereafter, Weston sent the Wileys listings of various triple-net lease opportunities,  
4 including a Jiffy Lube property located in Vestal, New York. The Vestal Jiffy Lube was offered for  
5 sale by Sovereign JF. Defendants never disclosed to the Wileys the extent of Sovereign JF's  
6 relationship with M&M.

7 138. Weston and M&M Real Estate led the Wileys to believe that the Vestal Jiffy Lube  
8 property – listed at approximately \$2,200,000.00 – was the most appealing and secure investment  
9 opportunity that was available to them. Weston assured the Wileys that Morabito – the operator of  
10 the property – was one of the largest and most successful Jiffy Lube franchisees in the country.  
11 Weston and M&M Real Estate led the Wileys to believe that Morabito's involvement further  
12 increased the security of an investment in the Vestal Jiffy Lube Property.

13 139. Weston and M&M Real Estate provided the Wileys with a full-color sales brochure  
14 which marketed the Vestal Jiffy Lube property as yielding an 8.0% cap rate. The marketing  
15 materials also noted that the tenants of the Vestal Jiffy Lube property – Eureka and Tibarom (which  
16 were alter-egos of Morabito) – would pay rent starting at \$173,675.00 per year with 10% rental  
17 increases every five years. The long-term lease on the property was for 25 years. The marketing  
18 materials touted Morabito as being the highest net worth Jiffy Lube operator in the United States.  
19 Reasonably relying on the M&M Real Estate marketing materials and Weston's representations, the  
20 Wileys believed that Morabito/Eureka/Tibarom was financially stable and would be a safe tenant.

21 140. The Wileys subsequently had a number of conversations with Weston, during which  
22 he assured them of the accuracy of the statements in M&M Real Estate's marketing materials.  
23 Weston told the Wileys that Morabito was one of Jiffy Lube's biggest franchisees and that he owned  
24 approximately 24 Jiffy Lube stores around the country. Weston assured the Wileys that it was  
25 highly unlikely that the Vestal Jiffy Lube would ever go out of business, but that even if the store  
26 failed, Morabito had 23 other operational Jiffy Lube stores and therefore could cover any rental  
27 payments.

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1           **2.     The Wileys Take the Bait**

2           141.    Thereafter, in November 2003, in reasonable reliance on M&M Real Estate and  
3    Weston's representations, the Wileys agreed to purchase the Vestal Jiffy Lube property for  
4    \$2,144,195.00, with \$1,050,000.00 in financing. By that time, the Wileys were very close to the 45-  
5    day deadline to identify a property for their 1031 exchange, and felt pressure to move forward with  
6    their investment. As this was the Wiley's first commercial real estate transaction, they placed their  
7    complete trust in Weston and M&M Real Estate, whom, based upon their representations, the Wileys  
8    perceived to be experts in the field, and relied on them to protect their interests.

9           142.    The Wileys closed on the Vestal Jiffy Lube location in February 2004, and thereafter,  
10   received timely rental payments from Morabito/Eureka/Tibarom through October 2006. The Wileys,  
11   Weston, M&M Real Estate, Sovereign JF and Morabito used fax, e-mail, phone and U.S. mail by  
12   and between California and New York to negotiate the transaction.

13           **3.     The Jiffy Lube Sale Was a Scam**

14           143.    On October 23, 2006, the Wileys received a letter from Salvatore Morabito, Vice-  
15   President of Eureka (and brother of Morabito), advising them that the lease on the Vestal Jiffy Lube  
16   property had purportedly been assigned and transferred to Tibarom NY. The assignment was  
17   completed without the Wiley's agreement or consent and in direct contravention of the language of  
18   the lease agreement. The Wileys were concerned about the assignment, but felt powerless to do  
19   anything. Thereafter, Tibarom NY paid rent on time through September 2007.

20           144.    From September through December 2007, Tibarom NY was late on its rent payments.  
21   As such, the Wileys contacted Breen – the general manager of the Vestal Jiffy Lube property – each  
22   month, about the late rental payments. On a December 2007 call, Breen told the Wileys that  
23   Tibarom NY was now controlled by Macchia and that Macchia would contact them about the  
24   situation. The Wileys never received any written notice of the transfer of the Vestal Jiffy Lube  
25   property to Macchia, nor did they ever consent to it.

26           145.    Soon thereafter, Macchia called Michael Wiley and told him that he was taking over  
27   Tibarom NY. Macchia told him that the current rental rate for the lease on the Vestal Jiffy Lube  
28   property was way out of line with the actual revenues generated from store operations. Specifically,

1 Macchia told the Wileys that *the rent was nearly twice what it should be* for a lease on the property.  
2 Macchia then told the Wileys that he would not be able to pay rent until February 2008, after he  
3 closed poor performing stores.<sup>11</sup>

4 146. In late 2007, the Wileys called Weston to inform him that they were having trouble  
5 with the tenant on the Vestal Jiffy Lube property and to inquire about the possibility of selling the  
6 property. After several conversations, Weston told the Wileys that he would investigate what was  
7 going on with the property and tenants. From that point on, Weston did not respond to the Wiley's  
8 phone calls.

9 147. In early February 2008, Macchia called Michael Wiley and informed him that  
10 Macchia would be closing all of the Jiffy Lube stores that Tibarom NY operated. Macchia told  
11 Michael Wiley that he would continue operating the Vestal Jiffy Lube until the Wileys found another  
12 tenant, but Macchia stated that he would not pay any rent during the time that he continued to  
13 operate the property.

14 148. Thereafter, in February 2008, Macchia abandoned the property, leaving the property  
15 in very poor condition. The property had 4 feet of water in the basement, water damage, mold and  
16 oil on the walls, and the trade fixtures and other items were either missing or destroyed. Thereafter,  
17 in order to mitigate their damages, in March 2008, the Wileys entered into a new 10-year triple-net  
18 lease with Sierra Oil Management at a monthly rent of 15% of net sales, well below the rent of  
19 \$14,492.92 that Morabito/Eureka/Tibarom had agreed to pay and well below the monthly mortgage  
20 of \$7,731.00 that the Wiley's owed on the property.

21 149. Throughout the course of their relationship with M&M Real Estate, Weston,  
22 Sovereign JF, Morabito and the various other members of the M&M Enterprise, Defendants made  
23 false and misleading statements and omissions regarding the fair market value, future rents, business

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25 <sup>11</sup> In a subsequent phone call, Michael Wiley asked Macchia if he thought the base rent rate was  
26 inflated. Macchia explained that he used to own and operate other Jiffy Lube stores and that he had  
27 been approached by individuals at Sovereign about selling his Jiffy Lubes years before. *The*  
28 *individuals at Sovereign told Macchia that it did not matter what the lease rates on the properties*  
*were as Sovereign could value the sales at much higher prices based on the other Jiffy Lubes that*  
*Sovereign had been selling.*

1 prospects, security and stability of the Wiley's investment – exploiting the relationship of trust that  
2 they had intentionally built with the Wileys. During this time, Defendants knew that the fair market  
3 value of the investment property was artificially inflated, that the purported long-term lease was a  
4 farce, and that the “tenant” would walk away, abandoning the property, wiping out the artificial  
5 inflation in the fair market value of the property, and eviscerating the future rents.

6           150. So, like every other investor, Defendants' conspiracy to scam the Wileys was a  
7 complete success. With mathematical precision, Defendants artificially inflated the value of the  
8 property that the Wileys were induced to purchase, which value plummeted when the Defendants  
9 walked away. As a result, the Wileys suffered severe financial damages, including the loss of fair  
10 market value of their investment, future rents and out-of-pocket damages, all of which they are  
11 entitled to recover.

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1 Chronology of the Wileys' purchase of the Jiffy Lube property located at  
2 137 Vestal Parkway East, Vestal, New York 13850

3  
4 **OCTOBER 15, 2003**

5 Morabito/Eureka purchased the Vestal Jiffy Lube property as part of a group of three properties from  
6 Net Lease Development for a combined price of \$4,085,356.00 - an average price of \$1,361,785.00  
per property

7  
8 **OCTOBER 16, 2003**

9 Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of  
\$14,472.92 per month and a 10% increase every 5 years through October 15, 2028

10  
11 **OCTOBER 28, 2003**

12 Sovereign JF purchased the same three properties including the Vestal Jiffy Lube property from  
Morabito/Eureka for a combined price of \$4,472,163.00 - an average of \$1,490,721.00 per property

13  
14 **JANUARY 30, 2004**

15 The Wileys purchased the Vestal Jiffy Lube property from Sovereign JF for \$2,144,135.00 and  
assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of  
\$14,492.92

16  
17 **DECEMBER 2007**

18 Morabito/Eureka/Tibarom purportedly assigned the lease to Macchia

19  
20 **FEBRUARY 2008**

21 Macchia abandoned the property and removed the trade fixtures

22  
23 **MARCH 17, 2008**

24 The Wileys mitigated their damages and signed a new lease with Sierra Oil for a 10 year term at a  
25 rental rate of 15% of net sales  
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1 **C. How Eileen and Johannes Moderbacher Got Scammed**<sup>12</sup>

2 **1. M&M Real Estate and Muirhead Cast the Bait**

3 151. In August 2005, Eileen and Johannes Moderbacher (the “Moderbachers”) were  
4 introduced to Muirhead and M&M Real Estate when they sold an Arizona apartment complex they  
5 owned with Amirkhas and Etemad. In the course of Muirhead and M&M Real Estate’s  
6 representation of Amirkhas in connection with the sale of the apartment complex, the Moderbachers  
7 and Etemad were advised about Amirkhas’ prior investment in M&M Real Estate’s 1031 exchange  
8 properties. Having trusted and relied on M&M Real Estate previously, Amirkhas arranged a  
9 meeting at his house in San Francisco so that the Moderbachers and Etemad could meet with  
10 Muirhead.

11 152. The initial meet and greet with Muirhead lasted at least two hours. Muirhead did  
12 most of the talking and made triple-net lease investments sound like fantastic, safe and secure  
13 investments. Muirhead, as an agent of M&M Real Estate, aggressively marketed triple-net leases as  
14 an investment for “Baby Boomers.” The Moderbachers specifically told Muirhead they were  
15 seeking steady income and an investment where the rental income was more than their monthly  
16 mortgage obligation. They wanted a stream of income with low personal involvement and no hassle.

17 153. Muirhead repeatedly represented to the Moderbachers that triple-net lease  
18 investments were ideal for people who do not want the hassles of maintenance and whose primary  
19 goal was to generate a consistent and reliable income stream. Muirhead represented to the  
20 Moderbachers that triple-net lease properties were the best investments they could ever find,  
21 comparing them to a pension fund. Muirhead’s representations led the Moderbachers to believe that  
22 triple-net lease investments were stable and reliable retirement options for people nearing retirement  
23 age.

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26 <sup>12</sup> Eileen and Johannes Moderbacher took title to their property as Eileen Starr Moderbacher  
27 and Johannes Moderbacher, husband and wife. On February 1, 2006, the Moderbachers transferred  
28 title to The Moderbacher Family Trust, established by Declaration of Trust, dated February 1, 2006.

1           154. Following the San Francisco meeting, the Moderbachers had numerous phone  
2 conversations with Muirhead wherein Muirhead pitched properties he said were available for a 1031  
3 exchange. Muirhead recommended three potential 1031 exchange options to the Moderbachers –  
4 Jiffy Lube, Uni-Mart and KFC. Muirhead assured the Moderbachers that these were all good, safe  
5 investments, especially in light of Muirhead’s specific knowledge of the Moderbachers risk tolerance  
6 and income generation goals. Jiffy Lube was touted as being particularly attractive because it was  
7 owned by SOPUS.

8           155. In September 2005, Muirhead and M&M Real Estate provided the Moderbachers  
9 with information and marketing documents relating to a Jiffy Lube in Clarks Summit, Pennsylvania.  
10 The brochure they received from M&M Real Estate for the Clarks Summit Jiffy Lube property  
11 portrayed the location and the business opportunities as highly attractive. M&M Real Estate and  
12 Muirhead represented that Morabito – who controlled the tenants on the Clarks Summit Jiffy Lube  
13 property, Eureka and Tibarom (which were alter-egos of Morabito) – was a highly successful Jiffy  
14 Lube operator.

15           156. M&M Real Estate’s glossy, full-color marketing brochure cleverly and conspicuously  
16 focused on the concept of cap rates. The Moderbachers believed that Muirhead, as their broker, was  
17 looking out for their best interests. Thus, when Muirhead touted the importance of capitalization  
18 rates in determining which property to purchase, the Moderbachers took his advice. Relying on  
19 Muirhead’s advice about investment criteria, the Moderbacher’s main investment criteria was to  
20 invest in a location with a cap rate of 8.0% or better.

21           157. Muirhead and M&M Real Estate represented to the Moderbachers that  
22 Morabito/Eureka/Tibarom was at the start of a new long-term lease on the Clarks Summit Jiffy Lube  
23 property with a monthly income stream of \$11,583.33 per month and with increases of 1.6% per  
24 year. Muirhead and M&M Real Estate convinced the Moderbachers that a 1031 investment property  
25 was more valuable if the property had a newer lease, because then the landlord would have more  
26 time with a tenant already under contract.

27           158. Muirhead maintained that the Clarks Summit Jiffy Lube property would be stable,  
28 require very little oversight from the Moderbachers and be a positive investment. The Moderbachers

1 put their trust in Muirhead and in M&M Real Estate, in part because M&M Real Estate was a huge,  
2 reputable firm. Because the Moderbachers trusted Muirhead and M&M Real Estate as their broker  
3 and relied on the marketing materials they were provided, the Moderbachers did not get an  
4 additional property inspection, relying instead on M&M Real Estate to protect them. The  
5 Moderbachers believed that they did not need to personally undertake additional analysis because  
6 Muirhead convinced them that the Clarks Summit Jiffy Lube property was a fantastic investment.

## 7 **2. The Moderbachers Take the Bait**

8 159. In addition to convincing them that he was working to protect their interests and that  
9 the Clarks Summit Jiffy Lube property was a safe and secure investment, Muirhead pressured the  
10 Moderbachers to move quickly. Muirhead told the Moderbachers on several occasions that there  
11 were not many properties available to them given their impending deadline to select a property under  
12 the 1031 rules. Muirhead further pressured the Moderbachers by telling them that the sellers would  
13 offer a discount to them, but only if they and their partners (Amirkhas and Etemad) purchased Jiffy  
14 Lube properties immediately.

15 160. At the behest of M&M Real Estate, PGP prepared an appraisal of the Clarks Summit  
16 Jiffy Lube property. The appraisal included comparables provided by M&M Real Estate and  
17 Morabito/Eureka/Tibarom which comparables were also based on leases with inflated rents, making  
18 the appraisal wholly unreliable. Of course, none of this information was disclosed to the  
19 Moderbachers.

20 161. Sovereign Scranton initially offered to sell the Clarks Summit Jiffy Lube to the  
21 Moderbachers for \$1,720,000.00. The Moderbachers eventually purchased this location effective  
22 September 30, 2005 (although the closing was delayed until January 16, 2006) for \$1,661,458.00.  
23 The Moderbachers, Muirhead, M&M Real Estate, Morabito and Sovereign Scranton used fax, e-  
24 mail, phone and U.S. mail by and between California, New York, and Arizona to negotiate the  
25 transaction.

## 26 **3. The Jiffy Lube Sale Was a Scam**

27 162. Subsequent to the closing, Morabito/Eureka/Tibarom initially paid rent regularly from  
28 January 2006 through October 2007. In the fall of 2007, Breen purportedly took over managing the

1 Morabito/Eureka/Tibarom offices, which had been moved by Morabito from California to Nevada  
2 after the Moderbachers' closing. After Breen started working for Morabito/Eureka/Tibarom, the rent  
3 started arriving on the 25th of each month – the very last day of the ten-day grace period provided  
4 for in the lease.

5 163. In November 2007, Morabito called the Moderbachers from Nevada and  
6 acknowledged that there had been some problems paying rent on time. Morabito assured the  
7 Moderbachers that he had a plan in place and that everything was going to be fine. Shortly  
8 thereafter, and unbeknownst to the Moderbachers, Morabito purportedly transferred his shares in  
9 Eureka and Tibarom to Macchia and his company D and R Lube, Inc. This transfer occurred without  
10 the Moderbachers' knowledge or consent.<sup>13</sup>

11 164. In early January 2008, the Moderbachers learned, for the first time, that Macchia had  
12 taken over a number of Jiffy Lube stores from Morabito/Eureka/Tibarom, including the Clarks  
13 Summit Jiffy Lube property. Macchia told the Moderbachers that he was coming to San Francisco  
14 later that month and scheduled a meeting with them, Amirkhas and Etemad.

15 165. During the meeting, Macchia told the Moderbachers, Amirkhas and Etemad that his  
16 experience with Morabito “taught him the difference between trusting and trustworthy.” Macchia  
17 represented that Morabito came to Macchia and offered to pay him to acquire Eureka and Tibarom  
18 because Morabito was having problems with the franchisor, JLI, and Morabito believed those  
19 problems would be resolved if he no longer owned Eureka and Tibarom. In reality, Morabito was  
20 just trying to dump the leases on the Jiffy Lubes, which were no longer of value to him as he had  
21 monthly payment obligations coming due under the leases and had already received his split of the  
22 scammed investors' monies.

23 166. Macchia told the Moderbachers that he could not continue to pay the current rental  
24 rate and asked for a new lease in which rent would be paid as a percentage of net sales. This new

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25  
26 <sup>13</sup> When they stopped receiving rent in a timely manner, the Moderbachers contacted Jiffy Lube  
27 International (“JLI”) to see if JLI would help or find them a new operator who would pay rent. Two  
28 JLI employees, Cynthia Bains (“Bains”) and Susan Kane (“Kane”), told the Moderbachers there was  
nothing JLI could do unless Morabito declared bankruptcy.

1 rent arrangement would have resulted in a significant rent reduction from the Moderbachers' original  
2 lease with Morabito/Eureka/Tibarom.

3 167. In order to attempt to mitigate their damages, the Moderbachers began talking to an  
4 experienced Jiffy Lube franchisee in the area – Jim Millet (“Millet”) – regarding taking over the  
5 existing lease. The Moderbachers learned from Millet that he had built several Jiffy Lube stores,  
6 including the Clarks Summit Jiffy Lube property that the Moderbachers had purchased through  
7 M&M Real Estate. Millett sold 5 or 6 of the stores to Morabito. When Millett heard the  
8 Moderbachers had paid \$1,600,000.00 for the Clarks Summit Jiffy Lube property and had been led  
9 to believe by M&M Real Estate and Muirhead that this was a fair price, “he was dumbfounded.”  
10 Millett told the Moderbachers that he would not pay more than \$350,000.00 for the Clark’s Summit  
11 Jiffy Lube property.

12 168. Facing mounting damages, the Moderbachers leased the property to a new tenant who  
13 began operating an Valvoline Instant Oil service in May 2008. While the new tenant is paying  
14 \$5,500.00 in rent per month, the Moderbachers’ monthly mortgage payment is close to \$6,800.00,  
15 requiring the Moderbachers to take a loss every month.

16 169. Throughout the course of their relationship with M&M Real Estate, Sovereign  
17 Scranton, Muirhead, Morabito and the various other members of the M&M Enterprise, Defendants  
18 made false and misleading statements and omissions regarding the fair market value, future rents,  
19 business prospects, security and stability of the Moderbacher’s investment – exploiting the  
20 relationship of trust that they had intentionally built with the Moderbachers. During this time,  
21 Defendants knew that the fair market value of the investment property was artificially inflated, that  
22 the purported long-term lease was a farce, and that the “tenant” would walk away, abandoning the  
23 property, wiping out the artificial inflation in the fair market value of the property, and eviscerating  
24 the future rents.

25 170. So, like every other investor, Defendants’ conspiracy to scam the Moderbachers was  
26 a complete success. With mathematical precision, Defendants artificially inflated the value of the  
27 property that the Moderbachers were induced to purchase, which value plummeted when the  
28 Defendants walked away. As a result, the Moderbachers suffered severe financial damages,

1 including the loss of fair market value of their investment, future rents and out-of-pocket damages,  
2 all of which they are entitled to recover.

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**Chronology of the Moderbachers' purchase of the Jiffy Lube property located at 150 South Abington Road, Clarks Summit, Pennsylvania 18411**

**JUNE 30, 2004**  
Morabito/Scranton Lube purchased the Clarks Summit Jiffy Lube property from Millet 21<sup>st</sup> Century Ventures, LP for \$1,386,000.00



**JUNE 30, 2004**  
Sovereign Scranton purchased the Clarks Summit Jiffy Lube property from Morabito/Scranton Lube for \$1,450,000.00



**JULY 1, 2004**  
Sovereign Scranton and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of \$11,588.33 per month with a 1.6% increase per annum through June 30, 2029



**JANUARY 12, 2006**  
The Moderbachers purchased the Clarks Summit Jiffy Lube from Sovereign Scranton for \$1,661,458.00 and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of \$11,588.33



**DECEMBER 22, 2007**  
Morabito/Eureka/Tibarom purportedly assigned the lease to Macchia/D&R Lube, and thereafter Macchia/D&R Lube abandoned the property



**MAY 1, 2008**  
The Moderbachers mitigated their damages and signed a new lease with Snowdon for 35 months at a rental rate of \$5,500.00 per month

1 **D. How Thomas Linden Got Scammed<sup>14</sup>**

2 **1. M&M Real Estate Casts the Bait**

3 171. In late 2003 or early 2004, Thomas Linden (“Linden”) sold an apartment building that  
4 he owned in Maywood, California. At the time he sold the apartment building, Linden planned to  
5 enter into a 1031 tax deferred exchange. The title company on the sale of the apartment building,  
6 First American Title Insurance Company, referred him to a subsidiary, First American Exchange  
7 Company, to perform the services as a 1031 intermediary.

8 172. Julie Galvin (“Galvin”), Linden’s contact at First American Exchange Company,  
9 explained to Linden – who was living in California at the time – that he needed to purchase a new  
10 investment property using the proceeds he received from the sale of the Maywood apartment  
11 building. Galvin referred Linden to M&M Real Estate’s Long Beach, California office to assist in  
12 finding a new investment property.

13 173. From the outset, Linden told M&M Real Estate that he wanted an investment that was  
14 less of a hassle and less hands-on than the apartment building he had owned. M&M Real Estate  
15 suggested Linden allow M&M Real Estate to search for a triple-net lease investment with an 8.0%  
16 cap rate, which Linden understood to mean that he would earn 8.0% per year on his investment.  
17 While Linden had heard of triple-net leases, he did not have more than a cursory knowledge of them.  
18 For this reason, and because he was using M&M Real Estate as his broker in the purchase of a new  
19 1031 exchange property, he relied on M&M Real Estate to advise him regarding achieving his  
20 investment goals and protecting his interests.

21 174. M&M Real Estate provided Linden with various investment options, including  
22 potential Jiffy Lube, Burger King and Church’s Chicken locations. M&M Real Estate represented to  
23 Linden that it typically sold properties for franchises and companies that did not want to operate  
24 their own property. M&M Real Estate provided Linden with a spreadsheet identifying a number of  
25 Jiffy Lube locations being offered for sale. The spreadsheet purported to show operating income,

26 \_\_\_\_\_  
27 <sup>14</sup> Thomas Linden took title to the property, with Sylvia E. Linden, as trustees of the Thomas H.  
28 Linden and Sylvia E. Linden Family Trust, dated September 19, 2000.

1 expenses and other information for each location listed. The tenants on most of the Jiffy Lube  
2 properties were Eureka and Tibarom (which were alter-egos of Morabito). M&M Real Estate  
3 represented to Linden that Jiffy Lube was “supporting” Morabito’s Eureka and Tibarom deals and  
4 that they were safe and secure investments.

5 175. The marketing materials that M&M Real Estate provided Linden for the Jiffy Lube  
6 properties prominently featured the JLI logo, and Linden was led to believe by M&M Real Estate  
7 that JLI was affiliated with or supported Morabito/Eureka/Tibarom – the likely tenant. M&M Real  
8 Estate also made a representation in the marketing materials that the tenant is “Eureka Petroleum,  
9 Inc. (Oil agreement with Shell is a 10 year agreement which Shell only signs with Eureka. Shell Oil  
10 has a right to cure any lease default under the oil agreement.)” Based on these representations, as  
11 well as others made by M&M Real Estate, at the time he was considering his investment options,  
12 Linden believed that if Morabito/Eureka/Tibarom were to default, then SOPUS would take over any  
13 lease on the property.

14 176. M&M Real Estate also used Morabito, personally, as a selling point, representing that  
15 Morabito’s involvement greatly increased the stability of the Jiffy Lube investments. For example,  
16 M&M Real Estate provided Linden with M&M Real Estate marketing materials indicating that  
17 Morabito’s franchises sold 12.0% more than the average Jiffy Lube store and had an average per  
18 service revenue of \$56.00 compared to just \$50.00 at other franchises. Linden relied upon the  
19 totality of M&M Real Estate’s representations and assurances when he chose to invest.

## 20 2. Linden Takes the Bait

21 177. On April 20, 2004, Linden purchased the Jiffy Lube in Rochester, NY from  
22 Sovereign JF for \$1,240,425.00. Linden, M&M Real Estate, Sovereign JF and Morabito used fax, e-  
23 mail, phone and U.S. mail by and between California, New York, and Florida to negotiate the  
24 transaction.

25 178. At the time of closing, Morabito/Eureka/Tibarom was Linden’s tenant, and there were  
26 24 years and eight-and-a-half months remaining on the long-term lease on the property. The  
27 monthly rent payment under the lease was \$8,269.50, with an annual increase of 1.6% on each  
28 March 5th.

1           **3.     The Jiffy Lube Sale was a Scam**

2           179.    From the time of Linden's closing in 2004 until 2007, Linden received his rent from  
3 Morabito/Eureka/Tibarom without any issues. However, in approximately the spring of 2007,  
4 Linden did not receive the monthly rent check. Thereafter, Linden called Morabito's office in Reno,  
5 Nevada to find out why Morabito/Eureka/Tibarom had not paid the rent for that month. At that time,  
6 he spoke with a person he believes was Brandi Sartain ("Sartain"). Linden overheard Sartain  
7 confirm with another woman in the office that his franchise had been "transferred" to DDS  
8 Management ("DDS") [which was an alter-ego of Samuel Pearson ("Pearson") and Deborah Pickett  
9 "Pickett")]. Sartain then told Linden that Morabito/Eureka/Tibarom had transferred his franchise  
10 and lease to DDS, but that DDS was keeping the Eureka name.

11           180.    Shortly thereafter, Linden received a letter notifying him that Morabito was  
12 purporting to "transfer" Linden's store to DDS. The letter explained that Linden's Rochester Jiffy  
13 Lube would continue to be run by Pearson and Pickett. The letter noted that Pearson and Pickett  
14 were experienced operators and had both previously worked for Morabito and JLI. The letter led  
15 Linden to believe that Pearson and Pickett were well qualified to operate his Jiffy Lube property in  
16 Rochester.

17           181.    Subsequent to the unapproved "transfer," DDS paid the rent under the long-term lease  
18 for a few months. Thereafter, Linden started receiving unsigned checks in the mail from DDS as  
19 well as checks drafted with the right amount but the wrong payee. DDS did not pay any rent in  
20 September or October 2007.

21           182.    Remembering that M&M Real Estate represented to Linden in their marketing  
22 materials that SOPUS had the right to cure any default under the lease, Linden contacted JLI  
23 employees Paula Floeck ("Floeck") and Lenny Lestrovsky ("Lestrovsky") to see if SOPUS would  
24 cure the default and take over his store or help him identify a replacement tenant. No one at JLI  
25 offered any assistance.

26           183.    In November 2007, Pearson called Linden and offered to buy the Rochester Jiffy  
27 Lube property. Linden asked for \$1,200,000.00 but Pearson declined, stating that he might pay  
28 \$1,000,000.00. Linden sent Pearson an e-mail asking him to make a written offer. On

1 November 2, 2007, Pearson told Linden through e-mail that he was having his attorney prepare a  
2 purchase contract, and Linden could expect to get a written offer.

3 184. Then, on November 8, 2007, Pearson asked Linden through e-mail whether Linden  
4 would let DDS out of the lease if Pearson did not purchase the property. Pearson provided Linden  
5 with calculations indicating that, based upon the property's revenues, the rent should have been more  
6 along the lines of \$4,500.00 to \$5,000.00 per month, not the \$8,878.00 originally agreed to under the  
7 long-term lease that Morabito and Sovereign JF put in place. When Linden refused to agree to a  
8 modification of the existing rental rate, DDS abandoned the Rochester Jiffy Lube property. As of  
9 that time, Linden was already owed approximately \$40,000.00 in unpaid rent, late fees and penalties.

10 185. When Linden made his investment, M&M Real Estate did not disclose that Sovereign  
11 JF had only purchased the location a few months before it was resold to him. He only learned this  
12 information much later, when he retained a local appraiser out of Rochester, New York to appraise  
13 the property. The appraisal concluded that Linden's store was valued at approximately \$400,000.00  
14 – a far cry from the \$1,200,000.00 that M&M Real Estate, Sovereign JF and Morabito had induced  
15 Linden to pay.

16 186. In December 2007, Linden received a call from Jim O'Leary ("O'Leary"), President  
17 of Fast Track Oil Change. O'Leary had heard that when other local Jiffy Lubes had been  
18 abandoned, the tenant came back and took all the equipment and machinery from the store. O'Leary  
19 offered to lock the Rochester Jiffy Lube store for Linden to prevent it from being stripped. Linden  
20 accepted this assistance. O'Leary then offered to lease the location and run it and try to make it  
21 grow. In order to mitigate his damages, Linden re-let his property to O'Leary, who signed a new  
22 lease with Linden on December 31, 2007 and agreed to pay Linden 12% of sales, approximately  
23 \$2,600.00 per month (as opposed to the \$8,269.50 that Linden was supposed to be paid under the  
24 lease with Morabito/Eureka/Tibarom).

25 187. Throughout the course of his relationship with M&M Real Estate, Sovereign JF,  
26 Morabito and the various other members of the M&M Enterprise, Defendants made false and  
27 misleading statements and omissions regarding the fair market value, future rents, business  
28 prospects, security and stability of Linden's investment – exploiting the relationship of trust that they

1 had intentionally built with the Linden. During this time, Defendants knew that the fair market value  
2 of the investment property was artificially inflated, that the purported long-term lease was a farce,  
3 and that the “tenant” would walk away, abandoning the property, wiping out the artificial inflation in  
4 the fair market value of the property, and eviscerating the future rents.

5       188. So, like every other investor, Defendants’ conspiracy to scam Linden was a complete  
6 success. With mathematical precision, Defendants artificially inflated the value of the property that  
7 Linden was induced to purchase, which value plummeted when the Defendants walked away. As a  
8 result, Linden suffered severe financial damages, including the loss of fair market value of his  
9 investment, future rents and out-of-pocket damages, all of which he is entitled to recover.

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1 Chronology of Linden's purchase of the Jiffy Lube property located at  
2 3022 Ridge Road, West Rochester, New York 14626

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5 **MARCH 5, 2004**

6 Morabito/Rochester Lube purchased the Rochester Jiffy Lube property from Bruce D. Coleman for  
7 \$1,004,006.00

8 **MARCH 5, 2004**

9 Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of  
10 \$8,269.17 per month with a 1.6% increase per annum through March 4, 2029

11 **MARCH 5, 2004**

12 Sovereign JF purchased the Rochester Jiffy Lube property from Morabito/Rochester Lube for  
13 \$1,086,439.00

14 **APRIL 5, 2007**

15 Linden purchased the Rochester Jiffy Lube property from Sovereign JF for \$1,240,425.00 and  
16 assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of \$8,269.17

17 **APRIL 10, 2007**

18 Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/DDS

19 **NOVEMBER 2007**

20 Pearson/Pickett/DDS abandoned the property

21  
22 **DECEMBER 31, 2007**

23 Linden mitigated his damages and signed a new lease with Fast Track for a term of two years at a  
24 rental rate of 12% of net sales calculated at the end of each calendar month

1 **E. How Sylvia and Kevork Belikian Got Scammed<sup>15</sup>**

2 **1. M&M Real Estate's Prior Representation of Sylvia and Kevork Belikian**

3 189. In 2000, Sylvia Belikian read about M&M Real Estate's purported expertise  
4 regarding triple net-lease investments on its website, and called M&M Real Estate for further  
5 information. After being introduced to Mickle, a broker in M&M Real Estate's San Diego office,  
6 Belikian explained to Mickle that she and her husband Kevork Belikian (the "Belikians") were  
7 interested in obtaining more information regarding a triple-net lease property for a 1031 exchange.  
8 Sylvia Belikian told Mickle that it was important that any investment property be "secure" and  
9 "reputable."

10 190. Mickle provided the Belikians with information regarding a medical building in  
11 Houston Texas, which, because of Sylvia Belikian's previous experience as a nurse, was of some  
12 interest to her. Relying on Mickle's advice, the Belikians ultimately purchased the medical building  
13 in 2000 for \$1,700,000.00.

14 191. Because Mickle acted as the Belikians' agent in connection with their purchase of the  
15 medical building, the Belikians came to accept him as a trustworthy representative. As such, when,  
16 in early 2004, the Belikians sold their commercial printing business in Pasadena, California, they  
17 contacted Mickle regarding another potential 1031 exchange.

18 **2. M&M Real Estate and Mickle Cast the Bait**

19 192. The Belikians told Mickle that they wanted to reinvest the proceeds from the printing  
20 business in a secure investment and were interested in possibly purchasing an additional medical  
21 building. Mickle called the Belikians back several days later and told them that there were no other  
22 medical buildings available, but that he did know of a property that would be a safe and secure  
23 investment that would meet the Belikians' needs – a Jiffy Lube property in Brockport, New York.

24 193. As the Belikians were not familiar with the oil change business, they were cautious  
25 and hesitant about investing in a property with an operating Jiffy Lube on it. In order to allay their

26 \_\_\_\_\_  
27 <sup>15</sup> Sylvia and Kevork Belikian took title to their property as Trustees under the Kevork Belikian  
28 and Sylvia S. Belikian Living Trust, dated July 10, 2000.

1 fears, Mickle, as an agent of M&M Real Estate, repeatedly represented that an investment in the  
2 Brockport Jiffy Lube would be secure and would pay a steady stream of rental income. In fact,  
3 Mickle promised the Belikians that investing in the Jiffy Lube property would be “very lucrative”  
4 since, among other things, it provided a cap rate 8.24%. Mickle described the Brockport Jiffy Lube  
5 property as being relatively new and located in a high traffic area in Brockport, New York, near a  
6 large university.

7       194. Consistent with the ongoing scheme, M&M Real Estate used Morabito as an  
8 additional inducement to convince the Belikians to invest in the Brockport Jiffy Lube property.<sup>16</sup>  
9 Mickle told the Belikians that Morabito was the owner of 42 other Jiffy Lube franchises, and  
10 represented that Morabito’s other locations were doing very well. Mickle assured the Belikians that  
11 the rental income from the Brockport Jiffy Lube property would be secure and steady as there were  
12 21 years remaining on Morabito’s 25-year lease. Mickle further represented to the Belikians that the  
13 lease was “guaranteed.” In addition, Mickle and M&M Real Estate represented that SOPUS – the  
14 parent company of the franchisor JLI – had a 10-year oil agreement with Morabito and that SOPUS  
15 had the right to cure any default under the lease agreement. Mickle and M&M Real Estate’s  
16 representations led the Belikians to believe that SOPUS would cover any unpaid rent if there were  
17 any problem with Morabito/Eureka/Tibarom.

18       195. Based on these and other repeated representations by Mickle and M&M Real Estate,  
19 the Belikians reasonably believed that the Jiffy Lube property in Brockport was a safe, secure  
20 investment that would provide a guaranteed income stream each month for the next two decades.  
21 Indeed, Mickle created the illusion that even if the Brockport Jiffy Lube did not do well, Morabito  
22 would offset any potential losses with the revenue generated from one of Morabito’s other Jiffy Lube  
23 properties – insuring that the rent on the Brockport property would continue uninterrupted.

24       196. In furtherance of Mickle and M&M Real Estate’s attempts to convince the Belikians  
25 to invest in the Brockport Jiffy Lube property, Mickle provided the Belikians with an electronic

26 \_\_\_\_\_  
27 <sup>16</sup> Tibarom and Eureka (which were alter-egos of Morabito) were the tenants and guarantors of  
28 the long-term lease already in place on the Brockport Jiffy Lube property.

1 password so that the Belikians could access M&M Real Estate's secure website. Mickle also  
2 provided the Belikians with a 35-page glossy, color brochure about the Brockport Jiffy Lube  
3 property. M&M Real Estate's website and brochure made many representations regarding the  
4 Belikian's potential investment, including that:

- 5 • The investment is a triple-net lease for 25 years with 21 years remaining (landlord  
6 has "absolutely no responsibilities");
- 7 • Cap Rate of 8.24% and net operating income of \$147,670.00;
- 8 • Rent increased by 1.6% each year;
- 9 • Lease is guaranteed by Eureka Petroleum;
- 10 • Eureka Petroleum has an oil agreement with Shell and Shell has the right to cure any  
11 lease default;
- 12 • The property is located in an "excellent" area close to SUNY Brockport;
- 13 • Tibarom, Inc. is a highly successful Jiffy Lube franchisee, owned and operated by  
14 Paul Morabito; and
- 15 • Morabito-owned Jiffy Lube franchises, on average, do 12% better than other Jiffy  
16 Lube franchises.

17 197. Mickle explained to the Belikians that the reported net operating income generated by  
18 the Brockport Jiffy Lube location was based on the \$12,305.00 monthly rent that the Belikians, as  
19 landlords, would receive. Mickle represented that the \$1,900,000.00 listing price of the property was  
20 based on the rental income that would be generated from the property – not the value of the  
21 underlying property itself. In fact, on more than one occasion, Mickle told Sylvia Belikian not to  
22 worry about what the building or its fixtures were actually worth because the value of the property  
23 was based on the income that the property could generate from the long-term lease already in place  
24 on the property between Sovereign JF, the current landlord, and Morabito/Eureka/Tibarom.

25 198. During the time that the Belikians were evaluating the Jiffy Lube property, Mickle  
26 also provided a purported balance sheet for Tibarom, prepared by BMI. The Belikians were never  
27 told that BMI was controlled by Morabito.

28 199. The Belikians reviewed the financials and discussed them with Mickle, questioning  
whether the financials showed sufficient net profits to support the rental rate. Mickle represented  
that Morabito/Eureka/Tibarom had incurred substantial expenses for renovations to its Jiffy Lube

1 properties which were reflected in the balance sheet, but assured them that the property would  
2 generate the rental income reflected in the materials provided to the Belikians by M&M Real Estate  
3 and Mickle.

4 200. While the Belikians dealt primarily with Mickle, on one occasion Mickle's supervisor  
5 participated in a conference call wherein he reiterated many of the representations made by Mickle,  
6 including that Morabito had 42 extremely successful Jiffy Lube franchises, that the rent on the  
7 Brockport Jiffy Lube property was guaranteed, and that there was an agreement with SOPUS.

8 201. After Mickle made the above representations to the Belikians, Sylvia Belikian visited  
9 other Jiffy Lube properties in Pasadena and Arcadia, California and talked to the employees in those  
10 shops about how the franchise operated. Sylvia Belikian was told that to generate rental income in  
11 excess of \$12,000.00 a month (as advertised by Mickle and M&M Real Estate), a Jiffy Lube would  
12 have to process about 60 oil changes a day. However, she was told that the Jiffy Lubes in Pasadena  
13 and Arcadia had, at best, 10-12 cars pass through a day. Based upon this anecdotal information, the  
14 Belikians became concerned about what Mickle and M&M Real Estate had represented to them  
15 concerning the Brockport Jiffy Lube property.

16 202. Thereafter, Sylvia Belikian called Mickle regarding her conversations with the Jiffy  
17 Lube employees at the Pasadena and Arcadia locations and voiced her concerns about the income  
18 potential. Mickle assured Sylvia Belikian that the Brockport location would generate significantly  
19 more income than the California locations, stressing that the Jiffy Lube property that he and M&M  
20 Real Estate were recommending to the Belikians was located in a very busy part of New York, near  
21 a big university, and close to an industrial center. After several conversations, Mickle persuaded the  
22 Belikians that the Pasadena and Arcadia Jiffy Lubes were not good comparables for the Brockport  
23 Jiffy Lube.

24 203. Relying on Mickle's representations, as well as their belief that M&M Real Estate  
25 was acting to protect their interests, the Belikians decided to purchase the Brockport Jiffy Lube  
26 property, offering \$1,700,000.00. The offer was submitted via facsimile from Mickle on  
27 April 7, 2004 to Sovereign JF. Kunofsky of M&M's New York office was the listing/selling agent  
28 on the Brockport Jiffy Lube property.

1           204. As the offer prepared by Mickle was sent to Kunofsky – another M&M Real Estate  
2 agent – the Belikians asked Mickle to confirm that he and M&M Real Estate represented them and  
3 were looking out for their best interests. Mickle stated that he only represented the Belikians and  
4 served their best interests. Mickle told the Belikians that Kunofsky was solely a listing agent and  
5 that there was no conflict of interest. Mickle further represented to the Belikians that he had done “a  
6 lot of other deals” with Kunofsky in the past. Mickle also reiterated that M&M Real Estate had sold  
7 a lot of Jiffy Lube properties and that all of the investors in those properties did well.

8           **3. The Belikians Take the Bait**

9           205. In July 2004, the Belikians received a counter-offer from Sovereign JF, through  
10 Kunofsky, of \$1,737,294.00. Concerned that \$1,737,294.00 was too much to pay for the property,  
11 the Belikians discussed the counter-offer with Mickle. Mickle assured the Belikians that the price  
12 was worth paying because of the stable and consistent income stream that would be generated from  
13 the property. Ultimately, reasonably relying on the myriad of representations made by Mickle,  
14 M&M Real Estate, and Morabito/Eureka/Tibarom, the Belikians accepted the counter-offer on  
15 July 21, 2004. The Belikians, Mickle, Kunofsky, M&M Real Estate, Morabito and Sovereign JF  
16 used fax, e-mail, phone and U.S. mail by and between California and New York to negotiate the  
17 transaction.

18           206. Mickle and M&M Real Estate did not disclose to the Belikians the extent of  
19 Sovereign JF’s relationship with M&M and the Belikians had no idea that they were buying a  
20 property from an M&M subsidiary. As the Belikians trusted Mickle and M&M Real Estate and  
21 believed that they were looking out for the Belikians’ best interests, the Belikians did not have an  
22 attorney or accountant review the purchase agreement or any other document provided by M&M  
23 Real Estate.

24           207. At the behest of M&M Real Estate, PGP prepared an appraisal of the Brockport Jiffy  
25 Lube property. The appraisal included comparables provided by M&M Real Estate and  
26 Morabito/Eureka/Tibarom which comparables were also based on leases with inflated rents, making  
27 the appraisal wholly unreliable. Of course, none of this information was disclosed to the Belikians.  
28