

1 Chronology of Hom's purchase of the Jiffy Lube property located at 321
2 S. Hamilton Street, Painted Post, New York 14870

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5 **MARCH 5, 2004**

6 Morabito/Rochester Lube purchased the Painted Post Jiffy Lube property from Ronald D. Woodard
7 for \$1,105,000.00

8 **MARCH 5, 2004**

9 Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease at an inflated rental rate of
10 \$9,711.00 per month with a 1.60% increase per annum through March 4, 2029

11 **MARCH 5, 2004**

12 Sovereign JF purchase the Painted Post Jiffy Lube property from Morabito/Rochester Lube for
13 \$1,246,332.00

14 **AUGUST 27, 2004**

15 Hom purchased the Painted Post Jiffy Lube property from Sovereign JF for \$1,370,964.00 and
16 assumed the sham lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of \$9,711.00

17 **MAY 12, 2007**

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

19 **MAY 2008**

20 Pearson/Pickett/Peanut Oil abandoned the property

21 **JULY 15, 2008**

22 Hom mitigated his damages and signed a new lease with Oil Xpress for a five year period at
23 \$3,500.00 per month

1 Chronology of Hom's purchase of the Jiffy Lube property located at 141
2 Seneca Street, Hornell, New York, 14843
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4 **OCTOBER 27, 2003**

5 Morabito/NY Seven Lube purchased the Hornell Jiffy Lube property from Robert and Martha Panter
6 for \$650,000.00



7 **OCTOBER 27, 2003**

8 Sovereign JF and Morabito/Eureka/Tibarom entered into a sham lease with an inflated rental rate of
9 \$7,585.75 per month and a 10% increase every 10 years through October 26, 2028



10 **OCTOBER 27, 2003**

11 Sovereign JF purchased the Hornell Jiffy Lube from Morabito/NY Seven Lube for \$961,785.00



12 **AUGUST 25, 2004**

13 Hom purchased the Hornell Jiffy Lube from Sovereign JF for \$1,070,929.00 and assumed the sham
14 lease with Morabito/Eureka/Tibarom as tenants with a monthly rent of \$7,585.75



15 **MAY 12, 2005**

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



17 **MAY 2008**

18 Pearson/Pickett/Peanut Oil abandoned the property



19 **July 15, 2008**

20 Hom mitigated his damages and signed a new lease with Oil Xpress for a five year term at an initial
21 rental rate of \$1,500.00 per month
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1 Chronology of Hom's purchase of the Church's Chicken property located
2 at 3007 W. Edgewood Avenue, Jacksonville, Florida 32209

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5 **NOVEMBER 19, 2004**

6 Waelti/QSR purchased the Jacksonville Church's Chicken property in a group of four properties from
7 Siplin for a combined price of \$3,223,800.00 - or an average of \$805,950.00 per property

8 **NOVEMBER 19, 2004**

9 Sovereign CC and Waelti/QSR II entered into a sham lease with an inflated rental rate of \$7,693.58
10 per month with a 1.75% increase per annum

11 **NOVEMBER 19, 2004**

12 Sovereign CC purchased the Jacksonville Church's Chicken property in the same group of four
13 properties from Walet/QSR for \$3,223,800.00 - or an average of \$805,950.00 per property

14 **JUNE 22, 2006**

15 Hom purchased the Jacksonville Church's Chicken property from Sovereign CC for \$1,020,000.00
16 and assumed the lease with Waelti/QSR II as tenants with a monthly rent of \$7,693.58

17 **FALL 2007**

18 Waelti/QSR II abandoned the property

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20 **MAY 2008**

21 Hom mitigated his damages and signed a new lease with Florida Chicken for \$3,300.00 a month with
22 a 2% yearly increase beginning in the sixth year of the lease

1 **L. How Mary Cheatham Got Scammed⁴⁹**

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

3 400. In 2001, Mary Cheatham (“Cheatham”) assisted her mother in the purchase of an
4 IHOP property in Oklahoma. Through that transaction, Cheatham was introduced to M&M Real
5 Estate Senior Investment Associate Emas in the Ontario, California M&M Real Estate office. Emas
6 helped Cheatham’s mother buy an IHOP triple-net lease property as an exchange for a property
7 previously sold.

8 401. In approximately January 2005, Cheatham contacted Emas to represent her in
9 connection with her own potential triple-net lease investment. Thereafter, Emas, as an agent of
10 M&M Real Estate, provided Cheatham with a list of available properties. According to the materials
11 that Emas and M&M Real Estate provided to Cheatham, there were only a limited number of
12 properties available in her price range of approximately \$500,000.00.

13 402. Despite her limited finances and her expressed desire to invest in a stable, secure
14 property with a consistent income stream, Emas convinced Cheatham to spend more than the
15 \$500,000.00 she wanted to invest. Indeed, Emas insisted that Cheatham should invest in a property
16 in the \$1,000,000.00 price range “to find a quality property,” even though it meant she would need to
17 finance the property. Towards that end, Emas sent Cheatham a brochure for a Church’s Chicken
18 property in Jacksonville, Florida, along with marketing and financial information for the property.
19 Those materials included representations that caused Cheatham to believe that the Jacksonville
20 Church’s Chicken property was the safe and secure investment with a consistent income stream that
21 she required.

22 403. Waelti, the operator of the Jacksonville Church’s Chicken property, was prominently
23 featured in the marketing materials provided by Emas and M&M Real Estate. The materials touted
24 Waelti’s experience and success. As a result of these and other representations made by Emas and
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27 ⁴⁹ Cheatham took title to the property in Cheatham Properties, LLC, a California Limited
28 Liability Company.

1 M&M Real Estate, Cheatham believed that Waelti's involvement as operator of the Jacksonville
2 Church's Chicken was an indication of the stability of the investment.

3 404. Emas told Cheatham that Emas himself owned a Church's Chicken in Monrovia,
4 California – leading Cheatham to believe that Church's Chicken properties were reliable
5 investments. Cheatham also conducted research regarding the franchisor. Further, Cheatham sent
6 her accountant a copy of financial statements she received early in the process from QSR II (which
7 was an alter-ego of Waelti) – the tenant and guarantor of the long-term lease in place on the
8 Jacksonville Church's Chicken property. Cheatham's accountant reviewed the financials and gave
9 Cheatham the green light to proceed.

10 **2. Cheatham Takes the Bait**

11 405. In reasonable reliance on M&M Real Estate, Emas and Waelti/QSR II's
12 representations, Cheatham selected the Jacksonville Church's Chicken restaurant as a good
13 candidate for her investment. Cheatham was told by Emas that she needed to act quickly given that
14 the seller of the property, Sovereign CC, had already sold 2 of the 5 Church's Chicken properties
15 that it owned.

16 406. Cheatham initially thought that the purchase price for the Jacksonville Church's
17 Chicken property was a bit high. M&M Real Estate represented that the restaurant's monthly sales
18 were reportedly \$65,000.00 to \$70,000.00, which seemed comparable to the monthly sales of
19 \$70,000.00 to \$80,000.00 generated by the Taco Bell that Cheatham owned with her sister in
20 Sacramento, California. The rent on the long-term lease at the Jacksonville Church's Chicken was
21 starting at \$6,812.42 per month, which was approximately 10% of the purported gross sales. The
22 Taco Bell property only paid her approximately 5% of gross sales in rent at the time. Yet, the Taco
23 Bell property, which was near the end of its lease, appraised for \$360,000.00 to \$380,000.00 based
24 on the presence of that tenant. Cheatham was uncertain why the Church's Chicken property was
25 purportedly worth so much more than the Taco Bell property and could pay her so much more rent
26 as a percentage of sales.

27 407. Cheatham expressed these concerns to Emas, who told her that Church's Chicken was
28 a different operation than Taco Bell, and therefore valued differently. Emas represented to

1 Cheatham that Church's Chicken had a different business model than Taco Bell – making larger
2 profits which, in turn, allowed it to afford higher rents. Emas represented that Church's Chicken “is
3 lower volume and higher profit, and rent is typically 10% of sales.” Emas and M&M Real Estate
4 further represented to Cheatham that the \$6,800.00 per month rent was the proper market rent for a
5 tenant on a Church's Chicken property. Cheatham trusted Emas and M&M Real Estate, was
6 confident in their knowledge, abilities and advice, and believed they represented her and would
7 protect her interests. As such, she relied on Emas and M&M Real Estate's explanation. Thereafter,
8 Cheatham signed a letter of intent to purchase the property for \$1,000,000.00 on February 16, 2005.

9 408. On February 24, 2005, M&M Real Estate provided Cheatham with pro forma
10 financials, store sales by location, a property condition report and conditional title, among other
11 things.⁵⁰ Thereafter, Cheatham undertook independent due diligence, visiting the Jacksonville
12 Church's Chicken property between March 17 and March 18, 2005. On this visit, Cheatham was
13 told about renovation plans to bring the store up to the latest and greatest Church's Chicken design.
14 Cheatham went to the store at two different times of day to check the traffic in the store, see the
15 building location, and observe how well the store was kept.

16 409. On March 22, 2005, Cheatham requested additional financial information about
17 Waelti/QSR II, but was told by M&M Real Estate that no additional information was available.
18 Apparently in an attempt to allay her fears, Waelti/QSR II re-confirmed in writing that the lease was
19 in force and that Waelti/QSR II was paying \$6,812.42 per month to Sovereign CC. M&M Real
20 Estate and Emas also provided Cheatham a copy of the long-term lease. The lease had commenced
21 on November 15, 2004 and had a 15-year term, with annual rent of \$81,749.00 in year one,
22 increasing by 1.75% per year.

23 410. Also on March 22, 2005, Cheatham inquired, in an e-mail to Emas, about an entity
24 named Lewis Siplin Enterprises, Inc., whose name had appeared in documents related to the
25 Jacksonville Church's Chicken property. Emas wrote to Cheatham that “Lewis Siplin was the prior

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27 ⁵⁰ Cheatham was frustrated that the information provided to her pre-dated Waelti/QSR II's
28 lease of the property, and expressed her frustration to Emas.

1 franchisee who sold his business to the QSR Group. He has owned his businesses, and these
2 locations in Florida and Georgia since roughly 1990 (we can verify the exact time period).”
3 Cheatham also asked in that same e-mail “When did QSR Group II, LLC become the franchisee?”
4 and she was told that “[I]n December, 2004 AFC Enterprises, the parent to Church’s, approved the
5 transfer of the franchise agreement for these locations from Siplin to QSR Group.”

6 411. On March 30, 2005, in reliance upon the various representations made by M&M Real
7 Estate, Emas and Waelti/QSR II, Cheatham removed her due diligence contingencies.

8 412. On April 22, 2005, Cheatham closed on the Jacksonville Church’s Chicken property,
9 paying \$1,000,000.00 for her store, with a \$525,000.00 mortgage and additional costs and expenses
10 of \$23,110.00, for a total of \$1,023,110. Cheatham, Emas, M&M, Sovereign CC and Waelti used
11 fax, e-mail, phone and U.S. mail by and between California, New York and Florida to negotiate the
12 transaction.

13 **3. The Church’s Chicken Sale Was a Scam**

14 413. From the close of the sale through May 2006, Cheatham received monthly rent
15 checks (many of which were late) from Waelti/QSR II for the Church’s Chicken property, although
16 several bounced and had to be resent. In May 2006, the rent was again very late and wired to
17 Cheatham at the end of the month. Prior to receiving the May 2006 rent, Cheatham received a phone
18 call and numerous e-mails from an individual named Clinton Barrow (“Barrow”), purportedly an
19 employee at QSR II, who told her that all the Church’s Chicken landlords would be receiving 80%
20 rent for the next year, and after that QSR II would pay all of the landlords their full rent.

21 414. On June 1, 2006, Cheatham received an e-mail from Michelle Piercy (“Piercy”) at
22 QSR II in regards to a wire payment for the May 2006 rent. Thereafter, Cheatham received a letter
23 from Waelti/QSR II dated July 1, 2006, asking her to agree to accept 80% rent. Cheatham did not
24 agree to this rent reduction. Nonetheless, the next month Waelti/QSR II unilaterally began paying
25 80% of its monthly rental obligations under the long-term lease. In an effort to mitigate her
26 damages, Cheatham accepted the reduced rent payment.

1 415. On November 13, 2006, Cheatham advised Emas that she was only receiving
2 \$5,545.00 in rent from Waelti/QSR II instead of the \$6,931.00 she was supposed to be receiving.
3 Emas did not provide any assistance.

4 416. On May 11, 2007, Waelti/QSR II sent Cheatham a letter by U.S. mail purporting to
5 unilaterally reduce its rent by an additional 50%. Cheatham called Waelti/QSR II right away and
6 told Waelti/QSR II that the additional purported unilateral rent reduction was not acceptable.
7 Nevertheless, Waelti/QSR II paid only \$1,966.74 for May rent, which was \$1,000.00 short of 50% of
8 the previous rent payment. In response, Cheatham sent Waelti/QSR II an e-mail pointing out the
9 shortfall (off of the additional unilateral 50% reduction) and was sent a check for the missing
10 \$1,000.00. That check bounced.

11 417. Then, on May 18, 2007, Cheatham received an e-mail from Barrow in response to an
12 e-mail that she had sent, advising Cheatham that Barrow no longer worked for QSR II and could not
13 speak on any matters relating to the restaurants. Thereafter, Cheatham received a call from Barrow
14 who started the call by telling her if she ever told anyone he had called he would deny it. He advised
15 her "to play hard-ball with QSR II. He didn't know what they were up to but [she] shouldn't trust
16 them."

17 418. On June 21, 2007, Waelti/QSR II paid \$8,900.20 in unpaid rent, which Cheatham
18 used to pay the delinquent 2006 property taxes of \$8,748.21 (which were supposed to be paid by
19 Waelti/QSR II). Waelti/QSR II attempted to pay reduced rent in July 2007, in the amount of
20 \$2,966.74, but Cheatham did not accept the rent because she had filed eviction proceedings.

21 419. From July through August 2007, Cheatham had several telephone conversations with
22 Aslam Khan ("Khan"), an individual who, at the time, owned 132 Church's Chicken locations.
23 After explaining the situation to Khan, Khan told Cheatham that her store would likely have to be
24 closed because the location's rent as a percentage of gross sales was way too high. Cheatham's
25 Jacksonville Church's Chicken store rent was 13.2% of gross sales, while Khan's locations averaged
26 5.5%. Cheatham was shocked by this information because it was directly at odds with what M&M
27 Real Estate, Emas and Waelti/QSR II had represented to her to induce her to purchase the property.

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1 420. On or about August 27, 2007, Cheatham found out that Waelti/QSR II was
2 abandoning the property. When Cheatham was able to have someone inspect the property thereafter,
3 she found out that Waelti/QSR II had left the property in a poor condition. There was approximately
4 \$40,000.00 in damage to the roof and air conditioning unit, with copper and other materials stripped
5 from the property.

6 421. In order to mitigate her damages, on April 15, 2008, Cheatham entered into a five-
7 year lease with Wireless America (which lease was to begin in July 2008), with monthly rent starting
8 at \$4,000.00 per month, and increasing by three percent annually. On April 29, 2008, Cheatham also
9 paid delinquent 2007 property taxes of \$8,375.41 – taxes which should have been paid by
10 Waelti/QSR II.

11 422. Throughout the course of her relationship with Emas, M&M Real Estate, Sovereign
12 CC, Waelti and the various other members of the M&M Enterprise, Defendants made false and
13 misleading statements and omissions regarding the fair market value, future rents, business
14 prospects, security and stability of Cheatham's investment – exploiting the relationship of trust that
15 they had intentionally built with Cheatham. During this time, Defendants knew that the fair market
16 value of the investment property was artificially inflated, that the purported long-term lease was a
17 farce, and that the "tenant" would walk away, abandoning the property, wiping out the artificial
18 inflation in the fair market value of the property, and eviscerating the future rents.

19 423. So, like every other investor, Defendants' conspiracy to scam Cheatham was a
20 complete success. With mathematical precision, Defendants artificially inflated the value of the
21 property that Cheatham was induced to purchase, which value plummeted when the Defendants
22 walked away. As a result, she suffered severe financial damages, including the loss of fair market
23 value of her investment, future rents and out-of-pocket damages, all of which she is entitled to
24 recover.

1 Chronology of Cheatham's purchase of the Church's Chicken property
2 located at 5809 North Main Street, Jacksonville, Florida 32208
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5 **NOVEMBER 19, 2004**

6 Waelti/QSR purchased the Jacksonville Church's Chicken property in a group of four properties
7 from Siplin for a combined price of \$3,223,800.00 - or an average of \$805,950.00 per property



8 **NOVEMBER 19, 2004**

9 Sovereign CC and Waelti/QSR II entered into a sham lease with an inflated rental rate of \$6,812.42
10 with a 1.75% increase per annum through November 30, 2019



11 **NOVEMBER 19, 2004**

12 Sovereign CC purchased the Jacksonville Church's Chicken property from Waelti/QSR for
13 \$3,223,800.00 - or an average of \$805,950.00 per property



14 **APRIL 22, 2005**

15 Cheatham purchased the Jacksonville Church's Chicken property from Sovereign CC for
16 \$1,000,000.00 and assumed the sham lease with Waelti/QSR II as tenants with a monthly rent of
17 \$6,812.42



18 **AUGUST 27, 2007**

19 Waelti/QSR II abandoned the property and removed the trade fixtures



20 **JULY 1, 2008**

21 Cheatham mitigated her damages and signed a new lease with Wireless America, LLC for five years
22 with a rental rate of \$4,000.00 a month

1 **M. How Amnon and Rivka Danus Got Scammed**

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

3 424. In December 2004, Amnon and Rivka Danus (the “Danuses”) sold a residential
4 condominium investment property. Thereafter, the Danuses decided to invest the proceeds into a
5 new property through a 1031 exchange. As such, the Danuses called Perkin of M&M Real Estate’s
6 Los Angeles office. The Danuses had previously met Perkin through a family member who had
7 completed a prior real estate transaction with Perkin.

8 425. The Danuses originally instructed Perkin that they were interested in purchasing a
9 residential property in Los Angeles. However, as time passed and their 1031 deadline loomed,
10 Perkin convinced them to invest in a triple-net lease on a commercial property. As the Danuses had
11 never invested in a triple-net lease property, Perkin educated them – describing the investment
12 concept and providing substantial background information to the Danuses. Perkin further instructed
13 the Danuses as to what factors should be important to them when deciding whether to invest. After
14 making representations regarding the criteria they should review, Perkin provided information to the
15 Danuses via e-mail on six to eight properties.

16 426. Perkin assisted the Danuses in assessing the investments he showed them, advising
17 the Danuses to analyze cap rates, the background of the tenant, the amount the tenant pays in rent,
18 and the leasehold on the property. Using Perkin’s investment analysis criteria, it was obvious that,
19 as it was described by M&M Real Estate, a Jacksonville Church’s Chicken location was the most
20 attractive investment.

21 427. Perkin and M&M Real Estate made many representations to the Danuses, both orally
22 and in writing, concerning the Jacksonville Church’s Chicken property. Perkin and M&M Real
23 Estate represented to the Danuses that the Church’s Chicken on the Jacksonville property had been
24 built in 1984 and had been in operation since then as a Church’s Chicken. The M&M Real Estate
25 marketing materials further gave the Danuses the impression that the Jacksonville Church’s Chicken
26 had been run by the same entity since 1984.

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1 428. The Danuses also were also led to believe that the tenant – QSR II (which was an
2 alter-ego of Waelti) – had been paying the same rent for the 20 years it had been at that location.⁵¹
3 Perkin and M&M Real Estate also represented to the Danuses that the original tenant planned to
4 continue operating the Jacksonville Church’s Chicken for at least another 14 years. Based on these
5 and other representations, the Danuses were led to believe that the only thing that would change if
6 they purchased the property was that they would own the building.

7 429. Perkin and M&M Real Estate repeatedly represented that the Jacksonville Church’s
8 Chicken property was a stable, low hassle investment, with a 20-year history of stable income. The
9 Danuses relied on Perkin’s statements and explanations of documents he provided to them, and were
10 led to believe that the only real risk to the investment was the possibility of a natural disaster.

11 **2. The Danuses Take the Bait**

12 430. Perkin and M&M Real Estate led the Danuses to believe that BMC, the lender
13 recommended by M&M Real Estate, was going to conduct a very thorough investigation because of
14 the value of the investment. Perkin and M&M Real Estate marketed BMC as a very conservative
15 lender who would not make the loan for the Danuses’ purchase of the Jacksonville Church’s Chicken
16 property unless it was a good investment.

17 431. Reasonably relying on the representations made by M&M Real Estate and Perkin, the
18 Danuses closed on the Jacksonville Church’s Chicken on April 8, 2005, paying \$896,000.00. The
19 Danuses, Perkin, M&M Real Estate, Waelti and Sovereign CC used fax, e-mail, phone and U.S. mail
20 by and between California, New York, and North Carolina to negotiate the transaction.

21 432. M&M Real Estate required that the Danuses use Stewart Title out of North Carolina
22 as the title company for the closing. At the closing, the Danuses noticed that the final closing
23 statement reflected a one percent origination fee charged by BMC for the loan. The Danuses found
24 this very odd because Perkin and M&M Real Estate had never informed them that BMC was not

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26 ⁵¹ In fact, through 2004, almost no rent had been paid by Waelti/QSR II. Furthermore,
27 Waelti/QSR II was a relatively new operator who had not been on the property for more than a
28 couple of months. Perkin and M&M Real Estate never disclosed this information to the Danuses.

1 acting as a lender, but rather as a loan broker. The final closing statement also reflected \$2,000.00 in
2 lender document preparation fees, \$3,700.00 for an appraisal and \$3,000.00 in fees to Stewart Title,
3 all charged to the Danuses.

4 433. When the Danuses questioned the fees they were being charged, they were told to
5 “either take it or leave it.” Since the Danuses did not have any time remaining to complete their
6 1031 exchange, walking away from the deal would have meant a huge tax liability. Thus, there was
7 no other option available to them other than paying the undisclosed fees.

8 **3. The Church’s Chicken Sale Was a Scam**

9 434. Within a few months of their investment, a rent check from Waelti/QSR II was
10 returned for insufficient funds. Thereafter, the Danuses did not receive rent checks until a week or
11 two after they were due each month. Amnon Danus spoke with Waelti/QSR II about the late rent
12 checks and asked that Waelti/QSR II send the rent checks via FedEx at the Danuses’ expense.
13 Following this conversation, the rent problems improved for a short time.

14 435. Then, in early May 2007, the Danuses received a call from Barrow asking for a 20%
15 rent reduction for the next year. Fearing the worst, the Danuses reluctantly agreed to the reduced
16 rent, believing Waelti/QSR II would repay the 20% over time.

17 436. Thereafter, on May 11, 2007, Waelti/QSR II told the Danuses that it was unilaterally
18 reducing the rent payments to the Danuses by another 50%. Then, around the end of August 2007,
19 the Danuses’ store was abandoned, leaving them without a tenant or an income stream. In order to
20 mitigate the damages caused by Defendants’ scam, the Danuses re-let their property for
21 approximately 50% of the rent set fourth in the original lease that the Danuses had received from
22 Waelti/QSR II.

23 437. Throughout the course of their relationship with M&M Real Estate, Sovereign CC,
24 Waelti and the various other members of the M&M Enterprise, Defendants made false and
25 misleading statements and omissions regarding the fair market value, future rents, business
26 prospects, security and stability of the Danuses’ investment – exploiting the relationship of trust that
27 they had intentionally built with the Danuses. During this time, Defendants knew that the fair
28 market value of the investment property was artificially inflated, that the purported long-term lease

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

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

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1 Chronology of the Danuses' purchase of the Church's Chicken property
2 located at 4250 Moncrief Road, Jacksonville, Florida 32208
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5 **NOVEMBER 19, 2004**

6 Waelti/QSR purchased the Jacksonville Church's Chicken property in a group of four properties
7 from Siplin for a combined price of \$3,223,800.00 - or an average of \$805,950.00 per property



8 **NOVEMBER 19, 2004**

9 Sovereign CC and Waelti/QSR II entered into a sham lease with an inflated rental rate of \$5,973.33
10 with a 1.75% increase per annum through November 30, 2019



11 **NOVEMBER 19, 2004**

12 Sovereign CC purchased the Jacksonville Church's Chicken property from Waelti/QSR for
13 \$3,223,800.00 - or an average of \$805,950.00 per property



14 **APRIL 8, 2005**

15 The Danuses purchased the Jacksonville Church's Chicken property from Sovereign CC for
16 \$896,000.00 and assumed the sham lease with Waelti/QSR II as tenants with a monthly rent of
17 \$5,973.33



18 **AUGUST 2007**

19 Waelti/QSR II abandoned the property.



20 **FEBRUARY 1, 2008**

21 The Danuses mitigated their damages and signed a new lease with Hook Fish & Chicken for three
22 years and one month for \$3,500.00 a month
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1 **N. How Richard and Debra Siebert Got Scammed⁵²**

2 **1. The Sieberts Retain M&M Real Estate to Sell a Residential Quadraplex**

3 439. In approximately 2004, Richard and Debra Siebert (the "Sieberts") retained M&M
4 Real Estate to sell a quadraplex they owned in Rohnert Park, California. The Rohnert Park
5 quadraplex was part of a set of ten such residences in the same complex. The building next door to
6 the Sieberts was listed for sale in 2004 by Leshner, an agent located in M&M Real Estate's San
7 Francisco office. After deciding to sell the quadraplex, the Sieberts retained Leshner and M&M Real
8 Estate to sell both the quadraplex and a five-unit apartment building they owned in Santa Rosa,
9 California.

10 **2. M&M Real Estate and Leshner Cast the Bait**

11 440. At one of their first meetings with Leshner, Leshner, as an agent of M&M Real Estate,
12 mentioned that the Sieberts should consider investing in a 1031 triple-net lease property with the
13 proceeds of the sale of their Rohnert Park quadraplex. At that time, the Sieberts were not interested
14 in a commercial property, preferring instead to invest in other residential investment properties in the
15 area. Leshner persisted in marketing triple-net lease properties to the Sieberts, finally piquing their
16 interest in December 2004. Thereafter, Leshner sent the Sieberts a list of 100 or 200 triple-net lease
17 investment opportunities. Leshner repeatedly represented to the Sieberts that triple-net lease
18 investments would provide a safe return with minimal investment.

19 441. In February 2005, the Sieberts sold the Rohnert Park building and, relying on Leshner
20 and his representations that triple-net lease properties were safe, income-producing investments,
21 started searching in earnest for a triple-net lease property for their 1031 exchange. Over the course
22 of the next month, Leshner persuaded the Sieberts that a Church's Chicken property in Thomasville,
23 Georgia was a great investment opportunity for them.

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26 ⁵² Richard Siebert took title to the property with Debra Siebert. Thereafter, the Sieberts
27 transferred the property to the Siebert Family Trust U/D/T, dated January 13, 2003 of which they are
28 the trustees.

1 442. Leshar represented to the Sieberts that the Thomasville Church's Chicken property
2 was a safe, solid investment. Leshar advised the Siebert's that an investment in the Thomasville
3 Church's Chicken property – inclusive of projected mortgage expenses – would provide them with
4 \$2,000.00 in profit per month.⁵³ Leshar led the Sieberts to believe that there was no way that a
5 purchase of the Thomasville Church's Chicken would lose money unless the Church's Chicken
6 franchise went bankrupt.

7 443. Leshar also represented to the Sieberts that the tenant on the Thomasville Church's
8 Chicken property would pay all expenses on the property. Leshar told the Sieberts that Waelti, the
9 then-current operator of the Thomasville Church's Chicken, owned other Church's Chicken
10 locations that were doing very well. Leshar repeatedly trumpeted the investment opportunity in the
11 Thomasville Church's Chicken, saying "these are the greatest things going and they never fail."

12 444. The Sieberts were convinced by Leshar and M&M Real Estate that any investment in
13 the Thomasville Church's Chicken would be backed by the Church's Chicken franchise. Leshar
14 told the Sieberts that QSR One (which was an alter-ego of Waelti) was the franchisee, but that
15 Church's Chicken corporate was behind them. Further, Leshar promised the Sieberts that if
16 Waelti/QSR One ever pulled out, Church's Chicken would bring in another franchisee to fill that
17 spot at the same rent.

18 445. Leshar and M&M Real Estate intended to, and did, induce the Sieberts' reliance on
19 their advice throughout the transaction. Leshar and M&M Real Estate reviewed the purchase
20 agreement and purportedly conducted due diligence on the Sieberts' behalf. Though Richard Siebert
21 visited the Thomasville Church's Chicken property on April 8, 2005, because of M&M Real Estate's
22 purported expertise in triple-net leases and continued reassurances that they were taking care of the
23 Sieberts, the Sieberts relied on Leshar and M&M Real Estate regarding all other due diligence.

24 446. Prior to their investment, the Sieberts were told by Leshar that the Thomasville
25 Church's Chicken property was going to be remodeled in the next year. Leshar promised that

26
27 ⁵³ Leshar represented to the Sieberts specifically how much they would be paying on their
28 mortgage and how much rent they would receive.

1 Church's Chicken was going to "sweep through the South" and renovate Church's Chicken
2 franchises that needed to be modernized. Leshar further represented to the Sieberts that the
3 remodeling would further increase the value of their investment.

4 447. The decision made by the Sieberts to purchase the Thomasville Church's Chicken
5 property for their 1031 exchange was based upon the representations made by Leshar, M&M Real
6 Estate, Sovereign CC and Waelti. The Sieberts relied on the representations concerning the safety of
7 the investment, the income potential of the investment, the stability of the tenant, and the due
8 diligence that had purportedly been performed by Leshar and M&M Real Estate.

9 **3. The Sieberts Take the Bait**

10 448. Reasonably relying on Leshar's representations that he and M&M Real Estate were
11 experts in triple-net lease properties and that Leshar and M&M Real Estate were representing their
12 interests, the Sieberts agreed to purchase the Thomasville Church's Chicken from Sovereign CC in
13 May 2005. Neither Leshar, M&M Real Estate nor Sovereign CC ever disclosed to the Sieberts that
14 Sovereign CC was a subsidiary of M&M. The Sieberts, Leshar, M&M Real Estate, Waelti and
15 Sovereign CC used fax, e-mail, phone and U.S. mail by and between California, North Carolina, and
16 New York to negotiate the transaction.

17 449. Since the Sieberts had never sought funding for a commercial investment, Leshar
18 referred them to BMC for a loan. The Sieberts financed \$386,091.00 of the \$759,091.00 purchase
19 price of the Thomasville Church's Chicken property. The total included fees of \$22,114.00,
20 including \$3,500.00 for an appraisal that the Sieberts were never provided, though it was supposedly
21 reviewed by M&M Real Estate as part of M&M Real Estate's due diligence on the Sieberts' behalf.
22 M&M Real Estate and Leshar chose Stewart Title in Charlotte, North Carolina to handle the closing
23 for the Sieberts. The Sieberts had no prior experience with Stewart Title in North Carolina and do
24 not know why that entity was chosen.

25 **4. The Church's Chicken Sale Was a Scam**

26 450. After the close of the transaction in May 2005, Waelti/QSR One started sending rent
27 checks to the Sieberts. In April 2006, Waelti/QSR One sent the Sieberts a rent check that bounced.
28 The Sieberts called Waelti/QSR One Controller Piercy, who apologized and sent the Sieberts a new

1 check that cleared. Thereafter, from April 2006, until Waelti/QSR One eventually abandoned the
2 premises in 2007, Waelti/QSR One paid the rent late every month, and did not pay the associated
3 late fees as required under the long-term lease.

4 451. In April or May 2006, Barrow called the Sieberts and told them he was an executive
5 with Waelti/QSR One. Barrow told the Sieberts that because Waelti/QSR One's Church's Chicken
6 stores were losing money, Waelti/QSR One was asking owners to accept 20% reduced rent for the
7 next 12 months. Barrow represented to the Sieberts that after 12 months, Waelti/QSR One would
8 resume paying full rent under the lease and would repay the discounted rent over the next two to
9 three years.

10 452. The Sieberts told Barrow that they needed some time before giving him an answer to
11 his inquiry about reducing the rent, and after hanging up the phone, expected that there would be
12 some further discussion regarding Waelti/QSR One's proposal of reduced rent, since they had not
13 agreed to it. However, a few weeks later, on July 1, 2006, Waelti/QSR One sent the Sieberts
14 correspondence by U.S. mail indicating that they were going to unilaterally reduce the rent they paid
15 by 20% for 12 months. Thereafter, in June 2006, Waelti/QSR One started unilaterally paying rent
16 reduced by 20%. In order to attempt to mitigate their damages, the Sieberts accepted the reduced
17 rent, believing the balance would eventually be paid.

18 453. The Sieberts continued to receive the 20% discounted rent, albeit with constant late
19 payments, through May 2007. Under the original long-term lease with Waelti/QSR One, the
20 Sieberts were originally receiving \$5,218.75 per month in rent, which went up to \$5,310.07 per
21 month in March 2006. In June 2006, Waelti/QSR One reduced the rent they paid to \$4,248.00 per
22 month. Then in May 2007, Waelti/QSR One again unilaterally reduced the amount of rent that it
23 was paying the Sieberts to \$2,124.00 per month. This new amount was less than 40% of what
24 Waelti/QSR One was obligated to pay under the original long-term lease.⁵⁴

25 _____
26 ⁵⁴ Around this time, the Sieberts called Leshner to discuss the disturbing developments related to
27 Waelti/QSR One and to inquire as to how something that Leshner and M&M Real Estate represented
28 was such a solid, safe investment was in fact, a disaster. Leshner said he would talk to Richard
Merryman ("Merryman"), a colleague in M&M Real Estate's San Francisco office, and another

1 454. From mid-to-late June 2007, the Sieberts exchanged e-mails with Waelti/QSR One
2 regarding Waelti/QSR One's failure to maintain liability insurance on their property as required
3 under the long-term lease. Waelti wrote to the Sieberts that he was not sure he would obtain the
4 insurance until he knew whether Church's Chicken would renew his "temporary franchise
5 agreement." Notwithstanding Leshner and M&M Real Estate's purported due diligence, this was the
6 first the Sieberts learned of Waelti/QSR One having only a temporary franchise agreement.

7 455. Ultimately, in October 2007, Waelti/QSR One abandoned the Thomasville Church's
8 Chicken property. In September 2008, in order to mitigate their damages, the Sieberts re-let the
9 Thomasville Church's Chicken property the property to Radhike Inc. at a rate significantly below
10 what Waelti/QSR One agreed to pay under the original long-term lease.

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

19 457. So like every other investor, Defendants' conspiracy to scam the Sieberts was a
20 complete success. With mathematical precision, Defendants artificially inflated the value of the
21 property that the Sieberts were induced to purchase, which value plummeted when the Defendants
22 walked away. As a result, the Sieberts suffered severe financial damages, including the loss of fair
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25 purported "expert" on triple-net leases. After Leshner's conversation with Merryman, Leshner told the
26 Sieberts that Merryman looked into it, and said that the Sieberts should sue Sovereign and M&M.
27 The Sieberts were surprised at this response, considering that Merryman worked for M&M Real
28 Estate. Specifically, Leshner told the Sieberts that Merryman thought the Sieberts had a claim for
"misrepresentation."

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

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Chronology of the Sieberts' purchase of the Church's Chicken property located at 448 East Jackson Street, Thomasville, Georgia 31792

NOVEMBER 19, 2004
Waelti/QSR purchased the Thomasville Church's Chicken property from Siplin for **\$533,400.00**



NOVEMBER 19, 2004
Sovereign CC and Waelti/QSR entered into a sham lease with an inflated rental rate of **\$5,218.75** per month with a 1.75% increase per annum through November 30, 2019



NOVEMBER 19, 2004
Sovereign CC purchased the Thomasville Church's Chicken property from Waelti/QSR for **\$626,300.00**



MAY 16, 2005
The Sieberts purchased the Thomasville Church's Chicken property from Waelti/QSR for **\$759,091.00** and assumed the lease with Waelti/QSR One as tenants with a monthly rent of **\$5,218.75**



OCTOBER 2007
Waelti/QSR One abandoned the property



SEPTEMBER 1, 2008
The Sieberts mitigated their damages and signed a new lease with Radhike Inc. for 122 months at an initial rental rate of **\$3,391.67** per month

1 **O. How Linda Farrell and Fred Engelberg Got Scammed⁵⁵**

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

3 458. In 2005, Linda Farrell ("Farrell") sold a Captain D's location, and wanted to conduct
4 a 1031 tax deferred exchange to roll the proceeds into another triple-net lease investment. As part of
5 that process, Farrell had to identify three properties that she might buy with the proceeds of the
6 Captain D's sale in a 1031 exchange within 45 days after the sale of the Captain D's. Farrell would
7 then be required to then close on the purchase of one of those three identified properties within a
8 certain number of days thereafter.

9 459. Farrell needed to identify potential exchange properties in a timely manner so that she
10 did not have to pay otherwise avoidable taxes and, as important, she needed to generate income each
11 month on which to live. Farrell was having a difficult time identifying suitable triple net leases to
12 buy as part of her 1031 exchange, and began to be concerned that she would not find a 1031
13 replacement property in time.

14 460. When Farrell originally purchased the Captain D's property back in approximately
15 2003, she had some dealings with Kunofsky at M&M Real Estate. Farrell also believes that she
16 initially met Harris, a Vice-President at BMC, when she purchased the Captain D's.

17 461. Following her sale of the Captain D's property, Farrell researched potential 1031
18 exchange properties using M&M Real Estate's website. Farrell always ran potential properties by
19 Harris to get his analysis and advice of whether they were good investments. In advising her about
20 the quality of possible investments, Harris counseled Farrell to focus on the strength of the
21 franchises' parent company and the strength of the operator.

22 462. In approximately March or April 2005, after having searched on her own for several
23 weeks to no avail, Farrell called Harris and told him that she was under a tight deadline to identify
24 potential 1031 exchange properties. Harris offered his assistance, and said that he would get back to

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26 ⁵⁵ Linda Farrell and Fred Engelberg ("Engelberg") took title to the property as Fred Engelberg,
27 single man, and Linda Farrell, single woman, tenants in common. On February 20, 2007, they
28 transferred title to the property to Fred Engelberg, single man, and Linda Farrell, single woman, as
joint tenancy with rights of survivorship.

1 her. Harris soon called Farrell back and told her that he contacted a “very important” agent at M&M
2 Real Estate – Kunofsky – who he had worked with successfully in the past. Harris arranged a
3 conference call for the three of them.

4 463. On the conference call, Kunofsky, as an agent of M&M Real Estate, assured Farrell
5 that he had a good investment property for her, identifying a Church’s Chicken location in
6 Jacksonville, Florida. Farrell told Kunofsky that she had heard of the operator, QSR II (which was
7 an alter-ego of Waelti), but expressed concern that Waelti/QSR II was a smaller operator and
8 therefore not as secure as a larger operator would be.⁵⁶ In response to Farrell’s expressed concern
9 that Waelti/QSR II only owned and operated 10 properties, Kunofsky assured Farrell that the
10 Jacksonville Church’s Chicken location with Waelti/QSR II as a tenant was a “spectacular property
11 that was high in demand.”

12 464. In reliance on these and other representations by Kunofsky and M&M Real Estate
13 regarding the strength and safety of the investment, Farrell and Engelberg designated the
14 Jacksonville Church’s Chicken as one of their potential 1031 exchange properties.

15 **2. Farrell and Engelberg Take the Bait**

16 465. Shortly after the conference call with Kunofsky, Kunofsky sent Farrell and Engelberg
17 an M&M Real Estate brochure regarding the Jacksonville Church’s Chicken property. The brochure
18 touted the stability of Waelti/QSR II, though Defendants and the M&M Real Estate marketing
19 materials failed to disclose to Farrell and Engelberg that Waelti was not the owner of the property
20 that Farrell was buying, but rather just the tenant.⁵⁷ In fact, the Jacksonville Church’s Chicken
21 location had recently been operated by Crescent Capital Investments.

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⁵⁶ In doing her own research, Farrell read advertisements for various Church’s Chicken
25 locations run by Waelti. Farrell was initially hesitant to invest because Waelti seemed like a small
26 operator with only approximately 10 stores.

27 ⁵⁷ The M&M Real Estate brochure also failed to disclose that Waelti/QSR II had not operated a
28 Church’s Chicken franchise prior to the sale to Farrell.

1 466. Farrell was told by Kunofsky that she “was buying the lease and track record” of
2 Waelti/QSR II and that the property “was secure and low maintenance.” Kunofsky told her that he
3 knew what she needed, and that M&M Real Estate was on top of its game. Farrell relied on
4 Kunofsky and M&M Real Estate’s triple-net leasing “expertise” and on their representations. Based
5 on the statements in the M&M Real Estate marketing brochure and statements made by Kunofsky,
6 Farrell and Engelberg reasonably believed Waelti/QSR II was an experienced operator and that the
7 Jacksonville Church’s Chicken property would be a safe, secure investment.

8 467. Thereafter, Farrell and Engelberg elected to purchase the Jacksonville Church’s
9 Chicken property and closed on their purchase in June 2005. Farrell, Engelberg, Kunofsky, M&M
10 Real Estate and Sovereign CC used fax, e-mail, phone and U.S. mail by and between California,
11 New York and Florida to negotiate the transaction. Prior to investing, Farrell and Engelberg were
12 never told the extent of Sovereign CC’s relationship with M&M.

13 468. As part of her due diligence, Farrell had the property inspected by a property
14 inspection company in Florida. While the inspection identified a number of potential problems,
15 Farrell was assured by Defendants that Waelti/QSR II would resolve the problems to comply with
16 the lease provisions requiring the premises to be maintained in good condition. Further, Farrell was
17 told the Jacksonville Church’s Chicken property was going to be renovated – an action that
18 Defendants told her would further increase the value of her investment.

19 469. Once Farrell and Engelberg accepted and relied upon Kunofsky and M&M Real
20 Estate’s representations and decided to invest, they used BMC, Harris’s company, to obtain a loan
21 for the Jacksonville Church’s Chicken property purchase. Harris represented to Farrell that BMC
22 was a very conservative lending institution and that BMC would not provide the loan if the property
23 was overpriced. Farrell believes she paid for an appraisal as part of her loan fees, but was never
24 provided with a copy of the appraisal.

25 **3. The Church’s Chicken Sale Was a Scam**

26 470. Immediately after closing on the Jacksonville Church’s Chicken property, Farrell and
27 Engelberg began having problems with the tenant, Waelti/QSR II. Initially, the first month’s rent
28 check was late. As such, Farrell called the Waelti/QSR II office to inquire about the first month’s

1 rent payment. Farrell was told that the only person that could help her was Brandi Trotter
2 (“Trotter”), the purported CFO of QSR II, but that Trotter was out of the office on vacation.⁵⁸

3 471. When Trotter returned from vacation, Farrell demanded her rent check, but Trotter
4 claimed not to know Farrell and denied knowing Farrell had purchased the property. Waelti/QSR II
5 eventually began paying the rent under the lease with Farrell, but refused to pay her by direct bank
6 payment as required by the lease. Sometimes the monthly rent check from Waelti/QSR II came on
7 time and sometimes it came late.

8 472. In the fall or winter of 2005, Trotter purportedly took a leave of absence due to an
9 illness. After Trotter left Waelti/QSR II, Farrell dealt with Valerie Williams (“Williams”), who
10 identified herself as the new CFO of QSR II. Farrell corresponded with Williams regularly because
11 Waelti/QSR II often paid rent late and not always in the full amount due.

12 473. After they had owned the Jacksonville Church’s Chicken property for approximately
13 six months, Farrell and Engelberg were told that the store was losing money and was being
14 mismanaged. Farrell and Engelberg were shocked to hear this news because this information
15 contradicted what they had been expressly told by Kunofsky and M&M Real Estate prior to
16 purchasing the property.

17 474. Also around this same time, Barrow called Farrell and identified himself as the head
18 of finance for Waelti/QSR II. Barrow told Farrell to contact him in the future regarding her
19 property, not Waelti. Barrow told Farrell that he was expecting to receive money from The QSR III
20 Group, LLC (“QSR III”) (which was an alter-ego of Waelti”) shortly, and that cash infusion would
21 help QSR II to clear up all of the problems with her store. Thereafter, Farrell called Waelti and told
22 him that her lease was with Waelti and that she did not want to deal with Barrow. Waelti told Farrell
23 that Barrow gave Farrell bad information and that QSR III had nothing to do with QSR II.
24 Waelti/QSR II ultimately abandoned Farrell’s Jacksonville Church’s Chicken property on
25 October 16, 2007.

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27 ⁵⁸ Upon information and belief, Trotter is Waelti’s daughter.
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1 475. Farrell called Kunofsky approximately 12 to 18 months after her purchase because
2 she was not receiving her full rent payments, her checks were regularly arriving late, and because
3 Kunofsky had assured her that she was investing in a safe, secure, and time-tested operator. On this
4 call – and contrary to his prior representation and purported “expertise” – Kunofsky told Farrell that
5 he did not really know anything about the property or Waelti/QSR II and had just handled the sale as
6 a favor for someone.

7 476. Eventually, Farrell became very frustrated in dealing with Waelti/QSR II given their
8 refusal to live up to the terms of the lease. As Waelti/QSR II had only been paying portions of their
9 rent for some time, Waelti/QSR II owed Farrell more than \$40,000.00. As such, and receiving no
10 help from Kunofsky or M&M Real Estate, Farrell called counsel for the Church’s Chicken
11 franchisor, Peter Dosick (“Dosick”), to see if he had any advice on how to collect from Waelti/QSR
12 II.

13 477. Dosick advised Farrell to issue Waelti/QSR II a five-day notice of default. Farrell
14 hired an attorney to prepare the notice and delivered it to Waelti/QSR II. QSR II’s new CFO,
15 Kimberly Harnage (“Harnage”), responded to Farrell via e-mail that “we can’t pay you, we are
16 sending you the keys.”

17 478. During this process, Farrell learned that GE Capital was somehow involved with
18 Waelti/QSR II.⁵⁹ As such, Farrell called Zack Thaler (“Thaler”) at GE Capital. Over the course of
19 several conversations, Farrell discussed with Thaler the problems that she was having with
20 Waelti/QSR II and the fact that they were going to close her Jacksonville Church’s Chicken
21 property. Thaler told Farrell that he would “take care of it,” and the store stayed open for a short
22 time.

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26 ⁵⁹ Farrell had no idea at this time that GE Capital had a loan secured by the equipment in her
27 store. Based on the representations made by Kunofsky, M&M Real Estate and Waelti/QSR II,
28 Farrell believed that she owned the equipment.

1 479. Thereafter, it was Farrell’s understanding that GE Capital and United Enterprise Fund
2 (“UEF”) began running the Jacksonville Church’s Chicken property.⁶⁰ Around this same time,
3 Church’s Chicken purportedly sold QSR III thirteen more Church’s Chicken franchises in Alabama.
4 Again, UEF was involved with the transaction.

5 480. When Farrell and Engelberg’s Church’s Chicken store was eventually closed, they
6 received documents from GE Capital claiming that GE Capital owned the equipment in their store by
7 virtue of a security interest GE Capital had received in exchange for loaning Waelti/QSR II money.
8 GE Capital had supposedly recorded its interest in the equipment, but neither Kunofsky, M&M Real
9 Estate, Sovereign CC, nor Waelti/QSR II ever disclosed this alleged security interest to Farrell or
10 Engelberg before they purchased the Jacksonville Church’s Chicken property. GE Capital
11 demanded that Farrell give GE Capital access to the store to collect the equipment, but Farrell
12 refused. Eventually Farrell and Engelberg offered a sum of money for the equipment and GE
13 Capital accepted.

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

23 482. So, like every other investor, Defendants’ conspiracy to scam Farrell and Engelberg
24 was a complete success. With mathematical precision, Defendants artificially inflated the value of
25 the property that Farrell and Engelberg were induced to purchase, which value plummeted when the

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27 ⁶⁰ Upon information and belief, UEF held an equity interest in QSR, the parent company of
28 QSR II.

1 Defendants walked away. As a result, Farrell and Engelberg suffered severe financial damages,
2 including the loss of fair market value of their investment, future rents and out-of-pocket damages,
3 all of which they are entitled to recover.

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1 Chronology of Farrell and Engelberg's purchase of the Church's Chicken
2 property located at 1060 East 21st Street, Jacksonville, Florida 32206

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5 **NOVEMBER 19, 2004**

6 Waelti/QSR purchased the Jacksonville Church's Chicken property in a group of four properties from
7 Siplin for a combined price of \$3,223,800.00 - or an average of \$805,950.00 per property



8 **NOVEMBER 19, 2004**

9 Sovereign CC and Waelti/QSR II entered into a sham lease with an inflated rental rate of \$6,385.25
10 with a 1.75% increase per annum through November 20, 2019



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12 **NOVEMBER 19, 2004**

13 Sovereign CC purchased the Jacksonville Church's Chicken property from Waelti/QSR for
14 \$3,223,800.00 - or an average of \$805,950.00 per property



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16 **JUNE 6, 2005**

17 Farrell and Engelberg purchased the Jacksonville Church's Chicken property from Sovereign CC for
18 \$957,800.00 and assumed the sham lease with Waelti/QSR II as tenants with a monthly rent of
19 \$6,385.25



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21 **OCTOBER 16, 2007**

22 Waelti/QSR II abandoned the property. Farrell and Engelberg have been unable to re-let the
23 Jacksonville Church's Chicken property despite attempting to do so.
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1 **P. How Victoria Armenta Got Scammed⁶¹**

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

3 483. Victoria Armenta ("Armenta") sold a shopping center she owned in Azusa, California
4 and began looking for 1031 exchange replacement properties. Her primary investment criteria were
5 secure cash flow and return on investment. Armenta preferred a triple-net lease to any other
6 investment type because she desired that the tenant pay all the costs and taxes associated with the
7 property.

8 484. Initially, Armenta used the proceeds from her sale of the Azusa property to buy two
9 other properties in California. Afterwards, Armenta realized that she was going to have some
10 taxable proceeds from the sale of the Azusa property unless she found an additional 1031 exchange
11 property to invest in.

12 485. In February or early March 2005, the brokers that Armenta used to sell her Azusa
13 property provided Armenta with marketing materials from M&M Real Estate concerning potential
14 triple-net lease investment properties. Subsequent to being provided with M&M Real Estate's
15 marketing materials, Armenta was introduced to Kunofsky in M&M Real Estate's New York office.
16 Thereafter, Kunofsky and his team at M&M Real Estate's New York office became Armenta's only
17 contact from M&M Real Estate with respect to her potential 1031 investment.

18 486. Armenta reviewed the information provided by Kunofsky and M&M Real Estate.
19 The materials set forth information concerning a Church's Chicken property that was for sale in
20 Albany, Georgia. The marketing materials contained representations that Church's Chicken was the
21 landlord on, and the seller of, the property. Armenta reasonably relied on these representations, in
22 part because all the materials she received said Church's Chicken and had the Church's Chicken
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27 ⁶¹ Victoria Armenta took title to the property in her own name. On March 24, 2008, Armenta
28 transferred title to the property to VAS Enterprises 1, LLC, a California Limited Liability Company.

1 logo on them.⁶² Kunofsky, as an agent of M&M Real Estate, also told Armenta verbally that the
2 seller, Sovereign CC, was part of or affiliated with Church's Chicken.

3 487. Kunofsky and the M&M Real Estate marketing materials emphasized the prior
4 business successes and ongoing involvement of Waelti – the operator of the Albany Church's
5 Chicken. Specifically, Kunofsky and M&M Real Estate represented that Waelti had previously
6 owned and operated many successful franchises, and would be operating the Church's Chicken that
7 Kunofsky and M&M Real Estate were pitching to Armenta.

8 488. Kunofsky further stated that Waelti had been granted operating rights by Church's
9 Chicken and was working for Sovereign CC. Kunofsky and M&M Real Estate sold Waelti as
10 competent, experienced and very financially secure. Kunofsky promised that Waelti had "deep
11 pockets" and assured Armenta that her investment and income stream would be safe and secure.
12 Kunofsky and M&M Real Estate also repeatedly represented that Armenta would own the equipment
13 and fixtures on the Albany Church's Chicken property.

14 489. Armenta reasonably believed that Kunofsky and M&M Real Estate were representing
15 her and would protect her interests. Further, Armenta relied on Kunofsky and M&M Real Estate's
16 representations concerning the reputation of Church's Chicken as a high quality franchise and
17 Waelti's purported business acumen. As such, Armenta reasonably believed an investment in the
18 Albany Church's Chicken property would be safe and secure.

19 **2. Armenta Takes the Bait**

20 490. On April 29, 2005, Armenta received by U.S. mail a purchase and sale agreement for
21 the Albany Church's Chicken property. The purchase and sale agreement had been prepared by the
22 Defendants. Thereafter, Armenta continued to review the materials provided by Kunofsky and
23 M&M Real Estate.

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26 ⁶² On April 12, 2005, Waelti, through one his alter-egos – QSR – provided Armenta with a
27 QSR financial summary document which indicated that Church's Chicken had provided the financial
28 information contained in the document. Kunofsky and M&M Real Estate also made statements and
representations that led Armenta to believe that Church's Chicken had an equity interest in QSR.

1 491. Armenta's purchase of the property was set to close on May 30, 2005. At M&M Real
2 Estate's direction, Armenta used Stewart Title in Charlotte, North Carolina for the closing. Armenta
3 was surprised when M&M Real Estate insisted that she use a Stewart Title office in North Carolina
4 to handle the transaction and that using that office was "non-negotiable." It was not clear to
5 Armenta why M&M Real Estate required that they use a North Carolina office which had no clear
6 ties to any of the parties or the property.

7 492. On May 16, 2005, QSR One (which was an alter-ego of Waelti) – the tenant on the
8 Albany Church's Chicken property – signed a certification that the rental rate for the triple-net lease
9 on the Albany Church's Chicken property was \$4,450.00 per month. Also, on May 16, 2005,
10 Armenta was provided with a property profile for the Albany Church's Chicken, indicating that *the*
11 *assessed value of the property was only \$129,600.00.* This figure was very concerning to Armenta
12 given that M&M Real Estate was marketing the property to her at a price of *over \$600,000.00.*

13 493. As such, Armenta questioned Kunofsky and others at M&M Real Estate about the fair
14 market value of the Albany Church's Chicken property. In response, Kunofsky represented to
15 Armenta that the "assessed value doesn't matter to you. That is just state tax valuation. You are not
16 buying the property you are buying the payment stream which is very secure through Church's
17 Chicken." Kunofsky assured Armenta numerous times that \$129,000.00 was not the value of the
18 investment. Instead, Kunofsky promised that Armenta was buying the annual return on the
19 investment through the rent, which was safe and secure given that Waelti/QSR was such a solid
20 tenant. Armenta was further told by Kunofsky that the property was a going concern that would
21 create a secure yield on her investment.

22 494. Having been convinced by Kunofsky and M&M Real Estate that the investment and
23 income stream would be safe and secure, Armenta purchased the property for \$635,000.00 in
24 approximately May 2005. Kunofsky represented to Armenta that she was actually getting a
25 discounted price because she was paying all cash and had agreed to a quick closing. Of the
26 \$635,000.00 invested by Armenta, \$335,000.00 came from the proceeds of the sale of the Azusa
27 property.

1 **3. The Church's Chicken Sale Was a Scam**

2 495. After closing on the Albany Church's Chicken property, Waelti/QSR One paid the
3 first six months of rent to Armenta in a timely fashion. During this time, on August 22, 2005,
4 Armenta received a letter from Waelti/QSR One indicating there had been three months of rent
5 overpayments and that Waelti/QSR One was going to take an offset on September's rent.

6 496. Beginning in December 2005, and for several months thereafter, Waelti/QSR One
7 started sending the rent to Armenta after the due date under the long-term lease. Armenta sent
8 correspondence by mail on January 9, 2006 reminding Waelti/QSR One of the need to pay rent on
9 time. In March, the rent check sent to Armenta by Waelti/QSR One was returned for insufficient
10 funds. In response, Armenta sent a demand letter to Waelti/QSR One for that month's rent plus a
11 late fee and other late fees for January and February 2006, totaling \$5,308.92. Waelti/QSR One did
12 not respond to this demand.

13 497. Thereafter, Armenta was advised by Waelti/QSR One employees that Waelti – the
14 individual who had been touted by Kunofsky and M&M Real Estate as the reason to invest in the
15 Albany Church's Chicken property, given his experience and past successes – had abandoned QSR
16 One. Armenta was also advised that Barrow was now in charge of QSR One.

17 498. Subsequent to Waelti purportedly walking away, QSR One requested a 20% rent
18 reduction, which Armenta rejected. Nevertheless, beginning in June 2006, QSR One unilaterally
19 reduced its rental payments to Armenta by 20%. In order to mitigate her damages, Armenta
20 accepted the reduced payments. On July 1, 2006, Waelti/QSR One sent Armenta correspondence by
21 mail, again asking that Armenta accept a reduction in rent, which she refused to do.

22 499. From that time through the end of 2006, Armenta had to constantly struggle with
23 Waelti/QSR One so that Waelti/QSR One would fulfill its obligations under the long-term lease
24 agreement.⁶³ After months of fighting with Waelti/QSR One to get the full rent paid, Armenta hired

25 _____
26 ⁶³ On at least one occasion in 2007, Armenta received a rent payment from The QSR Group
27 Three, LLC (which was an alter-ego of Waelti). Plaintiffs reserve the right to amend this Complaint
28 to name The QSR Group Three, LLC as a Defendant should Plaintiffs uncover additional
information to implicate The QSR Group Three, LLC in Defendants' fraudulent scheme.

1 an attorney. Thereafter, Armenta made a demand on Waelti/QSR One for the total past due rent of
2 \$13,138.85 through May 2007. After June rent was not paid, Armenta sent Waelti/QSR One a letter
3 demanding possession of the property.

4 500. As she was concerned about Waelti's purported departure, and Waelti/QSR One's
5 refusal to pay full rent, Armenta called an independent broker about the value of the Albany
6 Church's Chicken property. Shockingly, and in contrast to everything that Kunofsky and M&M
7 Real Estate had represented to her, Armenta was told that the *property was worth only \$125,000.00*.

8 501. In September 2007, Armenta learned during a phone call with representatives from
9 QSR One and a representative of GE Capital that GE Capital claimed to own the equipment located
10 on her property. Based upon the representations made by M&M Real Estate and Kunofsky, as well
11 as the plain language set forth in her lease with Waelti/QSR One, Armenta believed that she owned
12 the equipment. Neither Kunofsky, M&M Real Estate nor Waelti/QSR One ever disclosed to
13 Armenta the fact that Waelti/QSR One took a large loan from GE Capital secured by the equipment
14 in Waelti/QSR One's Church's Chicken restaurants prior to Armenta's purchase of the property.

15 502. On October 11, 2007, Armenta received an e-mail which confirmed that the
16 remaining Church's Chicken stores were being closed. Thereafter, Waelti/QSR One abandoned
17 Armenta's Church's Chicken property. On October 12, 2007, Armenta learned that GE Capital,
18 without her knowledge or consent, removed the equipment from her store. Thereafter, in November
19 2007, Daugherty County, Georgia sent Armenta a tax bill Jeopardy Assessment for unpaid taxes of
20 \$2,875.53. Armenta paid this bill in order to mitigate her damages, even though the bill was
21 Waelti/QSR One's responsibility under the long-term lease. In late 2008, Armenta was able to re-let
22 the Albany Church's Chicken property, but only at a rental rate that was significantly below the
23 amount that Defendants had originally agreed to pay in the long-term lease.

24 503. Throughout the course of her relationship with M&M Real Estate, Sovereign CC,
25 Kunofsky, Waelti and the various other members of the M&M Enterprise, Defendants made false
26 and misleading statements and omissions regarding the fair market value, future rents, business
27 prospects, security and stability of Armenta's investment – exploiting the relationship of trust that
28 they had intentionally built with Armenta. During this time, Defendants knew that the fair market

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

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

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Chronology of Armenta's purchase of the Church's Chicken property located at 1926 Martin Luther King Jr. Blvd., Albany, Georgia 31701

NOVEMBER 19, 2004
Waelti/QSR purchased the Albany Church's Chicken property from Siplin for **\$1,029,000.00****



NOVEMBER 19, 2004
Sovereign CC and Waelti/QSR One entered into a sham lease with an inflated rental rate of **\$4,445.00** with a 1.75% increase per annum through November 30, 2019



NOVEMBER 19, 2004
Sovereign CC purchased the Albany Church's Chicken property from Waelti/QSR for **\$1,029,000.00**



MAY 18, 2005
Armenta purchased the Albany Church's Chicken property from Waelti/QSR for **\$635,000.00** and assumed the sham lease with Waelti/QSR One as tenants with a monthly rent of **\$4,445.00**



OCTOBER 11, 2007
Waelti/QSR One abandoned the property and removed the trade fixtures. Armenta been unable to re-let the Albany Church's Chicken property despite attempting to do so.

** Upon information and belief, Waelti/QSR purchased the Albany Church's Chicken property at the same time it purchased several other Church's Chicken properties. While Plaintiffs have been unable to determine the exact allocation of proceeds that Waelti/QSR attributed to the Albany Church's Chicken property, discovery which will be obtained in this case will demonstrate that Defendants artificially inflated the value of the property before selling it to Armenta.

1 **Q. How Linda Call Got Scammed⁶⁴**

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

3 505. In approximately May 2005, Linda Call ("Call") received a phone call from M&M
4 Real Estate agent Head. Head encouraged Call to sell the nineteen-unit apartment building that she
5 owned at the time and to use the proceeds from that sale to purchase a triple-net lease investment.
6 Head explained to Call that triple-net lease investments were very safe and required no management
7 by the investor. Head represented to Call that an investment through Head and M&M Real Estate
8 would increase her cash flow. Further, Head claimed that he had helped several other people acquire
9 triple-net lease investments and that all of those individuals were very satisfied with their
10 investments.

11 506. When Call expressed uncertainty about triple-net lease investments, Head provided
12 Call with M&M Real Estate materials that explained triple-net lease investments and include some
13 property listings. The marketing materials M&M Real Estate and Head provided to Call were for
14 properties with cap rates from approximately 6.5% to 7.5%, but there were also some 8.0%+ cap rate
15 properties as well. The nineteen-unit apartment building Head was advising Call to sell had a cap
16 rate of approximately 5.5%. Head repeatedly represented that he could get Call a secure 7.5% cap
17 rate property.

18 507. Head followed up by calling Call approximately a week after dropping off the
19 materials. Call thought the investments looked attractive but was nervous because she had never
20 purchased a triple-net investment before and had owned the nineteen-unit apartment building for less
21 than a year. Call specifically told Head that she was a single mother in her early 50s with two
22 daughters and she could not afford to make a mistake by investing in something that was not safe
23 and secure.

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26 ⁶⁴ Linda Call took title to the property in her own name. Thereafter, Call transferred the
27 property to the Linda Jeanne Call Family Trust, dated September 12, 2002, of which she is the
28 trustee.

1 508. When Call expressed her fears to Head, Head reassured her by insisting that he would
2 increase her income, and that there were single tenants with guaranteed leases on the triple-net lease
3 properties which made them safe and secure. Head exuded a lot of confidence and promised Call
4 that the investment was very safe. Head was very persistent and made Call feel inadequate any time
5 she asked a question or showed any hesitation.

6 509. Head continued to contact Call for several weeks after providing the marketing
7 materials to her. In June 2005, after about a month of cajoling by Head, Call agreed to give him the
8 listing for the sale of her nineteen-unit apartment building. Thereafter, Head increased the frequency
9 and volume of triple-net listings that he sent to Call.

10 510. Head initially suggested that Call purchase a TGI Fridays restaurant with a triple-net
11 lease in Oklahoma. Call entered into a preliminary agreement to buy the TGI Friday's location in
12 approximately July 2005, after she traveled to Oklahoma to visit the site. She contacted a local
13 Oklahoma attorney to review all the documents, and to assist her with local insights. The attorney
14 did not tell Call to not buy the property, but he indicated that if it was his money, he would not buy
15 it. The attorney felt she did not have enough time for due diligence and was being pushed too
16 quickly. The location was also in a shopping center and had a lot of easements and other
17 encroachments that could have limited the value of the property. Furthermore, there was another
18 TGI Friday's in close proximity that was a higher-grossing store. After considering all of the
19 information she obtained, none of which M&M Real Estate or Head bothered to provide her, Call
20 canceled the deal. Head was very upset with Call for deciding not to invest.

21 511. Head next suggested Call buy a Miller's Ale House location in Georgia. Call flew to
22 Georgia and met with an attorney to review the prospects of purchasing the Miller's Ale House. The
23 attorney in Georgia attended a meeting with Call and the principals of the restaurant. After this
24 meeting, the attorney reviewed the sale documents, and suggested that Call stay in town another day
25 and spend some time at the restaurant. The attorney told Call that she "should really take a good
26 look," which Call interpreted as the attorney not being supportive of the purchase. As such, Call
27 decided to back out of the purchase of the Miller's Ale House. Again, Head was upset that Call
28 chose not to invest.

1 512. At this point Call's nineteen-unit apartment building was already in escrow, and the
2 agreed-upon sale price of \$2,250,000.00 would leave her with more than \$1,000,000.00 to invest in a
3 1031 exchange property. Call planned to split the money between at least two replacement
4 properties to further limit her risk. Immediately after agreeing to sell her apartment building, Call
5 began having terrible seller's remorse. Head calmed Call by telling her "you are going to be in a
6 much better position. Don't worry." Call specifically advised Head "I'm relying on you because I
7 don't know anything about triple-net leases." Head reassured Call by stating that he had many
8 satisfied customers, an MBA, and that he was an expert on triple-net lease properties.

9 513. On October 31, 2005, Head sent Call an e-mail with the subject line "have no fear, the
10 8+ Cap's are here..." in which Head wrote "Once again, sorry for the delay with Ramesh, but his
11 funds are here tomorrow and WE WILL EXCEED YOUR PRESENT CASH FLOW IN YOUR
12 UPLEG PROPERTY OR PROPERTIES." (Capital letters in original.) Thereafter, Head sent Call
13 M&M Real Estate marketing materials for the Jacksonville, Florida Church's Chicken property that
14 Call eventually purchased, and for a Skinny's Diner.

15 514. On November 3, 2005, after a very long escrow, Call closed the sale of her nineteen-
16 unit apartment building. Call was disappointed with Head's performance during the closing because
17 Head did not properly handle issues that arose leading up to the closing – though he did make sure to
18 collect his commission as buyer's agent.

19 515. On December 19, 2005, a few days before her 1031 deadline to identify a
20 replacement property, Call selected the Jacksonville Church's Chicken property and the Skinny's
21 Diner property. Call's decision to buy the Jacksonville Church's Chicken property was based
22 primarily on the offering proposal, and M&M Real Estate and Head's representations and purported
23 expertise. The tenant on the Jacksonville Church's Chicken property was QSR II (which was an
24 alter-ego of Waelti). The M&M Real Estate marketing materials represented that Waelti was very
25 experienced, and that the long-term lease on the property was personally guaranteed by Waelti.⁶⁵

26 _____
27 ⁶⁵ The M&M Real Estate marketing materials identified a traffic count of 25,000 cars per day in
28 front of the Jacksonville Church's Chicken property. However, contrary to M&M Real Estate's

1 Kunofsky of M&M Real Estate's New York office was the listing agent for the Jacksonville
2 Church's Chicken property.

3 516. Call had never invested in a sale leaseback property before. Head explained to her
4 that Waelti/QSR II wanted to sell the property to free-up cash so they could purchase additional
5 franchises. When Call inquired about financials, Head represented that Waelti/QSR II and M&M
6 Real Estate did not have any rent history because Waelti/QSR II owned the property and did not pay
7 rent to itself. All the other comparables in the M&M Real Estate marketing materials showed other
8 Church's Chicken locations paying similar rent to the location Head advised Call to purchase.⁶⁶

9 517. The M&M Real Estate marketing brochure originally listed the price of the
10 Jacksonville Church's Chicken property at \$1,220,000.00.⁶⁷ Although Waelti/QSR II was asking
11 \$1,220,000.00, Call was already committed to spend \$1,400,000.00 on her Skinny's purchase. As
12 such, Call had less than \$1,200,000.00 to spend on the Church's Chicken property. Notwithstanding
13 the fact that Call could not offer to pay the asking price, Head encouraged Call to make an offer
14 because the seller's prior deal purportedly fell through. Call took Head's advice and was surprised
15 when her offer was accepted.

16 **2. Call Takes the Bait**

17 518. Call signed a December 12, 2005 purchase agreement provided to her by M&M Real
18 Estate. The purchase agreement provided Call with seven calendar days from the effective date in
19 which to conduct a physical inspection of the Jacksonville Church's Chicken property and three days
20

21
22 representations, according to information provided by the City of Jacksonville, the average daily
23 traffic count in front of Call's Church's Chicken location was approximately 7,300 vehicles.

24 ⁶⁶ Of course, none of the Defendants advised Call that many of these comparables were other
properties owned and/or operated by Waelti and/or one of his QSR alter-egos.

25 ⁶⁷ Call showed the M&M Real Estate marketing materials to her mortgage broker to get his
26 opinion on the investment. The mortgage broker told Call that the rent per square foot seemed
27 unusually high. The broker's conclusion was based upon his understanding that the annual rent of
28 \$100,000.00 was for a 2,500 sq. ft. building – the size represented in the M&M Real Estate
marketing materials. In fact, Call learned after the transaction closed that the property was only
1,251 sq. ft.

1 to confirm the site was in compliance with applicable safety standards. The monthly rent under the
2 long-term lease with Waelti/QSR II was \$8,333.33, with scheduled 1.75% annual rent increases.

3 519. During the contingency period, Call traveled to Jacksonville to visit the property.
4 Call observed both the foot traffic and the drive through traffic. The store appeared to be very busy.

5 520. Call was originally supposed to have a 30-day escrow on the Jacksonville Church's
6 Chicken property. However, the closing was delayed because of appraisal and title issues and efforts
7 to try to get due diligence items from Waelti/QSR II. From approximately December 2005 through
8 the closing in early May 2006, there was a lot of back and forth between Call's lender and M&M
9 Real Estate via e-mail, with Call's mortgage broker seeking due diligence and financials from
10 Waelti/QSR II.

11 521. The only financial information and due diligence that Call received regarding
12 Waelti/QSR II was a two column accounting ticker that purported to show monthly sales for her
13 store for the preceding two years. Call understood she would have to pay a substantial amount of
14 taxes if she did not complete the 1031 exchange, so she decided to proceed, even though she was
15 concerned that M&M Real Estate and Waelti/QSR II had not provided all the financial disclosures
16 that Call and her lender had requested. Call was comforted by the fact that she believed that M&M
17 Real Estate and Head were looking out for her best interests.

18 522. In early April 2006, less than 20 days before closing, Call learned that there was an
19 appraisal from her lender on the Jacksonville Church's Chicken property that came in low. When
20 Call confronted Head about the appraisal, Head told Call the appraisal was low because the appraiser
21 made a mistake and had not taken into consideration the value of the income stream she was going to
22 receive. Head told Call that the appraiser only valued the real estate, when much of the value was in
23 the 15-year lease with great cash flow and increasing rents.

24 523. Head's justification for the low appraisal seemed somewhat plausible to Call and put
25 her at ease. Head told Call that M&M Real Estate was going to order another appraisal with the
26 same appraisal company and have them review it. Call did not get either appraisal until after the
27 transaction had been closed for some time.

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1 524. On April 7, 2006, Call requested a list of equipment included with the sale from
2 M&M Real Estate so she could appropriately depreciate those assets. Although Head and M&M
3 Real Estate represented to Call that the equipment on the Jacksonville Church's Chicken property
4 was going to be hers, they never provided her with the equipment inventory.⁶⁸

5 525. The transaction closed on May 3, 2006, with Call contributing \$218,793.00 in
6 exchange proceeds and obtaining an \$870,949.00 mortgage. Call paid \$1,100,000.00 plus closing
7 costs for the Jacksonville Church's Chicken property.

8 **3. The Church's Chicken Sale Was a Scam**

9 526. Starting immediately after her purchase, Waelti/QSR II failed to pay rent. On June 6,
10 2006, Call wrote an e-mail to Clinton Wu ("Wu") at Kunofsky's office at M&M Real Estate in New
11 York seeking her May and June rent as well as the name of the person at Waelti/QSR II to contact
12 regarding rent. On June 10, 2006, Call sent an e-mail to Head complaining about not having
13 received rent, a copy of her lease, and other closing documents she should have received. Head
14 wrote an e-mail to Call on June 10, 2006 stating that Kunofsky had told him that Waelti/QSR II
15 should be cutting a check to her soon.

16 527. Thereafter, Head wrote in an e-mail to Call that "[g]oing for the gusto in terms of the
17 cap rate has backfired a bit – not that you, me or any client deserves non-payment. I've-not
18 experienced @\$!* like this before." (Symbols in original.) Call was surprised to receive this e-mail
19 because before the e-mail, Head always made it seem like 8%+ cap rates were readily available and
20 safe. Head never indicated that by pursuing an 8%+ cap rate she was "going for the gusto" or taking
21 on any unusual risk. To the contrary, Head told Call "it is a matter of fact that you get 8 cap deals."
22 In fact, Call specifically told Head she did not want and could not accept much risk.

23 528. On June 12, 2006, Call sent an e-mail to Waelti/QSR II asking for unpaid rent and an
24 update. On June 14, 2006, Head sent Call an e-mail indicating he had been in touch with Kunofsky
25 and was going to have Kunofsky phone Call to discuss the Waelti/QSR II situation. Kunofsky never

26
27 ⁶⁸ After the investment closed, and contrary to his and M&M Real Estate's representations,
28 Head told Call she did not own the equipment.

1 phoned Call. On June 15, 2006, Head wrote to Call that Kunofsky had told him that Waelti/QSR II
2 was acquiring 30 more stores and had their accounting backed up. Kunofsky was supposed to phone
3 Call later that day to explain, but again never called.

4 529. Call eventually received her rent, and continued to receive rent until approximately
5 April 2007, though the rent payments were always eight to ten days late. When Call did not receive
6 her rent in April 2007, she sent e-mails to Waelti/QSR II. Call received a check for the May 2007
7 rent, but when she tried to deposit the check, Call's bank told her that they had information to
8 indicate the check would not clear. Call found it odd that the bank knew in advance the check would
9 not clear.

10 530. On approximately May 16, 2007, Call received a letter from Waelti/QSR II stating
11 that Waelti/QSR II would pay only 50% of the rent due under the long-term lease going forward.
12 Call was shocked to get the letter from Waelti/QSR II because 50% rent would not even cover Call's
13 mortgage payments on the Jacksonville Church's Chicken property. On June 30, 2007, Call wrote to
14 Waelti/QSR II asking for her full rent, and explaining her precarious financial position. The last rent
15 check that Call received was in July 2007. Thereafter, on October 15, 2007, Waelti/QSR II
16 abandoned the Jacksonville Church's Chicken property.

17 531. Despite her efforts to mitigate her damages, Call has not yet been able to find a new
18 tenant. Call was forced to spend \$70,000.00 over the last year making mortgage payments even
19 though she was not collecting rent, had no cash flow and her credit had been ruined.

20 532. Throughout the course of their relationship with M&M Real Estate, Head, Waelti,
21 Kunofsky and the various other members of the M&M Enterprise, Defendants made false and
22 misleading statements and omissions regarding the fair market value, future rents, business
23 prospects, security and stability of Call's investment – exploiting the relationship of trust that they
24 had intentionally built with Call. During this time, Defendants knew that the fair market value of the
25 investment property was artificially inflated, that the purported long-term lease was a farce, and that
26 the “tenant” would walk away, abandoning the property, wiping out the artificial inflation in the fair
27 market value of the property, and eviscerating the future rents.

1 533. So, like every other investor, Defendants' conspiracy to scam Call was a complete
2 success. With mathematical precision, Defendants artificially inflated the value of the property that
3 Call was induced to purchase, which value plummeted when the Defendants walked away. As a
4 result, Call suffered severe financial damages, including the loss of fair market value of her
5 investment, future rents and out-of-pocket damages, all of which she is entitled to recover.

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1 Chronology of Call's purchase of the Church's Chicken property located
2 at 1830 North Myrtle Avenue, Jacksonville, Florida 32209

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5 **NOVEMBER 19, 2004**

6 Waelti/QSR II purchased the Jacksonville Church's Chicken property from Siplin for \$866,400.00



8 **MAY 3, 2006**

9 Waelti/QSR II and Call entered into a sham lease which, unbeknownst to Call, contained an inflated
10 rental rate of \$8,333.33 with increases through May 3, 2021



12 **MAY 3, 2006**

13 Call purchased the Jacksonville Church's Chicken property from Waelti/QSR II for \$1,100,000.00
14 with a monthly rent of \$8,333.33



16 **OCTOBER 15, 2007**

17 Waelti/QSR II abandoned the property. Call has been unable to re-let the property despite attempting
18 to do so.
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1 **X. RICO ALLEGATIONS**

2 534. Each Plaintiff is a “person” within the meaning of 18 U.S.C. §1964(c), and each has
3 sustained injury to its, his or her business or property as a result of the acts and the conduct of
4 Defendants described herein.

5 535. Each Defendant is a “person” within the meaning of 18 U.S.C. §1961(3).

6 536. On more than two separate but related occasions over a several-year period,
7 Defendants have continually used the methods described above to perpetrate a fraudulent scheme on
8 the Plaintiffs that was intended to, and had the effect of, inducing the Plaintiffs to purchase the
9 Properties at artificially inflated prices.

10 537. Defendants have engaged in a common course of conduct and conspiracy with the
11 common purpose of defrauding Plaintiffs into purchasing the Properties at artificially inflated prices.
12 To achieve their common purpose, Defendants have associated-in-fact as an ongoing “enterprise”
13 within the meaning of 18 U.S.C. §1961(4).

14 538. In furtherance of their common course of conduct and conspiracy, Defendants
15 conducted the affairs of an interstate enterprise (described in detail below) through a pattern of
16 racketeering activity, in violation of 18 U.S.C. §1962(c).

17 539. The enterprise engaged in and continues to engage in interstate commerce, and its
18 activities affect interstate commerce.

19 **A. The M&M Enterprise**

20 540. The Defendants conducted, through a pattern of racketeering activity, an association-
21 in-fact enterprise (the “M&M Enterprise”), comprised of the following individuals and entities: the
22 Sovereign Entities, M&M, the M&M Brokers, Morabito, Eureka, Tibarom, Tibarom PA, Tibarom
23 NY, NY Seven Lube, New York Lube 3, Scranton Lube, Rochester Lube, BMI, Waelti, QSR, QSR
24 One, QSR II, and PGP. As set forth throughout this Complaint, each participant in the M&M
25 Enterprise played and continues to play a designated, well-defined and ongoing role in the affairs of
26 the enterprise.

27 541. The M&M Enterprise is an ongoing and continuing organization of corporations and
28 individuals that has been operating continuously since at least early 2005. Since that date, the M&M

1 Enterprise has engaged in at least 22 real estate transactions involving the sale of properties, the
2 values of which were artificially and fraudulently inflated. It consists of both corporations and
3 individuals associated for the common or shared purpose of selling, promoting and/or marketing the
4 Properties to the Plaintiffs and other potential purchasers through a fraudulent scheme, and deriving
5 profits from those activities.

6 542. The Defendants conducted the M&M Enterprise and its fraudulent schemes by
7 entering into contractual agreements with each other and with non-parties to obtain the Properties,
8 using a uniform scheme to artificially inflate the values of the Properties, conducting a deceptive
9 marketing campaign to sell the Properties to victims such as Plaintiffs, and obtaining monies from
10 Plaintiffs under false pretenses as a result. Each fraudulent real estate transaction described above
11 required a series of related acts by members of the M&M Enterprise.

12 543. Members of the M&M Enterprise engage in ongoing real estate transactions and
13 provide real estate services. Some of these services are legitimate and non-fraudulent. However,
14 Defendants, through the M&M Enterprise, have engaged in a pattern of racketeering activity which
15 also involves a fraudulent scheme to profit off of the sale of real estate, the values of which were
16 artificially inflated through deceptive and unlawful acts that were not disclosed to Plaintiffs – the
17 buyers of those Properties.

18 544. Each member of the M&M Enterprise had, and continues to have, a clear and ongoing
19 role in the affairs and operation of the Enterprise:

20 (a) Morabito, Waelti and their respective alter-ego shell companies made the
21 original purchases of the Properties, with the intention of re-selling each of the Properties to one of
22 the Plaintiffs, usually using one of the Sovereign Entities as a conduit. Morabito, Waelti, or their
23 respective alter-ego shell companies, entered into sale/leaseback agreements with one of the
24 Sovereign Defendants, and/or one of the Plaintiffs, which included a bogus lease with artificially
25 inflated rental rates. The Properties were marketed to 1031 investors, including Plaintiffs, as
26 featuring secure, long-term leases, with either Morabito, Waelti or one of their alter-ego shell
27 companies, as the long-term tenant and franchisee. Additionally, Morabito, Waelti and their alter-
28 ego shell companies assisted in the preparation of marketing materials and provided financial

1 documents that Morabito and Waelti knew to contain false information about the Properties and
2 about the financial strength of Morabito, Waelti, and their alter-ego shell companies. Along with
3 Morabito and Waelti, the alter-ego shell companies involved in this part of the scheme include
4 Eureka, Tibarom, Tibarom PA, Tibarom NY, NY Seven Lube, New York Lube 3, Scranton Lube,
5 Rochester Lube, BMI, QSR, QSR One, and QSR II;

6 (b) The Sovereign Entities purchased many of the Properties directly from
7 Morabito, Waelti and/or their respective alter-ego shell companies. After purchasing the Properties,
8 the Sovereign Entities entered into leases with Morabito, Waelti or one of their alter-egos that
9 contained artificially-inflated rental rates. The Sovereign Entities never intended to own any of the
10 Properties for any extended period of time, but merely took title to the Properties briefly, before
11 selling them to unwitting investors, including Plaintiffs. The Sovereign Entities include Sovereign
12 Investment, Sovereign Scranton, Sovereign CC, and Sovereign JF;

13 (c) M&M and the M&M Brokers acted as the brokers in the transactions and
14 marketed and sold the Properties held by the Sovereign Entities to unwitting investors, including
15 Plaintiffs. M&M and the M&M Brokers prepared and disseminated the marketing and sales
16 materials, financial information, and other information relevant to the Properties to Plaintiffs. M&M
17 is the parent company of the Sovereign Entities. The M&M Brokers include M&M Investment,
18 M&M Real Estate, Kunofsky, Muirhead, Mickle, Perkin, Emas, Leshner, Head, Gomez, Weston and
19 King; and

20 (d) PGP acted as an appraiser on many of the transactions. PGP improperly
21 reflected the artificially inflated fair market values of the Properties as manipulated by Defendants.

22 545. During the entire relevant period, the M&M Enterprise has engaged in, and continues
23 to engage in conduct that affects interstate commerce, such as the marketing, promotion,
24 advertisement and sale of the Properties, and the receipt of monies for said sales, across state
25 boundaries.

26 546. Within the M&M Enterprise, there was and is a common communication network by
27 which the Defendants share information on a regular basis. The M&M Enterprise uses this common
28

1 communication network to coordinate the purchase and leaseback of the Properties, and for the
2 purpose of marketing, soliciting and selling real estate to the general public, including Plaintiffs.

3 547. The members of the M&M Enterprise had, and continue to have, a systematic linkage
4 with each other because there are contractual relationships, financial ties and continuing coordination
5 of activities. Through the M&M Enterprise, Defendants have engaged, and continue to engage in,
6 consensual decision-making to implement their fraudulent scheme, and to function as a continuing
7 unit for the common purpose of selling real estate at artificially inflated prices using fraudulently
8 obtained appraisals. Furthermore, the M&M Enterprise functions as a continuing unit with the
9 purpose of assisting with, perfecting and furthering Defendants' wrongful scheme to market and sell
10 the Properties at artificially inflated prices.

11 548. The M&M Enterprise has an ascertainable structure and purpose beyond the scope
12 and commission of Defendants' predicate acts and conspiracy to commit such acts. The M&M
13 Enterprise is separate and distinct from Defendants.

14 **B. Pattern of Racketeering Activity**

15 549. Section 1961(1)(B) of RICO defines "racketeering activity" as any act indictable
16 under, *inter alia*, 18 U.S.C. §§1341 (relating to mail fraud) and 1343 (relating to wire fraud). As set
17 forth herein, Defendants have engaged, and continue to engage in, conduct violating each of these
18 laws to effectuate their scheme.

19 550. Defendants conducted the affairs of the M&M Enterprise by a "pattern of
20 racketeering activity," as defined by 18 U.S.C. §1961(5), by committing or aiding and abetting in the
21 commission of at least two acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C.
22 §§1341 and 1343 as described above, within the past 10 years. In fact, Defendants have committed
23 or aided and abetted in the commission of hundreds of acts of racketeering activity. Each
24 racketeering act was related, had a similar purpose, involved the same or similar participants and
25 method of commission, had similar results and impacted similar victims, including the Plaintiffs.

26 551. In addition, to effectuate their scheme, Defendants sought to and did aid and abet
27 themselves in violating the above laws within the meaning of 18 U.S.C. §2. As a result, Defendants'
28 conduct is indictable under 18 U.S.C. §§1341 and 1343 on this additional basis.

1 552. The multiple acts of racketeering activity which Defendants committed and/or
2 conspired to commit, or aided and abetted in the commission of, were related to each other and
3 amount to and pose a threat of continued racketeering activity, and therefore constitute a “pattern of
4 racketeering activity” as defined in 18 U.S.C. §3961(5).

5 **C. Predicate Act Violations of 18 U.S.C. §§1341 and 1343**

6 553. For the purpose of executing and/or attempting to execute the above-described
7 fraudulent scheme, Defendants, in violation of 18 U.S.C. §1341 (mail fraud), placed in post offices
8 and/or in authorized repositories, matter and things to be sent or delivered by the U.S. Postal Service,
9 caused matter and things to be delivered by commercial interstate carriers, and received matter and
10 things from the U.S. Postal Service and/or commercial interstate carriers, including, but not limited
11 to, marketing and sales materials, financial information, correspondence, contract, sales and lending
12 documents, escrow and title documents, and other materials relating to the properties sold to
13 Plaintiffs.

14 554. For the purpose of executing and/or attempting to execute the above-described
15 fraudulent scheme, Defendants, in violation of 18 U.S.C. §1343 (wire fraud), transmitted and
16 received by wire, matter and things, which include, but are not limited to, marketing and sales
17 materials, financial information, correspondence, contract sales and lending documents, escrow and
18 title documents and other materials relating to the properties sold to Plaintiffs.

19 555. For the purpose of executing and/or attempting to execute the above-described
20 fraudulent scheme, Defendants, in violation of 18 U.S.C. §1341 and §1343, made numerous material
21 misrepresentations and omissions of fact with the intent and effect of inducing Plaintiffs to rely on
22 such misrepresentations and omissions, including, *inter alia*:

23 (a) Misrepresentations and material omissions of fact concealing that Defendants
24 would, and did, use deceptive and misleading sales materials and, in some instances, fraudulent
25 appraisals to solicit and induce the Plaintiffs into purchasing the Properties;

26 (b) Misrepresentations and material omissions of fact concerning the Properties,
27 including but not limited to:

28 (i) the present and future anticipated income generated by the Properties;

1 (ii) the ability of the business model presented by Defendants to Plaintiffs
2 to support the rents provided for in the various leases;

3 (iii) the capitalization rates of the Properties;

4 (iv) the actual value of the Properties;

5 (v) the actual value of the various leases of the Franchises on the
6 Properties;

7 (vi) that each transaction was made at "arms-length," and there was no
8 conflicting inter-relationship among Defendants; and

9 (vii) the financial strength and business experience of the tenants and
10 franchisees.

11 556. Defendants' misrepresentations, omissions of material facts, acts of concealment, and
12 failures to disclose, were knowing and intentional, and made for the purpose of deceiving Plaintiffs
13 and obtaining their monies for Defendants' gain.

14 557. Defendants either knew or recklessly disregarded the fact that the misrepresentations
15 and omissions described above and incorporated herein were material, and Plaintiffs relied on the
16 misrepresentations and omissions as set forth above.

17 558. Each of the aforesaid intentional acts and misconduct of Defendants constituted
18 violations of the 18 U.S.C. §§1341 (mail fraud) and 1343 (wire fraud), and constituted instances of
19 "racketeering activity" as defined in 18 U.S.C. §1961(5).

20 559. As a result, Plaintiffs have been injured in their business and property within the
21 meaning of 18 U.S.C. §1964(c). Plaintiffs' damages include but are not limited to:

22 (a) the loss of their investment capital;

23 (b) lost out-of-pocket expenses;

24 (c) lost business opportunities;

25 (d) lost profits;

26 (e) lost goodwill; and

27 (f) loss of creditworthiness.

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1 **D. RICO Violations**

2 560. Section 1962(c) of RICO provides that it “shall be unlawful for any person employed
3 by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign
4 commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs
5 through a pattern of racketeering activity” Through the pattern of racketeering activities
6 outlined above, Defendants have conducted and participated in the affairs of the M&M Enterprise.

7 561. Defendants willfully agreed to, and did, materially participate, directly or indirectly,
8 in the conduct of the affairs of the M&M Enterprise through a pattern of racketeering activity
9 comprised of numerous acts of mail fraud and wire fraud, and so participated in violation of
10 18 U.S.C. §1962(c).

11 562. Additionally, §1962(d) of RICO makes it unlawful “for any person to conspire to
12 violate any of the provisions of subsection (a), (b) or (c) of this section.” Defendants’ conspiracy to
13 defraud the Plaintiffs of their money and property from the sale of the Properties at artificially
14 inflated values, pursuant to the scheme described herein, violates 18 U.S.C. §1962(d).

15 563. At all relevant times, each participant in the M&M Enterprise was aware of the
16 scheme to defraud Plaintiffs into purchasing real estate at artificially inflated prices, was a knowing
17 and willing participant in the scheme and reaped profits therefrom.

18 564. Defendants have directed and controlled the ongoing organization necessary to
19 implement their scheme and illicit business practices at meetings and through communications about
20 which Plaintiffs cannot now know because all such information lies in Defendants’ hands.

21 **E. RICO Conspiracy**

22 565. Defendants have not undertaken the practices described herein in isolation, but as part
23 of an ongoing, common scheme and conspiracy.

24 566. Defendants have engaged in a conspiracy to defraud Plaintiffs by soliciting Plaintiffs,
25 and marketing and selling to them the Properties at artificially inflated prices.

26 567. The objects of the conspiracy were, and are: (a) to sell the Properties and other real
27 property at artificially inflated prices; (b) to maximize sales for Defendants; and (c) to defraud
28 Plaintiffs and other members of the public.

1 568. To achieve these goals, Defendants conspired to purchase properties, entered into
2 sham sale/leaseback agreements to artificially inflate the value of the Properties, obtained (in some
3 instances) faulty appraisals that valued the Properties based upon the value of the sham leases, and
4 then sold and marketed the Properties to Plaintiffs as good secure investments that would produce
5 consistent income streams for 15 to 25 years.

6 569. Defendants, with knowledge and intent, have agreed to the overall objectives of the
7 conspiracy and participated in the common course of conduct to commit acts of fraud and indecency
8 in gaining the trust of Plaintiffs and persuading them to purchase the Properties as investments.

9 570. Indeed, for the conspiracy to succeed, Defendants had to agree to implement and use
10 the similar devices and fraudulent tactics against their intended targets.

11 571. Many instances of common conduct, activity and similar facts evidence the presence
12 of a conspiracy and exist among Defendants, including but not limited to:

13 (a) similar sale-leaseback agreements between Morabito and Waelti's alter-ego
14 shell companies and the Sovereign Entities (or in some instances, Morabito, Waelti, and/or other of
15 Morabito and/or Waelti's alter-ego shell companies) with regards to the Properties; and

16 (b) similar plans and methods for soliciting, marketing and selling the Properties
17 to Plaintiffs.

18 572. As a result of the conspiracy, Plaintiffs paid a much higher price for the Properties
19 than they would have paid had Defendants not defrauded them.

20 **XI. FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING**

21 573. Defendants have affirmatively and fraudulently concealed their unlawful scheme,
22 conspiracy and course of conduct from Plaintiffs. Plaintiffs did not know, and could not reasonably
23 have known, of Defendants' fraudulent scheme and could not have reasonably discovered the falsity
24 of Defendants' representations, advertising and similar documents, nor could Plaintiffs reasonably
25 have known the concealed information until January 2008, at the earliest.

26 574. To this day, Defendants continue to fraudulently conceal their practices from
27 Plaintiffs and the public alike. Although the initial decisions to engage in these practices were made
28 years ago, Defendants have repeatedly decided since then to continue concealing their fraudulent

1 practices. As a result of the foregoing, Plaintiffs could not reasonably discover the unlawful and
2 unethical practices described herein and did not do so until just recently.

3 575. Defendants' conduct is continuing in nature. There is a substantial nexus between the
4 fraudulent conduct that has occurred within the statute of limitations and the misconduct prior to that
5 time. The acts involve the same type of illicit practices and are recurring, continuous events.

6 576. The statutes of limitation applicable to any claims brought by Plaintiffs as a result of
7 the conduct alleged herein have been tolled as a result of Defendants' fraudulent concealment.

8 XII. CAUSES OF ACTION

9 COUNT I

10 Violations of the Racketeer Influenced and Corrupt 11 Organizations Act, 18 U.S.C. §1962(c)-(d)

12 577. Plaintiffs' repeat and reallege all allegations contained in ¶¶1-576 above as if set forth
13 separately in this Cause of Action.

14 578. Plaintiffs claims arise under 18 U.S.C. §1962(c)-(d), which provides in relevant part:

15 (c) It shall be unlawful for any person employed by or associated with
16 any enterprise engaged in, or the activities of which affect, interstate or foreign
17 commerce, to conduct or participate, directly or indirectly, in the conduct of such
18 enterprise's affairs through a pattern of racketeering activity

19 (d) It shall be unlawful for any person to conspire to violate any of the
20 provisions of subsection . . . (c) of this section.

21 579. At all relevant times, each Plaintiff and each Defendant was a "person" within the
22 meaning of 18 U.S.C. §1961(3), because each Plaintiff and each Defendant was "capable of holding
23 a legal or beneficial interest in property."

24 580. In violation of 18 U.S.C. §1962(c), Defendants have conducted or participated,
25 directly or indirectly, in the conduct of the affairs of the M&M Enterprise through a "pattern of
26 racketeering activity," as defined by 18 U.S.C. §1961(5).

27 581. As discussed in detail above, Defendants, operating through the M&M Enterprise,
28 committed hundreds of violations of the federal mail and wire fraud statutes, 18 U.S.C. §§1341 and
1343, between 2005 and today, in furtherance of their common purpose to defraud Plaintiffs and

1 other real estate investors. For each fraudulent real estate transaction described in this Complaint,
2 Defendants engaged in more than two related acts of mail or wire fraud.

3 582. Morabito and Waelti's alter-ego shell companies were created and/or used as a tool to
4 carry out the elements of Defendants' illicit scheme and pattern of racketeering activity. The M&M
5 Enterprise has an ascertainable structure and purpose beyond the scope and commission of
6 Defendants' predicate acts and conspiracy to commit such acts. The M&M Enterprise is separate
7 and distinct from Defendants.

8 583. Defendants' violation of 18 U.S.C. §1964(c) and (d) proximately caused injury to
9 Plaintiffs' business or property. As a result of Defendants' scheme to artificially inflate the value of
10 the Properties purchased by Plaintiffs, each Plaintiff lost hundreds of thousands of dollars or more in
11 the value of its/his/her investment together with the present and future income stream expected and
12 promised for each Property.

13 584. Plaintiffs are entitled to reasonable attorneys' fees and costs of investigation and
14 litigation and treble damages under 18 U.S.C. §1964(c).

15 **COUNT II**

16 **Negligent Misrepresentation**

17 585. Plaintiffs repeat and reallege all allegations contained in ¶¶1-576 above as if set forth
18 separately in this Cause of Action.

19 586. As alleged herein, Defendants marketed, financed, and sold the Properties to
20 Plaintiffs at artificially inflated prices. Defendants knew the values of the Properties were artificially
21 inflated. Further, Defendants knew that the representations they were making to Plaintiffs, in
22 connection with the marketing and sale of the Properties, including but not limited to the following,
23 were false:

- 24 (a) the present and future anticipated income generated by the Properties;
- 25 (b) the ability of the business model presented by Defendants to Plaintiffs to
26 support the rents provided for in the various leases;
- 27 (c) the capitalization rates of the Properties;
- 28 (d) the actual value of the Properties;

- 1 (e) the actual value of the various leases of the Franchises on the Properties;
2 (f) that each transaction was made at “arms-length,” and there was no conflicting
3 inter-relationship among Defendants; and
4 (g) the financial strength and business experience of the tenants and franchisees.

5 587. When Defendants made the representations referenced above, they had no reasonable
6 grounds for believing the representations to be true. The Defendants were aware that they did not
7 have reasonable grounds for making the aforementioned representations, yet suppressed from
8 Plaintiffs the true information with the intent to induce Plaintiffs to purchase the Properties.

9 588. The factual misrepresentations and artificially inflated values of the Properties were
10 not readily observable to Plaintiffs, and were not known to them at the time they purchased the
11 Properties from Defendants. In reliance on these representations, Plaintiffs entered into agreements
12 to purchase the Properties, funded deposits for the purchases, in some instances obtained financing,
13 acquired the Properties, and undertook the other normal and customary activities associated with
14 owning the Properties, and expended monies regarding the same. If Plaintiffs had known the actual
15 facts, they would not have taken these actions.

16 589. As a direct and proximate result of Defendants’ negligent misrepresentations,
17 Plaintiffs have suffered tens of millions of dollars in damages – the specific amount to be determined
18 at trial – including but not limited to the difference between the true value of the Properties at the
19 time they were acquired and the purchase prices paid by Plaintiffs, and the losses of rents suffered as
20 a result of the defaults on the leases and abandonment of the properties.

21 **COUNT III**

22 **Fraudulent Concealment,**
23 **Cal. Civ. Code §1710, et seq.**

24 590. Plaintiffs repeat and reallege all allegations contained in ¶¶1-576 above as if set forth
25 separately in this Cause of Action.

26 591. Defendants intentionally misrepresented or concealed material information from
27 Plaintiffs, including but not limited to the following:

- 28 (a) the present and future anticipated income generated by the Properties;

1 (b) the ability of the business model presented by Defendants to Plaintiffs to
2 support the rents provided for in the various leases;

3 (c) the capitalization rates of the Properties;

4 (d) the actual value of the Properties;

5 (e) the actual value of the various leases of the Franchises on the Properties;

6 (f) that each transaction was made at "arms-length," and there was no conflicting
7 inter-relationship among Defendants; and

8 (g) the financial strength and business experience of the tenants and franchisees.

9 592. Plaintiffs relied on these representations and omissions –as evidenced by their entry
10 into agreements to purchase the Properties, funding deposits for the purchases, in some instances
11 obtaining financing, acquisition of the Properties – and undertook the other normal and customary
12 activities associated with owning the Properties.

13 593. Defendants performed the wrongful acts with the intent of gaining their own financial
14 advantage to the disadvantage of Plaintiffs. In doing so, Defendants acted with an awareness of their
15 wrongdoing.

16 594. As a result of Defendants' wrongful conduct, Plaintiffs have suffered and continue to
17 suffer economic and non-economic losses, all in an amount to be determined at trial.

18 595. The wrongful acts of Defendants were done maliciously, oppressively and with the
19 intent to mislead and defraud. Plaintiffs are entitled to punitive and exemplary damages in an
20 amount appropriate to punish and set an example of Defendants pursuant to Cal. Civ. Code §3294,
21 *et seq.*

22 **COUNT IV**

23 **Unjust Enrichment and Imposition of a Constructive Trust**

24 596. Plaintiffs repeat and reallege all allegations contained in ¶¶1-576 above as if set forth
25 separately in this Cause of Action.

26 597. Plaintiffs have conferred substantial benefits on Defendants by purchasing the
27 Properties from Defendants.

28 598. Defendants have knowingly and willingly accepted these benefits from Plaintiffs.

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COUNT VI

Violation of California Business & Professions Code §17500, et seq.

610. Plaintiffs repeat and reallege all allegations contained in ¶¶1-576 above as if set forth separately in this Cause of Action.

611. Defendants have intentionally issued false or misleading marketing materials regarding the Properties. Defendants' sales materials misled and deceived Plaintiffs as to the material features and key risks of the Properties.

612. Defendants knew or should have known that the materials they disseminated concerning the Properties were false and misleading.

613. As a result of Defendants' misconduct as alleged herein, Plaintiffs have incurred actual financial losses and damages as a result of following the advice and recommendations of Defendants for the purchase of the Properties.

614. As a direct and proximate result of Defendants' wrongful conduct in violation of Cal. Bus. & Prof. Code § 17500, et. seq., Plaintiffs have suffered injury in fact and have lost money and property.

615. Unless Defendants are enjoined from continuing to engage in such wrongful actions and misconduct, Plaintiffs and members of the general public will continue to be damaged by Defendants' false and misleading statements.

616. Defendants should be required to disgorge and restore to Plaintiffs all monies wrongfully obtained by Defendants as a result of their false and misleading statements, along with interest.

COUNT VII

Violation of California Business & Professions Code §17200, et seq.

617. Plaintiffs repeat and reallege all allegations contained in ¶¶1-576 above as if set forth separately in this Cause of Action.

618. California Business and Professions Code §17200 prohibits any "unlawful . . . business act or practice." Defendants have violated §17200's prohibition against engaging in an

1 unlawful act or practice by, *inter alia*, violating statutes and common law rules prohibiting
2 Defendants' conduct, as described herein, including:

- 3 (a) RICO, 18 U.S.C. §1962;
- 4 (b) Cal. Bus. & Prof. Code §17500, *et seq.*;
- 5 (c) Cal. Civ. Code §§1709 and 1710;
- 6 (d) Negligent Misrepresentation;
- 7 (e) Fraudulent Concealment; and
- 8 (f) Unjust Enrichment.

9 619. Plaintiffs reserve the right to allege other violations of law which constitute other
10 unlawful business acts or practices. Such conduct is ongoing and continues to this date.

11 620. California Business and Professions Code §17200 also prohibits any "unfair . . .
12 business act or practice." As detailed in the preceding paragraphs, Defendants engaged in a
13 systematic scheme to defraud Plaintiffs into purchasing the Properties at artificially inflated prices,
14 in violation of federal and state law. Defendants' conduct was, and is, unethical, oppressive and
15 unscrupulous, and caused substantial injury to Plaintiffs. The utility, if any, of Defendants' conduct,
16 is substantially outweighed by the gravity of harm to the Plaintiffs. As a result, Defendants engaged
17 in unfair business practices prohibited by Cal. Bus. & Prof. Code §17200, *et seq.*

18 621. California Business and Professions Code §17200 also prohibits any "fraudulent . . .
19 business act or practice." As detailed in the preceding paragraphs, Defendants' conduct was likely to
20 deceive Plaintiffs by, *inter alia*, representing that they were providing objective financial appraisals
21 of the Properties, making misrepresentations and omissions concerning the values of the Properties,
22 and the genuineness of the leases on those Properties.

23 622. As a result of Defendants' unlawful, unfair and fraudulent business practices,
24 Plaintiffs have suffered injury in fact and lost money or property as a result of that unfair
25 competition.

26 623. Unless Defendants are enjoined from continuing to engage in the unlawful, fraudulent
27 and unfair business practices described above, Plaintiffs and members of the general public residing
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1 within the United States, including California, will continue to suffer injury to their business and
2 property.

3 624. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiffs seek an order requiring
4 Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and
5 requiring them to return the full amount of money improperly collected, including interest.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

8 For a temporary, preliminary and permanent order for injunctive relief enjoining Defendants
9 from pursuing the practices complained of above;

10 A. For an order requiring disgorgement and restitution of Defendants' ill-gotten gains
11 and payment of restitution to Plaintiffs all funds acquired by means of any practice declared by this
12 Court to be unlawful, fraudulent or unfair;

13 B. Imposition of a constructive trust;

14 C. For reasonable attorneys' fees and costs of investigation and litigation under
15 18 U.S.C. §1964(c);

16 D. For compensatory, special and general damages according to proof;

17 E. For punitive and exemplary damages pursuant to Cal. Civ. Code §3294, *et seq.*;

18 F. For treble damages and penalties pursuant to 18 U.S.C. §1964(c);

19 G. For pre-judgment and post-judgment interest; and

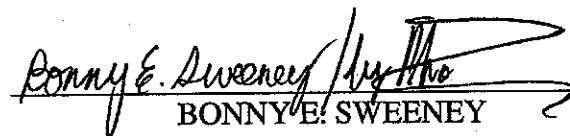
20 H. Such other and further relief as the Court may deem necessary or appropriate.

21 **JURY DEMAND**

22 Plaintiffs demand a trial by jury.

23 DATED: February 4, 2009

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PHONG L. TRAN

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27 BONNY E. SWEENEY
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.



BONNY E. SWEENEY
ATTORNEY OF RECORD FOR PLAINTIFF

EXHIBIT A

PROPERTY ADDRESSES

739 Oak Street, Scranton, PA 18508

401 West Oglethorpe Blvd., Albany, GA 31701

92-94 Mundy Street, Wilkes-Barre, PA 18702

1926 Martin Luther King Jr. Blvd., Albany, GA 31701

1010 Transit Way, Brockport, NY 14420

1830 North Myrtle Avenue, Jacksonville, FL 32209

5809 North Main Street, Jacksonville, FL 32209

4250 Moncrief Road, Jacksonville, FL 32209

1060 East 21st Street, Jacksonville, FL 32206

175 S. Wyoming Avenue, Kingston, PA 18704

6480 Transit Road, Cheektowaga, NY 14043

4885 Transit Road, Lancaster, NY 14086

3007 West Edgewood Avenue, Jacksonville, FL 32209

321 South Hamilton Street, Painted Post, NY 14870

141 Seneca Street, Hornell, NY 14843

3022 Ridge Road, West Rochester, NY 14626

150 South Abington Road, Clarks Summit, PA 18411

234-330 Main Street, Binghamton, NY 13905

288 Hamilton Street, Geneva, NY 14456

2418 North Main Street, Warsaw, NY 14569

448 East Jackson Street, Thomasville, GA 31792

137 Vestal Parkway, Vestal, NY 13850

EXHIBIT B

Peter Von Der Ahe Would Like To Invite You To His...

1031 EXCHANGE SEMINAR

Marcus & Millichap

Real Estate Investment Services

Dear Friends & Investors:

You are invited as our guest to attend an informal round-table discussion which may be very helpful to your real estate business. On **Thursday, January 31st at 5:00 PM**, we will hold a discussion on 1031 Exchanges, Retail Shopping Centers, Triple-Net Properties, Deferring Capital Gains Taxes, and locating the best investment opportunities in New York and other markets around the country.

The event is designed to go beyond the basics of a 1031 Exchange, and show how others are profiting in this market. *We will go into detail and explain how New York investors who have traditionally owned multifamily properties are purchasing Retail Centers, Triple-Net Properties, increasing their cash flow, and adding flexibility to their investment and personal lives.* The event will last approximately 30 minutes, with Q&A afterwards. Drinks and light hors-d'ouvres will be served.

In order to keep the discussion intimate and meaningful for you, attendance is limited to 40 individuals.

Some of the topics to be discussed are:

- 1) A quick overview of 1031 exchange rules, time frames, & structures.
- 2) NNN Properties: How big is the market? How can I benefit from it?
- 3) My Equity: How can I increase my monthly cash flow?
- 4) My Estate: what strategies are available to create an income stream for my heirs?
- 5) The NY Market: Day-to-day management, unprecedented prices, making sense of it all.
- 6) Diversification strategies for those who have much of their wealth in NY Real Estate.
- 7) I own my property "free and clear" could I leverage into something which may be more valuable and less risky?

**LEARN MORE ABOUT HOW YOU CAN
AVOID PAYING REAL ESTATE TAXES**

270 Madison Avenue, 7th Floor, New York, NY 10016 •
Tel: (212) 430-5114 Fax: (646) 349-3308

Offices Nationwide
www.marcusmillichap.com

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1031 EXCHANGE SEMINAR

Marcus & Millichap

Real Estate Investment Services

GUEST SPEAKERS WILL INCLUDE:

1) Glen Kunofsky, Director National Retail Group, Marcus & Millichap

Mr. Kunofsky is the director of Net leased properties in the Manhattan office of Marcus & Millichap. Glen has closed over \$300,000,000 worth of triple net (NNN), single tenant, and other "management free" transactions.

2) Peter Von Der Ahe, Director National Multi-Housing Group, Marcus & Millichap

Mr. Von Der Ahe specializes in investment property transactions in the New York area. Peter has been involved in over \$300,000,000 worth of investment property transactions in the NY market. He will provide a NY backdrop to the 1031 exchange process and speak about where the best opportunities lie in the market today.

SEATING IS LIMITED TO THE FIRST 40 RESPONDENTS, AND WILL BE ISSUED ON A FIRST COME, FIRST SERVE BASIS.

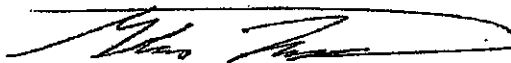
PLEASE RSVP BY JANUARY 24th.

If you would like to register your attendance please fill out the enclosed form and fax it to (646) 349-3308. You may also call to confirm to (212) 430-5124, email a response to pvonderahe@mmreis.com, or register online at www.pvofmm.com. Looking forward to seeing you there.

Sincerely,



Peter Von Der Ahe
Director, National Multi-Housing Group



Glen Kunofsky
Senior Director, National Retail Group

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1031 EXCHANGE SEMINAR RSVP

Yes! I would like to attend the real estate discussion

Fax to: (646) 349 – 3308

You may also register at: www.pvofmm.com

When: Thursday, January 31st, at 5:00pm

Where: The Williams Club
24 East 39th Street (Between Madison & Park Avenues)
New York, NY
212.697.5300

Who: Name: _____
Address: _____
Phone: _____
Fax: _____
Email: _____

RSVP BY: JANUARY 24th

SEATING IS LIMITED TO 40.

**You may also register online at WWW.PVOFMM.COM,
call Barbara at 212.430.5124,
or email your confirmation to pvonderahe@mmreis.com**

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