4. The Jiffy Lube Sale Was a Scam

208. After the Belikians' Jiffy Lube purchase closed, problems began to arise with the tenant on the property – Morabito/Eureka/Tibarom. In February 2007, Morabito/Eureka/Tibarom was late in paying the rent that was due to the Belikians under the long-term lease. Accordingly, the Belikians called Morabito/Eureka/Tibarom to inquire about the rent. During that call, the Belikians were told that Morabito/Eureka/Tibarom was no longer their tenant and that Peanut Oil, LLC ("Peanut Oil") (which was an alter-ego of Pearson and Pickett) had taken over the lease.[17]

209. The Belikians were shocked at this news because it was the Belikians' understanding based upon their review of the closing documents and based upon conversations with Mickle that Morabito/Eureka/Tibarom could not avoid its obligations under the lease. Furthermore, the Belikians did not receive any notice, written or otherwise, of the purported substitution of tenants.

210. After their call to Morabito/Eureka/Tibarom, the Belikians called Pearson, the President of the purported new tenant, Peanut Oil. During that conversation, Sylvia Belikian asked Pearson, "Who are you?" and told him, "You're not supposed to be here." Pearson explained to Sylvia Belikian that he used to work for Morabito as a Jiffy Lube manager and that he had experience in the oil lube industry. Pearson told Sylvia Belikian that Morabito had suggested he "take over" the Jiffy Lube in Brockport.

211. Neither Morabito nor Pearson paid the February 2007 rent. Thereafter, in March 2007, Peanut Oil abandoned the Belikians' Jiffy Lube property and stripped the fixtures from the premises.

212. When the Belikians turned to Mickle for help, Mickle referred them to Kunofsky in M&M Real Estate's New York office. On a call to M&M Real Estate's New York office, Gomez, who worked with Kunofsky, treated Sylvia Belikian rudely and did nothing to help. Likewise, when

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[17] The Defendants held Peanut Oil and DDS out to be well-capitalized, and capable of efficiently operating the franchises on certain of the Properties. In fact, Pearson and Pickett never had any intention of fulfilling the terms of the leases that their shell companies were purportedly assigned, and eventually walked away from all of the Properties, stealing fixtures and other things of value from the Properties. Shortly thereafter, Peanut Oil and DDS filed for bankruptcy protection.

the Belikians contacted JLI headquarters to see if the company could help with the situation, JLI did nothing.

213. In an attempt to mitigate their damages, the Belikians ultimately re-let the property for $5,000.00 per month ($60,000.00 per year) with the Belikians agreeing to pay the taxes on the property. The Belikians' replacement tenant pays the property insurance, and has a two-year lease with an option to renew with no annual rent increases. Despite finding a replacement tenant, and receiving $5,000.00 in rent each month, the Belikians must pay a debt service $7,241.00 per month and must pay property taxes.

214. Throughout the course of their relationship with Mickle, M&M Real Estate, Sovereign JF, Morabito and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of the Belikian's investment – exploiting the relationship of trust that they had intentionally built with the Belikians. During this time, Defendants knew that the fair market value of the investment property was artificially inflated, that the purported long-term lease was a farce, and that the "tenant" would walk away, abandoning the property, wiping out the artificial inflation in the fair market value of the property, and eviscerating the future rents.

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

Chronology of the Belikians' purchase of the Jiffy Lube property located at 1010 Transit Way, Brockport, New York 14420

OCTOBER 24, 2003

Morabito/NY Seven Lube purchased the Brockport Jiffy Lube property from Oil Spout Inc., for $**618,972.33**

↓

OCTOBER 27, 2003

Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of **$12,305.83** with a 1.60% increase per annum through October 26, 2028

↓

OCTOBER 27, 2003

Sovereign JF purchased the Brockport Jiffy Lube property from Morabito/NY Seven Lube for **$1,595,192.00**

↓

FEBRUARY 15, 2005

The Belikians purchased the Brockport Jiffy Lube property from Sovereign JF for **$1,737,294.00** and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of **$12,305.83**

↓

FEBRUARY 2007

Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/Peanut Oil

↓

MARCH 2007

Pearson/Pickett/Peanut Oil abandoned the property

↓

APRIL 1, 2008

The Belikians mitigated their damages and signed a new lease with Fast Track for the greater of **$5,000.00** per month or 12% of net sales calculated at the close of each month

F. How Sam and Arleen Risola Got Scammed[18]

1. M&M Real Estate Casts the Bait

216. In January 2004, Sam and Arleen Risola (the "Risolas") sold a Burger King franchise property for $1,030,000.00. In an effort to minimize their tax liability, the Risolas sought to find another property for a 1031 exchange. Sam Risola contacted Terry Marks ("Marks"), an agent with National Net Lease Realty, whom the Risolas had dealt with before on other triple-net lease transactions. Marks presented the Risolas with multiple triple-net lease opportunities, including a Jiffy Lube property in Warsaw, New York.[19] The Warsaw Jiffy Lube property was being marketed by M&M Real Estate and the seller was Sovereign JF.

217. When the Risolas expressed some interest in the Warsaw Jiffy Lube property, they were provided with M&M Real Estate's color sales brochure, as well as the financial statements from the purported lessees – Eureka and Tibarom (which were alter-egos of Morabito). Based upon the documents provided to them by M&M Real Estate, the Risolas decided that Morabito/Eureka/Tibarom's financials looked strong and that Morabito/Eureka/Tibarom would be a secure tenant. Indeed, the M&M Real Estate marketing materials touted Tibarom as having annual revenues of $20 million and virtually no long-term debt.

218. Moreover, the Risolas relied upon and were very impressed with M&M Real Estate's representations regarding Morabito's prior business success as a Jiffy Lube operator. M&M Real Estate represented that Morabito was one of the largest and most successful Jiffy Lube operators in the U.S. Based solely on M&M Real Estate's representations, the Risolas further understood that

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[18] The Risolas took title to their property under the Risola Family Partnership II, a Florida Limited Partnership. On November 15, 2004, the Risolas transferred title to the Risola Family Limited Partnership II, a Florida Limited Partnership.

[19] The Warsaw Jiffy Lube was not the Risola's first choice. The Risolas actually spent a number of months pursuing another property and conducting due diligence. The Risolas believe they spent close to three quarters of the time allotted for the 1031 exchange trying to purchase another property. However, problems arose when the Risolas received a "Phase I" environmental report on the other property, indicating possible contamination. The Risolas sought to conduct further testing on the other property, but the seller refused, and the Risolas had no choice but to drop out. Accordingly, some time in May or June 2004, the Risolas started to seriously consider the Warsaw Jiffy Lube property.

Morabito would continue to operate the Warsaw Jiffy Lube if the Risolas were to purchase the property. Morabito's continued involvement was a critically important factor in their decision to invest in the Warsaw Jiffy Lube property.

219. M&M Real Estate's representations convinced the Risolas that the Warsaw Jiffy Lube property was an attractive investment opportunity. M&M Real Estate marketed the property as having a 25-year triple-net lease with no landlord responsibilities. In addition, M&M Real Estate represented that the property would provide an 8.0% cap rate. The M&M Real Estate marketing materials noted that the annual rent on the Warsaw Jiffy Lube property could start as high as $81,683.00 (around $6,800.00 per month) with 10% increases in the rental rate every five years.

220. M&M Real Estate also represented to the Risolas that the Warsaw Jiffy Lube property was located in a "prime" location near a number of retail chains including Wal-Mart and McDonalds, and further that the property was located on a major commercial artery and therefore highly trafficked. Additionally, M&M Real Estate's marketing brochure indicated that Morabito had a ten-year agreement with SOPUS, which the Risolas understood to mean that SOPUS was somehow involved in the operation of the property and the long-term lease in place on the property.

2. The Risolas Take the Bait

221. Based upon M&M Real Estate's representations, the Risolas believed that an investment in the Warsaw Jiffy Lube property would be secure and stable. On May 12, 2004, the Risolas submitted a written cash offer to purchase the Warsaw Jiffy Lube property for $990,000.00. The Risolas' cash offer of $990,000.00 (without financing) was accepted by Sovereign JF. Thereafter, on June 22, 2004, the Risolas sent a purchase and sale agreement by FedEx to the listing agent on the property, Kunofsky, at M&M's New York office. Escrow closed in July 2004. The Risolas, M&M Real Estate, Kunofsky, Morabito and Sovereign JF used fax, e-mail, phone and U.S. mail by and between California, New York, Florida and North Carolina to negotiate the transaction.

222. As part of the sale, Sovereign JF assigned its 25-year lease with Morabito/Eureka/Tibarom to the Risolas. The lease called for rental payments of $6,806.92 per month with a 1.6% increase every year. The lease was triple-net with the tenant bearing responsibility for maintenance, taxes and property insurance.

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

223. Initially after closing on the purchase of the property, the Risolas received regular rent checks from Morabito/Eureka/Tibarom. Morabito/Eureka/Tibarom also paid for maintenance, utilities, taxes and property insurance on the property. However, on May 12, 2005, the Risolas received a letter from Morabito/Eureka/Tibarom stating that it had assigned the lease to Peanut Oil (which was an alter-ego of Pearson and Pickett), purportedly a qualified Jiffy Lube franchisee. The letter stated that Peanut Oil was operated by Pearson and Pickett, who purportedly had 30 years of experience operating Jiffy Lube franchises. The letter also noted that Peanut Oil was debt free and capable of becoming one of the preeminent Jiffy Lube franchisees in the country.

224. Shortly after the lease was purportedly assigned to Peanut Oil, Peanut Oil had problems paying the rent on time. The Risolas frequently had to call and e-mail Pearson to make sure that Peanut Oil would pay rent, and to check rent status. By 2007, the Risolas were tired of dealing with Pearson and the late rent payments and decided to sell the Warsaw Jiffy Lube property.

225. Soon after the Risolas listed the property, Pearson called them and said he was interested in purchasing the property. After negotiations, Pearson ultimately agreed to a purchase price of $992,000.00 – a price that was inclusive of the unpaid back rent. The transaction was supposed to be an all-cash deal with Pearson paying $10,000.00 upfront. The sale of the Warsaw Jiffy Lube property to Pearson was supposed to close in January 2008, but Pearson did not go through with the purchase, and never even sent the initial $10,000.00 payment. Instead he delayed and strung along the Risolas for six months. Eventually, Pearson stopped taking their phone calls.

226. On February 20, 2008, the Risolas sent a letter to Pearson notifying him that he was in breach of the lease agreement and had failed to pay rent from November 2007, through January 2008. Then, on or around April 23, 2008, a formal notice of eviction was served on Pearson.

227. On June 11, 2008, an employee at the Warsaw Jiffy Lube property called the Risolas and informed them that Pearson had vacated the premises. When Pearson abandoned the property, the taxes and insurance on the property were left unpaid – an obligation that Morabito/Eureka/Tibarom had agreed to undertake as part of the long-term triple-net lease. As such, the Risolas were

required to pay approximately $11,000.00 for the annual property tax and $2,600.00 for property insurance.

228. Throughout the course of their relationship with M&M Real Estate, Sovereign JF, Morabito and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of the Risolas' investment – exploiting the relationship of trust that they had intentionally built with the Risolas. During this time, Defendants knew that the fair market value of the investment property was artificially inflated, that the purported long-term lease was a farce, and that the "tenant" would walk away, abandoning the property, wiping out the artificial inflation in the fair market value of the property, and eviscerating the future rents.

229. Despite efforts to mitigate the damages suffered as a result of Defendants' scam, the Risolas have been unable to find another tenant, or sell the property. So, like every other investor, Defendants' conspiracy to scam the Risolas was a complete success. With mathematical precision, Defendants artificially inflated the value of the property that the Risolas were induced to purchase, which value plummeted when the Defendants walked away. As a result, the Risolas suffered severe financial damages, including the loss of fair market value of their investment, future rents and out-of-pocket damages, all of which they are entitled to recover.

Chronology of the Risolas' purchase of the Jiffy Lube property located at 2418 North Main Street, Warsaw, New York 14569

OCTOBER 24, 2003

Morabito/NY Seven Lube purchased the Warsaw Jiffy Lube property from Oil Spout Inc. for **$632,500.00**

OCTOBER 27, 2003

Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of **$6,806.92** per month with a 1.60% increase per annum through October 26, 2028

OCTOBER 27, 2003

Sovereign JF purchased the Warsaw Jiffy Lube property from Morabito/NY Seven Lube for **$852,000.00**

JULY 13, 2004

The Risolas purchased the Warsaw Jiffy Lube property from Sovereign JF for **$990,000.00** and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of **$6,806.92**

MAY 12, 2005

Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/Peanut Oil

JUNE 11, 2008

Pearson/Pickett/Peanut Oil abandoned the property. The Risolas have been unable to re-let the Warsaw Jiffy Lube property despite attempting to do so.

G. How Justus and Susan Ahrend Got Scammed[20]

1. M&M Real Estate, King and Gomez Cast the Bait

230. Justus ("Jay") and Susan Ahrend ("the Ahrends") are residents of Long Beach, California. The Ahrends previously owned the "Scorpions Restaurant" – a triple-net lease property in Huntington Beach, California. In January 2005, the Ahrends were convinced by their neighbor, Mike Vescovi ("Vescovi"), to sell the restaurant and invest in a more secure triple-net lease property. Vescovi worked for King, who was an agent of M&M Real Estate in Long Beach, California.

231. The Ahrends placed the Scorpions Restaurant on the market in March 2005 and sold it in July of that year for $2,500,000.00. As the Ahrends wanted to avoid being taxed on the proceeds of the sale, they sought a suitably safe and secure 1031 property to reinvest the proceeds from the sale of the Scorpions Restaurant in. King – who represented himself to the Ahrends as an "expert" in 1031 exchanges – subsequently showed the Ahrends a number of triple-net lease opportunities, none of which really interested them.

232. Sometime in July/August 2005, King met with the Ahrends and told them that Gomez of M&M Real Estate's New York office had a good investment opportunity to present them.[21] When the Ahrends met with Gomez, Gomez told them that said she had a "little jewel" she had been "saving" that she wanted to share with them. Gomez gave the Ahrends M&M Real Estate's marketing materials on the Jiffy Lube store at 739 Oak Street, Scranton, Pennsylvania and described how "wonderful" the property was.

233. Gomez explained that the Scranton Jiffy Lube provided an 8.0% cap rate, which was significantly higher than the 5.0% - 7.0% cap rates offered on other properties listed by M&M Real Estate. Gomez also claimed that the 25-year triple-net lease on the property was "guaranteed" and

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[20] The Ahrends took title to their property as Trustees of the Justus & Susan Ahrend Trust, dated December 6, 1990.

[21] Gomez was held out by M&M Real Estate as being "Marketing and Transactions Coordinator for Glen Kunofsky."

"backed" by SOPUS. Based on Gomez's representations, the Ahrends reasonably believed that whether the tenant occupied the property or not, rental payments would be guaranteed.

234. After the presentation, the Ahrends reviewed the M&M Real Estate marketing materials, which affirmed Gomez's representations. The brochure listed the Scranton Jiffy Lube at $2,746,000.00 with a base rent of $219,725.00 annually and 1.6% annual rent increase. The brochure represented that the tenants, Tibarom and Eureka (which were alter-egos of Morabito) had entered into a 25-year long-term lease (until year 2029) to remain on the property. The brochure also stated that Tibarom had a 10-year "oil agreement" with SOPUS, which, based upon Gomez's representations to the Ahrends, the Ahrends understood to be a "guarantee" by SOPUS.

2. The Ahrends Take the Bait

235. Based on Gomez's representations and the statements in the M&M Real Estate marketing materials, the Ahrends assumed that the Scranton Jiffy Lube was a safe and secure investment. Thereafter, the Ahrends submitted a letter of intent on August 3, 2005, offering $2,668,500.00 for the property. The Ahrends were not advised as to the extent of the relationship between Sovereign JF and M&M.

236. The Ahrends' offer was accepted by Sovereign JF, and they executed a purchase and sale agreement on August 9, 2005. During the subsequent due diligence phase, the Ahrends received a number of documents, including various environmental Phase I and II reports that had been previously prepared on the property in 2004, and a March 1, 2005 gross income statement from Eureka.

237. The gross income statement was not particularly helpful or informative because it only reflected the financial performance of Eureka as a whole and provided no specific financial information about the Scranton Jiffy Lube property. The Ahrends subsequently requested specific financial information about the property from King, but he never provided that information to the Ahrends.

238. On August 16, 2005, shortly after executing the purchase and sale agreement, Jay Ahrend flew out to Scranton, Pennsylvania to take a look a the property. During his site visit, Jay Ahrend saw that the Scranton Jiffy Lube property was in terrible condition and that the

photographs in the sales brochure failed to tell the "true story" about the property. The building was old, and the driveway had cracks and weeds everywhere. Moreover, Jay Ahrend thought that the Scranton Jiffy Lube business seemed depressed, and witnessed only a few cars pass through the store.

239. Concerned about the condition of the Scranton Jiffy Lube property, Jay Ahrend called King and said that the property was not worth $2,600,000.00. King advised Jay Ahrend that the value of the property was based on the long-term lease with Morabito/Eureka/Tibarom. King convinced the Ahrends that the price of the property was high because of the 25-year lease and the high cap rate of 8.0% generated by the lease, and the Ahrends reasonably relied on these representations.

240. Around the fall of 2005, King called the Ahrends and told them that the seller was getting irritated and was about to pull out because the Ahrends were taking too long to close on the property. King also mentioned that another investor was interested in buying the Scranton Jiffy Lube property. Accordingly, the Ahrends felt they had to move quickly on the property or else lose this "little jewel."

241. At M&M Real Estate's direction, Stewart Title Guaranty Company ("Stewart Title") was designated as the escrow company on the transaction. The Ahrends were surprised that they had to pay out-of-pocket closing fees in the amount of $25,000.00, which they assumed would come out of their mortgage.

242. The Ahrends were directed by M&M Real Estate to use Benchmark Financial as their mortgage broker. The Ahrends paid $10,000.00 for an appraisal from PGP but they never received a copy of the appraisal. In fact, Jay Ahrend requested a copy from PGP in June 2008, but PGP refused to send him a copy.

243. On September 9, 2005, Benchmark Financial procured a mortgage for the Ahrends from California Credit Union in the amount of $1,543,000.00 with monthly mortgage payments of $10,000.00. On November 1, 2005, the Ahrends closed escrow on the Scranton Jiffy Lube property.

3. The Jiffy Lube Sale Was a Scam

244. In October 2006, the Ahrends received a certified letter from Sujata Yalamanchili ("Yalamanchili"), Morabito's personal attorney. The letter indicated that Morabito/Eureka/Tibarom had assigned the lease on the Scranton Jiffy Lube property to Tibarom PA. There was no explanation as to why assignment occurred, and the letter did not seek the Ahrends' consent for the assignment.

245. Surprised by the assignment, the Ahrends called Yalamanchili and asked for an explanation. Yalamanchili assured the Ahrends that everything was fine and that the assignment was nothing more than a "company name change." Yalamanchili told the Ahrends that they would still receive rent checks from Tibarom PA.

246. For the next year, the Ahrends received timely rental payments from Tibarom PA. However, in September 2007, Tibarom PA was late with rent, which was unusual because it had never tendered late payment. As they were out of the country, the Ahrends had their son call Breen, the general manager of a number of Morabito/Eureka/Tibarom's Jiffy Lube stores, and ask about the status of the rent. Breen subsequently cut a check and sent it to the Ahrends.

247. Tibarom PA was then late with the November 2007 rent. On New Year's Eve of 2007, Breen called Jay Ahrend and advised him that the Scranton Jiffy Lube would be closing down and would be sold to Macchia. Breen explained that the Scranton Jiffy Lube was not bringing in money. Breen told Jay Ahrend that the sale to Macchia would be a seamless transition.

248. A few days later, the Ahrends met with King at his M&M Real Estate office in Long Beach to discuss the sale to Macchia. After the Ahrends explained the situation, King told them there was nothing he could do and that they were out of luck. The Ahrends asked King about the purported guarantees on the lease, which they understood to mean that they would continue to receive rent payments, even if the tenant breached the lease. King responded that there was no such guarantee in the lease. The Ahrends were shocked by King's response because he had been present at Gomez's presentation in July/August 2005 when she had represented that there was such a guarantee.

249. On January 4, 2008, a day after their meeting with King, the Ahrends received a call from Macchia. ***Macchia told the Ahrends that Tibarom's Jiffy Lube franchises had been having financial problems for years.*** Macchia asked the Ahrends if they would be willing to accept between $3,000.00 and $6,000.00 per month in rent (instead of the $20,000.00 per month they were supposed to getting paid under the long-term lease). The Ahrends thought that Macchia's offer was ridiculous, as his offer was substantially lower than their monthly mortgage obligation of $10,000.00. The Ahrends told Macchia that his offer would not even cover their mortgage and to come up with something else. Macchia said he would get back to them, but he never did.

250. Later in January 2008, Breen called the Ahrends and told them that the employees of Tibarom PA would be moving out of the Scranton Jiffy Lube property by February and that he would be taking the fixtures from the property. On or around January 26, 2008, Jay Ahrend contacted a local realtor in Scranton to inspect the property. The realtor advised Jay Ahrend that the property had been abandoned.

251. At the time, the realtor also told the Ahrends that Millet had been the owner of the Scranton Jiffy Lube property prior to Morabito. Thereafter, the Ahrends called Millet and told him about their situation and how they had purchased the property for $2,600,000.00. Millet was "astounded" at the price, and said that the property was not worth anywhere near that amount, but rather in the ballpark of $300,000.00 to $400,000.00.

252. Having relied on the representations that their investment would be safe and secure, the rent from the Scranton Jiffy Lube property was the Ahrends' only source of income. When Morabito/Eureka/Tibarom/Tibarom PA abandoned the property and failed to pay rent, the Ahrends could not pay their monthly mortgage payment. Accordingly, they were forced into bankruptcy and on June 25, 2008, signed a deed in lieu of foreclosure to their lender, California Credit Union. By handing title of the property directly to the bank, the Ahrends avoided foreclosure.

253. Throughout the course of their relationship with M&M Real Estate, King, Gomez, Sovereign JF, Morabito and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of the Ahrend's investment – exploiting the relationship of trust that

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

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

Chronology of the Ahrends' purchase of the Jiffy Lube property located at 739 Oak Street, Scranton, Pennsylvania 18508

JUNE 30, 2004

Morabito/Scranton Lube purchased the Jiffy Lube property from Millett 21st Century Ventures, LP for **$924,000.00**

JUNE 30, 2004

Sovereign Scranton purchased the Jiffy Lube property from Morabito/Scranton Lube for **$2,350,000.00**

JULY 1, 2004

Sovereign Scranton and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of **$18,310.42** with a 1.60% increase per annum through June 30, 2029

OCTOBER 31, 2005

The Ahrends purchased the Jiffy Lube property from Sovereign Scranton for **$2,668,500.00** and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of **$18,310.42**

OCTOBER 2006

Morabito/Eureka/Tibarom purportedly assigned the lease to Morabito/Tibarom PA

JANUARY 2008

Morabito/Tibarom PA abandoned the property. The Ahrends were forced to sign a deed in lieu of foreclosure in favor of their lender, California Credit Union and thereafter filed bankruptcy.

H. How Gary Reid Got Scammed[22]

1. M&M Real Estate Casts the Bait

255. In late 2003, Gary Reid ("Reid") was approached by Jeremy Byk ("Byk") of Sperry Van Ness in connection with several properties that Reid had listed for sale. Byk offered to sell the properties for Reid, and thereafter, introduced Reid to Ed Breslin ("Breslin"), another broker at Sperry Van Ness, who specialized in helping investors find commercial properties to purchase. Reid was familiar with 1031 exchanges and planned to use 1031 exchanges for his next investments.

256. Two of the 1031 exchange properties that were presented to Reid were Jiffy Lube properties – one in Warsaw, New York and one in Geneva, New York. At this time, Breslin provided Reid with an M&M Real Estate marketing brochure for the Geneva Jiffy Lube property. According to the marketing materials prepared by M&M Real Estate, the Geneva Jiffy Lube property was being offered at an asking price of $975,513.00 by Sovereign JF. The M&M Real Estate marketing materials represented that the property had an 8.0% cap rate.

257. The M&M Real Estate marketing materials represented that Morabito – the purported operator of the Geneva Jiffy Lube property – was "targeted to be the highest net worth ($75 million) Jiffy Lube Operator." The M&M Real Estate marketing materials also represented that Morabito had taken over the Geneva Jiffy Lube property in March 2003, and that the property was slated for significant renovations in 2003 and 2004. The M&M Real Estate marketing materials further represented that the Geneva Jiffy Lube property would be "updated with all the newest Jiffy Lube equipment." The M&M Real Estate marketing materials noted that Morabito/Eureka/Tibarom had recently executed a 25 year triple-net lease to operate a Jiffy Lube in the Geneva property, with a base rent of $6,503.42 per month and annual increases of 1.6%.

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[22] Gary Reid took title to the properties with Claudine E Reid. On May 18, 2006, the Reid's transferred title of the properties to their limited partnership, CECA 3000, LP, a Nevada Limited Partnership.

258. The M&M Real Estate marketing materials convinced Reid that Morabito's involvement in operating the Geneva Jiffy Lube was an important consideration, promising that Morabito had a strong track record for improving Jiffy Lubes post-acquisition:

> Relative to the overall Jiffy Lube system average Tibarom has an average ticket amount over 12% higher, making the franchise 23rd out of 212 Jiffy Lube entities. Mr. Morabito has demonstrated his ability to achieve these results quickly, usually within six months of acquiring and/or converting to a Jiffy Lube store. With his latest acquisition presented in this portfolio of five properties Mr. Morabito increased monthly store level sales by over 20% in the first three months of operations.

Morabito was "sold as king of the lube business." Reid reasonably relied on M&M Real Estate's representations, and believed, based on M&M Real Estate's claims, that Morabito was "the Jiffy Lube whiz."

259. M&M Real Estate also highlighted Morabito's purported relationship with SOPUS to induce Reid to invest. The M&M Real Estate marketing materials noted that by virtue of pumping 100% Pennzoil Products, Morabito had developed "a very strong relationship with Royal Dutch Shell, parent company of Pennzoil Quaker State, and this relationship has been beneficial to Mr. Morabito's expansion and acquisition growth strategy." M&M Real Estate represented to Reid that SOPUS had executed a 10-year oil agreement with Eureka (which was an alter-ego of Morabito) – one of the tenants on the Geneva Jiffy Lube property (Tibarom, another alter-ego of Morabito, was the other tenant) – and that SOPUS had a right to cure under the lease.

260. M&M Real Estate's representations led Reid to believe that if Morabito had a problem in operating the Geneva Jiffy Lube property, SOPUS or it subsidiary JLI would take over the lease. The M&M Real Estate marketing materials promised that the Geneva Jiffy Lube property was a prime location with "significant potential for future appreciation." Reid reasonably relied on these representations, believing that they were evidence that the location had a great income stream, and also that the property would appreciate in value.

2. Reid Takes the Bait

261. As a result of M&M Real Estate's representations, on March 17, 2004, Reid delivered a letter of intent to purchase the Geneva Jiffy Lube property for $867,122.00 to Kunofsky at M&M

Real Estate's New York office. Kunofsky was the listing agent for the seller of the property, Sovereign JF.

262. After Reid executed and delivered the letter of intent on the Geneva Jiffy Lube property, Morabito/Eureka/Tibarom, through M&M Real Estate, provided Reid with financial statements, including a first quarter 2004 monthly profit and loss showing that Eureka had strong cash flow. These documents gave Reid further comfort because they represented that Morabito/Eureka/Tibarom was financially successful and stable.

263. Thereafter, Reid visited the Geneva Jiffy Lube property, and then the Jiffy Lube property in Warsaw, New York. After visiting the Warsaw location, Reid decided not to proceed further on that property because it was in a remote location that did not look like it would do much business.[23]

264. On May 12, 2004, Breslin sent Gomez, Kunofsky's assistant at M&M Real Estate, an e-mail with a list of questions that Reid wanted answered with regards to his potential investments. Reid questioned the financial stability of the Geneva Jiffy Lube property, noting that it seemed to have been operating at a loss for some time. Gomez, as an agent of M&M Real Estate, replied that the Geneva Jiffy Lube property was a recently opened store and had a tough winter. Gomez attempted to assuage Reid's concerns by representing that Morabito/Eureka/Tibarom had 47 stores and had been in business for seven years. Gomez also represented to Reid that there was a car wash "planned" for the Geneva Jiffy Lube property.[24]

265. In early June 2004, Gomez and Kunofsky advised Breslin and Reid that an additional Jiffy Lube in Binghamton, NY had fallen out of escrow with another buyer and had become available. Thereafter, M&M Real Estate provided Breslin and Reid with marketing materials for the

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[23] As set forth in detail above, Sam and Arlene Risola purchased this Warsaw, New York location, apparently after Reid rejected it. Defendants did not disclose to the Risolas that Reid was able to close but chose not to. Instead, Defendants misrepresented to the Risolas that the only reason that the property was available was that another investor was unable to close on the Warsaw location.

[24] Contrary to these representations, no car wash was ever built on the property.

Binghamton Jiffy Lube property. The M&M Real Estate marketing materials represented that Morabito/Eureka/Tibarom had recently executed a 25 year triple-net lease to operate a Jiffy Lube on the Binghamton property, with a base rent of $9,150.00 per month and annual increases of 1.6%.

266. Kunofsky introduced Reid to Geoff Harris ("Harris") of BMC Capital ("BMC") to locate financing for his triple-net lease investments.[25] Citizens Bank and Trust ("Citizens") served as the lender for each of Reid's investments. Reid was told by Defendants that Citizens was a small town bank in Missouri that would not loan money unless they thought the deals were solid. Based on these representations, Reid reasonably believed that Citizen's would not loan him money unless the investments looked secure.

267. At M&M Real Estate's request, PGP appraised the Geneva Jiffy Lube property for $960,000.00 and the Binghamton Jiffy Lube property for $1,370,000.00. M&M Real Estate gave Reid the impression that if the appraisals came in at the price he was paying, then the properties were safe investments. As Reid had agreed to pay Sovereign JF only $951,719.00 for the Geneva Jiffy Lube property and $1,307,143.00 for the Binghamton Jiffy Lube property, he felt good about the appraisals. Of course, no one told Reid that the PGP appraisals included comparables provided by M&M Real Estate and Morabito/Eureka/Tibarom which comparables were also based on leases with inflated rents, making the PGP appraisals wholly unreliable.

268. Reid closed on the two Jiffy Lube properties on July 2, 2004. Reid, Kunofsky, M&M Real Estate, Sovereign JF and Morabito used fax, e-mail, phone and U.S. mail by and between California and New York to negotiate the transaction.

3. The Jiffy Lube Sales Were a Scam

269. From closing through May 2005, Reid received rent under both leases. Then, in early May 2005, Reid received a letter from Morabito/Eureka/Tibarom purporting to have assigned the long-term lease on the Geneva Jiffy Lube property to Peanut Oil. Though the letter claimed that

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[25] Upon information and belief, Harris, who brokered several of the loans referenced herein, has since been hired by MarkOne Capital – a subsidiary of Marcus and Millichap Capital Corporation – as a Senior Director.

Pearson of Peanut Oil was an experienced operator and approved Jiffy Lube franchisee, Reid never consented to the assignment because Morabito/Eureka/Tibarom never provided evidence, as required under the long-term lease, that Peanut Oil was a sufficient assignee.

270. Subsequent to the purported assignment by Morabito/Eureka/Tibarom, Peanut Oil fell three months behind on its rent and failed to pay the taxes on the property, forcing Reid to take steps to terminate the lease. In response, Peanut Oil sent Reid a check for an amount in excess of $20,000.00 for back rent and to avoid eviction. Peanut Oil eventually fell months delinquent on the rent again, and on August 21, 2006, Reid declared Morabito/Eureka/Tibarom/Peanut Oil to be in default under the lease and gave 30 days to cure.

271. On October 13, 2006, Morabito/Eureka/Tibarom notified Reid of a purported assignment of the Binghamton Jiffy Lube property to Tibarom NY (which was an alter-ego of Morabito). Salvatore Morabito signed the assignment on behalf of Eureka, Tibarom and Tibarom NY.[26]

272. In September 2007, Morabito/Eureka/Tibarom/Tibarom NY was late with the rent on the Binghamton Jiffy Lube property. Reid sent a demand letter by mail to Morabito/Eureka/Tibarom/Tibarom NY on September 24, 2007 and sent similar letters by mail on October 22, 2007 and December 28, 2007. Thereafter, Morabito/Eureka/Tibarom/Tibarom NY paid the September rent but failed to pay the late fees.

273. In December 2007, Morabito purportedly assigned his interest in Tibarom to David Macchia.[27] Neither Morabito/Eureka/Tibarom/Tibarom NY nor Macchia paid rent on the Binghamton Jiffy Lube location thereafter, causing Reid to send an election to terminate the Binghamton store lease on January 9, 2008.

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26 Reid formally rejected the purported assignment because it violated the lease for the same reasons that he rejected the purported assignment of the Geneva Jiffy Lube property to Peanut Oil.

27 Reid was not told of this assignment and only learned of it when he called Morabito/Eureka/Tibarom to inquire about late rent.

274. Reid eventually contacted Macchia, who told Reid that the Geneva and Binghamton Jiffy Lube stores were not performing well. Macchia initially told Reid he was going to keep the Geneva Jiffy Lube store open. Then, Macchia called back a few weeks later and told Reid that he was going to close the store because there was another Jiffy Lube in town. Thereafter, Reid asked Macchia to keep operating at the location without paying rent until Reid could get a new tenant. Macchia agreed to this and had Reid send him an e-mail to confirm the arrangement.

275. In order to attempt to mitigate his damages, Reid found a new tenant for the Binghamton Jiffy Lube property. The new tenant at the Binghamton Jiffy Lube property took over in May 2008. The new tenant was supposed to pay Reid $5,000.00 per month in rent, but, after a few months of operation, the tenant requested that Reid renegotiate the rent to $3,000.00 or 15% of gross sales, whichever was greater. The tenant threatened to abandon the premises if Reid did not agree. In a further effort to mitigate his damages, Reid accepted this arrangement to keep the tenant in place.

276. Morabito/Eureka/Tibarom/Peanut Oil defaulted on the Geneva Jiffy Lube property in January 2008, and abandoned the store shortly thereafter. The Geneva Jiffy Lube property has not had a tenant in place since Morabito/Eureka/Tibarom/Peanut Oil abandoned the property. Reid is continuing to have to make monthly mortgage payments of approximately $10,000.00 on both properties combined.

277. Throughout the course of his relationship with M&M Real Estate, Sovereign JF, Morabito, and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of Reid's investments – exploiting the relationship of trust that they had intentionally built with Reid. During this time, Defendants knew that the fair market value of the investment properties was artificially inflated, that the purported long-term leases were a farce, and that the "tenants" would walk away, abandoning the properties, wiping out the artificial inflation in the fair market value of the properties, and eviscerating the future rents.

278. So, like every other investor, Defendants' conspiracy to scam Reid was a complete success. With mathematical precision, Defendants artificially inflated the values of the properties

that Reid was induced to purchase, which values plummeted when the Defendants walked away. As a result, he suffered severe financial damages, including the loss of fair market values of his investments, future rents and out-of-pocket damages, all of which he is entitled to recover.

Chronology of Reid's purchase of the Jiffy Lube property located at 288 Hamilton Street, Geneva, New York 14456

OCTOBER 24, 2003

Morabito/NY Seven Lube purchased the Geneva Jiffy Lube property from Oil Spout Inc. for **$1,380,237.15****

↓

OCTOBER 27, 2003

Sovereign JF and Morabito/NY Seven Lube entered into a sham lease at an inflated rental rate of **$6,503.42** with a 1.60% increase per annum through October 26, 2029

↓

OCTOBER 27, 2003

Sovereign JF purchased the Geneva Jiffy Lube property from Morabito/NY Seven Lube for **$812,446.00**

↓

JULY 2, 2004

Reid purchased the Geneva Jiffy Lube property from Sovereign JF for **$951,719.00** and assumed the lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of **$6,503.42**

↓

MAY 2005

Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/Peanut Oil

↓

JANUARY 2008

Pearson/Pickett/Peanut Oil abandoned the property. Reid has been unable to re-let the Geneva Jiffy Lube property despite attempting to do so.

** Upon information and belief, Morabito/Eureka purchased the Geneva Jiffy Lube property at the same time it purchased several other Jiffy Lube properties. While Plaintiffs have been unable to determine the exact allocation of proceeds that Morabito/Eureka attributed to the Geneva Jiffy Lube property, evidence to be obtained in this case will demonstrate that Defendants artificially inflated the value of the property before selling it to Reid.

Chronology of Reid's purchase of the Jiffy Lube property located at 234-330 North Main Street, Binghamton, New York 13905

OCTOBER 15, 2003

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

OCTOBER 15, 2003

Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of **$9,150.00** per month with a 1.60% increase per annum through October 14, 2029

OCTOBER 15, 2003

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

JULY 2, 2004

Gary Reid purchased the Binghamton Jiffy Lube property from Sovereign JF for **$1,307,143.00** and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of **$9,1500.00**

DECEMBER 2007

Morabito/Eureka/Tibarom purportedly assigned the lease to Macchia

FEBRUARY 2008

Macchia abandoned the property

MARCH 24, 2008

Gary Reid mitigated his damages and signed a new lease with Sierra Oil for a ten year term at a rental rate of the greater of **$3,000.00** or 15% of net sales per month

** Upon information and belief, Morabito/Eureka purchased the Binghamton Jiffy Lube property at the same time it purchased several other Jiffy Lube properties. While Plaintiffs have been unable to determine the exact allocation of proceeds that Morabito/Eureka attributed to the Binghamton Jiffy Lube property, evidence to be obtained in this case will demonstrate that Defendants artificially inflated the value of the property before selling it to Reid.

I. How Eugenia Gagnon Got Scammed[28]

1. M&M Real Estate and Emas Cast the Bait

279. In the late 1980's, Eugenia ("Genie") Gagnon ("Gagnon") and her late husband purchased a Jack-in-the-Box restaurant using M&M Real Estate broker Mitch LaBar ("LaBar"). M&M Real Estate broker Emas represented the seller in the transaction. The Jack-in-the-Box property was a triple-net lease investment purchased as a 1031 exchange property. Following her husband's death, Gagnon held the property until 2004, when she decided to invest in a new 1031 exchange property.

280. Gagnon called LaBar, who was working at the Ontario, California office of M&M Real Estate, to represent her in the sale of the Jack-in-the-Box. Upon reaching M&M Real Estate's Ontario office, Gagnon was told that LaBar was now in management at M&M Real Estate and no longer represented clients. Over the years, Emas had continued to send her flyers about other properties, and as Emas was the only other name that Gagnon knew at M&M Real Estate, she asked to be transferred to him.

281. Emas, as an agent of M&M Real Estate, represented to Gagnon and Henry Shuda ("Shuda"), Gagnon's significant other, that triple-net leases were his specialty. Based on her prior business relationship with M&M Real Estate, and based on Emas' title as Senior Investment Associate, and his representations regarding his experience and expertise, Gagnon believed that Emas was an expert on advising purchasers and sellers of triple-net lease investments and would represent and protect her interests.

282. Emas represented to Gagnon and Shuda (who acts as an advisor to Gagnon) that he would represent Gagnon's interests in the sale of the Jack-in-the-Box and would find her a safe and secure 1031 exchange property. Gagnon made clear to Emas from the outset that she was especially concerned with protecting her income stream.

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[28] Genie Gagnon took title to the properties as trustee of The Genie Debs Revocable Trust, dated October 10, 1995.

283. As there were only five years left on Gagnon's Jack-in-the-Box lease, Emas set the asking price on the Jack-in-the-Box using a formula that involved rental rates and a discount. He listed her Jack-in-the-Box for approximately $1,750,000.00 in the summer or early fall of 2004.

284. Thereafter, Emas provided Gagnon and Shuda a list of prospective triple-net lease investments to purchase using the proceeds of Gagnon's Jack-in-the-Box sale. Early on, Emas attempted to focus Gagnon and Shuda on two Jiffy Lube properties in the Buffalo New York area that were located on Transit Road. These properties purportedly had long-term leases already in place with Eureka and Tibarom (which were alter-egos of Morabito) as tenants. Emas represented that M&M Real Estate had sold six other similar properties with Morabito/Eureka/Tibarom as the tenant/operator, and that those stores were doing well.

285. Emas provided Gagnon and Shuda glossy marketing brochures supplied by M&M Real Estate touting two other Morabito-run Jiffy Lube locations in New York – one for 50 Liberty Street in Batavia and one for a store on South Hamilton, in Painted Post. Though Emas did not have a brochure for the two properties that he was marketing to Gagnon and Shuda, Emas promised Gagnon that the brochures for her potential investments would have looked exactly the same as the brochures that he provided to her for the Batavia and Painted Post properties. The brochures provided to Gagnon and Shuda described the "investment attributes" in the following manner:

- Attractive Yield: 8.00% Initial Return, with 1.6% annual increases
- 25-year Absolute NNN Lease: no Landlord responsibilities; Tenant pays all expenses
- Prime location with significant potential for future appreciation
- Highly recognized brand
- Strong sales unit at location
- This particular franchise is the fastest growing franchisee in the Jiffy Lube system
- Jiffy Lube International is a wholly owned subsidiary of Shell Oil Company (NYSE: RD)
- 10-year Oil agreement with Shell Oil Company

286. Emas emphasized that the brochures for the Transit Road Jiffy Lube properties would have contained the identical glowing reviews of Morabito's business acumen. Emas represented to Gagnon that the only differences in brochures regarding the Transit Road Jiffy Lube properties and the other locations would have been the specific rent amounts, the square footage of the building, and the local demographics.

287. As Gagnon had more experience owning restaurants, she was more interested in finding a triple-net lease on a restaurant building as her next 1031 exchange property. Shortly after reviewing the Jiffy Lube brochures, Gagnon and Shuda drove to Arizona to look at El Pollo Loco investments and they also drove to Texas to look at Taco Cabana restaurants. They were very interested in one Taco Cabana property in Woodlands, Texas, and phoned Emas about it. On that call, Emas told Gagnon and Shuda that the Taco Cabana property had already been purchased by someone else.

288. On that same phone call, Emas again counseled Gagnon that the Transit Road Jiffy Lube locations were the right investments for her. In fact, Emas advised Gagnon and Shuda to start negotiations with Morabito that very day so they could "hold their spot." Otherwise, Emas claimed, other investors would buy the properties first. Emas proclaimed that "it is a great deal, you won't be sorry." Thereafter, Emas continuously pushed Gagnon to purchase the Transit Road Jiffy Lube properties. Whenever Gagnon and Shuda mentioned restaurants, Emas attempted to talk them out of these investments and to talk them into investing in the Transit Road Jiffy Lubes.

289. Emas and M&M Real Estate represented that Morabito was tremendously wealthy and successful and that he was "extremely capable with a monster operation and huge cash flow." Emas further represented that Morabito was an expert at operating Jiffy Lubes efficiently, consistently producing more revenue than other Jiffy Lube locations. For example, Emas and M&M Real Estate represented that Morabito, on average, generated 12% higher revenues per car serviced than other Jiffy Lubes. Emas and M&M Real Estate also represented to Gagnon and Shuda that Morabito was going to install cameras at the Transit Road Jiffy Lube locations so that he could monitor their operations remotely.

290. Emas and M&M Real Estate further lured Gagnon and Shuda into purchasing the Transit Road Jiffy Lubes by telling them that Morabito was the second or third largest Jiffy Lube operator, as well as the fastest growing, with existing stores in New York, Nevada, California and Pennsylvania (and future expansion into Connecticut). Emas and M&M Real Estate represented to Gagnon and Shuda that Morabito was selling the properties solely because he wanted to focus his money and attention on the operations aspect of the business. Emas and M&M Real Estate also represented to Gagnon and Shuda that SOPUS was "fully backing Morabito" and that SOPUS had an agreement with Morabito because he was using their oil exclusively. Emas also said that under that agreement, Morabito would buy large quantities of Jiffy Lube franchises and then sell them one or two at a time.

291. Although Gagnon trusted Emas and M&M Real Estate and believed the protection of her investment was paramount to them, she and Shuda still asked a lot of questions. Specifically, Gagnon and Shuda asked whether Morabito/Eureka/Tibarom's business could support the substantial rent it had agreed to pay. Emas advised Gagnon and Shuda that "this is not like flipping burgers, [Morabito] is really smart and he knows what he is doing." Emas consistently trumpeted Morabito's skill and experience to dispel any questions that Gagnon and Shuda had about the properties.

292. Before purchasing the Jack-in-the-Box, Gagnon and her late husband had asked for, and received, financial history, including rents and revenue for the location. Gagnon and Shuda asked Emas for similar financial information regarding the Transit Road Jiffy Lube properties. Emas responded that M&M Real Estate would provide financial due diligence when Gagnon applied for her loan because the bank would want to see it. Emas told Gagnon and Shuda that "[w]e need to close quickly because Morabito is conducting an exchange, but [you] will get the information later." However, when Gagnon and Shuda later asked additional questions about Morabito/Eureka/Tibarom or the financials supporting Gagnon's investment, Emas told them "it was Morabito's business" and made Gagnon feel like her questions were intrusive personal questions of Morabito.

293. Gagnon and Shuda trusted and relied upon the information provided by Emas and M&M Real Estate, and from Morabito though Emas and M&M Real Estate. Emas, for his part, said that he was in contact with Morabito and knew him personally. Gagnon, at all times, believed that

Emas and M&M Real Estate represented her and would protect her interests in the Jiffy Lube purchases. Neither Emas nor M&M Real Estate disclosed that they were also representing Morabito, or, in fact, that Emas had actually brought Morabito to M&M Real Estate.

294. Gagnon and Shuda had several concerns about purchasing the Transit Road Jiffy Lube properties. For one, the asking price of $2,500,000.00 for the two Transit Road Jiffy Lube properties would require a very large loan, and Gagnon had not made any efforts to secure financing. Also, Gagnon and Shuda had very limited knowledge about the quicklube business. As Gagnon was to receive only $1,700,000.00, minus fees and costs, from the sale of her Jack-in-the-Box property, she told Emas that she wanted to buy just one of the Transit Road Jiffy Lube properties for $1,250,000.00 and a smaller second property with the excess proceeds to eliminate or minimize the need for a mortgage.

295. Notwithstanding this fact, Emas pressured Gagnon into buying the two Transit Road Jiffy Lube properties for a total of $2,500,000.00, emphasizing that the Jiffy Lube properties were the best possible investment and that her money would be safe and her income stream secure. Additionally, Emas told Gagnon that the Transit Road Jiffy Lube properties were only going to be sold as a set of two. Emas, on multiple occasions, attempted to assuage Gagnon's concerns by emphasizing the great rent that Gagnon and Shuda were going to receive from the Jiffy Lube properties and the stability of Morabito/Eureka/Tibarom as a tenant.

296. To allay Gagnon's mortgage payment concerns, Emas showed her a document with anticipated mortgage monthly payments based upon her anticipated loan amount, compared to the monthly rent. These calculations showed that Gagnon was going to be "in the black," or cash flow positive, each month. And with 2% annual rent increases, Emas represented to Gagnon that "it was only going to get better over time."

2. Gagnon Takes the Bait

297. On September 17, 2004, Gagnon signed an offer that Emas had prepared of $2,500,000.00 for the two Transit Road Jiffy Lube locations. To seal the deal, Emas represented to Gagnon and Shuda that Morabito/Eureka/Tibarom was to sign a new 20-year lease with Gagnon paying $103,125.00 per year in rent for each property, with 2% annual rent increases. Even though

they were still in Texas at the time looking at other properties, Emas convinced Gagnon to sign the purchase and sale agreement and to fax it to him immediately given that the properties could be purchased by another investor at any time.

298. The offer that Emas and M&M Real Estate prepared for Gagnon to sign was addressed to "Mr. Paul Morabito, President and Chief Executive of Jiffy Lube." There was no reference to Eureka, Tibarom, or any other Morabito-controlled entity in the offer that M&M Real Estate had prepared. Based on the offer that Emas and M&M Real Estate prepared, Gagnon and Shuda believed that Morabito was an executive of, or directly affiliated with, JLI, the franchisor. Emas and M&M Real Estate never disclosed to Gagnon and Shuda that Morabito was only a franchisee of JLI.

299. The offer drawn up by Emas and M&M Real Estate required Morabito to provide all documentation relating to the Jiffy Lube locations within a week, and thereafter provided for Gagnon to only have a two week due diligence period. Emas told Gagnon that the short time period was due to the fact that Morabito was in the midst of conducting his own 1031 exchange.

300. Even after submitting the offer prepared by Emas and M&M Real Estate, Gagnon had not secured financing. However, Emas continually reassured her that financing would not be a problem. Emas told Gagnon that there was a guy down the hall from Emas who worked for Marcus & Millichap Capital Corporation, stating that "[h]e's good, he'll get you the loan." Gagnon expressed discomfort and concern, but Emas told her again "don't worry, he's good." Emas never disclosed to Gagnon that Marcus & Millichap Capital Corporation was actually brokering a loan, not acting as the lender, and charging Gagnon a fee of 1% of the loan amount for arranging a loan from a third party.

301. Gagnon and Shuda drove to New York from Florida to visit the properties on September 24, 2004 – visiting the properties on the 26th or 27th. The locations were on the smaller side, and had double tandem work bays situated front to back, as opposed to two bays next to each other side to side. Notwithstanding this fact, Emas told Gagnon and Shuda that these locations would still be able to handle the same volume of cars as locations with side-to-side bays.

302. While Emas did not accompany them on their visit, he did instruct Gagnon and Shuda that they could not go into the stores because doing so would alarm the employees, who were apparently not aware that Morabito was selling the properties. At the time of Gagnon and Shuda's visit to the Transit Road Jiffy Lube properties, the stores were not yet being operated as Jiffy Lube franchises. They were being operated as "No Bull Fast Lube" stores. When Gagnon and Shuda inquired about this, Emas represented to Gagnon and Shuda that the stores were in the process of being converted to Jiffy Lubes, and that Morabito "has a tight time limit" running to get it done.

303. Based upon Emas' representations, Gagnon and Shuda believed that Morabito already owned the facilities, and was just in the process of converting them to Jiffy Lubes. Emas and M&M Real Estate never disclosed that Morabito, in fact, did not own Gagnon's potential locations at the time of the negotiations for Gagnon and Shuda to purchase them.

304. The sale of Gagnon's Jack-in-the-Box closed on September 29, 2004 and Gagnon and Shuda were required to fax documents to Emas from the road relating to that transaction. The proceeds from the closing of the Jack-in-the-Box sale went into a 1031 escrow account handled by Downstream Exchange Company in Pasadena, California, which was the 1031 intermediary that Gagnon was directed to by Emas.

305. On October 12, 2004, Gagnon and Shuda received the lease agreements sent from California by Jeffrey Langan ("Langan"), General Counsel for Eureka and Tibarom. The leases required total monthly rent payments of $8,593.75.00 consistent with the prior representations made by Emas and M&M Real Estate.

306. On October 13, 2004, in reliance on the representations made by Emas, M&M Real Estate, and Morabito, Gagnon put a $50,000.00 deposit on the Transit Road Jiffy Lube properties using proceeds from her Jack-in-the-Box sale. As soon as she put their deposit down, Gagnon began receiving documents to be signed and sometimes notarized, all of which Emas and M&M Real Estate said had to be returned right away.[29] These documents came from Emas, from Eureka and

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[29] At this time, Gagnon and Shuda had just been hit by Hurricane Charlie and were still cleaning up a lot of damage to their home.

Tibarom's attorney Langan, and from Morabito's personal attorney in New York, Yalamanchili. The documents often arrived with the notation "sign and return in 24 hours, we need to get JLI signatures." For instance, on October 13, 2004, Gagnon and Shuda received a FedEx package sent from Yalamanchilli in New York enclosing documents that needed to be signed and returned by October 16, 2004.

307. Gagnon and Shuda did not want to complain about the short turnaround time, and believed Emas, M&M Real Estate and Morabito knew what they were doing, and were, at all times, acting with Gagnon's best interests in mind. Gagnon kept asking Emas, "have they started paperwork on my loan?" When Emas said no, Gagnon asked "what if I don't qualify?" Emas told her "don't worry about it. This is what I'm here for. I'll do the worrying for you. I'll take care of it." Gagnon told Emas she did not know how to fill out the loan paperwork coming in. Emas told her to send him her financial information and "I'll fill it out for you."

308. Some documents received by Gagnon identified New York Lube 3, with no explanation of how that entity was related to Morabito. Gagnon and Shuda asked Emas questions about this entity and the others they would occasionally see mentioned, and Emas told them, "this is just another Morabito business. He is really big with lots of different entities to manage properties in different states." Every time that Gagnon or Shuda would have a question concerning Morabito or his entities, Emas would just reply that Morabito was "very large and successful and this is just how successful people do business."

309. During this process, Gagnon received a request from M&M Real Estate to sign and send back a document indicating that Gagnon was removing all contingencies to the closing of the transaction. Relying on Emas and M&M Real Estate's trustworthiness, Gagnon signed the document, although the absence of financing and magnitude of documents that had to be signed and returned with virtually no time for review began to make Gagnon very uncomfortable.

310. As a result of her discomfort, Gagnon told Emas that she thought she might need an attorney to review the documents. Emas talked her out of retaining an attorney, stating "it will take a while to get someone." When Gagnon insisted, Emas told her that "there is no time to do that, this sale has to close by October 18 or you will lose your $50,000.00 deposit." Emas also said "this guy

[Morabito] is powerful, I don't know what he'll do. You'll lose your $50,000.00 and hopefully that is all."

311. Emas' comment was the first Gagnon learned that she had to close the transaction by October 18, 2004. Gagnon asked why he had never told her about the impending October 18, 2004 closing date and Emas said "I thought you knew." As it was only a few days before the newly announced closing date of October 18, 2004, Gagnon was concerned that she might not get her loan. She told Emas she could not close on October 18, 2004 because she did not have a loan. Emas told her that Morabito himself was willing to provide a bridge loan. Emas had evidently already spoken with Morabito about this and said "don't worry about it, Morabito will cover you until you get the loan."[30]

312. The Purchase and Sale Agreement stated that Gagnon and Shuda were buying the two Transit Road Jiffy Lube properties from New York Lube 3 (which was yet another alter-ego of Morabito). The Purchase and Sale Agreement further noted that New York Lube 3 was already under contract to purchase the properties from Izydorczak. Gagnon was confused by this document and asked Emas what it meant. Emas told Gagnon that "this is the exchange." Emas explained "New York Lube was Morabito's business. No Bull is the old company but it is becoming Jiffy Lube." Emas said "they just haven't been repainted yet. It is all in the process of being done."

313. Based on Emas and M&M Real Estate's representations, Gagnon and Shuda believed that Morabito already owned the property and the purchase and sale agreement disclosing No Bull Fast Lube LLC was just about the transition from that operational entity to a Jiffy Lube franchise.[31]

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[30] Gagnon found out much later the reason the sale had to close by October 18, 2004 was because Jerome Izydorczak ("Izydorczak"), the then-current owner of No Bull Fast Lube LLC – who was selling the properties to Morabito – had grown tired of negotiating with Morabito and Morabito's brother Salvatore. Izydorczak set October 18, 2004 as the final date to either close the purchase of his stores or else he would not sell to Morabito. It was this deadline that meant that Gagnon had to close her purchase by October 18, 2004 as well. Gagnon and Shuda recently learned that Morabito closed on the No Bull/Jiffy Lube locations on the same day he sold them to Gagnon and Shuda.

[31] The second page of Gagnon's December 30, 2004 closing statement at Section G indicates the payoff of an existing mortgage to Eureka for the bridge loan. Of this payoff amount, $625,000.00 was wired to Eureka, and $75,000.00 was wired to M&M Real Estate. Gagnon believes

Gagnon, Shuda, Emas, M&M Real Estate, Morabito, and New York Lube 3 used fax, e-mail, phone and U.S. mail by and between Florida, California and New York to negotiate the transaction.

3. The Jiffy Lube Sales Were a Scam

314. On October 29, 2004, Langan, on behalf of Morabito/Eureka/Tibarom, sent Gagnon her first rent check via FedEx. Then, on November 1, 2004, Langan sent Gagnon a FedEx asking her to sign and return a Contingent Assignment and Assumption Agreement purportedly required by JLI. The agreement appeared to grant JLI a right to cure any defaults by Morabito/Eureka/Tibarom. Gagnon called Morabito/Eureka/Tibarom to inquire about the document but never received a call back. Gagnon then asked Emas about the document and he responded that "[i]t is a good thing, sign them and send them in. That is more protection for you." Gagnon signed the document and sent it back, but she never received a copy of the document counter-signed by JLI.

315. On November 30, 2004, Gagnon received her rent check for $17,187.50 for both properties combined. Thereafter, Gagnon continued to receive her rent, but the account on which the checks were drawn changed from a bank in California to a bank in Nevada. In early 2005, Gagnon sent her property tax bill to Morabito's Laguna Beach, California office to be paid, but got a return receipt indicating it was instead delivered to Reno, Nevada. Thereafter, Gagnon called Emas, who confirmed that Morabito had moved a few months prior.

316. Emas then disclosed to Gagnon for the first time that a company named Berry-Hinckley Industries, Inc. ("Berry-Hinckley") was now operating the Transit Road Jiffy Lube properties instead of Morabito/Eureka/Tibarom. Gagnon and Shuda were shocked by this news because Morabito was the "superstar" whose involvement and reputation was so highly touted by Emas and M&M Real Estate as insuring the success of Gagnon's investment. When Gagnon told Emas of her concern, Emas told her not to worry.

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the $75,000.00 was Emas and M&M Real Estate's commission. Gagnon received two copies of the closing statements, one from Morabito's counsel and one from Marcus & Millichap Capital Corporation. The statement received from Morabito showed the $75,000.00 payment to M&M Real Estate, but the version Gagnon received from Marcus and Millichap Capital Corporation did not.

317. When Gagnon did not receive her December 1, 2006 rent check, Gagnon called Berry-Hinckley to find out why. Gagnon was told that Berry-Hinckley would get the check to her, and the rent arrived shortly thereafter. However, the name "Eureka Petroleum" no longer appeared on the rent check. Instead, the payor was Tibarom NY. Gagnon called Berry-Hinckley to ask why Morabito/Eureka/Tibarom was not the payor and was told that Morabito had many Tibarom entities and Tibarom NY was just one of them.

318. In March 2007, Gagnon's rent checks did not arrive. Thereafter, no one answered the phones at Berry-Hinckley and Gagnon's subsequent e-mails did not receive responses. Emas claimed not to know anything about Berry-Hinckley's sudden unresponsiveness.

319. Gagnon eventually reached Audrey Hanson ("Hanson"), an employee of Morabito/Eureka/Tibarom. Hanson advised Gagnon that "we no longer own this. The stores have been assigned to Sam Pearson of Peanut Oil." Gagnon asked why she had not been given notice and Hanson responded that "I don't know." Hanson then whispered to Gagnon, "you need to get a lawyer and do exactly what he tells you to do. I don't want to lose my job, I need to work. Do what you have to do."

320. Eventually Gagnon learned that Morabito/Eureka/Tibarom had purportedly assigned the leases for the Transit Road Jiffy Lube properties to Peanut Oil (which was an alter-ego of Pearson and Pickett) on October 9, 2006. This purported assignment was done without Gagnon's consent. When Gagnon discovered Morabito's attempt to avoid his obligations under the leases, Gagnon wrote letters to Pearson's attorney Brian Melber ("Melber"), Pearson, Pickett, Morabito, and Langan complaining about the failure to gain the consent and provide the notice of the assignment that was required under the lease agreement. Though Pearson responded that he had documentation to support his role as the new tenant, no documentation was ever provided to Gagnon.

321. Gagnon and Shuda called Emas to try to get more information. Emas said they should have received a notice if their properties were assigned. Emas e-mailed Phil Tripoli ("Tripoli") on March 14, 2007 at Morabito/Eureka/Tibarom to inquire about the non-payment of rent by Morabito/Eureka/Tibarom. Tripoli did not get back to Emas, but Morabito did respond to the e-mail on March 15, 2007, even though he was not an addressee on Emas' initial e-mail. Morabito

claimed to have sold the leases in the two Transit Road Jiffy Lube properties six months earlier to Peanut Oil. Morabito said that Gagnon and Shuda could call Pearson at Peanut Oil, or Kevin Lyng ("Lyng"), Vice President of JLI, if they had any questions.

322. Gagnon eventually spoke with Lesorovsky and Floeck at JLI in Houston, but never got hold of Lyng. Lesorovsky and Floeck made it clear that JLI had been aware for some time about what was going on with Morabito and the assignments of leases. However, JLI was continuing to receive royalty payments from Morabito. As long as JLI received such payments, Gagnon was told that JLI was not going to do anything. Lesorovsky and Floeck claimed they could take no action to compel Morabito to honor his leases because their legal department was afraid that JLI would get sued.

323. In March 2007, Gagnon and Shuda also got in touch with M&M Real Estate agent LaBar. Gagnon told LaBar that they were getting nervous and wanted to sell the Transit Road Jiffy Lube properties. LaBar agreed that they should sell the Transit Road Jiffy Lube properties and recommended they use another M&M Real Estate broker – Kunofsky – because Kunofsky was located in New York where the properties were situated.

324. On March 15, 2007, Gagnon telephoned Kunofsky and left a message with his secretary. Thereafter, Kunofsky agreed to review their purchase agreements and other information, but a week or two later told Gagnon that he could not sell the Transit Road Jiffy Lube properties because ***there were eight to ten other 1031 exchange investors who owned properties that were in a similar situation to Gagnon.*** Gagnon asked for the names of the other scammed investors, but Kunofsky refused to provide that information.

325. On March 16, 2007, Gagnon got a call from Pearson, who said he was interested in buying Gagnon's properties, ***but that the stores were not worth what Gagnon had paid.*** Pearson offered Gagnon $900,000.00 for both stores, despite the fact that, based upon the advice and counsel of Emas and M&M Real Estate, Gagnon had paid $2,500,000.00 for those same stores.

326. At this time, Pearson told Gagnon he was still working for Morabito. Pearson further stated that Gagnon's locations were not making enough to cover the rents owed. Yet, in the same conversation, Pearson mentioned that out of the 12 Jiffy Lubes he had contracted to operate for

Morabito/Eureka/Tibarom, Pearson had already purchased six. Gagnon could not understand how Pearson could claim the stores were not generating sufficient income for Morabito or Pearson to pay rent, but that Pearson, who purportedly operated those very stores, could afford to buy six of the stores and was trying to acquire even more.

327. On March 18, 2007, Gagnon and Shuda got a call from Emas who had purportedly been making inquiries on her behalf. Emas told Gagnon and Shuda that the taxes on the Transit Road Jiffy Lube properties had not been paid. Gagnon called Pearson and left him a voice-mail message that the taxes needed to be paid and she wanted to talk with him. She also sent Pearson notice of the taxes by registered mail, which was delivered, but Pearson never responded. Gagnon also left voice messages and e-mails for Morabito to this effect, but these were all ignored. Gagnon and Shuda eventually paid the $9,553.81 in taxes themselves.

328. From April to September 2007, Gagnon received no rent, although she made demands monthly to Morabito/Eureka/Tibarom and Pearson. During this time, Gagnon continued to pay the mortgage of $5,204.00 per month plus two tax bills from New York. By May 15, 2007, Morabito/Eureka/Tibarom owed Gagnon $9,134.08 in unpaid taxes and unpaid rent of $56,327.91. Thereafter, in November 2007, Gagnon's stores were abandoned. At this time, inventory and machinery were removed from both stores, leaving the locations essentially inoperable. In order to mitigate their damages, Gagnon has leased one store to a tenant that pays an average of approximately $2,450.00 per month. The other store is empty. Gagnon's mortgage obligation for the two Transit Road Jiffy Lube properties is $5,204.00 per month.

329. Throughout the course of their relationship with Emas, M&M Real Estate, Morabito and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of Gagnon's investments – exploiting the relationship of trust that they had intentionally built with Gagnon. During this time, Defendants knew that the fair market value of the investment properties was artificially inflated, that the purported long-term leases were a farce, and that the "tenants" would walk away, abandoning the properties, wiping out the artificial inflation in the fair market value of the properties, and eviscerating the future rents.

330. So, like every other investor, Defendants' conspiracy to scam Gagnon was a complete success. With mathematical precision, Defendants artificially inflated the values of the properties that Gagnon was induced to purchase, which values plummeted when the Defendants walked away. As a result, Gagnon suffered severe financial damages, including the loss of fair market value of her investments, future rents and out-of-pocket damages, all of which she is entitled to recover.

Chronology of Gagnon's purchase of the Jiffy Lube property located at 4885 Transit Road, Lancaster, New York 14086

OCTOBER 18, 2004

Morabito/New York Lube 3 purchased the 4885 Transit Road Jiffy Lube from Jerome and Linda M. Izydorczak for **$800,000.00**

↓

OCTOBER 18, 2004

Morabito/Eureka/Tibarom and Gagnon entered into a sham lease which, unbeknownst to Gagnon, contained an inflated rental rate of **$8,593.75** with a 2.00% increase per annum through October 31, 2024

↓

OCTOBER 18, 2004

Gagnon purchased the Transit Road Jiffy Lube from Morabito/New York Lube 3 for **$1,250,000.00**

↓

OCTOBER 9, 2006

Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/Peanut Oil

↓

NOVEMBER 2007

Pearson/Pickett/Peanut Oil abandoned the property and removed the trade fixtures. Gagnon has been unable to re-let the Transit Road Jiffy Lube property despite attempting to do so.

Chronology of Gagnon's purchase of the Jiffy Lube property located at 6480 Transit Road, Cheektowaga, New York 14043

OCTOBER 18, 2004

Morabito/New York Lube 3 purchased the 6480 Transit Road Jiffy Lube from Jerome and Linda M. Izydorczak for **$800,000.00**

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OCTOBER 18, 2004

Morabito/Eureka/Tibarom and Gagnon entered into a sham lease which, unbeknownst to Gagnon, contained an inflated rental rate of **$8,593.75** with a 2.00% increase per annum through October 31, 2024

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OCTOBER 18, 2004

Gagnon purchased the Transit Road Jiffy Lube from Morabito/New York Lube 3 for **$1,250,000.00**

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OCTOBER 9, 2006

Morabito/Eureka/Tibarom purportedly assigned the lease to Pearson/Pickett/Peanut Oil

↓

NOVEMBER 2007

Pearson/Pickett/Peanut Oil abandoned the property and removed the trade fixtures

↓

JANUARY 2008

Gagnon mitigated her damages and signed a new lease with Fast Track for a period of two years at a rental rate of 12% of net sales at the end of each calendar month

J. How Joseph Amirkhas Got Scammed[32]

1. Amirkhas Retains M&M Real Estate to Sell Commercial Real Estate

331. In June 2004, M&M Real Estate broker Muirhead contacted Amirkhas regarding the sale of a small office building Amirkhas owned in the Phoenix, Arizona area. Muirhead, who was based in the Phoenix, Arizona office of M&M Real Estate, represented to Amirkhas that he was very experienced at selling commercial real estate in the Phoenix area. Amirkhas decided to have Muirhead list the property for him, and Muirhead was successful in selling the office building.

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

332. Amirkhas told Muirhead that he wanted to reinvest the proceeds from the office building in an easy-to-manage investment. In response, Muirhead advised Amirkhas to purchase a triple-net lease investment because such investments were safe and extremely low maintenance. In convincing Amirkhas to continue working with M&M Real Estate, Muirhead assured Amirkhas that M&M Real Estate brokers were triple-net lease "experts" and that M&M Real Estate brokers would provide all the information necessary to enable Amirkhas to choose which property to purchase.

333. Muirhead, as an agent of M&M Real Estate, pitched a number of triple-net lease investment properties to Amirkhas. Among Muirhead's pitches were properties with leases to Denny's, KFC, Arby's and other restaurants with cap rates of 7.75%. Muirhead represented that each property would be a good, safe investment for Amirkhas to purchase as a tax deferred 1031 exchange.

334. Amirkhas believed that Muirhead and M&M Real Estate were trustworthy and were protecting his interests in helping him to identify a safe, conservative investment. In convincing Amirkhas that the triple-net lease properties in the M&M Real Estate portfolio – and in particular, the Church's Chicken in Albany, Georgia that Amirkhas ended up purchasing – were an excellent fit for Amirkhas, Muirhead repeatedly told Amirkhas that triple-net lease investments were very secure,

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[32] Joseph Amirkhas took title to the first property, the Church's Chicken in Albany, Georgia, as trustee under the Amirkhas Trust, dated January 14, 2000. Amirkhas took title to the second property, the Jiffy Lube in Wilkes-Barre, Pennsylvania, as "Joseph Amirkhas, an unmarried man."

safe and hassle-free, involving essentially no ongoing oversight by Amirkhas. This information was particularly important to Amirkhas, who, as a retiree, did not want the responsibility of ongoing management duties and liked the idea of a passive, yet safe, investment.

335. Eventually, Muirhead convinced Amirkhas to focus on a Church's Chicken in Albany, Georgia being sold by Sovereign CC. Muirhead represented to Amirkhas that the Albany Church's Chicken property would be an excellent investment because Church's Chicken was a very well-established franchise and the operator, Waelti, was very successful and experienced. Amirkhas knew nothing about Church's Chicken or Waelti prior to Muirhead touting the investment.

336. Based on Muirhead and M&M Real Estate's representations, Amirkhas became interested in the Albany Church's Chicken location. As such, Muirhead began providing due diligence to Amirkhas on the Albany Church's chicken property. During the due diligence process, Muirhead provided Amirkhas financials with respect to the Church's Chicken location in Albany, Georgia. When Amirkhas expressed the desire to retain an accountant to help him analyze the investment, Muirhead told him that it was unnecessary and that Muirhead and M&M Real Estate could do the financial and due diligence analysis for him.

337. Accordingly, Muirhead (who told Amirkhas that he had a lot more commercial real estate experience than Amirkhas did) and M&M Real Estate purportedly reviewed the financials and other due diligence related to the Albany Church's Chicken property. Aside from reviewing the M&M Real Estate marketing brochure for the property, Muirhead led Amirkhas to believe that he and M&M Real Estate conducted independent research, including conducting a financial analysis of the property and obtaining additional information from Kunofsky – the M&M Real Estate listing agent for the property. Based upon the due diligence purportedly conducted by Muirhead and M&M Real Estate on Amirkhas' behalf, Muirhead and M&M Real Estate represented to Amirkhas that the Church's Chicken property was a very good investment.

338. As part of his review of the materials and information fed to him by Muirhead and M&M Real Estate, Amirkhas questioned Waelti's experience and results. In order to attempt to negate any hesitation by Amirkhas, Muirhead arranged a conference call between himself, Amirkhas

and the listing broker Kunofsky to provide Amirkhas more information about Waelti and Church's Chicken.

339. Before the conference call, Muirhead told Amirkhas that Kunofsky, based in M&M Real Estate's New York office, was the biggest, most knowledgeable and successful real estate agent at M&M Real Estate. Muirhead represented to Amirkhas that Kunofsky hunted for valuable investment properties and convinced their owners to sell their properties using M&M Real Estate. Muirhead convinced Amirkhas that Kunofsky knew "everything about all the properties he was listing," leading Amirkhas to believe that Kunofsky knew "everything" about the property M&M Real Estate wanted him to purchase, the property's tenant, QSR One (which was an alter-ego of Waelti), and the seller, Sovereign CC.

340. During the conference call, Kunofsky assured Amirkhas that Waelti was very experienced in franchised fast food operations, and had been very successful as a Jack-in-the-Box franchisee.[33] Kunofsky further allayed any fears that Amirkhas had by reiterating Muirhead's prior representations that the Albany Church's Chicken property was a great investment. Kunofsky specifically told Amirkhas that small operators like Waelti and QSR One "can be better than big operators because they have more time to pay attention to all their stores."

341. Kunofsky and Muirhead convinced Amirkhas to focus on Waelti's backing and experience. They reassured Amirkhas that he was "buying something from someone with lots of experience." Kunofsky reiterated to Amirkhas the security of the investment, representing that Church's Chicken "was a big franchise and very secure." Kunofsky said the investment was "very safe and hassle free." Amirkhas relied on Muirhead, M&M Real Estate, and Kunofsky's due diligence, financial analysis and representations when he decided to take their advice and purchase the Albany Church's Chicken property.[34]

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[33] Amirkhas learned much later, towards the end of Waelti's tenancy at his Albany Church's Chicken location, that Waelti was actually removed as a Jack-in-the-Box franchisee.

[34] Despite their purported expertise, Muirhead, M&M Real Estate, and Kunofsky failed to disclose that Waelti only recently purchased at least six of the Church's Chicken stores and franchises from Lewis Siplin ("Siplin"). Waelti then immediately turned around and sold the

342. Despite the numerous representations made to Amirkhas by Muirhead, Kunofsky and M&M Real Estate, no one revealed to Amirkhas the extent of the relationship between Sovereign CC and M&M. In fact, Kunofsky actually described Sovereign CC as an independent institution that invested in restaurants and other businesses – a bulk buyer of franchises which then "breaks them up and sells them one by one." Kunofsky represented to Amirkhas that Sovereign CC bought franchises at a discount because it bought so many at a time (up to 20 or more franchise locations in a single transaction), thus receiving a volume discount which enabled Sovereign to turn a profit by then selling those properties individually at market prices.

343. In order to further induce Amirkhas to close on the Church's Chicken property, Kunofsky advised Amirkhas that there "was a big budget for a complete image upgrade renovation" to the Church's Chicken location "which would increase its value." Kunofsky advised Amirkhas that the renovation would be funded by Waelti and the franchisor itself, Church's Chicken's parent company Cajun Operating Co. (which was requiring the renovation). Kunofsky further represented to Amirkhas that this renovation would occur within one year following Amirkhas' purchase.[35]

344. Amirkhas specifically asked Kunofsky whether the existing (pre-renovation) equipment in the store was included in his purchase and Kunofsky assured him that it was. Kunofsky also assured Amirkhas that Amirkhas would own the new equipment that was to be installed as part of the major renovation, and that this was very good news because it would make the building and the franchise more valuable. In fact, Amirkhas asked for a list of any items that were excluded from his purchase, and the exclusion list that was part of his purchase agreement did not identify any excluded property.

345. Amirkhas relied on Kunofsky's representations regarding ownership of the equipment when he decided to purchase the Albany Church's Chicken property. Neither Muirhead, Kunofsky, M&M Real Estate, nor Waelti disclosed to Amirkhas that in 2004 – prior to Amirkhas' purchase of

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locations to Sovereign and entered into long-term leases with Sovereign CC. Thus, Waelti was not nearly as experienced in operating Church's Chicken locations as Amirkhas was led to believe.

[35] Contrary to Kunofsky's promises, the renovation never occurred.

the Church's Chicken property – Waelti took a loan of over $3,000,000.00 from GE Capital and used the equipment in the Church's Chicken restaurants as security. Not only was this fact concealed from Amirkhas, but the security interest was contrary to the lease and purchase agreement which Defendants induced Amirkhas to enter into. Both the lease and the purchase agreement stated that all equipment belonged to Amirkhas.

3. Amirkhas Takes the Bait

346. Amirkhas signed the purchase agreement for the Albany Church's Chicken property on April 15, 2005, with a purchase price of $1,088,000.00. Amirkhas, Muirhead, Kunofsky, M&M Real Estate, Waelti and Sovereign CC used fax, e-mail, phone and U.S. mail by and between California, New York, and Arizona to negotiate the transaction.

347. Muirhead, Kunofsky and M&M Real Estate marketed the location as having an 8.0% cap rate, backed by rent of $7,477.83 per month, with annual rent increases of 1.75%. Amirkhas' purchase of the Albany Church's Chicken property was driven entirely by representations made by Muirhead, Kunofsky, M&M Real Estate and Waelti with respect to the value, security, safety and ease of management of that "triple-net lease" investment. Indeed, Muirhead, Kunofsky, and M&M Real Estate convinced Amirkhas that the $7,477.83 per month long-term lease already in place on the property with Waelti/QSR One as tenant would generate the 8.0% cap rate and guarantee Amirkhas a safe, consistent source of retirement income for at least 20 years.

348. Muirhead directed Amirkhas to Pinnacle 1031 Exchange Services ("Pinnacle") to be the required, disinterested intermediary to complete the 1031 exchange, and to Stewart Title Insurance Company for the title work.[36] Muirhead told Amirkhas to use BMC as his lender, representing that BMC financed many of M&M Real Estate's brokered transactions.

349. Amirkhas financed $387,000.00 to purchase the Albany Church's Chicken property, and put $700,000.00 as a down payment. Although Amirkhas was led to believe he was getting a

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[36] Federal tax rules require use of a disinterested intermediary to complete a 1031 tax deferred exchange.

good deal on the loan because BMC worked with M&M Real Estate frequently, Amirkhas learned later that the 7.2% interest rate BMC gave him was not competitive.

4. The Church's Chicken Sale Was a Scam

350. Several months after the closing on Amirkhas' Church's Chicken property, problems began to arise. Initially, during the first few months of ownership, rent payments to Amirkhas were late and no one at Waelti/QSR One was returning his phone calls. Waelti attempted to justify the late payments by claiming that he was not making any money because the restaurants did not generate sufficient income to support the rents that Waelti/QSR One had agreed to pay.

351. Amirkhas told Muirhead about these problems from the beginning. Amirkhas also sent e-mails to Kunofsky about the problems that he was having concerning the rent being paid timely and getting return contacts from the Waelti/QSR One office, but Kunofsky ignored his repeated requests for help.

352. On January 10, 2006, Amirkhas' attorney Thad Gould ("Gould") sent a notice of default and demand for $7,608.69 in rent to Waelti/QSR One. Waelti/QSR One eventually paid the past due rent for that month, but for each subsequent month thereafter until Waelti/QSR One abandoned the property, Waelti/QSR One did not pay the monthly rent until Gould sent a demand letter on behalf of Amirkhas. Ultimately, Waelti/QSR One abandoned the Albany Church's Chicken property in October 2007.

353. In order to mitigate his damages, Amirkhas agreed to enter into a new lease with Cajun Operating Co. for $4,900.00 per month, significantly less than the $7,440.00 per month rent that Amirkhas was entitled to under the original lease. As a result, the fair market value of his investment has plummeted, and he has suffered severe economic damages.

5. The Bait Is Cast Again

354. In 2005, Amirkhas was also a partial owner (with the Moderbachers and Etemad as other partial owners) of an 80-unit apartment building in Phoenix known as Andover Square which

the partners decided to sell.[37] After selling Andover Square, Amirkhas began looking into additional triple-net lease investments with M&M Real Estate, again spearheaded by Muirhead.[38]

355. Muirhead began talking up a Wilkes-Barre, Pennsylvania Jiffy Lube property, again being sold by a subsidiary of Sovereign. Muirhead, as an agent of M&M Real Estate, glowingly told Amirkhas that the Jiffy Lube property was "so good, so secure, it was almost like buying an interest in an oil company." Near the start of Amirkhas' discussions with Muirhead about the Wilkes-Barre Jiffy Lube property, Muirhead provided Amirkhas with an extensive marketing brochure about the Wilkes-Barre location and the co-tenants/operators of the location – Eureka and Tibarom (both of which were alter-egos of Morabito).

356. The marketing brochure touted the investment as a "True NNN Lease – Tenant Pays All Expenses" and boasted an 8.25% cap rate. The marketing brochure further sold Morabito as the wonder boy of Jiffy Lube, noting:

> Tibarom, Inc., a Jiffy Lube franchisee which operates 24 stores in the Reno-Tahoe, NV (11), Coachella Valley, CA (8), and Binghamton, NY (5) markets, was founded by Paul Morabito in 1999. Prior to forming Tibarom, Mr. Morabito owned and operated 18 Q Lube stores in Texas and Colorado, which were sold due to territorial conflicts after Jiffy Lube merged with Q Lube. With his extensive experience in the quick lube industry, Mr. Morabito has established a successful track record of building and acquiring new and existing Jiffy Lube stores as well as converting other quick lube stores into profitable Jiffy Lube stores.
>
> Tibarom, Inc. currently has annual revenue of approximately $20 million, EBITDA of $4.5 million and total assets of $11.5 million. This substantial cash flow supports a balance sheet with virtually no long debt term.
>
> Mr. Morabito has proven his ability to add-value to both existing Jiffy Lubes and independent operators through cost-effective marketing, branding and improved operations. This is evidenced by a consistent post-acquisition increase in average

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[37] Around the time of the sale of Andover Square, Amirkhas' partners asked him how he was going to invest his portion of the proceeds of the sale. Amirkhas told them he had recently invested (through M&M Real Estate) in the Church's Chicken location, a single tenant triple-net lease property and that he was considering purchasing additional triple-net lease investments through M&M Real Estate using his portion of the Andover Square sale proceeds. When his partners in the Andover Square property expressed interest in discussing these investments with M&M Real Estate, Muirhead came out to San Francisco for a meeting at Amirkhas' house with Amirkhas and his partners.

[38] At this time, Amirkhas had no idea that the problems with his Church's Chicken property were anything other then issues caused by a bad tenant.

> ticket size by bundling more services to the usual oil chance as well as managing resources more efficiently.
>
> Relative to the overall Jiffy Lube system average, Tibarom has an average ticket amount that is 12% higher, ranking the franchise 23rd out of 212 Jiffy Lube entities. Mr. Morabito has demonstrated his ability to achieve these results quickly, usually within six (6) months of acquiring and/or converting to a Jiffy Lube store. With his latest acquisition, presented in this portfolio of five properties, Mr. Morabito increased monthly store level sales by over 2% in the first three (3) months of operations.
>
> Part of Tibarom's operating strategy is to pump 100% Pennzoil products versus 70% for other franchises and also to focus on high margin style synthetic oil (30% of sales versus the 5% franchise average). This has resulted in stores that are disproportionately profitable to Pennzoil and has led to a very strong relationship with Royal Dutch Shell, the parent company of Pennzoil Quaker State. This relationship has been beneficial to Mr. Morabito's expansion and acquisition growth strategy.

357. Muirhead repeatedly assured Amirkhas that Kunofsky could not say enough good things about the Jiffy Lube franchise and that Kunofsky personally vouched for Morabito. At no time did Muirhead or Kunofsky disclose to Amirkhas that Kunofsky had a personal and business relationship with Morabito – Muirhead merely told Amirkhas that Kunofsky knew a great deal about Morabito/Eureka/Tibarom and that they operated many Jiffy Lube locations.[39]

358. Muirhead recommended that Amirkhas divide his $1,700,000.00 in cash proceeds from the sale of Andover Square into two bundles – one to be used to purchase the Wilkes-Barre Jiffy Lube and the other to be used to purchase three Uni-Mart locations. Muirhead continuously touted the Jiffy Lube investment as being oil-related and Morabito and Jiffy Lube as being highly successful.

359. As with his Church's Chicken purchase, Muirhead's representations led Amirkhas to believe that he and M&M Real Estate were working to protect Amirkhas' interests and that

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[39] Additionally, Defendants never disclosed to any of the Plaintiffs that Bernard Haddigan, the Managing Director of M&M, was conducting business with Morabito/Tibarom/Eureka on the side for his own personal profit. In a March 7, 2004 e-mail concerning Tibarom's 2004 strategic outlook, Morabito noted "Bernie Haddigan, the Managing Director of Marcus and Millichap, is personally taking $8 million worth of the $27 million in exchanged Expressway real estate. . . ."

Amirkhas was buying a very secure property in Jiffy Lube.[40] In a September 20, 2005 e-mail to Amirkhas, Muirhead wrote that "I do consider you a friend over a client. I enjoy our conversations and think we have built and continue to build a good partnership that will benefit us not only on these transactions but for many transactions and years to follow."

360. In a separate e-mail on September 20, 2005, Muirhead wrote to Amirkhas that "I have extreme confidence in the team we have formed – us, Glen's [Kunofsky] team and Brandon/Barbara." Once again, Muirhead, Kunofsky, and M&M Real Estate all failed to disclose the extent of M&M Real Estate's relationship with Sovereign, JF – the seller of the Wilkes-Barre Jiffy Lube property. Further, neither Muirhead, Kunofsky, M&M Real Estate, Sovereign JF, Morabito, nor any other co-conspirators disclosed to Amirkhas that Morabito (through his Eureka/Tibarom entities) had only recently purchased ***several*** Jiffy Lube franchises and locations as a group for a total of approximately $3,000,000.00. The $3,000,000.00 purchase price was less than what Amirkhas was induced to pay ***for his single location*** only a short time later.

6. Amirkhas Relies on Muirhead and M&M Real Estate to Analyze the Due Diligence on His Jiffy Lube Investment

361. Muirhead told Amirkhas that Amirkhas was "Kunofsky's darling" because Amirkhas had already bought a Church's Chicken location from him and was in discussions to buy several more triple-net lease investments from him. Amirkhas had also referred the Moderbachers and Etemad to Kunofsky, and they were in discussions to each buy multiple properties as well.

362. As he had done in the Church's Chicken transaction, Amirkhas relied on Muirhead and M&M Real Estate's purported expertise. Before deciding to purchase the Wilkes-Barre Jiffy Lube, Amirkhas again asked Muirhead to assist with the due diligence and analyze the financials for the Jiffy Lube transaction. Amirkhas soon received purportedly independently audited written financial statements from Morabito/Eureka/Tibarom indicating that the entities had $16,000,000.00

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[40] In furtherance of the scheme, Amirkhas was told by Muirhead and/or Kunofsky that Sovereign JF made a deal to buy multiple locations from Morabito. As with the Church's Chicken purchase, Amirkhas was led to believe that Sovereign JF made money by purchasing locations in bulk and then selling them off individually.

in cash on hand.[41] Additionally, Amirkhas was told that there was a long-term lease on the Wilkes-Barre Jiffy Lube property with a monthly rental stream of $20,490.67.

363. Muirhead and M&M Real Estate represented to Amirkhas that they had "reviewed" the financials and the lease and conducted other due diligence. During the sales process, and at the behest of M&M Real Estate, PGP prepared an appraisal of the property. The appraisal included comparables provided by M&M Real Estate and Morabito/Eureka/Tibarom which comparables were also based on leases with inflated rents, making the appraisal wholly unreliable. Of course, none of this information was disclosed to Amirkhas. Muirhead reviewed the appraisal and assured Amirkhas that the investment "was very, very strong."

364. The transaction was completed on November 14, 2005 with Amirkhas again using Pinnacle for all the 1031 exchange intermediary services for the transaction. Although Amirkhas had worked with BMC as the lender for his earlier Church's Chicken purchase, he switched to the California Credit Union for the Jiffy Lube purchase at M&M Real Estate's suggestion. Once again, Amirkhas, Muirhead, Kunofsky, M&M Real Estate, Morabito and Sovereign JF used fax, e-mail, phone and U.S. mail by and between California, New York, and Arizona to negotiate the transaction.

7. The Jiffy Lube Sale Was a Scam

365. After the Jiffy Lube purchase closed, Muirhead sent Amirkhas the name of the person to contact at Morabito/Eureka/Tibarom for purposes of collecting rent or addressing any other problems. Initially, Amirkhas dealt with Sartain out of the Morabito/Eureka/Tibarom office in Laguna Beach, California. Two to three months after Amirkhas purchased his Jiffy Lube location, Morabito moved his Eureka and Tibarom alter-egos to Reno, Nevada.

366. In approximately September 2007, Breen joined Tibarom and Eureka as Vice President and General Manager, and Sartain was fired shortly thereafter. Once Sartain was fired, Breen became Amirkhas' contact at Morabito/Eureka/Tibarom. For several months after Breen took over the managerial duties at Morabito/Eureka/Tibarom, the rent arrived on the 25th of each month –

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41 Amirkhas requested Morabito/Eureka/Tibarom's tax returns but was told by Muirhead that he could not have access to them.

the very last day of the ten-day grace period provided for in the lease. Sartain had always ensured that the rent for the Wilkes-Barre Jiffy Lube property arrived by the 15th of each month – the date the rent was due under the lease.

367. Then, in January 2008, Amirkhas received a call from Etemad who told him that Macchia was now operating their Jiffy Lube locations. Macchia had told Etemad in a prior conversation that Macchia now owned the franchises, that he would be closing some stores, and that there would be no other rental payments forthcoming. At this time, Amirkhas continued to attempt to deal with Morabito because Amirkhas had not consented to Macchia becoming his tenant. Unfortunately, Morabito was nowhere to be found.

368. Around the same time that Macchia appeared and stopped paying rent, Amirkhas got a letter by mail from Morabito's personal attorney Yalamanchili directing Amirkhas to send all rent questions to her going forward. Yalamanchili stopped answering e-mails and returning calls shortly thereafter.

369. Soon after Macchia appeared on Amirkhas' property, Macchia proposed paying Amirkhas $9,000.00 in total rent for the two months of back rent instead of the $43,000.00 owed by Morabito/Eureka/Tibarom. In order to attempt to limit his ever-growing damages, Amirkhas accepted the $9,000.00 rent, but did so while explicitly retaining rights to claims for unpaid rents or other claims. Macchia and his company, D&R Lube, Inc., eventually vacated the premises in December 2007. Ultimately, Amirkhas found a replacement tenant who agreed to lease Amirkhas' location for $11,500.00 per month, significantly less then the rent that the lease with Morabito/Tibarom/Eureka had called for.

370. Throughout the course of his relationship with M&M Real Estate, Muirhead, Kunofsky, Sovereign JF, Morabito, Waelti and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of Amirkhas' investments – exploiting the relationship of trust that they had intentionally built with Amirkhas. During this time, Defendants knew that the fair market value of the investment properties were artificially inflated, that the purported long-term leases were a farce, and that the "tenants" would walk away, abandoning the

properties, wiping out the artificial inflation in the fair market value of the properties, and eviscerating the future rents.

371. So, like every other investor, Defendants' conspiracy to scam Amirkhas was a complete success. With mathematical precision, Defendants artificially inflated the value of the properties that Amirkhas was induced to purchase, which values plummeted when the Defendants walked away. As a result, Amirkhas suffered severe financial damages, including the loss of fair market value of the property that Amirkhas was induced to purchase, future rents and out-of-pocket damages, all of which he is entitled to recover.

Chronology of Amirkhas' purchase of the Church's Chicken property located at 401 West Oglethorpe Blvd., Albany, Georgia 31701

NOVEMBER 19, 2004

Waelti/QSR purchased the Albany Church's Chicken property from Siplin for **$897,400.00**

NOVEMBER 19, 2004

Sovereign CC purchased the Albany Church's Chicken property from Waelti/QSR for **$898,000.00**

DECEMBER 17, 2004

Sovereign CC and Waelti/QSR One entered into a sham lease with an inflated rental rate of **$7,477.83** with a 1.75% increase per annum through December 31, 2019

APRIL 15, 2005

Amirkhas purchased the Albany Church's Chicken property from Sovereign CC for **$1,088,000.00** and assumed the sham lease with Waelti/QSR One as tenant with a monthly rent of **$7,477.83**

OCTOBER 1, 2007

Waelti/QSR One abandoned the property

NOVEMBER 2007

Amirkhas mitigated his damages and signed a new lease with Cajun Operating Co. for an initial term of 5 years at $**4,900.00** a month

Chronology of Amirkhas' purchase of the Jiffy Lube property located at 92 Mundy Street, Wilkes-Barre, Pennsylvania, 18702

JUNE 30, 2004

Morabito/Scranton Lube purchased the Jiffy Lube property from Millett 21st Century Ventures, LP for $<u>**770,000.00**</u>

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JUNE 30, 2004

Sovereign Scranton purchased the Jiffy Lube property from Morabito/Scranton Lube for <u>**$2,925,000.00**</u>

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JULY 1, 2004

Sovereign Scranton and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of <u>**$20,490.67**</u> with a 1.60% increase per annum through June 30, 2029

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NOVEMBER 15, 2005

Amirkhas purchased the Jiffy Lube property from Sovereign Scranton for <u>**$2,939,082.00**</u> and assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of <u>**$20,490.67**</u>

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JANUARY 2007

Morabito/Eureka/Tibarom purportedly assigned the lease to Macchia/D&R Lube

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DECEMBER 2007

Macchia/D&R Lube abandoned the property

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APRIL 1, 2008

Amirkhas mitigated his damages and signed a new lease with Snowdon for 36 months at a rental rate of <u>**$11,500.00**</u> per month

K. How Allen Hom Got Scammed[42]

1. M&M Real Estate and Mickle Cast the Bait

372. In 2004, Allen Hom's ("Hom") sister-in-law purchased a Captain D's seafood restaurant through Mickle, an M&M Real Estate agent based in San Diego, California. After his sister-in-law referred Hom to M&M Real Estate, Hom purchased two Captain D's restaurants with Mickle's guidance.

373. In mid-2004, Mickle, as an agent of M&M Real Estate, advised Hom that M&M Real Estate was marketing a few Jiffy Lube triple-net lease investments with high cap rates. Hom had previously expressed to Mickle his interest in pursuing investments with high cap rates. Mickle and M&M Real Estate represented that the tenants on the Jiffy Lube properties – Eureka and Tibarom (which were alter-egos of Morabito) – were experienced operators who had signed 25-year long-term leases for both locations.

374. Hom was interested in the Jiffy Lube properties because of the high cap rates, 25-year lease terms, and because of the fact that he believed that M&M Real Estate and Mickle were trustworthy and were making truthful representations to him. M&M Real Estate and Mickle represented to Hom that the Painted Post Jiffy Lube property had a 25-year lease beginning March 4, 2004 with a base lease rate of $9,711.00, and 1.6% annual increases. M&M Real Estate and Mickle represented to Hom that the Hornell Jiffy Lube property had a 25-year term lease beginning October 2003 with a base lease rent of $7,585.00, and 1.6% annual increases.

375. Though Hom was told that Sovereign JF owned the stores, no one disclosed to Hom the extent of Sovereign JF's relationship with M&M. Kunofsky of M&M Real Estate's New York office was the listing agent on the Jiffy Lube properties.[43] Throughout the process, Mickle,

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[42] Hom took title to his properties as Trustee for the Allen Ernest Hom Trust, dated August 19, 1992.

[43] Much of the information for the Jiffy Lube properties was provided from Kunofsky to Mickle who, in turn, passed it along to Hom.

Kunofsky and M&M Real Estate continuously represented to Hom that the stores were profitable and would be safe, secure investments.

376. Hom believed that Mickle and M&M Real Estate were representing him as a buyer and were looking out for his best interests. M&M Real Estate's reputation and the combination of the long lease terms and experienced operators made the properties seem to be very safe investments.

2. Hom Takes the Bait

377. In approximately June 2004, in reasonable reliance on M&M Real Estate's representations, Hom signed letters of intent for the Painted Post and Hornell Jiffy Lube properties. The price for the Painted Post Jiffy Lube was $1,338,448.00 and the price for the Hornell Jiffy Lube was $1,046,310.00, both with an 8.7% cap rate. Mickle advised Hom as to what prices to offer. Based on their prior relationship as well as M&M Real Estate's reputation, Hom believed that Mickle and M&M Real Estate were representing him and would act in his best interests.

378. Once Hom signed the purchase agreements, M&M Real Estate began sending him, through the U.S. mail, due diligence information about his Jiffy Lube locations, including a Phase I Environmental Report, Pre-title report, site maps and the leases. M&M Real Estate also provided Hom with a Tibarom compilation report of assets, liabilities and shareholder equity for the period ended December 31, 2003 showing that Tibarom had a strong balance sheet. The report was prepared by BMI (which was an alter-ego of Morabito).[44] Neither BMI, Morabito, Mickle, Kunofsky nor M&M Real Estate disclosed the relationship between BMI and Morabito/Eureka/Tibarom.

379. Hom closed on the Painted Post Jiffy Lube property on August 25, 2004, paying $1,396,048.99, and on the Hornell Jiffy Lube property on August 27, 2004, paying $1,070,929.00. On August 26, 2004, Mickle faxed Hom the settlement statements for the two Jiffy Lube properties.

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[44] Morabito is identified as President of BMI according to http://www.manta.com/coms2/dnbcompany_dmmlsf. Salvatore Morabito identified himself as Vice President of BMI in political donations in 2004. *See* http://fundrace.huffingtonpost.com/neighbors.php?type=emp&employer=BARUK+MANAGEME NT%2C+INC.

Hom, Mickle, Kunofsky, M&M Real Estate, Sovereign JF and Morabito/Eureka/Tibarom used fax, e-mail, phone and U.S. mail by and between California and New York to negotiate the transaction.

3. The Jiffy Lube Sales Were a Scam

380. Morabito/Eureka/Tibarom paid rent from the close of the transaction in August 2004, through May 2005. However, on May 12, 2005, Morabito/Eureka/Tibarom purportedly assigned both long-term leases on the Jiffy Lube properties to Peanut Oil – without Hom's consent and in violation of the express language in the lease agreements. The purported notice of assignment received by Hom in a certified letter from Morabito/Eureka/Tibarom identified Pearson and Pickett as the proprietors of Peanut Oil, but Morabito/Eureka/Tibarom provided no evidence to Hom that Peanut Oil was as well capitalized as Morabito/Eureka/Tibarom – a requirement for such an assignment under the leases.[45]

381. Peanut Oil made rent payments for several months before problems began. On January 9, 2006, Yalamanchili, counsel for Morabito/Eureka/Tibarom, sent a letter to Hom stating that Morabito had sold his interest in Hom's property on May 15, 2005, and that Morabito/Eureka/Tibarom were no longer obligated to pay any taxes related to the property. Hom eventually was forced to pay a tax lien after Morabito/Eureka/Tibarom and Peanut Oil both refused to pay the taxes.

382. In both January and February 2006, the rent for the Hornell and Painted Post Jiffy Lube properties was late. Peanut Oil eventually paid the rent and a late fee, and then subsequently paid April rent late, but did not pay the required late fees.

383. On May 1, 2006, Peanut Oil failed to make monthly rent payments on the properties, and, thereafter, did not pay any further rent on Hom's two Jiffy Lube properties. Several months later, despite the large amount of unpaid rent, Pearson contacted Hom and offered to purchase the

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[45] The notice of assignment indicated that "[a]part from having tremendous experience in operating Jiffy Lubes, they have a company [Peanut Oil] that is debt free, and capable of becoming one of the preeminent franchises within the over 2,300 Jiffy Lube Store Community." Unfortunately for Hom, this representation – like many of the other representations made by Defendants – turned out to be false.

Hornell and Painted Post Jiffy Lube properties from him for an amount much lower than what Hom had paid.

384. Then, on August 8, 2006, Peanut Oil sent correspondence by U.S. mail to Hom requesting a rent reduction, ostensibly because construction near their facility was negatively impacting the business. In order to mitigate his damages, Hom faxed a letter to Peanut Oil on August 17, 2006 offering a 10% rent reduction on the condition that Peanut Oil paid $48,000.00 in unpaid rent. Hom received no response.

385. On September 18, 2006, Hom made an additional demand for unpaid rent and on October 4, 2006, Hom wrote to Morabito/Eureka/Tibarom regarding the troubling situation with Peanut Oil. Hom never received a response from Morabito/Eureka/Tibarom. Thereafter, Hom continued to demand back rent payments for the Hornell and Painted Post Jiffy Lube properties from Morabito/Eureka/Tibarom and Peanut Oil, but still no rent was paid.

386. In May 2008, Peanut Oil abandoned the Hornell and Painted Post Jiffy Lube properties after operating the locations without paying rent for approximately two years. Around that time, Hom paid approximately $10,000.00 - $11,000.00 on each property to clear outstanding tax liens.

387. In order to further mitigate his damages, Hom leased the stores to Ben Kohberger ("Kohberger "). Kohberger 's rent for the Hornell location started at $1,500.00, and for the Painted Post location, the rent started at $3,500.00. In addition, Kohberger agreed to pay taxes and insurance on the properties. Hom is receiving from Kohberger only about one-third of the payments agreed to by Morabito/Eureka/Tibarom under the original long-term leases.

4. The Bait Is Cast Again

388. In April 2006, Mickle began to market a Church's Chicken at 3007 W. Edgewood Ave., Jacksonville, Florida to Hom.[46] Mickle and M&M Real Estate represented in a fax to Hom that "This property can be delivered at a 9.0% CAP. The operator currently has 10 stores and is

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[46] At this time, Hom had no idea that the problems with his Jiffy Lube properties were anything other then issues caused by a single bad tenant.

merging with a 20 unit operator in the next few weeks. The guarantee will triple in size." The asking price for the Jacksonville Church's Chicken was $1,223,405.00. Mickle told Hom that the property was located in a middle-class area in Jacksonville. Based upon these and other representations made by Mickle and M&M Real Estate, the property seemed like a good opportunity to Hom.

389. M&M Real Estate's marketing materials promised a "[s]trong tenant with proven restaurant experience." Hom was led to believe the tenant on the Jacksonville Church's Chicken property, QSR II (which was an alter-ego of Waelti), and the seller, Sovereign CC, were big operators. He concluded, in reasonable reliance on Mickle and M&M Real Estate's representations, that Waelti/QSR II was a financially stable lessee and a solid company.

5. Hom Takes the Bait Again

390. Hom wanted to buy the Jacksonville Church's Chicken property at a 9.0% cap rate, which equated to a $1,020,000.00 purchase, so he offered that amount to Sovereign CC. Sovereign CC agreed to the $1,020,000.00 offer on the condition that the due diligence period be shortened to 10 days because Sovereign CC wanted to close escrow quickly.

391. M&M Real Estate provided Hom with a Title Commitment, Survey, Phase I Environmental Audit, Lease and Budget documents as part of the due diligence process. M&M Real Estate and Mickle continued to represent that the investment was solid and safe and that Waelti/QSR II was a large operator with a number of stores. Hom was told that QSR One (which was an alter-ego of Waelti) and QSR II were operating in different states, and that the property Hom was buying was a part of QSR II. According to the lease already in place between Waelti/QSR II and Sovereign CC, the monthly rent on November 19, 2004 was $7,693.58 per month with 1.75% annual increases.

392. M&M Real Estate provided Hom with a series of Waelti/QSR II financial spreadsheets that purported to show performance of the Jacksonville Church's Chicken location and

other Waelti/QSR II Church's Chicken locations for the years 2001 through 2003.[47] Indeed, Hom was persuaded by M&M Real Estate and Mickle that Waelti/QSR II was so big with QSR One, QSR II, and QSR (which was an alter-ego of Waelti) that Waelti/QSR II would have enough cash flow to carry a low performing store if there was one – *i.e.*, to have a financial cushion that would insure the safety, security and success of his investment.

393. In reasonable reliance on M&M Real Estate and Mickle's representations, Hom signed a purchase and sale agreement on May 1, 2006 for the purchase of the Jacksonville Church's Chicken property. Thereafter, Sovereign CC pushed for a quick closing while Mickle and M&M Real Estate continued to assure Hom that the property was a very stable investment.

394. On June 20, 2006, just days before closing, Sovereign CC and Waelti/QSR II amended the long-term lease agreement in place on the property with Sovereign CC agreeing to accept a 20% rent reduction from June 1, 2006 through May 31, 2007. The total amount of the rent reduction was $18,952.12 over the 12 month period.[48] Hom closed on approximately June 26, 2006, financing $700,000.00 of the purchase, with an interest rate of 7.375% fixed for five years. Hom, Mickle, M&M Real Estate, Sovereign CC and Waelti/QSR II used fax, e-mail, phone and U.S. mail by and between California, New York, and Florida to negotiate the transaction.

6. The Church's Chicken Sale Was a Scam

395. Hom received rent for the Jacksonville Church's Chicken property through April 2007. However, on May 11, 2007, Waelti/QSR II sent Hom correspondence by mail notifying him that Waelti/QSR II intended to unilaterally reduce its rent by 50% due to the financial hardships it was purportedly facing. Though Hom never consented to Waelti/QSR II's unilateral rent reduction, he only received 50% of his normal rent in May, June and July. In August 2007, Hom did not receive any rent payment from Waelti/QSR II.

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[47] In fact, during the time period referenced in the financials, the Church's Chicken locations were operated by the prior owner, Lewis Siplin, not Waelti/QSR II. This fact was never disclosed to Hom.

[48] Hom was not advised why Sovereign CC agreed to the rent reduction but received an equivalent reduction in the purchase price to maintain the same cap rate.

396. In September 2007, Hom received a check for $6,683.83, presumably for August and September 2007 rent. The check initially bounced for insufficient funds, but Hom's bank attempted to deposit the check again, and it went through on the second try. Hom received no further rent payments thereafter.

397. Waelti/QSR II abandoned the Jacksonville Church's Chicken property in the fall of 2007. In May 2008, in an effort to mitigate his damages, Hom signed a lease with a new tenant, Florida Chicken, for $3,300.00 per month, which is approximately 50% of the rent under the original long-term lease with Waelti/QSR II. The new lease will increase by 2% starting in year six.

398. Throughout the course of his relationship with M&M Real Estate, Sovereign CC, Morabito, Waelti and the various other members of the M&M Enterprise, Defendants made false and misleading statements and omissions regarding the fair market value, future rents, business prospects, security and stability of Hom's investments – exploiting the relationship of trust that they had intentionally built with Hom. During this time, Defendants knew that the fair market value of the investment properties was artificially inflated, that the purported long-term leases were a farce, and that the "tenants" would walk away, abandoning the properties, wiping out the artificial inflation in the fair market value of the properties, and eviscerating the future rents.

399. So, like every other investor, Defendants' conspiracy to scam Hom was a complete success. With mathematical precision, Defendants artificially inflated the values of the properties that Hom was induced to purchase, which values plummeted when the Defendants walked away. As a result, Hom suffered severe financial damages, including the loss of fair market values of his investments, future rents and out-of-pocket damages, all of which he is entitled to recover.