

CASE NO. 22-56003
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAURA LYNN HAMMETT

Plaintiff-Appellant,

v.

MARY E. SHERMAN; et al.

Defendants-Appellees.

Appeal From The United States District Court
Southern District of California, Case No. 3:19-cv-00605-LL-AHG

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD
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Plaintiff in Pro Se
Laura Lynn Hammett

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual;
MARY E. SHERMAN, as manager of
Silver Strand Plaza, LLC; SILVER
STRAND PLAZA, LLC, a California
limited liability company; MARY E.
SHERMAN as CO-TRUSTEE OF THE
J & M SHERMAN FAMILY TRUST, a
California revocable trust; JEFFREY
M. SHERMAN as CO-TRUSTEE OF
THE J & M SHERMAN FAMILY
TRUST; MARY E. SHERMAN as
TRUSTEE OF THE ALEXA
SHERMAN IRREVOCABLE TRUST,
a California irrevocable trust; MARY E.
SHERMAN as TRUSTEE OF THE

) Case No.: 19-CV-0605-JLS-AHG
)
)
) **SECOND AMENDED VERIFIED**
) **COMPLAINT FOR CAUSES OF**
) **ACTION 1) FRAUD; 2)**
) **FRAUDULENT CONVEYANCE 3)**
) **DISSOLUTION; 4) APPOINTMENT**
) **OF RECEIVER; 5) ACCOUNTING;**
) **6) CONSTRUCTIVE TRUST; 7)**
) **CONVERSION; 8) BREACH OF**
) **FIDUCIARY DUTY COUNT ONE;**
) **9) BREACH OF FIDUCIARY DUTY**
) **COUNT TWO, ALTERNATIVELY**
) **BREACH OF COVENANT OF**
) **GOOD FAITH AND FAIR**
) **DEALING; 10) AIDING AND**
) **ABETTING BREACH OF**
) **FIDUCIARY DUTY; 11)**
) **DEFAMATION PER SE OR PER**
) **QUOD; 12) FALSE LIGHT**
) **INVASION OF PRIVACY COUNT**

DANA SHERMAN IRREVOCABLE) **ONE; 13) DEFAMATION PER SE**
 TRUST, a California irrevocable trust;) **OR PER QUOD COUNT TWO**
 MARY E. SHERMAN as TRUSTEE) **THROUGH SIX; 14) FALSE**
 OF THE JENNA SHERMAN) **LIGHT INVASION OF PRIVACY**
 IRREVOCABLE TRUST, a California) **COUNT TWO AND; 15) UNJUST**
 irrevocable trust; MARY E.) **ENRICHMENT**
 SHERMAN as TRUSTEE OF THE)
 BROXTON DENNIS IRREVOCABLE) **JURY TRIAL DEMAND**
 TRUST, a California irrevocable trust;)
 MARY E. SHERMAN as TRUSTEE)
 OF THE CURT DENNIS)
 IRREVOCABLE TRUST, a California)
 irrevocable trust; MARY E.)
 SHERMAN as TRUSTEE OF THE)
 SEAN LYNN IRREVOCABLE)
 TRUST, a California irrevocable trust;)
 MARY E. SHERMAN as TRUSTEE)
 OF THE BRANDEN LYNN)
 IRREVOCABLE TRUST, a California)
 irrevocable trust; LINDA R. KRAMER,)
 an individual; LINDA R. KRAMER as)
 CO-TRUSTEE OF THE LYNN AND)
 ERIK’S TRUST; ERIK VON)
 PRESSINTIN HUNSAKER as CO-)
 TRUSTEE OF THE LYNN AND)
 ERIK’S TRUST; DIANE G. DENNIS,)
 an individual; DOES 1-99)
)

Defendants.

Plaintiff Laura Lynn Hammett alleges as follows:

The Parties

1. Plaintiff Laura Lynn Hammett (“Plaintiff” or “Hammett”) is an individual residing in Faulkner County, Arkansas and was at all times relevant

herein a member of Defendant Silver Strand Plaza, LLC. (“SSP” or “the Company”)

2. The shares held by Plaintiff constitute 14.1571% of the shares of SSP.

3. Separate defendant Silver Strand Plaza, LLC is a California limited liability company whose principal asset was a multi-tenant shopping center in Imperial Beach, California that was sold in January 2017. SSP resides in the Central District of California as per 28 U.S.C. §1391(c)(2). Plaintiff said SSP resided in Southern District in the FAC, but jurisdiction can be had in either Southern or Central District pursuant to §1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in Central District, and a substantial part of property that is the subject of the action is situated in Southern District. SSP headquarters is in Central District and the Silver Strand Plaza is no longer owned by SSP.

4. Plaintiff is informed and believes, and on that basis alleges, that SSP is a closely held Limited Liability Company.

5. Defendant Mary E. Sherman as an individual (“Sherman”) resides in Los Angeles County, California. Mary E. Sherman is sued under nine further separate capacities, each with liability arising from varied rights and duties.

6. Separate defendant Mary E. Sherman as manager of Silver Strand Plaza, LLC (“the Manager”) is and was the Manager of Defendant SSP, residing in Los Angeles, California.

7. Separate defendants Mary E. Sherman as Trustee of the Jenna Sherman Irrevocable Trust, Alexa Sherman Irrevocable Trust, Dana Sherman Irrevocable Trust, Broxton Dennis Irrevocable Trust, Curt Dennis Irrevocable Trust, Sean Lynn Irrevocable Trust, and Branden Lynn Irrevocable Trust (collectively, “Grandchildren Trusts”) were and are at all relevant times trustees of the member California irrevocable trusts holding a combined 29.2145 interest therein.

1 8. Separate defendant Mary E. Sherman as Co-Trustee of the J&M
2 Sherman Family Trust and separate defendant Jeffrey M. Sherman as Co-Trustee
3 of the J & M Sherman Family Trust are the Co-Trustees of a California revocable
4 trust and were at all times relevant herein a member of Defendant SSP, holding a
5 14.1571% interest therein.

6 9. Separate defendant Linda R. Kramer (“Kramer”) is an individual
7 residing in San Diego, California, and was at all relevant times herein a member of
8 SSP holding a 14.1571% interest therein. Defendant Kramer is commonly called
9 “Lynn”, the same as Plaintiff’s surname before her marriage in April 2019, which
10 may make email evidence in this case confusing.

11 10. Separate defendant Linda R. Kramer as co-trustee of the Lynn and
12 Erik’s Trust and separate defendant Erik Von Pressintin Hunsaker as Co-Trustee of
13 the Lynn and Erik’s Trust are the co-trustees of a California revocable trust.

14 11. Where there is more than one trustee, all trustees must concur in the
15 administration of the trust, but the entire body can direct one of their number to
16 transact business, which it may be inconvenient for the others to perform, and the
17 acts of the one thus authorized are the acts of all, and binding on all. (Howard Fire
18 Ins. Co. v. Chase, 72 U.S. 509, SCOTUS (1866), h.n. 6) “Generally, powers of
19 trustees of private trust are undivided and trustees cannot act separately...”(Bitker
20 v. Hotel Duluth Co., 83 F.2d 72, 8th Cir Ct. App, (1936)).

21 12. Mary E. Sherman acted on behalf of the J&M Sherman Family Trust
22 on all matters regarding SSP after Jeffrey M. Sherman signed the OA in 2009,
23 binding Jeffrey M. Sherman as Co-Trustee to all acts of his Co-Trustee. The two
24 separate defendants collectively are called “the J&M Trust Defendants”.

25 13. Linda R. Kramer as Co-Trustee of the Lynn and Erik’s Trust acted on
26 behalf of the trust on all matters regarding SSP, binding Erik Von Pressintin
27 Hunsaker as Co-Trustee to all acts of his Co-Trustee. The two defendants
28 collectively are referred to as the “L&E Trust Defendants”.

1 14. Kramer made an assignment of her share of SSP to the L&E Trust
2 Defendants that is void *ab initio* due to Article VII of the Operating agreement as
3 discussed thoroughly in the Second Cause of Action.

4 15. Separate defendant Diane G. Dennis (“Dennis”) is an individual who
5 was a member of SSP holding a 14.1571% interest therein at all relevant times
6 herein. The Member List of SSP provided by Defendant Sherman through her
7 attorney on April 5, 2019 shows an address for Defendant Dennis that is a P.O.
8 Box in Santa Fe, New Mexico. Dennis was living in Colorado when last seen by
9 Plaintiff and has a Colorado telephone number.

10 16. The aforementioned eleven separate defendants who had voting rights
11 and duties to make major decisions for SSP, called herein as J&M Trust
12 Defendants, Grandchildren Trusts, Kramer and Dennis are collectively referred to
13 as “Defendant Members”. The Operating agreement refers to the Defendant
14 Members, deceased Member Roberta Kramer and Plaintiff as “Members” and that
15 denotation is adopted here (except, of course Roberta Kramer was not included
16 after she passed away).

17 17. The Members are all siblings, except the J&M Trust Defendants.
18 Jeffrey M. Sherman, co-trustee of the J&M Sherman Family Trust, is married to
19 sibling Mary E. Sherman.

20 18. Mary E. Sherman in each and every capacity knows what each and
21 every other Mary E. Sherman capacity is thinking and doing.

22 19. To make the pleading less cumbersome, when it says Mary E.
23 Sherman in one capacity acted toward the Members or Member Defendants, such
24 as sending an email or convincing them of something, it should be understood that
25 she did not act upon Mary E. Sherman in other capacities, like sending a copy to
26 herself or convincing herself.

27 20. The Manager and Mary E. Sherman in each of her capacities used
28 only one email account in all email communications of which Plaintiff is aware.

21. Plaintiff does not know the true names, legal capacities or exact nature of the involvement of the Defendants sued herein as DOES 1-99, inclusive, and therefore sues said Defendants by such fictitious names.

22. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether specifically named or designated herein as a DOE, was the agent, representative, servant, employee, principal, assignee, co-conspirator, management company and/or representative of each of the remaining Defendants, and in doing the acts hereinafter alleged, was acting within the course and scope of said agency, employment, assignment, conspiracy, agreement, management company agreement and/or service with the approval, knowledge, authority, permission and/or consent of the remaining Defendants, and each of them.

23. Plaintiff anticipates the need to file a motion per Civil Code 1714.10 for leave to add previous or present counsel to SSP as Doe Defendants on any cause of action that might involve a civil conspiracy but cannot do so until after discovery.

24. Counsel to SSP from December 18, 2013 to May 2018 was Ellis Roy Stern (“Stern”) of the law partnership Stern and Goldberg.

25. Counsel to SSP from May 2018 to about June 2019 was Patrick C. McGarrigle (“McGarrigle”) of McGarrigle, Kenney and Zampielo, A Professional Corporation.

26. Counsel to SSP from June 2019 to this writing was Daniel Forde (“Forde”) of Hoffman and Forde, Attorneys at Law.

Jurisdiction and Venue

27. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, because this is a civil action in which Plaintiff is a citizen of and residing in Arkansas; Defendants Sherman and Kramer are California citizens and residents; Dennis is a citizen and residing in Colorado or New Mexico; The J&M Sherman

1 Family Trust is a revocable trust formed in California; The Lynn and Erik's Trust
2 is a revocable trust formed in California; The Grandchildren Trusts are irrevocable
3 trusts formed in California and SSP is a California limited liability company
4 headquartered in California and the amount in controversy exceeds \$75,000
5 exclusive of interest and costs.

6 28. Venue is proper in the Southern District of California pursuant to
7 U.S.C. § 1391(b)(2) but Plaintiff will move the Court for a transfer to Central
8 District of California, which is also proper.

9 29. Plaintiff filed against Sherman, the Manager and SSP in Central
10 District in May 2018 and then dismissed that suit without prejudice on the
11 fraudulent inducement of McGarrigle on behalf of the Manager, who promised full
12 disclosure of SSP financial records, said disclosure still incomplete to this writing.

13 30. Defendant Kramer resides in the Southern District; The L&E Trust
14 Defendants reside in the Southern District; a substantial part of the events or
15 omissions giving rise to the claim occurred, and a substantial part of property that
16 is the subject of the action is situated in the Southern District; When Plaintiff filed
17 the Complaint, one of her sons lived in the Southern District, so Plaintiff stayed
18 with him when in San Diego, but he moved to Central District in February 2020, so
19 Southern District is less convenient for Plaintiff.

20 31. Defendant SSP is subject to the Court's personal jurisdiction in the
21 Central District with respect to the civil action herein; The J&M Trust Defendants
22 reside in the Central District, the Manager reside in the Central District, the
23 Grandchildren's Trusts reside in the Central District probable Doe Defendant
24 McGarrigle resides and has his office in the Central District, probable Doe
25 Defendants Ellis Stern and his partner Alan Goldberg reside and have an office in
26 the Central District, the two probable Doe defendant law firms reside in the Central
27 District; SSP's Accountant has their office in the Central District.

28

32. Plaintiff spent her first 32 years domiciled in the Central District and about 23 years domiciled in the Southern District of California and has significant contacts in both districts. Plaintiff is unable to work in her business of rehabilitating properties due to physical injury. What should be her liquid assets to live on are being held by SSP in the Central District of California. This means Plaintiff's primary business contacts are in the Central District of California.

33. The Central District would serve the interests of justice better than the Southern District because it is more pro se friendly than the Southern District, offering pro-bono services and allowing for limited scope representation without prior approval, thereby giving the plaintiff who cannot afford full representation more equal access to the court, equal justice. Plaintiff was represented on contingency, but the defendants made it clear they would increase the costs of litigation making it not economically feasible for the plaintiff's attorney to continue on contingency.

General Allegations

34. The Amended and Restated Operating Agreement of Silver Strand Plaza, LLC entered into as of January 1, 2009 ("OA") is incorporated into this complaint as Exhibit 1.

35. The OA is a contract between the Plaintiff and each of the Member Defendants. The Plaintiff is uncertain if Mary E. Sherman signed an employment agreement, but she was the person who helped draft the OA, signed the OA in her capacity as trustee for various trust Members and acted as if she adopted the OA as her employment agreement.

36. Plaintiff has performed all terms and provisions of the OA sued upon herein and has otherwise acted in accordance with the law.

1 37. Prior to the restatement of the OA in 2009, SSP was co-managed by
2 the Members' parents, Norman and "Sandi" Kramer, Jeffrey M. Sherman and
3 Mary E. Sherman.

4 38. The OA contract is poorly written and was not amended to comply
5 with the requirement of California Revised Uniform Limited Liability Company
6 Act Section 17704.07(a) and 17702.01(5), leaving an ambiguity as to if the LLC is
7 member-managed, which is the the default, or manager-managed.

8 39. Before accepting the contract, Hammett made two suggestions. As
9 drafted, the OA gave the Manager the right to buy any property she wanted and
10 demand the Members contribute capital or jeopardize their ownership interest in
11 SSP. Changing a few words corrected this problem and the changes were made,
12 after some haughty conveyance of her disgust from Sherman.

13 40. Sherman in each of her capacities made the new version with the two
14 corrections a take-it-or-leave-it offer. Sherman insinuated that leaving it meant not
15 receiving about a half million dollars' worth of capital from Norman and Sandi
16 Kramer's trust.

17 41. Hammett signed the contract as it was because Sherman had vastly
18 more power than Hammett over Norman and Sandi Kramer, making it a contract of
19 adhesion.

20 42. Ambiguities in the contract should be resolved against the
21 "draftsmen", the Manager, Jeffrey M. Sherman as Co-Trustee of the J&M Sherman
22 Family Trust and Mary E. Sherman in all her capacities.

23 43. SSP is controlled by the Manager except what are called "Major
24 Decisions" which are controlled by the Members. (OA Article V, especially at §
25 5.5)

26 44. Regardless of member-managed or manager-managed, the Members
27 and the Manager have a fiduciary duty to one another to discharge the duties to a
28 limited liability company and the other members under the California Revised

1 Uniform Limited Liability Company Act and under the operating agreement and
2 exercise any rights consistent with the obligation of good faith and fair dealing.
3 Each Member Defendant and the Manager failed in this regard.

4 45. Section 5.5 is convoluted. The Manager assured Hammett and the
5 other Members by email on March 23, 2009 that section 5.5 would require that
6 51% of the voting Members consent to make major decisions that might harm each
7 member separately, like ordering each member to contribute capital to buy another
8 property.

9 46. Section 5.5 establishes that Major Decisions must be made by
10 “consent of Members holding at least 51% of the percentage interests.” Included,
11 but not exclusive:

12 47. Approving an Assignment. (OA § 5.5(b));

13 48. Admitting any person as a Member. (OA §5.5(e));

14 49. Doing any act in contravention of the Articles of Organization filed by
15 the Company. (OA § 5.5(f)); or

16 50. Possessing Company assets, or assigning the Company’s rights in
17 specific Company assets, for other than a Company purpose. (OA § 5.5(i)).

18 51. Unfortunately, section 5.5 is a paper tiger, even before Roberta
19 Kramer’s death. Even if Hammett could convince Dennis and Kramer to vote
20 against a misappropriation, there is no mechanism, other than a lawsuit, to make
21 the Manager comply with the duties specified in the OA. The Manager could not
22 be removed by a vote. (OA § 5.1(b)) She can only be removed by operation of law,
23 or by an order or decree of any court of competent jurisdiction, filing a bankruptcy
24 petition, or submitting a voluntary resignation.

25 52. Since Mary E. Sherman violates the contract which was accepted by
26 100% of the members, and of which the Manager controlled the drafting, it is
27 reasonable to believe she will not comply with the vote of the non-Mary Sherman
28 Members if she disagrees.

1 53. Sherman told Hammett she controlled more than 50% of the vote
2 anyhow.

3 54. Because the contract was poorly written, the actual percentages are
4 questionable. Section 5.5 does not specify if the voting rights of the deceased
5 Member are split between the remaining Members or if the percentages are
6 recalculated between the remaining Members. In the former, the J&M Trust
7 Defendants are voting over 51% of the shares, in the later, 50.52%.

8 55. The Defendant Members and Member Roberta Kramer were in
9 complete alignment with the Manager since February 2014 in respect to all votes
10 for the major decisions of SSP, and they are each adversarial toward the Plaintiff.

11 56. No Member or assignee has joined Plaintiff in her complaint or filed a
12 separate complaint regarding SSP, its Members, its counsel, its employees or its
13 Manager since Plaintiff first asked them to in 2014. Kramer has given an
14 affirmative “no” to any lawsuit against SSP, the Manager or any Member but
15 Hammett.

16 57. Plaintiff begged and pleaded, told the Defendant Members she had a
17 Hastings and Stanford educated attorney who would help correct the Manager’s
18 misappropriations and breaches of fiduciary duty on contingency, and filed an
19 action through said counsel against just Mary Sherman as an individual and
20 manager of SSP, and SSP to which none of the Defendant Members or assignees
21 joined.

22 58. The Plaintiff therefore chooses to prosecute her claims as direct injury
23 because she is the sole minority Member who does not have dirty hands, who did
24 not breach her fiduciary duty to the other Members, who acted in good faith at all
25 times and who did not receive company assets in cash or in kind for other than
26 company purposes and who had distributions that should have been made withheld
27 unjustly and without her consent.

28

59. Meaningful regulation of the Manager’s fiduciary duties and the Member Defendant’s duty of loyalty to the Plaintiff Member is possible only by Court intervention and the Defendant Members refuse to join in an action.

60. The OA § 5.8 limits the liability of Members drastically, but not for any act or failure to act that constitutes fraud or negligence.

61. Furthermore, the OA shall not eliminate or limit a member or manager's liability to Members for money damages for (1) Breach of the duty of loyalty;

62. (2) A financial benefit received by the member or manager to which the member or manager is not entitled; or

63. (3) Intentional infliction of harm on a member. (CA Corp § 17701.10(g))

64. The Defendant Member’s refusal to dissolve the Company and receive their equal shares of the capital remaining speaks to their intent to keep Plaintiff’s share for themselves and their co-conspirators if they can avoid liability for their transgressions successfully.

65. Despite Hammett asking numerous times for votes pursuant to OA 5.5 (f) and (i), none after February 2014 was held.

66. Dennis and Kramer refused to use a reasonable standard of care in their duty to make Major Decisions.

67. The Members were not a “Board of Directors” of the company, and therefore not subject to the “business judgment rule” codified in California Corporations Code §309.

68. According to Black’s Law Dictionary, the Board of Directors is “The governing body of a corporation, partnership, association, or other organization, elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions. — Often shortened (informally) to board. — Also termed board of governors; board of managers;

1 board of trustees (esp. in charitable and educational organizations); executive
2 board.”

3 69. The Members were not elected.

4 70. The Members did not establish policy.

5 71. The Members did not elect or appoint officers and committees. The
6 manager appointed officers. (OA §5.4)

7 72. The Members had a distinct and limited management function
8 specified in OA section 5.5. The most pertinent management function was
9 oversight. If the Manager abused her position, each Member must approve or
10 oppose the contravention.

11 73. Federal and state courts have generally applied the law of corporations
12 to LLCs for “business judgment rule”. *Montgomery v. eTrepid Technologies,*
13 *LLC, 548 F.Supp.2d 1175, 1179.*

14 74. SSP being analogous to a corporation, the Members were shareholders
15 with a limited but important management function. They were not directors or even
16 officers. Plaintiff could find no case law concerning the application of the business
17 judgment rule to shareholders, but there is case law that supports the denial of
18 application of the business judgment rule to corporate officers.

19 75. Even if offered the protection of the presumptions of the Business
20 Judgement Rule, the Defendant Members failed, as discussed further below in the
21 enumerated causes of action. The Manager and Member Defendants took action
22 without reasonable inquiry and with improper motives. When asked to make
23 “Major Decisions” the Member Defendants did not conduct a good faith and
24 reasonable investigation and usually refused to vote either way.

25 76. Generally, acting in bad faith, the Member Defendants and Roberta
26 Kramer engaged in self-dealing and in conflicted and self-interested relationships
27 with McGarrigle, Stern and their firms; allowed the misappropriation and waste of
28 assets of SSP by engaging in bad-faith voting schemes which were not intended to

benefit SSP and were aimed at harming the Plaintiff; failed to abide by the terms of the Operating Agreement; and engaged in other wrongful acts and conduct which were intended to harm both SSP and Hammett, knowing that Hammett was the only member who would not be reimbursed for SSP losses by Sandi Kramer from the Members' father's by-pass trust or directly from the SSP money misappropriated by the Manager.

77. The rationale for stripping Hammett of her fair share of SSP was that Hammett was given her shares "for breathing"; Hammett was the sole Member who refused to sign a rescission deed on other property Sandi Kramer gifted the members from Norman Kramer's bypass trust (called "Woodman and Magnolia"); Hammett was an "ungrateful creature"; and Dennis and Mary E. Sherman in all her capacities wrote falsely that Hammett is a "criminal" who evaded taxes, got fired and had an illegal pornography business; and who had a judgment against her for child support which purportedly made her a criminal.

78. But a gift is not revocable, and Hammett was under no legal obligation to rescind the deed to Woodman and Magnolia.

79. Fiduciary duties of loyalty and the covenant of good faith and fair dealing must be extended to even "ungrateful creatures" and someone who commits an unrelated crime.

80. Hammett is not a criminal and has never been charged with any crime. Writing that Hammett was a criminal was malicious and defamatory and shows that Dennis and Mary E. Sherman in all her capacities were not acting in good faith.

81. A child support judgment against a person does not make the person a criminal.

82. Regardless of their rationalizations, Hammett's siblings were just greedy and mean.

83. This Second Amended Complaint is written fifteen months after the First Amended Complaint and Plaintiff has discovered that the breaches of fiduciary duty were even more egregious in 2012 and 2013 than Plaintiff thought when she filed the FAC.

84. The exorbitant management fees of 11.45% began in 2012 instead of 2014.

85. Also, the meaning of “MSFP” in the MSFP “loan” that neither the Manager nor SSP Counsel explained to Hammett was disclosed briefly on a K-1 for 2013 produced after the meeting of February 10, 2014 as discussed below. It represents a passthrough entity called “Sherman Family Partnership”. Plaintiff found no record of “Sherman Family Partnership” on the Secretary of State website business search. The Manager offered no explanation upon Plaintiff’s inquiry sent to all the Member Defendants on July 22, 2020.

86. The Member Defendants should have received the same K-1 information that Plaintiff received for 2013, but no inquiry or investigation was made by them that Plaintiff is aware of. (Of course the J&M Trust Defendants and the Grandchildren’s Trusts knew what the MSFP loan and Sherman Family Partnership were all along.)

87. The Defendants act as if (and make statements through counsel) that the OA is null and void because Plaintiff filed a suit based on their violations of the OA and the duties that arose from it.

88. The OA is not null and void. The Manager and Members are still bound by the same rights and duties. They continue to violate them.

89. Again, applying the laws of corporations, it would be absurd if Walmart said, “we had a lawsuit filed against us, so we are suspending all annual reports to shareholders.”

90. The Member Defendants have absolutely known about the Manager’s overpayment of management fees and other misappropriations since no later than

October, 2019 when they received the exhibits Plaintiff filed in this case and still refuse to join in an action to remove the Manager by court action. They continue to breach their fiduciary duties and the implied covenant of good faith and fair dealing.

First Cause of Action

For Fraud

91. Plaintiff alleges as its First Cause of Action against The Manager, the J&M Trust Defendants, the Grandchildren's Trusts (collectively "the Fraud Defendants" in this section) and Does 1-99 for fraud:

92. To avoid redundancy, the Plaintiff refers to the allegations contained throughout the Complaint and incorporates them as though set forth at length herein.

93. The Manager has an obligation to Hammett as a Member of SSP to provide access to accurate books and records of the company and to make distributions from SSP with a 14.1571 percent of each total distribution made to Hammett. This percentage will be called "Hammett's Fair Share".

94. The J&M Trust Defendants and Grandchildren's Trusts have an obligation of acting in good faith and fair dealing. They shall not conceal acts of willful misconduct by the Manager that they know about. When discussing the Company finances, for example when discussing fair market value for a buyout in lieu of dissolution, they shall not misrepresent what they know the accurate figures to be.

95. The Fraud Defendants made numerous misrepresentations and concealments of the truth to Hammett. A sampling of three specific, discrete misrepresentations are listed herein.

1 96. The Fraud Defendants knew the falsity of what they misrepresented
2 and had scienter of the concealments.

3 97. The Fraud Defendants intended to defraud Hammett.

4 98. Hammett justifiably relied on the misinformation from the Fraud
5 Defendants and was damaged by that reliance.

6 99. First, the Manager told Plaintiff that she was paying reasonable
7 management fees during the meeting of February 10, 2014.

8 100. The Manager concealed the overpayment of management fees after
9 the February 2014 meeting by denying Hammett her rightful access to the
10 Company financials pursuant to CA Corp § 17704.10(e) and OA Article IV.

11 101. The Manager paid Sherman and a professional manager combined
12 about 11.45% management fees from 2012 through 2016 inclusive.

13 102. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
14 and the Grandchildren's Trusts knew the Manager was paying almost three times
15 what they knew to be a reasonable management fee in contravention to OA § 6.1
16 which says the Manager may receive "reasonable compensation".

17 103. The J&M Trust Defendants and the Grandchildren's Trusts concealed
18 the overpayment of management fees from Hammett. In the February 10, 2014
19 meeting, the J&M Trust Defendants and the Grandchildren's Trusts contended that
20 the management fees being paid were reasonable.

21 104. Second, the Manager told Hammett the rents collected on which NOI
22 and thus distributions were based were at market rate except where long term
23 tenants operated on old leases.

24 105. The Manager sent an email on December 3, 2013 that said in part:

25
26 "In 2014, we will have at least 4 suites unleased, and 6 other leases
27 expiring.//
28

1 Therefore, we are unable to make further distributions until we know our
2 true income v. expenses.”

3
4 106. Plaintiff responded that evening, in part:

5
6 “This may be a wonderful opportunity. Without seeing the spreadsheets, I
7 cannot say for sure, but it seems from my experience that the rents were
8 below market rate. (We had good distributions, but I attribute that to the fact
9 that Dad and Mom paid the property off and we had no mortgage expense.)”

10
11 107. In the meeting of February, 2014, the Manager maintained her
12 position that all rents in the area were as low as she reported to Hammett that SSP
13 was collecting.

14 108. On the Offering Memorandum page 34 written in 2016 there were 27
15 tenants listed. Eleven of those leases were commenced after February 2014.

16 109. One tenant of particular note was Partners Health and Wellness. Its
17 lease was commenced on April 1, 2014. It had 8,154 square feet. (The average
18 space was, not considering the three roof cell site tenants, 1,860 square feet.) The
19 gym paid seventy cents per square foot (\$.70/sq. ft.) The average rent in Silver
20 Strand Plaza was \$1.22/sq. ft. The gym was owned by Norman and Sandi Kramer
21 for many years prior to 2014. Plaintiff does not know who owned the gym in April
22 2014. The Secretary of State Business Entity Listing shows the earliest LLC
23 Registration for Partners Health and Wellness to be April 27, 2020.

24 110. A second tenant of note is IB Beautiful who had 929 square feet
25 commencing on February 1, 2016 for twelve cents per square foot. (\$.12/sq.ft.)
26 There is no SOS registration for an LLC or partnership called “IB Beautiful”.

27 111. On Offering Memorandum page 18, San Diego retail market rental
28 rates are quoted as being \$2.02 per square foot per month.

1 112. Clearly the Manager was reporting collecting rents that were
2 significantly lower than market rents. (And then paying almost triple the
3 reasonable percentage of that to “management”, with \$65,000 in “bonuses” to
4 Sherman after the sale of the property.)

5 113. The J&M Trust Defendants and Grandchildren’s Trusts knew the
6 Manager was not bringing in market rates of rent on the books and did not disclose
7 this information to Hammett. When Hammett specifically asked about the rents,
8 the Fraud Defendants told her the Manager was not underperforming.

9 114. Third, In June 2015 Hammett offered to sell her shares of SSP to the
10 other Members. Mary E. Sherman in each capacity understood that to mean
11 Hammett wanted a dissolution and used that language in an email to the other
12 Members. (Hammett specifically wrote that she wanted a “dissolution” in 2013 and
13 2014.)

14 115. Stern negotiated on behalf of the other Members, disregarding the
15 intent of a fair dissolution as per CA Corp 17707.03(c)(1): “In any suit for judicial
16 dissolution, the other members may avoid the dissolution of the limited liability
17 company by purchasing for cash the membership interests owned by the members
18 so initiating the proceeding, the ‘moving parties,’ at their fair market value.”

19 116. Stern used different numbers than those given to arms-length buyers
20 in 2016 when giving his opinion of the value of Hammett’s shares of SSP. Stern’s
21 stated opinion of value was approximately one sixth (1/6th) their actual value.
22 Stern was authorized to give this opinion by the Manager and stated that the
23 Manager concurred.

24 117. The offer to purchase for \$218,000 was made on behalf of all the
25 Members but Hammett, including the J&M Trust Defendants and the
26 Grandchildren’s Trust. Hammett was not included in any discussion or vote of
27 what SSP should offer for Hammett’s shares as would be required for a purchase
28 by SSP.

1 118. In 2016 the Manager caused an Offering Memorandum to be printed
2 which said a reasonable rate for management fees was 4%.

3 119. The Fraud Defendants knew the management fees paid were not
4 reasonable.

5 120. In 2016 the Manager advertised the property as having income
6 growth potential and the buyer specializes in distressed properties as per their
7 website.

8 121. The Fraud Defendants knew the Manager was not bringing in market
9 rates of rent on the books and did not disclose this information to Hammett.

10 122. Even though a year and a half passed between the lowball purchase
11 offer and going into escrow, the real estate market at that time did not rise six-fold.
12 It did not double. The Fraud Defendants knew the information given to Hammett
13 to justify a price of \$218,000 was false.

14 123. The intention was to induce Hammett to accept 1/6th the value of her
15 shares in SSP.

16 124. The intention of understating the NOI and the management fee
17 percentage was to pay Hammett less than her fair share of the distributions,
18 without having Hammett file a lawsuit similar to this one.

19 125. Hammett did not agree to the \$218,000, but she was led to believe the
20 value was less than \$500,000. No reasonable person would offer 1/6th the value of
21 property, especially not a licensed attorney who is supposed to represent the
22 Company and comply with the statute on dissolutions.

23 126. Because the other Members agreed with Mary E. Sherman about the
24 income and the management fees, and they were intelligent women with an
25 implied covenant of good faith and fair dealing, Plaintiff was gaslighted into a
26 reasonable belief that Mary E. Sherman was being truthful.

27 127. All the Members knew in February 2014 that Plaintiff was under
28 extreme stressors for several years, mostly involving litigation, and had recently

1 been hospitalized for anxiety and suicidal ideation. Plaintiff could be reasonably
2 expected to stop pursuing an accounting and litigation based upon the
3 misrepresentations of Mary E. Sherman in all her capacities with the voting
4 concurrence of Dennis, Kramer and Roberta Kramer.

5 128. The Manager, J&M Trust Defendants and Grandchildren's Trusts
6 intended to defraud Hammett. Plaintiff had a justifiable reliance on the fraudulent
7 statements and concealments to believe there was no reason for an accounting or
8 legal action to remove Sherman from her position as manager in February 2014.

9 129. The Fraud Defendants successfully delayed court intervention and
10 justice delayed is justice denied.

11 130. Hammett was fraudulently induced to agree to a bottom sales price of
12 \$7.9 million for the property in 2016 based on the numbers she was given by the
13 Manager and Stern.

14 131. Perhaps because Hammett referred buyers to the property, the
15 property sold for closer to its true value, about \$10.2 million. This was at the low
16 end of the broker's price opinion obtained by the manager but not shared with
17 Hammett until after the sale. The Manager said there were three buyers bidding at
18 the same time. Still, the ultimate buyer specializes in purchasing distressed
19 properties "with upside potential" and the property was advertised as having below
20 market rents.

21 132. The Manager knew that Stern, paid for by SSP, was giving false
22 information to Hammett and the Manager encouraged the fraud to induce Hammett
23 to refrain from filing a lawsuit for a receiver and dissolution sooner.

24 133. Because Stern was presented to Hammett as representing SSP and not
25 the other Members, Hammett could and did justifiably rely on the information
26 presented by Stern.

27

28

1 134. Emails between the Manager and the Member Defendants that were
2 not copied to Hammett show that Stern was in fact working for the interests of the
3 Member Defendants, not the Company.

4 135. Distributions made by the Manager from 2012 to 2016 inclusive
5 reflected the lower NOI. This caused Hammett's income to be lower than it should
6 have been at a time when Hammett was told by her therapist to "take a sabbatical".

7 136. The K-1 given to Hammett for 2016 reports Hammett's 14.1571% of
8 "Net income from rental real estate activities" as \$70,696, which equates to
9 \$499,368 for the entire company. The Offering Memorandum the Manager caused
10 to be prepared in 2016 has a Net Operating Income of \$649,213 on page 32. The
11 Manager was underperforming by about \$150,000 per year, about 30%.
12 Distributions made to Hammett based on NOI were about \$20,000 per year lower
13 than they should have been.

14 137. About thirty years ago, Jeffrey M. Sherman told Hammett that he and
15 his brothers set up shell companies with the intent of looting them and then filing
16 bankruptcy. (This is when Hammett decided she wanted nothing to do with Jeffrey
17 M. Sherman.)

18 138. Recovering any assets found through an accounting to rightly belong
19 to Hammett will probably be much more difficult now than if the Fraud
20 Defendants did not fraudulently conceal the actual NOI that was or should have
21 been earned from February 2012 to February 2017.

22 139. Finding the true owner of Partners Health and Wellness back in 2014
23 may be impossible now that it was taken over by a new LLC in 2020.

24 140. Any of Hammett's Fair Share of the profits earned by the Sherman
25 Family Partnership will be difficult to recover.

26 141. The motivation for defrauding Hammett was greed, oppression and
27 callous entitlement. Mary E. Sherman and Jeffrey M. Sherman in all their
28 capacities wanted to keep more money for themselves and those they deemed

1 worthy. They wanted vengeance for Hammett's refusal to rescind other property to
2 the Norman and Sandi Kramer trust. Sherman had a history of writing vile and gut
3 wrenching commentary about Hammett and Hammett's children. The Fraud
4 Defendants were driven by this animus.

5 142. Rather than coming clean in 2014, when Hammett first suspected the
6 Manager was not making reasonable distributions to Hammett, the Manager
7 intended to defraud Hammett so Hammett would not pursue a threatened lawsuit.
8 The Manager capitalized on Hammett's poor emotional health for which Sherman
9 was in large part responsible. The Manager was successful until after the sale of
10 Silver Strand Plaza when an attorney took up the case for Hammett.

11
12 **Second Cause of Action**
13 **For Fraudulent Conveyance**
14

15 143. Plaintiff alleges as its second cause of action for fraudulent
16 conveyance against Linda R. Kramer as an individual, Linda R. Kramer and Erik
17 Von Pressintin Hunsaker as Co-Trustees of the Lynn & Erik's Trust, the Manager
18 and Does 1-99:

19 144. To avoid redundancy, the Plaintiff refers to the allegations contained
20 throughout the Complaint and incorporates them as though set forth at length
21 herein.

22 145. The OA Article VII § 7.2(a) states: "Except in case of permitted
23 assignment (as defined in Section 7.2(b)), no Member shall make an Assignment
24 of all or part of its interest in the Company."

25 146. OA Article VII, Section 7.2(b) defines a "Permitted Assignment" as
26 an assignment only after the death of any Member.
27
28

1 147. Linda R. Kramer was not deceased at the time the original complaint
2 in these proceedings was filed, and to the best of Hammett’s knowledge and belief
3 Linda R. Kramer is not deceased as of this writing.

4 148. “An Assignee may become a Member only in the manner provided in
5 [the OA].” Id. § 7.1(b)

6 149. The L&E Trust Defendants are listed as a Member on the list
7 generated by the Manager and sent by email by McGarrigle to Hammett on April
8 5, 2019.

9 150. The Assignment of Kramer’s interest to the L&E Trust Defendants is
10 void ab initio. (id. §7.3)

11 151. The Manager made distributions to the L&E Trust Defendants in
12 violation of the operating agreement with the full knowledge and consent of
13 Kramer, the L&E Trust Defendants, the J&M Trust Defendants, and the
14 Grandchildren’s Trusts.

15 152. The Manager listed the L&E Trust Defendants with the other
16 Members, while listing Roberta Kramer’s assignee in a separate section for
17 “permitted assignees”.

18 153. OA §7.6 restricts admission of Members to Permitted Assignees who
19 have been approved by vote as per OA §5.5. Plaintiff was not informed of any vote
20 by the Major Decision makers regarding the assignment to the L&E Trust
21 Defendants.

22 154. The void assignment was made after Plaintiff had threatened a lawsuit
23 against Defendant Kramer in 2014 and appears to be an attempt to transfer assets
24 to a trust in order to shield Kramer from Plaintiff’s claim in violation of the state’s
25 fraudulent conveyance act, CA CIVIL § 3439.04 (b)(4).

26 155. The effect of the conveyance is that it will shield recapture of
27 damages from Kramer by Hammett upon prevailing on this litigation which was
28

1 threatened as early as January 2014 and the need for Hammett to file litigation in
2 order to nullify the void assignment.

3 156. The assignment was made with actual intent to hinder, delay, or
4 defraud Hammett upon prevailing on this action:

5 157. Without receiving a reasonably equivalent value in exchange for the
6 transfer or obligation; and

7 158. Linda R. Kramer, an individual reasonably should have believed that
8 she would incur a debt beyond her ability to pay as it is awarded in this case. (This
9 is a violation of California Civil Code Section 3439.04(a)(2)(B) whereas the
10 scheme Jeffrey Sherman told Plaintiff he used as described in paragraph 37 is a
11 violation of California Civil Code Section 3439.04(a)(2)(A).)

12 159. The Manager allowed for the assignment in violation of the OA and
13 made distributions to the L&E Trust Defendants of close to \$1,500,000 to the best
14 of Plaintiff's knowledge and belief.

15 160. The Company records Hammett was given by Stern in late 2013 did
16 not show the L&E Trust Defendants as a Member of SSP.

17 161. L&E Trust Defendants had no contractual obligation or fiduciary duty
18 to Hammett as per the OA because the assignment was void, so barring a
19 successful suit for fraudulent transfer or adoption of the trust as an alter ego,
20 Hammett will not be able to recover money given to the L&E Trust Defendants.

21 162. Kramer did not respond to the Complaint timely. Her intent was to
22 induce Hammett to write Kramer out of the lawsuit by adopting the language of
23 attorney Keith Cochran, i.e. "two defendants" and leaving out "Linda R. Kramer,
24 as an individual".

25 163. The clerk made no docket entry for Linda R. Kramer as an individual
26 until Hammett called him and made a request for correction on August 1, 2019.

27 164. On request made by a private phone call of the L&E Trust
28 Defendant's counsel, the clerk altered the docket to show three defendants

1 including Kramer had filed a motion to dismiss on July 30, 2019. After Hammett
2 told L&E Trust Defendant's Counsel that she had printed the docket with the
3 original entry, it was changed back.

4 165. The Court admonished Plaintiff in the Order Granting Defendant's
5 Motions to Dismiss dated March 23, 2020, ECF No. 111 at f.n. 13:

6
7 "The Court cautions Plaintiff against impugning the Clerk or other staff of
8 this Court or District based on gratuitous speculation regarding relationships
9 of favoritism toward litigants or their counsel. See, e.g., ECF No. 85 at 2, 4.
10 Such accusations should not be made lightly and, absent evidence supporting
11 such claims, the Court will not countenance them."

12
13 166. This statement tends to chill the Plaintiff's Constitutional right found
14 in the First Amendment to petition for the redress of grievances.

15 167. This is a verified complaint and Plaintiff's testimony is evidence.
16 Besides, there is also documentary evidence supporting the claim.

17 168. Plaintiff did not fall for the trick, so Kramer pretended that L&E Trust
18 Defendant's counsel meant "Linda R. Kramer, as an individual and Linda R.
19 Kramer and Erik Von Pressentin Hunsaker as Co-Trustees of the Lynn and Erik's
20 Trust" when he wrote "Linda R. Kramer and Erik Von Pressentin Hunsaker as Co-
21 Trustees of the Lynn and Erik's Trust" on the face of the Motion to Dismiss filed
22 July 30, 2019, ECF No. 19.

23 169. If Hammett prevails against Linda R. Kramer an individual, Linda R.
24 Kramer an individual will undoubtedly insist she is a separate and distinct person
25 than Linda R. Kramer as co-trustee of the Lynn & Erik's Trust. Therefore, the
26 Court should bind the L&E Trust Defendants to disgorge themselves of assets
27 intended for Linda R. Kramer as an individual.
28

170. The assignment was made with fraud, malice and oppression and therefore warrants the award of punitive damages.

Third Cause of Action

Dissolution of SSP

171. Plaintiff alleges as its Third Cause of Action against the Member Defendants, SSP and the Manager for dissolution of the Company:

172. Plaintiff refers to the allegations contained in all other sections of this Complaint and incorporates them as though set forth at length herein.

173. Pursuant to California law, Plaintiff is entitled to the dissolution of SSP for the following reasons:

174. Those in control of SSP have been guilty of or have knowingly countenanced mismanagement, abuse of authority and persistent unfairness toward Plaintiff;

175. SSP's property is being misapplied or wasted by those in control of SSP;

176. Disagreements and disputes have arisen between Plaintiff and the Defendant Members regarding matters of mismanagement of SSP by the Manager which is countenanced by the Defendant Members and the Defendant Members are making irrational decisions for the Major Decisions they must make pursuant to the OA;

177. The Manager decided, without including Plaintiff in discussions or a vote, to hire counsel for the specific purpose of representing SSP against Plaintiff in particular;

178. Counsel for SSP simultaneously represented the interests of the other defendants, paid for by SSP, and adverse to the interests of SSP and Plaintiff as an individual;

1 179. The Manager has on several occasions misappropriated SSP's funds
2 for her own use, without Plaintiff's knowledge, approval, or consent;

3 180. The manager bought computers with SSP funds for over \$2,800 after
4 the Company's primary property was sold and is believed to have given the asset
5 to someone other than SSP for personal use;

6 181. The Manager has on several occasions converted Plaintiff's assets and
7 threatened to convert Plaintiff's assets alone, not taking equally from the general
8 fund; and

9 182. SSP's primary asset was sold in January 2017.

10 183. Though SSP's counsel and the Manager refuse to provide Plaintiff
11 with business records or an accounting, the amount of capital Plaintiff supposedly
12 has in capital as shown on K-1s from 2017 is 78,489. This amount is being
13 diminished, though the sole authorized business of the Company has ceased.

14 184. Each member contributed capital at the formation of SSP in direct
15 proportion to the amount of stock owned – in other words, receiving one unit for
16 one dollar invested. Therefore, there is a direct correlation between Plaintiff's
17 capital investment and Plaintiff's membership interest.

18 185. No Member other than Plaintiff has asked a Court to intervene against
19 the Manager and the Member Defendants are in complete alignment.

20 186. Plaintiff desires the sale of all or substantially all of the assets of SSP
21 and distributions made according to the percentage owned by each shareholder;

22 187. SSP has 35 or fewer shareholders and its liquidation is reasonably
23 necessary for the protection of the rights and interests of Plaintiff in that Plaintiff
24 desires but is unable to sell her interest in SSP to third parties because it is not
25 allowed by the OA and the remaining members are unwilling to buy out Plaintiff's
26 shares.

188. The Member's conduct has prejudicially affected the carrying on of SSP's business, and it has become impossible to carry on the business to Plaintiff and the Members mutual advantage.

189. Because the primary asset of SSP was sold, there are only two reasons to continue the business.

190. One reason is to insulate the Defendants from being forced to disgorge themselves of misappropriated assets.

191. The second reason is to keep control of Plaintiff's capital so she cannot spend the capital on her own needs.

192. Pursuant to the OA, Plaintiff is entitled to the dissolution of SSP for the following reason:

193. "The Company shall be dissolved upon the first to occur of the following events: The sale of all or substantially all of the Company assets; [provision for a sale on an installment basis]" OA Article VIII § 8.2(a)

194. "The Company's primary activities will be limited to owning, leasing and managing the retail shopping center known as Silver Strand Plaza, which is located at [address]." OA §1.4

195. Silver Strand Plaza was sold in January 2017.

196. The sale of Silver Strand Plaza should have triggered the dissolution of SSP and remaining capital should have been distributed to Hammett based on her percentage of shares.

197. The Manager failed to effect the dissolution, no other Defendant Member voted against the contravention of the OA and no Defendant Member accepted Hammett's offer to sell her share to a Member for the value of her capital. The OA strictly limits the persons to whom shares may be sold.

Fourth Cause of Action
Appointment of a Receiver

1
2 198. Plaintiff alleges as its Fourth Cause of Action against All Defendants
3 for Appointment of a Receiver.

4 199. Plaintiff refers to the allegations contained in all other sections of this
5 Complaint and incorporates them as though set forth at length herein.

6 200. Pursuant to California law, Plaintiff is entitled to the dissolution of
7 SSP for the following reasons:

8 201. Those in control of SSP have been guilty of or have knowingly
9 countenanced mismanagement, abuse of authority and persistent unfairness toward
10 Plaintiff;

11 202. SSP's property is being misapplied or wasted by those in control of
12 SSP;

13 203. Disagreements and disputes have arisen between Plaintiff and the
14 Members regarding matters of mismanagement of SSP by the Manager which is
15 countenanced by the Members and the Members are making irrational decisions
16 for the major management decisions they must make pursuant to the OA;

17 204. The Members decided, without including Plaintiff in discussions or a
18 vote, to hire counsel for the specific purpose of representing SSP against Plaintiff
19 only;

20 205. Counsel for SSP simultaneously represented the interests of the other
21 defendants, paid for by SSP, and adverse to the interests of SSP;

22 206. The Manager has on several occasions misappropriated SSP's funds
23 for her own use, without Plaintiff's knowledge, approval, or consent;

24 207. The Manager bought unneeded computers for over \$2,800 after Silver
25 Strand Plaza was sold and is believed to have given that Company property to an
26 unauthorized recipient for personal use;

27 208. The Manager has on several occasions converted Plaintiff's funds and
28 threatened to convert more of Plaintiff's funds; and

1 209. SSP's primary asset was sold in January 2017.

2 210. Though SSP's counsel and the Manager refuse to provide Plaintiff
3 with business records or an accounting, the amount of capital Plaintiff supposedly
4 has in capital as shown on K-1s from 2017 is \$78,489.

5 211. Plaintiff desires the sale of all or substantially all of the assets of SSP
6 and distributions made according to the percentage owned by each shareholder;

7 212. SSP has 35 or fewer shareholders and its liquidation is reasonably
8 necessary for the protection of the rights and interests of Plaintiff in that Plaintiff
9 desires but is unable to sell her interest in SSP to third parties because it is not
10 allowed by the OA and the remaining members are unwilling to buy out Plaintiff's
11 shares.

12 213. The Defendant Member's conduct has prejudicially affected the
13 carrying on of SSP's business, and it has become impossible to carry on the
14 business to the Members' mutual advantage.

15 214. Because the primary asset of SSP was sold, there are only two reasons
16 to continue the business.

17 215. One reason is to insulate the Defendants from being forced to
18 disgorge themselves of misappropriated assets.

19 216. The second reason is to keep control of Plaintiff's capital so she
20 cannot spend the capital on her own needs.

21 217. Unless a receiver is appointed by the Court to take possession of,
22 collect, care for, and manage SSP assets and property, such property and assets are
23 in danger of being lost, removed, or materially destroyed in that the Manager is in
24 control of SSP's business, and is applying SSP's funds for her own use or the use
25 of the other defendants, in excess of their interest in SSP business and refuses to
26 provide Plaintiff, despite Plaintiff's requests therefor, with the basic financial
27 records of SSP and an accounting of income and expenses of SSP.

28

1 218. The Manager retained counsel to represent SSP, the Manager and
2 each Family Defendant simultaneously from January 2014 through May 2018
3 which is a conflict of interest.

4 219. Daniel Forde, Counsel retained to represent SSP since about May
5 2019 shares an office and works on cases with counsel retained to represent Mary
6 E. Sherman in each of her capacities and Jeffrey M. Sherman as co-trustee of the
7 J&M Sherman Family Trust. This reeks of collusion. Especially considering Forde
8 was sued for legal malpractice in 2017.

9 220. In that case, the plaintiff claimed “Forde Defendants had conflicts of
10 interest in connection with their representation and advice to the Lukes Plaintiffs as
11 well as to John and Samantha Vorzimer, in connection with their handling of the
12 bankruptcy filed by Barbara Lynn Behm [citation omitted].” *Lukes v. Gallo, 2017*
13 *WL 9472131 (Cal. Super.) ¶15 (S).*

14 221. Hammett informed the Member Defendants of this potential conflict
15 and none objected pursuant to their duty found in OA 5.5(f) to this act in
16 contravention of OA 5.3, that the Manager “discharge her duties in good faith, with
17 the care that an ordinarily prudent person in a like position would exercise under
18 similar circumstances, and in a manner that the Manager reasonably believes to be
19 in the best interests of the Company.”

20 222. There is a danger that the Manager will continue to remove or
21 improperly distribute the assets of SSP. The Manager has previously unilaterally
22 removed funds from the accounts of SSP for her own use or the use of the other
23 defendants and has the ability to repeat such improper distributions.

24 223. A receiver is necessary to safeguard the Plaintiff’s interests pending
25 the resolution of this action.

26 224. Plaintiff has no plain, speedy or adequate remedy at law, and will
27 suffer irreparable damage, injury, and harm, unless a receiver is immediately
28

1 appointed to manage the collection of accounts receivable, to pay creditors, and
2 sell or divide the corporate assets.

3 225. The receiver should appoint an attorney to represent SSP who is not
4 simultaneously representing the other Defendants or sharing an office with another
5 defendant's attorney.

6
7 **Fifth Cause of Action**
8 **for an Accounting**
9

10 226. Plaintiff alleges as its Fifth Cause of Action against All Defendants
11 for an Accounting:

12 227. Plaintiff refers to the allegations contained in all paragraphs of this
13 Complaint and incorporates them as though set forth at length herein.

14 228. The Manager is in possession of the Company's books, assets and
15 accounts.

16 229. Despite Plaintiff's demands for copies of financial statements, bank
17 statements, an accounting of accounts payable and accounts receivable, the
18 manager has failed and refused to provide the same. The amount of Company
19 assets and liabilities is unknown to Plaintiff and cannot be assessed without an
20 accounting of profits and losses that occurred during the operation of the
21 Company's business.

22 230. Plaintiff is entitled to a true and correct accounting from the Manager
23 of income, and profits collected from the Company.

24 231. Company Counsel Forde wrote to Plaintiff that her right to review
25 company records ended when she filed suit, basing his opinion on a case where the
26 entire record had already been produced in discovery. In this case Plaintiff
27 provided the manager with a comprehensive list of documentation that is missing
28 and the documentation was never provided.

232. In particular, but not limited to, there was property known as a “commercial rental” and “Sherman Family Partnership” involving a “MSFP loan”, which Plaintiff was required to pay income tax on, but which the Manager and SSP Counsel provided no other information regarding;

233. There were no bank statements for one account, “CBB”, that was just presented by ledger, and even those ledgers were not complete.

234. Information from 1099s was given only by ledger, not copies of the actual statement, and no 1096 or other reporting was offered;

235. The \$65,000 paid to Sherman in 2017 as “bonuses” were not accounted for in the 1099 tax documents;

236. There were no cancelled checks or other source documents;

237. The Defendant Members refuse to vote against the secreting of company financial records which is in contravention of the OA 5.5(f);

238. Plaintiff is entitled to a true and correct accounting from the Manager and SSP of the liabilities incurred in connection with the Company pursuant to OA Article IV;

239. Plaintiff is entitled to a true and correct accounting from the Manager and SSP of the dividends, distributions, or other manner of disbursements of the net profits of the Company;

240. Despite demand therefore, the Manager and SSP have refused (i) to render a true and correct account for the income, and profits collected by the Company for the years 2012 to present, (ii) to render a true and correct account for the liabilities incurred by the Company for said period of time, (iii) to render a true and correct account of the dividends, distributions, or other manner of disbursements of the net profits of the Company for said period of time, (iv) to pay over to Plaintiff her capital retained after the sale of Silver Strand Plaza in an amount not less than \$7.00, and (vi) to pay over to Plaintiff her share of the net profits of the Company.

241. On information and belief Plaintiff is entitled to a sum of money exceeding \$100,000.00, which will be shown by a true and full accounting to be Plaintiff's share of the capital and net profits from the Company to the present.

242. Plaintiff has no plain, adequate, or speedy remedy at law.

243. An accounting is necessary to distribute the Company assets upon dissolution of the Company.

Sixth Cause of Action
for Constructive Trust

244. Plaintiff alleges as to its Sixth Cause of Action against All Defendants for imposition of a constructive trust:

245. Plaintiff refers to the allegations contained in the other sections of this Complaint and incorporates them as though set forth at length herein.

246. By virtue of her ownership of fourteen point one five seven one percent (14.1571%) of the issued and outstanding shares of SSP, Plaintiff has and holds a beneficial interest in the Company's property and all of the income and profits collected by and through SSP.

247. By virtue of their conversion, fraudulent deceit, breach of fiduciary duty, and other wrongful acts described herein, Defendants have unjustly enriched themselves to Plaintiff's damage and detriment by wrongfully collecting and holding for their exclusive use and benefit the Company's property and income and profits collected by and through SSP.

248. Further, by virtue of the Defendant Member's combined majority eighty-three and a half percent (83.5%) of the issued and outstanding voting shares of SSP; and by virtue of the Manager's exclusive possession, custody, and control of SSP the Member Defendants and the Manager held a position of confidence as constructive trustee for the benefit of Plaintiff, and breached their confidence by

undue influence in that they have taken oppressive and unfair advantage of Plaintiff's minority shareholder status and inability to exercise her rights to access to financial records of the Company.

249. Plaintiff is entitled to appointment of a receiver to take possession, custody, and control of the Company's property and to prevent Defendants further unjust enrichment by violation of their duties as constructive trustees.

250. Plaintiff is informed and believes and thereon alleges that Sherman, the Manager, J&M Trust Defendants, the Grandchildren's Trusts, Kramer, the L&E Trust Defendants, and Dennis each has in their possession some of the funds or other assets of SSP, which items are property of and otherwise belong to SSP.

251. By reason of the manner in which the Defendants, or some of them, may have withdrawn funds from the Company's General Account, and/or disposed of or concealed other property of the Company, the Defendants, and each of them, are involuntary trustees holding Plaintiff's proportionate share of said funds, and the profits and proceeds therefrom, in constructive trust for Plaintiff, with the duty to convey, transfer, and assign the same to Plaintiff forthwith.

Seventh Cause of Action

Conversion

252. Plaintiff alleges as its Seventh Cause of Action against Defendants Mary E. Sherman as Manager of Silver Strand Plaza, LLC and DOE 1 through DOE 99, inclusive, for Conversion:

253. Plaintiff refers to the allegations contained in all other sections of this Complaint and incorporates them as though set forth at length herein.

254. The close of the sale of Silver Strand Plaza should have triggered the dissolution of SSP. The Company "shall" be dissolved upon sale of substantially all of the Company's assets. (OA §8.2)

1 255. Upon dissolution, “and within a reasonable time thereafter”, the
2 Manager should have made a distribution to Hammett of her Fair Share of the
3 account balances. (OA §8.4)

4 256. The Manager did in fact agree to distribute the proceeds of the sale
5 upon close of escrow.

6 257. The Manager controlled the distribution of the proceeds thereof to
7 SSP's members, including Plaintiff.

8 258. On December 20, 2016, the Manager informed Plaintiff and the other
9 members of SSP that the sale of the shopping center was set to close on January
10 10, 2017 and asked how each Member wanted to receive their distribution.

11 259. On January 1, 2017, Plaintiff e-mailed wire instructions to the
12 Manager so that she could receive her funds from the sale by wire transfer.

13 260. The Manager confirmed receipt of Plaintiff’s e-mail that same day.

14 261. Escrow closed on January 26, 2017.

15 262. The Manager falsely stated in an e-mail to Plaintiff late in the evening
16 of January 31, 2017, that she did not have wire instructions from Plaintiff.

17 263. In an email sent February 2, 2017, the Manager used the excuse of the
18 time spent communicating on a tax withholding issue as the reason she could not
19 wire Plaintiff’s distribution to her, even though the Manager’s e-mail claiming that
20 she “will not have time today to go to the bank” was sent at 10:45 a.m.

21 264. When Plaintiff responded only an hour later that the Manager had a
22 fiduciary obligation to wire the amount of her distribution less whatever amount
23 the Manager believed had to be withheld for California taxes, the Manager
24 responded through Mr. Stern and asserted for the first time that, in addition to
25 California taxes, the Manager was required to withhold the amount of a Child
26 Support Division lien against other property unrelated to SSP, Woodman and
27 Magnolia, and that determining the amount of the lien would further delay
28 payment to Plaintiff of her distribution.

1 265. The Manager and attorney Stern had been aware of the Child Support
2 Division lien against Woodman and Magnolia for over a year and had never
3 previously indicated that money would have to be withheld to pay that lien.

4 266. With this excuse, the Manager delayed wiring any of Plaintiff's
5 distribution, even the \$1,099,563.59 that was undisputedly owed above any
6 possible tax obligations or liens until February 6, 2017.

7 267. The Manager then improperly withheld and converted \$50,000 from
8 Plaintiff's distribution wired on February 6, 2017.

9 268. The stated reason: the funds were held as a litigation fund that the
10 Manager could use if Plaintiff litigated against the Manager or SSP to obtain the
11 funds!

12 269. Through Stern, the Manager not only defended this unlawful
13 conversion and breach of fiduciary duty, but informed Plaintiff that the funds
14 would not be released until Plaintiff released any of her claims against the Manager
15 for breach of fiduciary duty: "Perhaps we can discuss a method to protect the
16 Manager in connection with release of the reserved funds. Otherwise, they will be
17 withheld to cover the litigation expense or for the period of time until the statute of
18 limitations has run its course."

19 270. Through Stern, the Manager reiterated this effort to extort a release
20 from Plaintiff in a second e-mail on February 9, 2017, in which Stern wrote: "The
21 \$50,000.00 will be released promptly upon your furnishing to me a signed General
22 Release by your client, releasing Mary Sherman from all claims in her capacity as
23 Manager of the LLC."

24 271. Plaintiff did not respond to this blatant effort to extort a release from
25 her. Realizing that she was only compounding her breach of fiduciary duty, the
26 Manager released the \$50,000 by wiring the funds to Plaintiff on February 10,
27 2017.

28

272. The first part of Hammett's distribution was made on February 6, 2017, ten days after the proceeds of sale were available to SSP.

273. The Manager withheld \$50,000 of Plaintiffs distribution to use as Sherman and the Manager's defense fund in the event Plaintiff sued Mary E. Sherman in any capacity to obtain that \$50,000, and demanding a general release as a condition to release of those funds. She finally released those funds to Hammett fourteen days after they were available.

274. These constituted conversion of specific, segregated sums of money.

275. The Manager prevented the plaintiff from having access to her property for a significant period of time.

276. Hammett was damaged by the conversion economically as follows:

277. Interest on the withheld funds = \$1,049,563 at 10% per year interest, highest rate allowed by law from date of conversion to return, over 10 days would yield two thousand, eight hundred and seventy five dollars and fifty-two cents (\$2,875.51.52);

278. Plus, \$50,000 at 10% per year for 14 days yields one hundred, ninety one dollars and seventy-eight cents (\$191.78).

279. Hammett is entitled to reasonable compensation for the time she spent trying to collect the converted funds and her travel expenses for the recovery trip, no less than \$3,000.

280. The plaintiff was excruciatingly nervous while waiting for the distribution. Hammett knew the manager and her husband to be conniving, entitled, and crooked.

281. Hammett travelled from Arkansas to California to be available if any signatures were needed, the wire wouldn't go through so a check would need to be issued or any other issue the Manager could dream up.

282. While waiting the two weeks to recover her money, Hammett visited an urgent care in Pacific Beach and was prescribed 15 tablets of .25 mg Xanax.

1 This was the first anxiety medication Hammett had taken since moving to
2 Arkansas over two years before. Plaintiff used 12 of the tablets and had 3 left a
3 year later. The urgent care and medication cost Hammett about \$125 out of pocket.

4 283. The Manager misappropriated the funds from Hammett in conscious
5 disregard for, and with malice and oppression towards, the rights of Plaintiff, in a
6 bid to extort release of the Manager from her several torts and breaches of
7 fiduciary duty, justifying an award of punitive damages against the Manager.

8
9 **Eighth Cause of Action**

10 **Breach of Fiduciary Duty**

11 **Count One**
12

13 284. Plaintiff alleges as its Eighth Cause of Action against Defendants
14 Mary E. Sherman as manager of SSP, SSP and DOE 1 through DOE 99, inclusive,
15 for Breach of Fiduciary Duty:

16 285. Plaintiff incorporates by reference all other sections of this complaint
17 as though fully set forth herein.

18 286. Given the relationship between Plaintiff and the Manager, and the
19 trust and confidence Plaintiff reposed in the Manager, the Manager, and each and
20 every doe defendant, owed and still owes a fiduciary duty to Plaintiff. The
21 Manager, and each and every doe defendant, had a duty to act with the utmost
22 good faith in the best interests of Plaintiff. The Manager and Doe defendants, and
23 each of them, had an affirmative duty to notify Plaintiff, a Member of SSP, of the
24 true and correct financial records of the Company and had, and continue to have,
25 an affirmative duty not to conceal material facts from Plaintiff. The Manager, and
26 each and every doe defendant, had a duty to notify Plaintiff, the lienholder, that the
27 rents being reported were significantly lower than market rent, the management
28

1 fees being paid were almost three times reasonable rates and the nature of the
2 Company's involvement with the Sherman Family Partnership.

3 287. The Manager, and each and every doe defendant, breached their
4 fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) causing
5 SSP to make loans interest-free or at below market interest to Sherman and/or to
6 entities in which she or her spouse have an interest; (b) fraudulent
7 misrepresentation of the net operating income of SSP; (c) concealing material facts
8 from Plaintiff; and, (d) converting over a million dollars from Plaintiff which was
9 only returned after Plaintiff retained the services of an attorney to advocate for her.

10 288. As a direct and proximate cause, result and consequence of that
11 breach, Plaintiff suffered damages, and continues to suffer damages, in amounts
12 according to proof at the time of trial. The Manager's and Doe defendants'
13 conduct was a substantial factor in causing Plaintiff's harm.

14 289. The Manager owed Plaintiff a fiduciary duty as a result of her position
15 as Manager of SSP under an Operating Agreement that gave her "sole authority to
16 manage [SSP]" other than "Major Decisions" listed in OA § 5.5 and "to make any
17 contracts [or] enter into any transactions ... to conduct or further [SSP's] business."

18 290. The Manager also owed a fiduciary duty to Plaintiff pursuant to Cal.
19 Corp. Code § 17704.09.

20 291. SSP is liable for the actions of its manager by the theory of respondeat
21 superior.

22 292. As outlined in the conversion cause of action, the Manager breached
23 that duty to Plaintiff by creating ever-changing reasons to delay disbursement to
24 Plaintiff of the proceeds of the sale of the SSP shopping center; refusing to
25 disburse any funds to her even though over \$1,000,000 was undisputedly owed to
26 her above any tax obligations or liens; withholding and converting \$50,000 of
27 Plaintiffs distribution to use as a defense fund in the event Plaintiff sued to obtain
28 that \$50,000 (while at the same time withholding about \$500,000 from all

1 members in a separate defense fund), and demanding a general release as a
2 condition to release of those funds.

3 293. On a Quickbooks type program generated ledger offered to Hammett
4 by the Manager just prior to the February 2014 meeting, called the MMA register,
5 there was an entry for “MSFP” loan with payee of “ThE SHERMAN FA...”. The
6 Manager refused to explain the meaning of this entry. She said only that SSP, LLC
7 made \$40 off the investment “our” advisor suggested.

8 294. On the K-1 for 2013 the Manager caused to be sent to Hammett after
9 the February 2014 meeting, there was a commercial rental documented that
10 generated a reported income for Hammett’s share of the entity of \$246 in 2013.
11 The entity owned by SSP was called “Sherman Family Partnership”.

12 295. The Manager continues to refuse to explain this entity to Hammett.
13 Hammett’s most recent inquiry was made by email on July 22, 2020, with no
14 response.

15 296. Plaintiff is informed and believes and thereon alleges that the
16 Manager has breached her fiduciary duty to Plaintiff by hiring attorneys to
17 represent SSP that were simultaneously representing Sherman and each of the
18 defendants, even though the interests of these defendants conflicted with the
19 interests of SSP. This unfair business practice was compounded by the Manager
20 causing SSP to pay the entire bill for representation of counsel to all defendants
21 with SSP assets, but not making an equal distribution to Hammett prorated by her
22 percentage of ownership.

23 297. This circumstance inherently raises an inference of conflict of interest
24 that contradicts the “business judgment rule” and the obligation of good faith and
25 fair dealing.

26 298. Plaintiff is informed and believes and thereon alleges that the
27 Manager has breached her fiduciary duty to Plaintiff by hiring management
28 personnel, including herself, at an expense that was almost triple what her own

1 experts contend is reasonable; paying herself about \$1,500 per month in salary
2 after close of escrow on the shopping center; paying Sherman \$65,000 after the
3 Silver Strand Plaza was sold; did not report the \$65,000 to Sherman on 1099s,
4 increasing Plaintiff's tax burden; sharing Plaintiff's (erroneous) private tax
5 information with Members to whom she had no right to make these disclosures.

6 299. Mary E. Sherman wrote an email to Kramer, Dennis and Roberta
7 Kramer on February 2, 2017 in which she stated:

8
9 "Frankly, [Hammett] has used up every ounce of goodwill, and then some."

10
11 300. The Manager did not act in good faith toward Hammett. The
12 manager, in doing the bad acts complained of above, acted intentionally,
13 oppressively, and maliciously toward Plaintiff in conscious disregard of Plaintiffs
14 rights and of the Manager's fiduciary obligations under contract, thereby entitling
15 Plaintiff to an award of punitive damages.

16
17 **Ninth Cause of Action**

18 **Breach of Fiduciary Duty**

19 **Count Two**

20
21 301. Plaintiff alleges as its Ninth Cause of Action against All Member
22 Defendants including but not limited to Jeffrey M. Sherman as Co-Trustee of the
23 J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive, for Breach of
24 Fiduciary Duty:

25 302. Plaintiff incorporates by reference all paragraphs in this complaint as
26 though fully set forth herein.

27 303. Given the relationship between Plaintiff and the Member Defendants,
28 and Does 1-99 and the trust and confidence Plaintiff reposed in the Member

Defendants, the Member Defendants and each and every Doe defendant owed and still owes a fiduciary duty to Plaintiff. The Member Defendants had a duty to act with the utmost good faith in the best interests of Plaintiff. Defendants, and each of them, had an affirmative duty to discharge their duty to vote on Major Decisions using reasonable business judgement and continue to have an affirmative duty not to conceal material facts from Plaintiff.

304. The Member Defendants breached their fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) refusing to vote against acts of the Manager that were in contravention to the OA; (b) refusing to dissolve the Company timely; (c) Using the Company attorneys, Stern and McGarrigle to represent them as individuals, even letting SSP pay for the representation without following OA requirements; and, (d) agreeing to consider buying Plaintiff's shares in lieu of a voluntary dissolution that would be a reasonable action under the circumstances, but then using Stern to represent a fair price as about 1/6th the actual fair value.

305. As a direct and proximate cause, result and consequence of that breach, Plaintiff suffered damages, and continues to suffer damages, in amounts according to proof at the time of trial. Member Defendants' and Doe defendants' conduct was a substantial factor in causing Plaintiff's harm.

306. The Member Defendants had a fiduciary duty to Plaintiff pursuant to Cal. Corp. Code § 17704.09 to discharge their duties to SSP and the other members under the Cal. Corp. Code or under the operating agreement and to exercise any rights consistent with the obligation of good faith and fair dealing. They did not.

307. Liabilities of the Member Defendants to the Plaintiff arose from acts of fraud or negligence and from acts or omissions which were not within the scope of authority conferred on such Member by the OA. OA §5.8.

308. The Members were not Directors of the Company, and therefore not subject to the shield of the "Business Judgment Rule".

1 309. Still, if the Business Judgment Rule was applied, it would fail to
2 protect the Member Defendants from their actions that were not in good faith;

3 310. Not in best interests of the Company;

4 311. The cause of a direct conflict of interest pursuant to Rules of
5 Professional Conduct 3-310;

6 312. Abdication of corporate responsibility;

7 313. And, in all but the Grandchildren Trusts and Mary Sherman as Co-
8 Trustee of the J&M Sherman Family Trust, indicate a lack of sufficient diligence
9 to inform herself or himself of how the Manager was handling SSP assets.

10 314. To the extent that the Member Defendants knew of the contraventions
11 of the OA by the Manager and refused to vote against the misconduct or join in an
12 action for judicial intervention, they became liable to the Plaintiff for damages due
13 to their omission of voting against the contravention or joining in an action for
14 judicial intervention, contrary to their duty of good faith and fair dealing.

15 315. It was obviously not in the best interest of the Company to pay three
16 times the reasonable rate for management, especially when the rents collected were
17 below market rents.

18 316. It was not in the best interest of the Company to pay bonuses of
19 \$65,000 to the Manager after the sale of the sole property. The Company was
20 supposed to dissolve. There is no reason for the Company to retain the good will of
21 the Manager or anyone. Sherman's good will that came with the tacit approval of
22 the bonus equal to two years salary was directed toward the Member Defendants,
23 not toward the Company.

24 317. Not reporting the \$65,000 bonuses to the IRS on a 1099 was not in the
25 best interest of the Company. The Company was participating in tax evasion for
26 Sherman. The result was individual Members, including Hammett, paid the tax
27 bill, which would be a conversion of Plaintiff's share.

28

1 318. None of the other defendants, each independently wealthy and
2 standing to be found liable for millions of dollars in this litigation, hired an
3 attorney other than Stern and McGarrigle to represent them prior to June 17, 2019.
4 The Grandchildren Trusts, J&M Trust Defendants, and L&E Trust Defendants
5 could not be represented by their trustees who were not authorized to practice law.

6 319. McGarrigle wrote a declaration in this case that all his
7 communications regarding Silver Strand Plaza were in anticipation of litigation.
8 The Member Defendants knew they were receiving legal advice as individuals and
9 having SSP pay for it. This was a financial benefit received by the Member to
10 which the Member is not entitled.

11 320. The communications from the other defendants to Plaintiff will be
12 proven at trial to be negligible, with the exception of the bizarre and defamatory
13 communications from Dennis, and a jury would find the Member Defendants more
14 probably than not were represented by Stern and McGarrigle. This was a prima
15 facia conflict of interest.

16 321. The Defendants knew Plaintiff had a healthy distrust in the integrity
17 of the courts due to the appearance of bias and embroilment exhibited in her family
18 law case by former Commissioner Alan H. Friedenthal. They forced her to look to
19 the court for intervention anyhow. Dennis even said they met with Mr. Friedenthal
20 after the first suit was filed against Sherman and SSP in May 2018. Being forced to
21 litigate what should have been a simple issue, which as McGarrigle entered as
22 evidence, Plaintiff was willing to settle for less than she had in capital, was the
23 proximate cause of severe emotional distress for Hammett.

24 322. As a proximate result of the Member Defendants' and Doe
25 Defendants' wrongful conduct as alleged herein, Plaintiff has sustained damages in
26 an amount in excess of \$75,000, exclusive of attorney's fees and costs, as her Fair
27 Share of SSP assets wasted and misappropriated with the tacit approval, inaction or
28 negligent discharge of their duties.

1 323. As stated above, Mary E. Sherman wrote an email that describes her
2 lack of good will toward Hammett: “ Frankly, she has used up every ounce of
3 goodwill, and then some.”

4 324. The breach of fiduciary duty by the Member Defendants and Doe
5 Defendants was the proximate cause of considerable anxiety, distress, aggravation
6 and sleepless nights for the Plaintiff. The Plaintiff partakes in therapy at least once
7 per week, has an appointment with a psychiatrist monthly or bi-monthly and has a
8 prescription for anti-anxiety medications to handle the stress.

9 325. The Member Defendants and Doe Defendants, in doing the acts
10 described in Paragraphs above, acted intentionally, oppressively, and maliciously
11 toward Plaintiff in conscious disregard of Plaintiffs rights and of the Member
12 Defendants’ and Doe Defendants’ fiduciary obligations under contract, thereby
13 entitling Plaintiff to an award of punitive damages.

14
15 **Alternatively, the Ninth Cause of Action**
16 **for Breach of Covenant of Good Faith and Fair Dealing**
17

18 326. Plaintiff alleges as its Ninth Cause of Action alternatively against All
19 Member Defendants including but not limited to Jeffrey M. Sherman as Co-
20 Trustee of the J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive,
21 for Breach of Covenant of Good Faith and Fair Dealing:

22 327. Plaintiff incorporates by reference all sections of this complaint as
23 though fully set forth herein.

24 328. There was a contract between each of the Members.

25 329. Plaintiff performed all of her duties according to that contract.

26 330. There is an implied covenant of good faith and fair dealing in every
27 contract that neither party will do anything which will injure the right of the other
28 to receive the benefits of the agreement (“the Covenant”).

1 331. Plaintiff brought evidence to the Member Defendants in January and
2 February 2014 that would make a reasonable person demand an accounting of SSP
3 finances pursuant to the OA §5.5(f) and (i). The Member Defendants voted against
4 an accounting. That was a breach of the Covenant.

5 332. Plaintiff brought the discrepancy between NOI reported on Hammett's
6 K-1 and NOI given on the Offering Memorandum to the Member Defendants in
7 late 2017. Plaintiff pled with the Member Defendants throughout 2018 until April
8 2, 2019 to demand an accounting of SSP finances. To no avail. That was a breach
9 of the Covenant.

10 333. On September 19, 2019, Plaintiff filed exhibits in this case, ECF Nos.
11 73-3 and 74, augmented by exhibits that SSP and the Manager had tried to keep
12 confidential, ECF Nos. 104-1 to 6 lodged on November 4, 2019. No reasonable
13 person could read these exhibits and not know the Manager agreed 4% was a
14 reasonable percentage of gross rents to pay management, but she paid management
15 of Silver Strand Plaza about 11.45%, thereby violating OA § 5.3, a contravention
16 of the OA.

17 334. The failure of the Member Defendants to exercise their decision
18 making duty found in OA § 5.5 enabled the Manager to continue with her
19 misconduct. This diminished the distributions that were paid to Plaintiff over three
20 years.

21 335. The Manager chose the same attorney to represent herself as she
22 chose to represent SSP. That was a conflict of interest. It was in contravention to
23 OA § 5.3. The Member Defendants not only shirked their responsibility as per OA
24 § 5.5, they relied on the SSP attorney to represent their interests as well and had
25 SSP pay their bills.

26 336. The Member Defendants did not provide a written undertaking
27 pursuant to OA § 9.1(b).
28

337. Any indemnification payment was therefore a distribution in kind of legal services owned by the Company paid to the Member Defendants. Plaintiff, who did not receive the services, should have received an appropriate Capital Account adjustment prior to the payment of the legal services fee, pursuant to OA § 3.3(b).

338. The Member Defendants refused to vote pursuant to OA § 5.5(h) for dissolution of the Company as required by OA § 8.2(a).

339. Because the Company is not dissolved and Plaintiff's capital distributed to her, Plaintiff is frustrated from completing two construction projects and is anxious about her finances during the Coronavirus epidemic and civil unrest.

340. By these breaches of contract, Plaintiff was damaged economically by an amount to be determined at trial and was caused anxiety for which she is in treatment at least weekly.

341. Furthermore, in doing the acts described in Paragraphs above, the Member Defendants' acted intentionally, oppressively, and maliciously toward Plaintiff in conscious disregard of Plaintiffs rights and of the Member Defendants' fiduciary obligations under contract, thereby entitling Plaintiff to an award of punitive damages.

Tenth Cause of Action

Aiding and Abetting a Breach of Fiduciary Duty

342. Plaintiff alleges as its Tenth Cause of Action against the J&M Trust Defendants, Grandchildren's Trusts, Kramer, Dennis and DOE 1 through DOE 99, inclusive, for Aiding and Abetting a Breach of Fiduciary Duty by the Manager:

343. Plaintiff incorporates by reference all paragraphs of this complaint as though fully set forth herein.

1 344. The Member Defendants conspired together with the Manager and
2 Doe Defendants to assist and encourage the Manager to

3 345. Mary E. Sherman in each capacity knew everything the Manager
4 knew.

5 346. Dennis and Kramer, at least as of October 2019 but probably before,
6 knew all the details of the Manager's Breach of Fiduciary Duty to that point,
7 because they were provided with the evidence by Plaintiff.

8 347. Mary E. Sherman in each of her capacities committed fraud. (See the
9 First Cause of Action)

10 348. Mary E. Sherman as the Manager committed Breach of Fiduciary
11 Duty. (See the Eighth Cause of Action.)

12 349. The J&M Trust Defendants, Grandchildren's Trusts, Kramer and
13 Dennis were able and had a duty to vote against the commission of acts in
14 contravention to the OA and refused to do so. They assisted the Manager to enable
15 her to over-pay management fees, hire attorneys for SSP who also represented
16 several other individuals and entities that had a direct conflict of interest with SSP
17 and to interfere with the contractual relations between Hammett and Kramer and
18 Dennis.

19 350. The aim of this conspiracy was to minimize the Manager's exposure
20 for financial irregularities by painting Plaintiff as biased and unbelievable and her
21 expressed concerns as unfounded.

22 351. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
23 and Grandchildren's Trusts knew all the details of the Manager's breach of
24 fiduciary duty because they are literally "of one mind".

25 352. The J&M Trust Defendants and Grandchildren's Trusts had
26 substantial participation in the breach, by refusing to vote against the acts in
27 contravention to the OA, especially the overpayment of management fees which
28 caused unjust enrichment for Mary E, Sherman and by refusing to vote for

1 dissolution of the Company which would protect Plaintiff's capital from further
2 waste.

3 353. The J&M Trust Defendants, Grandchildren's Trusts and Doe
4 defendants gave significant encouragement to the Manager to breach her fiduciary
5 duty.

6 354. The J&M Trust Defendants, Grandchildren's Trusts and Doe
7 defendants concealed information about the wrongful acts of the Manager from the
8 Plaintiff.

9 355. A person may be liable for aiding and abetting a breach of fiduciary
10 duty under two theories: first, if the aider and abettor owes a fiduciary duty to the
11 victim provides substantial assistance to the person breaching his or her fiduciary
12 duty, courts impose liability for concerted action that violates the aider and
13 abettor's fiduciary duty. (American Master Lease LLC v. Idanta Partners, Ltd., 225
14 Cal.App.4th 1451, (2014) h.n. 12 on fraud) The J&M Trust Defendants,
15 Grandchildren's Trusts and Doe defendants had a fiduciary duty to Hammett
16 pursuant to CA Corp §17704.09(d), the obligation of good faith and fair dealing
17 and to the extent SSP was member-managed, §17704.09 (a)(b)(c) and (e).

18 356. Second, if the aider and abettor commits an independent tort by
19 making a conscious decision to participate in tortious activity for the purpose of
20 assisting another in performing a wrongful act. (American Master Lease, h.n. 12 on
21 fraud). The J&M Trust Defendants, Grandchildren's Trusts and Doe defendants
22 committed fraud. Their fraud gave the Manager significant aid in her breach of
23 fiduciary duty.

24 357. The J&M Trust Defendants, Grandchildren's Trusts and Doe
25 defendants' conduct was a substantial factor in causing harm to plaintiff. They had
26 a combined 50.52% or more of the voting power on Major Decisions and could
27 have easily put the Manager in check but chose not to do so.

28

Eleventh Cause of Action

Defamation Per Se

Alternatively Per Quod

Count One

358. Plaintiff alleges as its Eleventh Cause of Action against Sherman, the Manager, the J&M Trust Defendants and the Grandchildren Trusts, defamation per se:

359. Plaintiff incorporates by reference all paragraphs in this complaint as though fully set forth herein.

360. Plaintiff made a similar allegation in the First Amended Complaint. It was dismissed based on the Court's ruling that Arkansas law must be applied and Arkansas does not recognize defamation per se.

361. Plaintiff realleges the cause of action here as the Court erred.

362. The defamatory statement emanated from California.

363. The Plaintiff has substantial ties to California.

364. The defamatory statement was read in California, by some of Plaintiff's business contacts and siblings who are residents of California. One recipient was in Colorado, which also recognizes Defamation Per Se as a cause of action. There were no recipients in Arkansas.

365. The Plaintiff's reputation was presumably harmed in every state in which the defamatory statement was read, including California. "Tort of libel is generally held to occur wherever offending material is circulated, and since reputation of libel victim may suffer harm even in state in which he has hitherto been anonymous, state may extend its concern to injury that in-state libel causes within the state to nonresident." *Keeton v. Hustler Magazine, inc.*, 465 U.S. 770 (1984).

1 366. In March 2019 Plaintiff read a libelous email published by Sherman,
2 the Manager, the J&M Trust defendants and the Grandchildren's Trusts under the
3 pretext of being SSP business on February 2 by a private email to Roberta Kramer,
4 Dennis and Kramer. While there is no year on the email, it is consistent with 2017.
5 She wrote in part:

6
7 "SSP LLC refuses to be bullied any longer by this ungrateful creature who
8 has sent hundreds of accusatory emails over the past 12 years with no basis, since
9 our business flourished and grew and we each reaped financial reward. [Plaintiff]
10 chooses to break the law over and over and over (as evidenced by being fired from
11 the County, having a \$250K judgment imposed against her by CSSD, and not
12 paying CA taxes since 2011)." ("The Ungrateful Creature email")

13
14 367. Diane Dennis, Linda Kramer and Roberta Kramer reasonably
15 understood that this statement was about the Plaintiff.

16 368. Those who read the statement reasonably understood the statements to
17 mean Plaintiff had willfully committed crimes such as tax evasion.

18 369. The statement was false.

19 370. Plaintiff has no criminal record and has no criminal charges ever filed
20 against her.

21 371. Plaintiff was not fired from her job with "the County".

22 372. Plaintiff has not evaded taxes and easily qualified for the withholding
23 waiver in the State of California.

24 373. Having a judgment is not a crime.

25 374. Not paying child support in some circumstances is treated as contempt
26 of court, a quasi-criminal adjudication.

1 375. An Order to Show Cause as to why Plaintiff should not be found in
2 contempt for failure to pay a child support order was issued against Plaintiff, but it
3 was easily opposed.

4 376. Defendant Sherman in each capacity failed to use reasonable care to
5 determine the truth or falsity of the statement.

6 377. Those who read the statement reasonably understood the statement to
7 mean Plaintiff was a repeat criminal who was fired for some crime, willfully
8 disobeyed a valid court order and committed tax evasion.

9 378. Defendant Sherman in each of her capacities acted with malice, in that
10 she did not ask Plaintiff if she owed taxes or wanted to file a waiver for the
11 withholding;

12 379. Plaintiff was extremely vocal about her child custody and support
13 case and never said she was found guilty of contempt;

14 380. Plaintiff never said she was fired from the County. In fact Plaintiff
15 was clear that she “quit” her job in an email to Mary Sherman. Hammett receives a
16 pension from the county job, which would not be due if she had been fired;

17 381. Sherman knew Plaintiff had a real estate broker’s license and had her
18 own brokerage between resigning from the County and when the ridiculous child
19 support order was enacted in 2010, which was based on the proposition that Silver
20 Strand Plaza would generate \$34,000 per month for Hammett;

21 382. It is rare that someone convicted of a crime would be qualified to hold
22 a real estate license.

23 383. Sherman in all her capacities made no reasonable inquiry to determine
24 the truth.

25 384. Though actual damage to reputation is not required to be proven in
26 California, there was actual damage to Plaintiff’s reputation.

27 385. Dennis wrote that Sherman was “very persuasive and manipulative”.
28 One paragraph written by Dennis:

1
2 “The verbiage used by mary (sic) to describe you, i.e. “creature”, were very
3 persuasive and manipulative. I’m so sorry I didn’t see it, or maybe didn’t
4 want to see it.”

5
6 386. Clearly, Mary E. Sherman’s words damaged Hammett’s reputation,
7 however slight.

8 387. Plaintiff believes Sherman continues to make defamatory statements
9 about her.

10 388. Sherman’s wrongful conduct was a substantial factor in causing harm
11 to Plaintiff’s business relationship with the other Members of SSP, making
12 Plaintiff ineffectual in garnering support for a dissolution or legal action to remove
13 Sherman as the Manager and harm to Plaintiff’s reputation.

14 389. Because Sherman is malicious and oppressive, there should be
15 punitive damages against her enough to encourage her to refrain from future harm.
16
17

18 **Twelfth Cause of Action**
19 **For False Light Invasion of Privacy**
20 **Count One**
21

22 390. Plaintiff alleges as its Twelfth Cause of Action against Sherman, the
23 Manager, the J&M Trust Defendants and the Grandchildren’s Trusts, false light
24 invasion of privacy (“FLIP”):

25 391. Plaintiff incorporates by reference all paragraphs in this complaint as
26 though fully set forth herein.

27 392. There is no true conflict between Arkansas and California law for
28 FLIP.

1 393. FLIP and Defamation may be plead concurrently, but recovery can
2 only be had on one or the other.

3 394. Arkansas law makes more sense for the FLIP cause than defamation
4 because the damage in defamation is to reputation, which occurs where the
5 recipient is domiciled, but the damage in FLIP is to the Plaintiff's feelings or
6 emotional well being, which would be wherever the Plaintiff is domiciled.

7 395. In March 2019 Plaintiff read a libelous email written by Sherman
8 under the pretext of being SSP business on February 2 to Roberta Kramer, Dennis
9 and Kramer. While there is no year on the email, it is consistent with 2017. She
10 wrote in part:

11
12 "SSP LLC refuses to be bullied any longer by this ungrateful creature who
13 has sent hundreds of accusatory emails over the past 12 years with no basis, since
14 our business flourished and grew and we each reaped financial reward. [Plaintiff]
15 chooses to break the law over and over and over (as evidenced by being fired from
16 the County, having a \$250K judgment imposed against her by CSSD, and not
17 paying CA taxes since 2011)."

18
19 396. The statement was false.

20 397. Plaintiff has no criminal record and has no criminal charges ever filed
21 against her.

22 398. Plaintiff was not fired from her job with "the County".

23 399. Plaintiff has not evaded taxes and easily qualified for the withholding
24 waiver in the State of California.

25 400. Having a judgment is not a crime.

26 401. Not paying child support in some circumstances is treated as contempt
27 of court, a quasi-criminal adjudication.

28

1 402. An Order to Show Cause as to why Plaintiff should not be found in
2 contempt for failure to pay a child support order was issued against Plaintiff, but it
3 was easily opposed.

4 403. Enforcing the child support order would require Alan H. Friedenthal
5 to testify about his unethical actions and involvement with the Shermans. Mr.
6 Friedenthal, through Court Counsel, was not willing to testify. So Plaintiff was
7 found to be not in contempt.

8 404. The Ungrateful Creature Email caused Hammett emotional distress. In
9 fact, Hammett did not read the email when it was first transmitted to her on a disk
10 by Dennis in 2017. Dennis warned Hammett that the contents of the disk were
11 troubling and apologized for the “hurt” it would cause Hammett to read them.

12 405. Hammett did not read the Ungrateful Creature email until she was
13 writing the original complaint in this case and thought she better read all the emails
14 Dennis had transmitted.

15 406. Most of the emails were hurtful to Dennis, and Hammett, having
16 empathy, was disturbed reading just those. Dennis wrote that there are hundreds
17 more emails that Hammett should read, but those will likely be deleted now that
18 Dennis has realigned with Sherman.

19 407. Hammett is profoundly embarrassed, knowing Sherman is stating to
20 people, in a tone of authority, that Hammett is a criminal.

21 408. Hammett is in therapy and under the care of a psychiatrist again. She
22 did not need to get professional help for anxiety from January 2015 until February
23 2017 when it seemed the Manager was going to refuse to return the money she
24 converted from Hammett. Reading the defamatory email increased the awful
25 feelings of embarrassment and not knowing which childhood friends were hearing
26 the same kinds of defamatory statements. (There were several indications that
27 Sherman was making defamatory statements to others.) Plaintiff took twelve
28

1 Xanax in 2017, had acupuncture treatment for anxiety and did yoga and hiked
2 every day to destress.

3
4 **Thirteenth Cause of Action**

5 **Defamation Per Se**

6 **Alternatively Per Quod**

7 **Count Two to Six**

8
9 409. Plaintiff alleges as its Thirteenth Cause of Action against Diane
10 Dennis, an individual, defamation per se, count two:

11 410. Plaintiff incorporates by reference all paragraphs in this complaint as
12 though fully set forth herein.

13 411. Plaintiff made the same allegation in the First Amended Complaint. It
14 was dismissed based on the Court's ruling that Arkansas law must be applied and
15 Arkansas does not recognize defamation per se.

16 412. Plaintiff realleges the cause of action for Defamation per se here to
17 preserve her right on appeal, but if the Court still finds that Arkansas law applies,
18 then Plaintiff asks that she may proceed on the alternative cause of Defamation Per
19 Quod.

20 413. The Plaintiff has substantial ties to California.

21 414. The Plaintiff was domiciled in California for the first 52.5 years of her
22 life, from 1962 to 2015.

23 415. The defamatory statement was read in California, by some of
24 Plaintiff's business contacts and siblings who are residents of California.

25 416. The defamatory statements emanated from Colorado or New Mexico,
26 both states which also recognize Defamation Per Se as a cause of action. There
27 were no recipients in Arkansas.

1 417. The Plaintiff's reputation was presumably harmed in every state in
2 which the defamatory statements were read, including California. "Tort of libel is
3 generally held to occur wherever offending material is circulated, and since
4 reputation of libel victim may suffer harm even in state in which he has hitherto
5 been anonymous, state may extend its concern to injury that in-state libel causes
6 within the state to nonresident." Keeton v. Hustler Magazine, inc., 465 U.S. 770
7 (1984).

8 418. Defendant Dennis made the following discrete presentation of
9 information by email to Mary Sherman and Linda Kramer on January 20, 2019
10 which is Count Two:

11
12 "Gosh Laura, I figured you were so busy looking at your illegally obtained
13 porn, that you would not have time for this nonsense. BTW, anything I
14 supposedly said to you, needs to be looked at in the context it was given.
15 You are a criminal, by any sense of the word. Lay off the lawsuit thing. You
16 will likely have more 'lawsuit' then you can handle, in the near future."

17
18 419. Defendant Dennis wrote the following discrete presentations of
19 information by email to Mary Sherman, Linda Kramer and Mr. McGarrigle:

20 420. Count Three. "How is your alleged illegal porn business going?" on
21 March 12, 2019;

22 421. Count Four. "Child pornography is illegal. Criminals eventually get
23 caught." On March 12, 2019;

24 422. Count Five. "Are you and Michael enjoying watching your illegal
25 porn on your vacation?" on March 12, 2019;

26 423. And Count Six. "At least he has morals and not running an illegal
27 porn ring. Patrick makes an honest living. How's the vacation?" on March 13,
28 2019.

1 424. Those who read the statements reasonably understood that the
2 statement was about Plaintiff.

3 425. That because of the facts and circumstances known to the reader of
4 the statement, they tended to injure Plaintiff in her business with the readers and to
5 expose her to hatred, contempt, ridicule, or shame and to discourage others from
6 associating or dealing with her.

7 426. Defendant Dennis failed to use reasonable care to determine the truth
8 or falsity of the statement. The statement was false. There is no evidence that
9 Plaintiff is aware of that she is or did engage in any illegal pornographic business,
10 obtain any illegal pornographic material for personal viewing or engage in criminal
11 activity of any kind. The statement was a malicious lie.

12 427. Those who read the statement reasonably understood the statement to
13 mean Plaintiff watches illegal pornography and is a criminal.

14 428. Dennis's wrongful conduct was a substantial factor in causing harm to
15 Plaintiff's business relationship with the other Members of SSP and McGarrigle as
16 it caused the meanspirited receivers to ridicule Hammett and encouraged them to
17 continuing breaching their fiduciary duties to Hammett and conspiring to harm
18 Plaintiff financially.

19 429. Even if Plaintiff has not proved any actual damages for harm to
20 reputation or shame, mortification or hurt feelings, the law assumes that she has
21 suffered this harm.

22 430. Defendant Dennis acted with malice, oppression and fraud and should
23 pay Hammett punitive damages.

24
25 **Fourteenth Cause of Action**
26 **False Light Invasion of Privacy**
27 **Count Two**
28

1 431. Plaintiff alleges as its Fourteenth Cause of Action against Diane
2 Dennis, an individual, false light invasion of privacy (“FLIP”):

3 432. Plaintiff incorporates by reference all paragraphs in this complaint as
4 though fully set forth herein.

5 433. There is no true conflict between Arkansas and California law for
6 FLIP.

7 434. FLIP and Defamation may be plead concurrently, but recovery can
8 only be had on one or the other.

9 435. Arkansas law makes more sense for the FLIP cause than defamation
10 because the damage in defamation is to reputation, which occurs where the
11 recipient is domiciled, but the damage in FLIP is to the Plaintiff’s feelings or
12 emotional well-being, which would be wherever the Plaintiff is domiciled.

13 436. Defendant Dennis made the following discrete presentation of
14 information by email to Mary Sherman and Linda Kramer on January 20, 2019
15 which is Count Two:

16
17 “Gosh Laura, I figured you were so busy looking at your illegally obtained
18 porn, that you would not have time for this nonsense. BTW, anything I
19 supposedly said to you, needs to be looked at in the context it was given.
20 You are a criminal, by any sense of the word. Lay off the lawsuit thing. You
21 will likely have more ‘lawsuit’ then you can handle, in the near future.”
22

23 437. Defendant Dennis wrote the following discrete presentations of
24 information by email to Mary Sherman, Linda Kramer and Mr. McGarrigle:

25 438. Count Three. “How is your alleged illegal porn business going?” on
26 March 12, 2019;

27 439. Count Four. “Child pornography is illegal. Criminals eventually get
28 caught.” On March 12, 2019;

1 440. Count Five. “Are you and Michael enjoying watching your illegal
2 porn on your vacation?” on March 12, 2019;

3 441. And Count Six. “At least he has morals and not running an illegal
4 porn ring. Patrick makes an honest living. How's the vacation?” on March 13,
5 2019.

6 442. The statement was false. There is no evidence that Plaintiff is aware
7 of that she is or did engage in any illegal pornographic business, obtain any illegal
8 pornographic material for personal viewing or engage in criminal activity of any
9 kind. The statement was a malicious lie.

10 443. The false light in which Dennis put Plaintiff would be highly
11 offensive to any reasonable person. A jurisdiction which recognizes defamation per
12 se includes false statements that a person is a criminal or watches illegal
13 pornography as presumptively harmful to ones reputation.

14 444. Dennis knew the statement was false or acted in reckless disregard of
15 the falsity and the false light in which it would place the Plaintiff. Dennis cannot
16 present any evidence that Plaintiff watched illegal pornography or did any criminal
17 act, because Plaintiff has not done these things.

18 445. Plaintiff came upon illegal pornography in an estate she bought out
19 once and reported it to the FBI, then Plaintiff burned all of the paper and threw out
20 anything else. It was the most disturbing thing Plaintiff has ever seen and having
21 such horrible things attributed to her makes the Plaintiff nauseous.

22 446. It is humiliating to think someone even heard these things. When
23 Dennis made similar statements to people in Arkansas, they asked Hammett why
24 anyone would make those statements about her and Hammett had to defend
25 herself. There is always at least a bit of curiosity if such a statement might be true.

26 447. Dennis wrote that when she read or heard defamatory statements
27 made by Sherman about Hammett, that Dennis believed them “or wanted to
28

1 believe them” because of her animosity toward Hammett. It is possible that Kramer
2 and Sherman would want to believe Dennis.

3 448. Also, Hammett shared personal information with Dennis during a time
4 when the sisters were getting along well. Plaintiff told Dennis she suspects one or
5 more of their mother’s friends molested the Plaintiff when she was a child. The
6 friends had access to “date rape” drugs because they were doctors.

7 449. It was especially cruel for Dennis to alter information that was given
8 in confidentiality when Hammett was trying to ascertain if Dennis was also
9 sexually abused.

10 450. Plaintiff had many years of therapy to deal with her childhood sexual
11 and emotional abuse but was perfectly content and at peace about this issue for at
12 least two years before Dennis started bringing up past trauma. Now Hammett is
13 working with a therapist again to try to regain her serenity in regards to the earlier
14 abuse.

15 451. This makes Hammett feel angry, upset, embarrassed and helpless.

16
17 **Fifteenth Cause of Action**
18 **For Unjust Enrichment**
19

20 452. Plaintiff alleges as its Sixteenth Cause of Action against Each and
21 Every Named Defendant and Does 1-99, For Unjust Enrichment:

22 453. Plaintiff incorporates by reference all paragraphs in this complaint as
23 though fully set forth herein.

24 454. Within the last two years, at Los Angeles, California, Defendants, and
25 each of them, were unjustly enriched at the expense of Plaintiff, in an amount
26 subject to proof at trial.
27
28

1 455. Neither the whole nor any part of said sum has been paid, although
2 demand therefor has been made, and there is now due, owing and unpaid an
3 amount subject to proof at trial.

4
5 **Wherefore, Plaintiff prays for Remedies as is hereinafter set forth.**

6
7 **On the First Cause of Action for Fraud against The Manager, the J&M**
8 **Trust Defendants, and the Grandchildren's Trusts and Does 1-99, Jointly and**
9 **Severally:**

- 10 1. For general damages in an amount to be determined at trial;
- 11 2. For punitive damages enough to deter Mary E. Sherman from acting
- 12 fraudulently in her administration of property entrusted to her in the
- 13 future;
- 14 3. For attorney fees;
- 15 4. For costs; and
- 16 5. For such other relief as the Court deems appropriate.

17
18 **On the Second Cause of Action for fraudulent conveyance against The**
19 **Manager, Linda R. Kramer as an individual, Linda R. Kramer and Erik Von**
20 **Pressintin Hunsaker as Co-Trustees of the Lynn & Erik's Trust, jointly and**
21 **severally:**

- 22 1. For Nullification of the Assignment of rights to Kramer's percentage
- 23 interest of SSP to the L&E Trust Defendants.
- 24 2. For disgorgement of improperly taken funds from SSP by Linda R.
- 25 Kramer and Erik Von Pressintin Hunsaker as Co-Trustees of the Lynn
- 26 & Erik's Trust to the extent of damages found against Linda R.
- 27 Kramer, an individual by the Jury awarded to Hammett in this case.
- 28

3. In the case that the disgorgement does not yield enough money to cover the award by the Jury, the remainder to be collected from the remaining culpable defendants named in the Second Cause of Action.
4. Alternatively, for an order determining the L&E Trust Defendants to be an alter-ego for Linda R. Kramer an individual;
5. For punitive damages;
6. For attorney fees;
7. For costs; and
8. For such other relief as the Court determines.

On the Third Cause of Action for Dissolution against the Member Defendants, SSP and the Manager

1. That the Court decree a winding up and dissolution of defendant Silver Strand Plaza, LLC;
2. That the Court entertain those proceedings as may be necessary or proper for the involuntary winding up or dissolution of defendant SSP, and make those orders for winding up and dissolution of defendant SSP as justice and equity require;
3. For costs and reasonable attorneys' fees;

On the Fourth Cause of Action for Appointment of a Receiver Against All Defendants

1. For the appointment of a receiver to take over management and control of all SSP property and assets, to collect accounts receivable, to wind up SSP affairs, to control SSP business until winding up is completed, and to keep SSP assets until their division between the parties is ordered by the Court;

2. That the receiver be appointed with the full power and authority to manage, maintain, and control all SSP property, including the right to collect and receive all accounts receivable, issues, profits, and revenues generated by the SSP; to divert or receive all mail relating to the revenues of SSP; to take possession of and transfer all bank accounts relating to the revenues of the SSP; and pursuant to Court approval, sell all SSP property and hold the proceeds from that sale in a receivership account for the benefit of SSP and its shareholders; as well as all other powers normally entrusted to a receiver; and
3. For costs and reasonable attorneys' fees.

On the Fifth Cause of Action for an Accounting Against All Defendants

1. For an accounting of SSP affairs from January 1, 2012 to the present, that the account be settled between Plaintiff and Defendants, and that Plaintiff have judgment against Defendants for such sums as may be found due and owing to Plaintiff under such accounting;
2. For costs and reasonable attorneys' fees.

On the Sixth Cause of Action for Constructive Trust Against All Defendants

1. That this Court declare that all Defendants, and each of them, hold all funds found to have been converted from the rents, issues, profits, or revenues generated from the Company, and the proceeds thereof, in trust for Plaintiff;
2. That this Court compel all Defendants, and each of them, to transfer legal title and possession of the converted rents, issues, profits, and revenues and their proceeds to Plaintiff;

3. For the value of the converted income, issues, profits and revenues and an order compelling the Defendants to fully account therefor, and pay interest thereon at the highest legal rate;
4. For costs and reasonable attorneys' fees.

On the Seventh Cause of Action for Conversion against Defendants Mary E. Sherman as Manager of Silver Strand Plaza, LLC and DOE 1 through DOE 99, inclusive

1. For interest on the sum of all converted funds at the highest legal rate from the date of conversion, according to proof;
2. For costs of recovering the converted property according to proof, but no less than \$3,000;
3. For pain and suffering according to proof;
4. For punitive damages, according to proof.

On the Eighth Cause of Action for Breach of Fiduciary Duty, Count One Against Defendants Mary E. Sherman as manager of SSP, SSP and DOE 1 through DOE 99, inclusive, Jointly and Severally:

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

On the Ninth Cause of Action for Breach of Fiduciary Duty, Count Two Against All Member Defendants including but not Limited to Jeffrey M. Sherman as Co-Trustee of the J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive, Jointly and Severally:

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

On, Alternatively, the Ninth Cause of Action for Breach of Covenant of Good Faith and Fair Dealing against All Member Defendants including but not limited to Jeffrey M. Sherman as Co-Trustee of the J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive, Jointly and Severally:

1. For specific performance of OA Article VIII for Dissolution pursuant to §8.2(a);
2. For all other breaches, a sum subject to proof at trial;
3. For interest on the sum at the highest legal rate from the date of conversion, according to proof;
4. For costs and reasonable attorneys' fees;
5. For punitive damages, according to proof.

On the Tenth Cause of Action for Aiding and Abetting a Breach of Fiduciary Duty by the Manager Against the J&M Trust Defendants and the Grandchildren's Trusts and DOE 1 through DOE 99, inclusive, Jointly and Severally:

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

On the Eleventh Cause of Action, for Defamation Per Se or Per Quod Count One Against Sherman, the J&M Trust Defendants, the Manager and the Grandchildren Trusts, jointly and severally:

1. Compensatory damages for presumed harm to reputation;
2. Or Compensatory damages to actual harm to reputation;
3. Past medical expenses;
4. Future medical expenses;
5. Emotional distress; and
6. Punitive damages according to proof.

On the Twelfth Cause of Action for False Light Invasion of Privacy Count One Against Sherman, the Manager, the J&M Trust Defendants and the Grandchildren's Trusts

1. Compensatory damages for emotional distress;
2. Past medical expenses;
3. Future medical expenses;
4. Punitive damages according to proof;
5. Costs;
6. Attorney Fees.

On the Thirteenth Cause of Action for Defamation Per Se or Per Quod Count Two to Six Against Diane Dennis:

1. Compensatory damages for presumed harm to reputation;
2. Or Compensatory damages for actual harm to reputation;
3. Past medical expenses;
4. Future medical expenses;
5. Emotional distress; and
6. Punitive damages according to proof.

On the Fourteenth Cause of Action for False Light Invasion of Privacy Count Two Against Diane Dennis:

1. Compensatory damages for emotional distress;
2. Past medical expenses;
3. Future medical expenses;
4. Punitive damages according to proof;
5. Costs;
6. Attorney Fees.

On the Fifteenth Cause of Action for Unjust Enrichment Against Each and Every Named Defendant and Does 1-99

1. For general damages according to proof

Trial by jury is demanded in the causes remedied under law.

DATED: August 7, 2020

//s Laura Lynn Hammett
Laura Lynn Hammett
Plaintiff in Pro Se

VERIFICATION

1
2 I, Plaintiff Laura Lynn, state that the contents of the pleading above are true to my
3 knowledge, except as to those matters stated on information and belief, and as to
4 those matters, I believe them to be true.
5

6 /s Laura Lynn Hammett
7 Laura Lynn Hammett
8 Plaintiff in Pro Se
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EXHIBITS TO SECOND AMENDED VERIFIED COMPLAINT

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CONFIDENTIAL

AMENDED AND RESTATED OPERATING AGREEMENT
OF
SILVER STRAND PLAZA, LLC

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**AMENDED AND RESTATED OPERATING AGREEMENT
OF
SILVER STRAND PLAZA, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and entered into as of January 1, 2009 (the "Effective Date"), among the undersigned Members of SILVER STRAND PLAZA, LLC, a California limited liability company (the "Company"). As used herein, the term "Member" means any then present member of the Company, and the term "Members" means all then present members of the Company.

RECITALS

A. The Company was formed on March 28, 2005 pursuant to the Act (as defined in Section 1.1), when the Articles of Organization (as defined in Section 1.1) were filed with the California Secretary of State's office.

B. The Company was formed for the purposes described in Section 1.4 (the "Company Objectives").

C. The Company current exists pursuant to the Operating Agreement of Silver Strand Plaza, LLC dated March 28, 2005 (the "Original Agreement"). This Agreement amends and restates the Original Agreement from and after the Effective Date. The Original Agreement is hereby superseded as of the Effective Date.

D. The Members desire to amend and restate the Original Agreement to reflect the termination of the Norman and Sandra Kramer Family Trust as a member, to reflect all transfers of interests in the Company, and for other reasons.

NOW, THEREFORE, the Members hereby agree as follows:

ARTICLE I

Formation, Conversion and Purposes

1.1. **Formation and Conversion.** Subject to the provisions of this Agreement, the Members agree:

(a) **California Limited Liability Company Act.** To be governed by: (i) the Beverly-Killea Limited Liability Company Act, Title 2.5 of the California Corporations Code (the "LLC Act"); (ii) those parts of the California Revised Limited Partnership Act as pertain to partnership conversions, including but not limited to Title 2, Chapter 3, Article 7.4 of the California Corporations Code (the "Partnership Act"); and (iii) all other pertinent laws of the State of California; all of which shall govern the relationship among the Members except as expressly provided to the contrary herein. The LLC Act and the Partnership Act are collectively herein referred to as the "Act."

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(b) **Plan of Conversion.** To take any further actions that are contemplated or required by the Plan of Conversion that was attached as an exhibit to the Original Agreement (the "Plan of Conversion"). The Members do not believe that any additional actions are contemplated or required in connection with the Plan of Conversion. The Plan of Conversion provides for the conversion of Remark a California Limited Partnership (the "Partnership") into the Company.

(c) **Articles of Organization.** To execute, acknowledge, and cause to be filed in a timely fashion Limited Liability Company Articles of Organization - Conversion (Form LLC-1A) (the "Articles of Organization") as permitted by the Act, and any and all statements and certificates, including any required amendments, as may be required by other jurisdictions in which any property owned by the Company is located, or in which the Company maintains a place of business. The name of the registered agent in California is Gerald E. Wilson, whose address is 30850 Rancho Viejo Road, Suite A, San Juan Capistrano, California 92675. The registered agent and/or registered office may be changed by the Members as provided in the Act.

(d) **Further Assurances.** To take any and all actions as may from time to time be required under the laws of the State of California to give effect to the provisions of this Agreement.

1.2. **Name.** The name of the Company shall be Silver Strand Plaza, LLC.

1.3. **Principal Place of Business.** The principal place of business of the Company shall be 24178 Park Riviera, Calabasas, California 91302, or such other place or places as the Manager (as defined in Section 5.1) may from time to time determine in her sole discretion.

1.4. **Purpose.** The purposes of the Company shall be to acquire, develop, own, lease and manage real estate, and to engage in related or incidental activities, including owning interests in other entities that either directly or indirectly engage in such activities. Notwithstanding the foregoing, the purpose of the Company shall be limited to those activities that are permitted by the Articles of Organization (as amended from time to time). The Company's primary activities will be limited to owning, leasing and managing the retail shopping center known as Silver Strand Plaza, which is located at 600 Palm Avenue, Imperial Beach, California 91932 (the "Property").

1.5. **Term.** The term of the Company commenced on the date set forth in Recital A, and shall continue until dissolved, liquidated and terminated pursuant to the provisions of Article VIII.

1.6. **Limited Liability.** No Member or Manager shall have any personal obligation for any liabilities of the Company solely by reason of being a Member or Manager, except as provided by law.

ARTICLE II

Capital

2.1. **Capital Contributions.** The capital contributions to the Company through the Effective Date consisted of contributions by the Members or their predecessors of 100% of the interests in the Partnership, which occurred as a result of the Plan of Conversion.

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2.2. Additional Contributions to Capital.

(a) The Members acknowledge that additional capital contributions may be required as and when the Manager determines that additional capital contributions are necessary to accomplish the Company Objectives. The Members agree to make such capital contributions on the date or dates determined by the Manager and in proportion to their respective Percentage Interests (as defined in Section 3.1) as of such date or dates.

(b) In the event that a Member (the "Defaulting Member") fails to make any capital contribution when required pursuant to this Agreement, the remaining Members (the "Non-Defaulting Members") shall have the following remedies as the sole and exclusive remedies for the failure of the Defaulting Member to make any required capital contribution:

(i) The Non-Defaulting Members may elect to advance the amount of the Defaulting Member's capital contribution as a loan to the Company (a "Capital Loan"), which: (A) will bear interest at 2% plus the Prime Rate (as defined below); (B) will compound on a quarterly basis as of the end of each calendar quarter (i.e., March 31, June 30, September 30, and December 31) and be added to the principal balance then outstanding; (C) will be due and payable on demand by the Non-Defaulting Members; (D) will include other commercially reasonable terms that are mutually agreeable to the Non-Defaulting Members and the Company; and (E) will not be subject to the loan requirements in Section 2.4. As to each Capital Loan, all distributions and other payments that would otherwise be made to the Defaulting Member shall be paid instead to the Non-Defaulting Members until the Capital Loan and all accrued interest are paid in full. The interest in the Company owned by the Defaulting Member shall be security for the loan described in this Section 2.2(b)(i), but otherwise the Capital Loan shall be nonrecourse as to the Defaulting Member's other assets. As used herein, the term "Prime Rate" means the interest rate designated as such in the Wall Street Journal from time to time; provided, that such interest rate will be deemed to adjust only quarterly (i.e., on January 1, April 1, July 1, and October 1 of each year), based on the Prime Rate as reported on each applicable date (or the last business day prior to such date if such date is not a business day).

(ii) Notwithstanding Section 2.2(b)(i), interest on Capital Loans will not compound as long as the total outstanding balance of all Capital Loans with respect to the Defaulting Member is less than \$50,000. Once the total outstanding balance of all Capital Loans with respect to the Defaulting Member is \$50,000 or more, interest on Capital Loans will begin compounding on a quarterly basis as provided in Section 2.2(b)(i).

(iii) Each Member making a Capital Loan will have an election (the "Conversion Election") as of June 30 and December 31 of each calendar year to convert all or any part of a Capital Loan into an additional capital contribution to the Company. Each Conversion Election must be made not later than 15 business days after each June 30 and December 31. If the deadline for making a Conversion Election is missed for a particular June 30 or December 31, the Capital Loan in question may be converted into an additional capital contribution to the Company at the next date that a Conversion Election can be made.

(iv) Capital Loans may be made by Non-Defaulting Members or Related Persons (as defined in Section 7.1) thereto. Before converting all or any part of a Capital

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Loan into an additional capital contribution to the Company, such Capital Loan must first be transferred as necessary to the Member with respect to which a Related Person to such Member made such Capital Loan.

(v) A Member making a Conversion Election (the "Electing Member") and the other Members (the "Other Members") will have their respective Percentage Interests adjusted as provided in this Section 2.2(b)(v). Each Other Member's Percentage Interest shall be reduced to a percentage equal to: (A) the aggregate amount of capital contributions actually made by the Other Member; divided by (B) the aggregate amount of capital contributions made by all Members (in each case including the principal balance and accrued interest with respect to all Capital Loans that are being converted into additional capital contributions). Each Electing Member's Percentage Interest shall be increased to a percentage equal to: (a) the aggregate amount of capital contributions actually made by the Electing Member; divided by (b) the aggregate amount of capital contributions made by all Members (in each case including the principal balance and accrued interest with respect to all Capital Loans that are being converted into additional capital contributions). The Members intend to adjust their respective Percentage Interests in proportion to the relative capital contributions actually made by the Members (including the principal balance and accrued interest with respect to all Capital Loans that are being converted into additional capital contributions).

(vi) Each Other Member hereby irrevocably constitutes and appoints the Electing Members, any one of which may act, as each Other Member's attorneys-in-fact to execute and deliver any documents necessary or appropriate to effectuate this Section 2.2(b), including an Assignment (as defined in Section 7.1) of each Other Member's Percentage Interest and the adoption of a new Member List. The appointment by each Other Member of the Electing Members as their attorneys-in-fact is irrevocable and shall be deemed to be a power coupled with an interest and shall survive the incompetency, bankruptcy or dissolution of such Defaulting Member.

2.3. Capital Accounts. An individual capital account ("Capital Account") shall be maintained for each Member in accordance with the rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv), and the following provisions:

(a) **Credits.** Each Member's Capital Account shall be credited with an amount equal to:

(i) The cash and the fair market value of property originally and subsequently contributed by such Member to the Company (net of liabilities assumed by the Company and liabilities to which such contributed property is subject);

(ii) Such Member's distributive share of Company income (whether or not exempt from tax); and

(iii) Such Member's distributive share of Company gain resulting from dispositions or partial dispositions of Company assets, whether or not as a result of the dissolution, termination, and winding up of the Company.

(b) **Debits.** Each Member's Capital Account shall be debited with an amount equal to:

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(i) The cash and the fair market value of property distributed to such Member (net of liabilities assumed by such Member and liabilities to which such distributed property is subject);

(ii) Such Member's distributive share of Company losses and deductions; and

(iii) Such Member's distributive share of other items of deductions and loss that are specially allocated pursuant to the provisions of this Agreement.

(c) **Special Adjustments.** Any special adjustments to a Member's Capital Account, including but not limited to those relating to transfers of interests in the Company and pre-liquidation adjustments, shall be made at the direction of the Manager and in accordance with Treasury Regulations Section 1.704-1(b).

2.4. Loans to the Company. If any Member shall make any loan to the Company or advance any money on the Company's behalf, the loan or advance shall not increase the lending Member's Capital Account, entitle the lending Member to a greater share of Company distributions, or subject the lending Member to any greater proportion of Company losses. The amount of the loan or advance shall be a debt owed by the Company to the lending Member, repayable on the terms and conditions and bearing interest at the rate agreed on by the lending Member and the Company.

2.5. Guarantees of Debt. Each of the Members agrees to guarantee any loans that are made to the Company or any entity in which the Company is an investor, but only to the extent that loan guarantees are required by particular lenders. No compensation shall be paid to any Member, and no additional interest in the Company shall be provided to any Member, who provides loan guarantees pursuant to this Section 2.5. In the event that any such guarantees are provided, each Member's liability exposure shall be limited to their Percentage Interest multiplied by the total guaranteed amount. Each Member agrees to indemnify and pay the other Members to the extent that the actual payments arising from or relating to any guarantees are not in proportion to the Members' Percentage Interests. The actual payments referenced in the preceding sentence include, but are not limited to, attorneys' fees that are incurred in asserting or protecting the Members' rights under this Section 2.5.

ARTICLE III

Allocations and Distributions

3.1. Percentage Interests. The Company shall maintain at its principal place of business a current list (the "Member List") showing the name, address, and percentage interest in profits and losses ("Percentage Interest") of each Member, as well as a list of all Managers. The Member List as of the Effective Date is attached hereto as Exhibit A. The Member List shall be updated from time to time as required, including but not limited to reflecting the admission of new Members. No adjustment shall be made in any Percentage Interest as a result of any transaction other than:

(a) The transfer of an interest in the Company pursuant to Article VII;

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(b) Pursuant to the requirements of Section 2.2(b); or

(c) The determination by the Manager that the Percentage Interests should be adjusted to reflect any disproportionate allocations, disproportionate distributions, or disproportionate capital contributions that may occur from time to time with respect to the Company and the Members.

3.2. Allocations.

(a) General. The profits and losses of the Company shall be allocated among the Members and Assignees (as defined in Section 7.1), annually or more frequently, in accordance with their respective Percentage Interests as determined under Section 3.1.

(b) Tax Allocations. Except as required by the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall allocate its tax items in the same manner as its book items. All allocations of profits and losses of the Company must comply with Treasury Regulations Section 1.704-1(b).

(c) Tax Matters. The tax year of the Company shall be the calendar year. The Company may make, refrain from making, or revoke all tax elections under the Code. If required by the Code, the Company shall designate a "Tax Matters Partner," who shall be one or more of the Members as designated by the Manager from time to time.

(d) Special Allocations.

(i) The Manager may determine that it is prudent to modify the manner in which the profits and losses of the Company are allocated among the Members, or the manner in which the Capital Accounts (or any debits or credits thereto) of the Members are computed, in order to comply with Treasury Regulations Section 1.704-1(b). If the Manager makes such a determination, the Manager may change the allocations of profits and losses of the Company and/or make adjustments to the Capital Accounts of the Members; provided, that: (A) the Manager notifies in advance any Members who would be affected by such changes or adjustments; and (B) the Manager makes such changes or adjustments in a manner that will have the least material effect on the amounts distributable to any Member pursuant to Section 8.4 upon dissolution of the Company and still result in compliance with Treasury Regulations Section 1.704-1(b).

(ii) The Members acknowledge that the Members' Capital Accounts from time to time may not be in proportion to the Members' Percentage Interests, and that any disparities must be addressed in filing the Company's tax returns. The Manager is hereby authorized to make adjustments to the allocations of profits and losses of the Company to eliminate any disparities in Capital Accounts and Percentage Interests in the manner that the Manager deems most appropriate. The Members authorize the Manager to make additional allocations of profits of the Company to those Members who contribute disproportionately less capital contributions to the Company. All allocations of profits and losses of the Company must comply with Treasury Regulations Section 1.704-1(b).

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3.3. Distributions.

(a) **Distributions of Cash.** Cash that the Manager determines is not necessary for the operations or reserves of the Company shall be distributed to the Members and Assignees, quarterly or more frequently, in accordance with their respective Percentage Interests as determined under Section 3.1.

(b) **Distributions in Kind.** If the Company distributes assets in kind, such assets shall first be assigned a fair market value, and the unrealized appreciation or depreciation in the fair market value of such assets shall be allocated among the Members in accordance with their respective Percentage Interests as if such assets had been sold by the Company for their fair market value, and the resulting gain or loss that would have been realized by the Company shall be appropriately reflected in the Capital Accounts of the Members prior to the actual distribution of such assets to the Members. Any Company assets to be distributed shall not be assigned a fair market value less than the unamortized principal balance of any loan secured thereby. If the Members cannot agree upon the fair market value for a particular Company asset, the same shall be determined by an appraiser selected by the Manager.

3.4. **Entity Classification.** The Company shall be treated as a partnership for income tax purposes. The Company shall take such actions as are permitted or required in order to claim and then retain the Company's status as a partnership for income tax purposes. Such actions shall include, but not be limited to, filing elections described in Treasury Regulations Sections 301.7701-1 through 301.7701-3. To the extent applicable, appropriate elections shall be filed for both Federal and State income tax purposes.

ARTICLE IV Records and Reports

4.1. **Company Records.** At all times during the term of the Company, and beyond that term if the Members deem it necessary, the Manager shall keep or cause to be kept books of account in which each Company transaction shall be entered fully and accurately. All Company books of account, together with executed copies of the Articles of Organization, this Agreement, and any amendments to such documents, shall be kept at the Company's principal office, and shall be available during reasonable business hours for inspection and examination by the Members or their representatives, who shall have the right to make copies of any of such books and documents at their own expense.

4.2. **Financial Statements.** Statements reflecting the financial condition of the Company and its net profit or net loss (the "Financial Statements") shall be prepared by the accountant that the Manager shall employ at the Company's expense, which may include Persons (as defined in Section 7.1) employed by the Manager or Related Persons (as defined in Section 7.1) with respect to the Manager. The format of the Financial Statements shall be determined by the Manager in her sole discretion. Copies of the Financial Statements shall be given to all Members.

4.3. **Company Income Tax Returns.** At the end of each calendar year, the Company's tax returns shall be prepared by the accountant that the Manager shall in her sole discretion employ at the Company's expense. Copies of each Member's Schedule K-1 and related

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tax reporting documents shall be provided to each Member immediately after the Company's tax returns are filed.

ARTICLE V

Management and Operation of Business

5.1. Appointment of Manager.

(a) The Company shall be managed by a single manager (the "Manager"), who is Mary E. Sherman.

(b) The Manager shall continue to serve until such time as the Manager: (i) is removed by operation of law, or by an order or decree of any court of competent jurisdiction; (ii) files a bankruptcy petition; or (iii) submits a voluntary resignation. Upon the resignation or removal of the Manager, a new Manager shall be appointed by the Members as provided in Section 5.5.

5.2. Authority of the Manager. Except as otherwise provided in this Agreement, the Manager has the sole authority to manage the Company, and is authorized to make any contracts, enter into any transactions, and make or obtain any commitments on behalf of the Company to conduct or further the Company's business. The Manager may delegate any of the Manager's responsibilities and authority to one or more of the following: (a) an officer of the Company; (b) a qualified property management company; (c) a lineal descendant of Norman H. Kramer and Sandra P. Kramer; or (d) a manager, employee, member, or other equity owner of any Member. This provision does not alter or waive any duty that the Manager may have to the Company concerning the Manager's exercise of management authority.

5.3. Duties of the Manager. The Manager must discharge her duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that the Manager reasonably believes to be in the best interests of the Company. The Manager may rely on information received from other Persons if that reliance is consistent with the Manager's duties as provided in this Section 5.3.

5.4. Officers of the Company. The Manager may appoint one or more officers from time to time (collectively, the "Officers"). Each of the Officers: (a) shall have such duties and powers as the Manager determines; (b) shall serve at the pleasure of the Manager; and (c) may be removed with or without cause at any time. The Manager shall be entitled to appoint successor Officers.

5.5. Major Decisions. Notwithstanding any contrary provision of this Agreement, the following determinations, decisions, approvals and actions affecting the Company and its business and affairs ("Major Decisions") must be determined, made, approved or authorized by the consent of Members holding at least 51% of the Percentage Interests:

- (a) Amending this Agreement;
- (b) Approving any Assignment (as defined in Section 7.1) of an interest in the Company or taking any other action described in Article VII with respect to the Members;

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- (c) Appointing a Manager for the Company in the circumstances described in Section 5.1;
- (d) Selling all or substantially all of the Company's assets;
- (e) Admitting any Person as a Member;
- (f) Doing any act in contravention of the Articles of Organization filed by the Company;
- (g) Doing any act that would make it impossible to carry on the ordinary business of the Company;
- (h) Dissolving the Company, filing a bankruptcy petition on behalf of the Company, making an assignment for the benefit of creditors, or confessing a judgment against the Company; or
- (i) Possessing Company assets, or assigning the Company's rights in specific Company assets, for other than a Company purpose.

5.6. Specific Powers. The Company shall have, in addition to the specific powers set forth in this Agreement, the power to act with regard to any Company asset, real or personal, and to do anything reasonably connected with such action. Without limiting this authority, the Company shall have the power to sell, exchange, convey title to, and grant options for the sale of all or any portion of the Company's real or personal property; to lease all or any portion of the Company assets without limit as to the term of the lease, whether or not the term (including any renewals and extensions) shall extend beyond the date of termination of the Company; to borrow money and, as security for such borrowing, to encumber all or any part of the Company assets; and to modify, consolidate or extend any deed of trust or other security device encumbering any Company assets. If the Members agree to the extent required by Section 5.5, the Manager may: (a) bind the Company and each of the Members; and (b) exercise the specific powers described in this Section 5.6. Each of the Members, including those now admitted or subsequently admitted, agrees to recognize the authority of the Manager as provided in this Article V.

5.7. Bank Accounts. One or more Company bank accounts shall be established, and checks on such accounts shall be signed by the Manager or Persons designated by the Manager. Such Persons are authorized and directed to execute standard bank documentation to establish bank accounts on the Company's behalf.

5.8. Non-Liability of the Members and Manager. No Member or Manager shall have any personal obligation for any liabilities of the Company solely by reason of being a Member or Manager, except as provided by law. No Member or Manager shall be liable to any other Member or Manager because of any act or failure to act if such act or omission is within the scope of the authority conferred on such Member or Manager by this Agreement (or any amendments hereto, or any delegations of authority pursuant hereto), or by law, and does not constitute fraud or negligence. Without limiting the foregoing, no Member or Manager shall be personally liable for the return of the capital of any Member or Manager, or for the return of any other contribution to the Company made by any Member or Manager.

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5.9. **Expenses; Reimbursement.** The Company shall bear all expenses and liabilities incurred with respect to the organization, operation and management of the Company. A Member or Manager shall be entitled to reimbursement from the Company for any reasonable Company expenses or liabilities incurred by the Member or Manager.

5.10. **Nominees.** The Members recognize that sometimes there are practical difficulties in doing business as a limited liability company, occasioned by outsiders seeking to satisfy themselves relative to the capacity of the Members or the Manager to act for and on behalf of the Company, or for other reasons. Therefore, the Members are hereby specifically authorized, if the Manager approves, to acquire real and personal property, arrange financing, enter contracts, and complete all other arrangements needed to effectuate the purposes of this Company, either in the names of the Members or in the name of a nominee, without having to disclose the existence of the Company. Nothing in this Section 5.10 is intended to address the authority of the Manager as provided in this Article V; this Section 5.10 relates only to the method of operation of the Company.

5.11. **Additional Member Agreements.** Because of the transfers of interests in the Company that are referenced in Recital D, the Norman and Sandra Kramer Family Trust shall have no interest in the Company from and after the Effective Date.

ARTICLE VI

Compensation And Outside Interests

6.1. **Compensation and Fees.** Each Member or Manager, as well as Related Persons thereto, may receive reasonable compensation or fees for services rendered to the Company, but only if and to the extent that the Manager approves the amount and payment terms for such compensation or fees, including any adjustments in the amount of such compensation or fees from time to time.

6.2. **Time Devoted to the Company.** The Members and the Manager are not required to devote all of their business time to the Company, but shall devote such time to the Company that the Members and the Manager deems appropriate.

6.3. **Competition With the Company Permitted.** The Members and the Manager, either individually or collectively, may participate in other business ventures of any kind, whether or not such business ventures compete with the Company. Neither the Company nor any of the Members or the Manager shall have any right to any income or profit derived from any such business ventures of any Member or the Manager, and none of the Members and the Manager shall have any obligation, liability or duty to offer to the Company or to any of the Members or the Manager any opportunity of which they may have knowledge or be informed.

ARTICLE VII

Assignees and Assignments

7.1. **General.**

(a) The term "Assignment" means a sale, assignment, gift, exchange, transfer at death, or any other transfer, whether voluntary or involuntary, of any direct or indirect interest in the Company (including transfers involving any interest in any Member). The term

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"Assignor" means any Person who makes an Assignment of an interest in the Company. The term "Assignee" means the owner, other than a Member, of an interest in the Company. The term "Person" means an individual, corporation, trust, partnership, joint venture, limited liability company, or other entity. The term "Related Person" means, as to any Person: (i) any Person that directly or indirectly controls or holds the power to vote 10% or more of the outstanding voting interests or securities of the Person in question; (ii) any Person 10% or more of whose voting interests or securities are directly or indirectly owned, controlled, or held with the power to vote, by such other Person; (iii) any Person directly or indirectly controlling, controlled by, or under common control with such other Person; (iv) any member, manager, director or partner of such other Person; and (v) if such other Person is a member, manager, director or partner, any Person for which such Person acts in such capacity.

(b) An Assignee may become a Member only in the manner provided in this Agreement. No Assignment will be recognized unless the Assignee agrees in writing to be bound by all provisions of this Agreement as such provisions relate to Assignees.

7.2. Restrictions on Assignments.

(a) Except in case of a Permitted Assignment (as defined in Section 7.2(b)), no Member shall make an Assignment of all or any part of its interest in the Company. Upon a Permitted Assignment, the successor in interest to the Assignor shall become an Assignee of such Member's interest in the Company, and as such shall only be entitled to share in the distributions to which the Assignor would otherwise be entitled to share, diminished by the share of losses and obligations, if any, for which the Assignor and its contribution to the capital of the Company would be liable. An Assignee shall have no right to transfer such interest in the Company (or any part thereof), or to require any information regarding or an accounting of the Company's transactions, or to inspect the Company's books, or to vote on Major Decisions, and shall not be deemed a party to this Agreement.

(b) As used herein, the term "Permitted Assignment" means:

- (i) An Assignment following the death of any Member that is an individual to any member of the family of such Member; or
- (ii) An Assignment following the death of any Member that is an individual to an Assignee that is approved by the Members; provided, that such approval will not be unreasonably withheld.

As used herein, the term "family" means an individual's spouse, natural or adoptive lineal ancestors or descendants, and trusts for the exclusive benefit of any of the foregoing.

7.3. Notice of Assignment; Effectiveness. The Company shall not be required to recognize any Assignment until the Company receives notice thereof, and, notwithstanding any contrary provision of this Agreement, no Assignment will be permitted if it would violate any law. Any Assignment not made in accordance with this Agreement shall be void ab initio.

7.4. Status and Liability of an Assignor. A Person making an Assignment of an interest in the Company shall be considered an Assignor, not a Member, to the extent of the

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Assignment. To the extent of an Assignor's Assignment, an Assignor, whether or not a Member, shall not have the rights of a Member, and shall not be relieved of liability under this Agreement for obligations that accrued prior to the date of the Assignment, unless and until approval of the Manager is obtained. The Assignor and the Assignee of an interest in the Company shall advise the Manager as to the manner in which the liabilities described in this Section 7.4 should be handled as between the Assignor and the Assignee.

7.5. Rights of an Assignee. An Assignment of an interest in the Company entitles the Assignee, to the extent assigned, to the Capital Account and Percentage Interest of the Assignor. An Assignment does not entitle the Assignee, whether or not a Member, to participate in the management and affairs of the Company or to become a Member or a Manager, to the extent of the Assignment, until approval by the Members as provided in Section 5.5 is obtained. The Member List shall reflect the same information with regard to Assignees as it does with regard to Members.

7.6. Admission of Members. Persons, other than the undersigned Members, acquiring interests in the Company by Assignment or otherwise will not become Members until: (a) admission of such Person has been approved by the Members as provided in Section 5.5; (b) they execute this Agreement, as it then exists; and (c) they make any capital contributions that were required from such Person's predecessor in interest. Except for Assignees who become Members as provided in this Section 7.6, there shall be no additional Members of the Company.

7.7. Adjustments to Tax Basis. Upon the transfer of an interest in the Company, the Company will, upon request of the affected Member or Members, elect pursuant to Code Section 754 to adjust the basis of the Company assets under the circumstances and in the manner provided in Code Sections 734 and 743. In the event of any such election, the Members shall take any and all necessary steps to consummate such adjustments, including but not limited to the filing of such election with the income tax returns of the Company for the first taxable year to which such election applies. Before the election under Code Section 754 is made, the affected Member or Members must agree to reimburse the Company for the additional accounting costs in filing the election and making the adjustments required by Code Sections 734 and 743.

ARTICLE VIII Dissolution

8.1. Limitations. The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Article VIII, and each Member hereby waives any and all other rights that it may have to cause the dissolution of the Company or a sale or partition of any or all of the Company assets. The Members agree that neither the retirement, death nor insanity of a Member, nor the admission to the Company of a substituted Member pursuant to the provisions of Article VII, shall cause the Company to be dissolved, liquidated and terminated.

8.2. Events of Dissolution. The Company shall be dissolved upon the first to occur of the following events:

(a) The sale of all or substantially all of the Company assets; provided, that, if all or substantially all of the Company assets are sold on an installment basis pursuant to the provisions of Code Section 453, the Company shall not be terminated nor dissolved until all payments thereunder have been received by the Company; or

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- (b) The written consent of all of the Members.

8.3. Continuation of Business. During the period of dissolution, liquidation and termination of the Company pursuant to the provisions of this Article VIII, the business of the Company may be continued to the extent necessary to allow an orderly winding up of its affairs, including but not by way of limitation the liquidation of the Company pursuant to the provisions of Section 8.4.

8.4. Distributions Following Dissolution. Upon the dissolution, liquidation and termination of the Company pursuant to this Article VIII, and within a reasonable time thereafter, the Company assets shall be sold and the proceeds thereof shall be applied in the following order of priority:

(a) Payment of the Company's debts to creditors, including Members who are creditors to the extent permitted by law, in satisfaction of the liabilities of the Company, other than liabilities for distributions to the Members, in the priority provided by law;

(b) Payments to the Members and the former Members in satisfaction of liabilities for distributions; and

(c) Payments to the Members in accordance with their positive Capital Account balances, and in compliance with Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2).

8.5. Negative Capital Accounts Upon Dissolution. Notwithstanding any contrary provision of this Agreement, any Member with a deficit in its Capital Account following the distribution of liquidation proceeds in accordance with Section 8.4 shall not be required to restore the amount of such deficit to the Company. The preceding sentence shall be reviewed and modified as necessary upon one or more of the following events: (a) the financing for the Company's assets changes from fully or partially nonrecourse loans; (b) an adjusted Capital Account deficit would otherwise apply with respect to any Member under Treasury Regulations Section 1.704-1(b); (c) the rules for allocations of liabilities under Code Section 752 would otherwise cause the liabilities allocated to any Member to be reduced below that Member's Capital Account; or (d) the Manager determines that this Section 8.5 should be amended in any respect.

8.6. Termination of the Company. The Company shall terminate upon the completion of the dissolution and liquidation thereof pursuant to the provisions of this Article VIII, as well as the filing of a Certificate of Dissolution and a Certificate of Cancellation pursuant to the provisions of the Act.

ARTICLE IX Indemnification

9.1. Indemnification.

(a) The Company shall indemnify any Member or Manager who was or is a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, and whether formal or informal (a "Proceeding"), including a Proceeding brought on behalf of the Members of the Company,

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because such Person is or was a Member or Manager of the Company, or was or is serving at the request of the Company as a manager, director, trustee, partner or officer of another entity, against any liability or any reasonable expenses (including reasonable attorneys' fees) incurred by such Person in connection with such Proceeding, unless such Person has engaged in willful misconduct or a knowing violation of the criminal law, or unless such Proceeding is to enforce contractual obligations of a Member including the capital contribution obligations contained in this Agreement. No amendment of this Article IX shall have any effect on the rights provided herein with respect to any act or omission occurring prior to such amendment.

(b) The Company shall promptly make advances or reimbursements for reasonable expenses (including attorneys' fees) incurred by any Person claiming indemnification under this Article IX, unless it has been determined that such Person is not entitled to indemnification because of a failure to meet the standards set forth in this Article IX or is inconsistent with a court order. Such advances or reimbursements shall be conditioned upon receipt from the Person claiming indemnification of a written undertaking to repay the amount of such advances or reimbursements if it is ultimately determined that such Person is not entitled to indemnification.

(c) The determination that indemnification under this Article IX is permissible, and of the reasonableness of expenses and attorneys' fees, shall be determined as follows: (i) if the claimant is a Member that is not a Related Person with respect to the Manager, by the Manager; and (ii) if the claimant is the Manager or a Related Person with respect to the Manager, either by: (A) a majority in interest of the Members entitled to vote, or (B) outside counsel to the Company; provided, that the Manager or Member requesting indemnification under this Article IX shall not be entitled to vote to approve such indemnification. The determination may be made before or after a claim for indemnification is made.

(d) No Person shall be entitled to indemnification pursuant to this Article IX to the extent such Person is entitled to indemnification by another, including an insurer.

(e) Notwithstanding any other provisions of this Article IX, no indemnification under this Article IX is permitted if inconsistent with: (i) an agreement prohibiting indemnification executed by the Company, by the Manager, or by the Member in question; or (ii) a court order.

(f) In no event shall indemnification under this Article IX be made to the extent that additional capital contributions from the Members are required pursuant to Section 2.2. The initial capital contributions described in Section 2.1 may be used for indemnification under this Article IX.

9.2. **Liabilities.** The Company shall assume and bear all liabilities and obligations relating to or arising out of the business of the Company.

ARTICLE X Miscellaneous Provisions

10.1. **Priority of Certain Members.** None of the Members have any priority over the other Members as to capital contributions or as to compensation by way of income.

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10.2. Amendments.

(a) This Agreement is subject to amendment only with the approval of the Members pursuant to Section 5.5.

(b) Each Member hereby appoints the Manager as its attorney-in-fact to execute any amendments to this Agreement that: (i) have been approved as provided in Section 5.5; or (ii) do not require the approval of the Members pursuant to the other provisions of this Agreement. The Manager is authorized to amend the Member List from time to time to reflect: (A) changes in the Members and Assignees; (B) changes in the Members' Percentage Interests pursuant to the provisions of Section 3.1; and (C) changes in the managers of the Company. The changes described in the preceding sentence shall be effective whether or not the Member List has been amended. The power of attorney described in this Section 10.2(b) is irrevocable and shall apply to each Member, as well as its successors in interest.

10.3. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California.

10.4. Interpretation. Unless the context otherwise requires, terms used and not defined in this Agreement shall have the same definitions as set forth in the Act.

10.5. Binding on Heirs and Successors. Subject to the restrictions against Assignment as herein contained, this Agreement shall inure to the benefit of and shall be binding upon the assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the Members.

10.6. Counterparts. This Agreement may be executed in several counterparts, and as so executed shall constitute one agreement that shall be binding on all of the Members, notwithstanding that all of the Members are not signatory to the original or to the same counterpart.

10.7. Entire Agreement. This Agreement contains the entire understanding among the Members relating to the subject matters of this Agreement, and supersedes any prior written or oral agreements between or among them respecting the subject matters contained herein.

10.8. Captions and Pronouns. All titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the party or parties may require.

10.9. Power of Attorney. Each Member hereby constitutes and appoints the Manager (and each of them if there is more than one) such Person's true and lawful attorney-in-fact in such Person's name, place and stead, to execute, acknowledge and deliver or file any certificate required by law to be filed by the Company with any governmental agency.

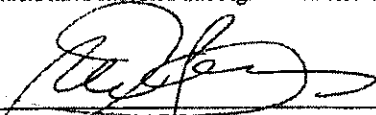
10.10. No Third Party Beneficiaries. No provision in this Agreement shall affect the Members' and Assignors' insulation from personal liability for Company debts that is provided

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for in the Act. No provision of this Agreement shall inure to the benefit of, or be enforceable by, any third party, including, without limitation, any creditor of the Company or any creditor of a Member.

10.11. **Notices.** Any notice, demand, or other communication that any party may be required or may elect to give to anyone interested hereunder will be sufficiently given if: (a) deposited postage prepaid in a United States mail letter box, or sent on a prepaid basis by overnight courier, addressed to such address as may be set forth in the Member List from time to time; (b) sent by electronic mail, addressed to such e-mail address as may be set forth in the Member List from time to time; or (c) delivered personally at the address in clause (a) above. Delivery shall be deemed complete when actually received.

IN WITNESS WHEREOF, the Members have executed this Agreement effective as of the Effective Date.


JEFFREY M. SHERMAN, Trustee of the J & M
Sherman Family Trust dated April 7, 1995


MARY E. SHERMAN, Trustee of the J & M
Sherman Family Trust dated April 7, 1995

ROBERTA J. KRAMER

DIANE G. DENNIS

LAURA J. LYNN

LINDA R. KRAMER

[Signature Pages Continue]

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[Signature Pages Continue]

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Diane G. Dennis
DIANE G. DENNIS

LAURA J. LYNN

LINDA R. KRAMER

[Signature Pages Continue]

CONFIDENTIAL

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LAURA J. LYNN

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[Signature Pages Continue]

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MARY E. SHERMAN, Trustee of the J & M
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ROBERTA J. KRAMER

DIANE G. DENNIS

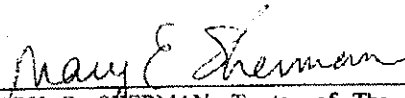
LAURA J. LYNN

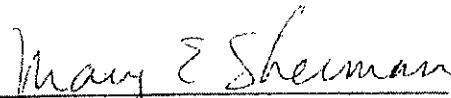


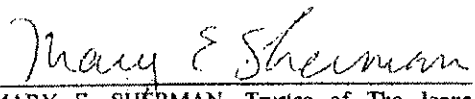
LINDA R. KRAMER

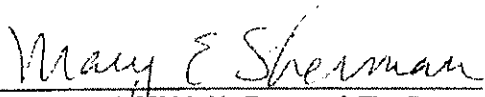
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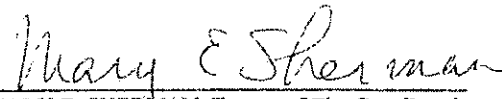
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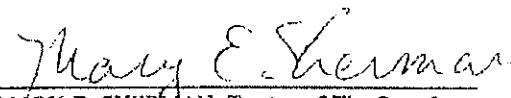

MARY E. SHERMAN, Trustee of The Alexa
Sherman Irrevocable Trust dated September 7, 2001

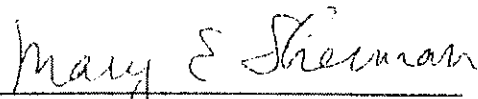

MARY E. SHERMAN, Trustee of The Dana Sherman
Irrevocable Trust dated September 7, 2001


MARY E. SHERMAN, Trustee of The Jenna
Sherman Irrevocable Trust dated September 7, 2001


MARY E. SHERMAN, Trustee of The Broxton
Dennis Irrevocable Trust dated September 7, 2001


MARY E. SHERMAN, Trustee of The Curt Dennis
Irrevocable Trust dated September 7, 2001


MARY E. SHERMAN, Trustee of The Sean Lynn
Irrevocable Trust dated September 7, 2001


MARY E. SHERMAN, Trustee of The Branden Lynn
Irrevocable Trust dated September 7, 2001

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EXHIBIT AMEMBER LIST

Member Name And Address	Percentage Interest
Jeffrey M. Sherman and Mary E. Sherman, Trustees of the J & M Sherman Family Trust 24178 Park Riviera Calabasas, California 91302	14.1571%
Roberta J. Kramer 22246 Buena Ventura Woodland Hills, California 91364	14.1571%
Diane G. Dennis P.O. Box 1161 Conifer, Colorado 80433	14.1571%
Laura J. Lynn 4024 Crystal Dawn Land #201 San Diego, California 92122	14.1571%
Linda R. Kramer 2751 Grandview Street San Diego, California 92110	14.1571%
Mary E. Sherman, Trustee of The Alexa Sherman Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	5.3306%
Mary E. Sherman, Trustee of The Dana Sherman Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	5.3306%
Mary E. Sherman, Trustee of The Jenna Sherman Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	5.3306%

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Member Name And Address	Percentage Interest
Mary E. Sherman, Trustee of The Broxton Dennis Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	5.3306%
Mary E. Sherman, Trustee of The Curt Dennis Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	5.3305%
Mary E. Sherman, Trustee of The Sean Lynn Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	1.2808%
Mary E. Sherman, Trustee of The Branden Lynn Irrevocable Trust 24178 Park Riviera Calabasas, California 91302	1.2808%
TOTAL	<u>100.0000%</u>

Dated: January 1, 2009

Company: Silver Strand Plaza, LLC

Manager of the Company:

Mary E. Sherman

KRASSER SILVER STRAND 99B.DOC

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in Pro Se
Laura Lynn Hammett

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

<p>LAURA LYNN HAMMETT, an individual,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>MARY E. SHERMAN, an individual; MARY E. SHERMAN, as manager of Silver Strand Plaza, LLC; SILVER STRAND PLAZA, LLC, a California limited liability company; MARY E. SHERMAN as CO-TRUSTEE OF THE J & M SHERMAN FAMILY TRUST, a California revocable trust; JEFFREY M. SHERMAN as CO-TRUSTEE OF THE J & M SHERMAN FAMILY TRUST; MARY E. SHERMAN as TRUSTEE OF THE ALEXA SHERMAN IRREVOCABLE TRUST,</p>	<p>) Case No.: 19-CV-0605-JLS-AHGL</p> <p>)</p> <p>)</p> <p>) <u>SECOND</u>FIRST AMENDED</p> <p>) <u>VERIFIED</u> COMPLAINT FOR</p> <p>) <u>CAUSES OF ACTION 1) FRAUD; 2)</u></p> <p>) <u>FRAUDULENT CONVEYANCE 3)</u></p> <p>) <u>DISSOLUTION; 4) APPOINTMENT</u></p> <p>) <u>OF RECEIVER; 5) ACCOUNTING;</u></p> <p>) <u>6) CONSTRUCTIVE TRUST; 7)</u></p> <p>) <u>CONVERSION; 8) BREACH OF</u></p> <p>) <u>FIDUCIARY DUTY COUNT ONE;</u></p> <p>) <u>9), AIDING AND ABETTING A</u></p> <p>) <u>BREACH OF FIDUCIARY DUTY</u></p> <p>) <u>COUNT TWO, ALTERNATIVELY</u></p> <p>) <u>BREACH OF COVENANT OF</u></p> <p>) <u>GOOD FAITH AND FAIR</u></p> <p>) <u>DEALING; 10) AIDING AND</u></p> <p>) <u>ABETTING BREACH OF</u></p> <p>) <u>FIDUCIARY DUTY; 11);</u></p>
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a California irrevocable trust; MARY E.) **DEFAMATION PER SE OR PER**
 SHERMAN as TRUSTEE OF THE) **QUOD; 12) FALSE LIGHT**
 DANA SHERMAN IRREVOCABLE) **INVASION, CIVIL CONSPIRACY TO**
 TRUST, a California irrevocable trust;) **DEFAME, CONVERSION, AND**
 MARY E. SHERMAN as TRUSTEE) **EXEMPLARY DAMAGES;**
 OF THE JENNA SHERMAN) **DERIVATIVE CLAIM OF LEGAL**
 IRREVOCABLE TRUST, a California) **MALPRACTICE; EQUITABLE**
 irrevocable trust; MARY E.) **RELIEF OF AN ACCOUNTING AND**
 SHERMAN as TRUSTEE OF THE) **DECLARATORY RELIEF OF**
 BROXTON DENNIS IRREVOCABLE) **SPECIFIC PERFORMANCE OF**
 TRUST, a California irrevocable trust;) **INDEMNIFICATION CLAUSE OF**
 MARY E. SHERMAN as TRUSTEE) **OPERATING AGREEMENT,**
 OF THE CURT DENNIS) **DISQUALIFICATION OF PRIVACY**
 IRREVOCABLE TRUST, a California) **COUNT ONE; 13) DEFAMATION**
 irrevocable trust; MARY E.) **PER SE OR PER QUOD COUNT**
 SHERMAN as TRUSTEE OF THE) **TWO THROUGH SIX; 14) FALSE**
 SEAN LYNN IRREVOCABLE) **LIGHT INVASION OF PRIVACY**
 TRUST, a California irrevocable trust;) **COUNT TWO AND; 15) UNJUST**
 MARY E. SHERMAN as TRUSTEE) **ENRICHMENT COUNSEL TO**
 OF THE BRANDEN LYNN) **SILVER STRAND PLAZA, LLC AND**
 IRREVOCABLE TRUST, a California) **RECEIVERSHIP**
 irrevocable trust; LINDA R. KRAMER,) **JURY TRIAL DEMAND**
 an individual; LINDA R. KRAMER as)
 CO-TRUSTEE OF THE LYNN AND)
 ERIK'S TRUST; ERIK VON)
 PRESSINTIN HUNSAKER as CO-)
 TRUSTEE OF THE LYNN AND)
 ERIK'S TRUST; DIANE G. DENNIS,)
 an individual; DOES 1-99 ~~ELLIS ROY~~)
~~STERN, ESQ., an individual; ALAN N.~~)
~~GOLDBERG, ESQ., an individual;~~)
~~STERN & GOLDBERG, a California~~)
~~Partnership; PATRICK C.~~)
~~MCGARRIGLE, ESQ., an individual;~~)
~~MCGARRIGLE, KENNEY &~~)
~~ZAMPIELLO, A PROFESSIONAL LAW~~)
~~CORPORATION, a California~~)
~~corporation; DOES 1-99~~)
 Defendants.)

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Plaintiff Laura Lynn Hammett alleges as follows:

The Parties

1. Plaintiff Laura Lynn Hammett (“Plaintiff” or “Hammett”) is an individual residing in Faulkner County, Arkansas and was at all times relevant herein a member of Defendant Silver Strand Plaza, LLC (“SSP” or “the Company”)
2. The shares held by Plaintiff constitute 14.1571% of the shares of SSP.
3. Separate defendant Silver Strand Plaza, LLC is a California limited liability company whose principal asset was a multi-tenant shopping center in Imperial Beach, California that was sold in January 2017. SSP resides in the Central District of California as per 28 U.S.C. §1391(c)(2). Plaintiff said SSP resided in Southern District in the FAC, but jurisdiction can be had in either Southern or Central District pursuant to §1391(b)(2) because a substantial part of

1 the events or omissions giving rise to the claim occurred in Central District, and a
2 substantial part of property that is the subject of the action is situated in Southern
3 District. SSP headquarters is in Central District and the Silver Strand Plaza is no
4 longer owned by SSP. ~~Defendant SSP is an entity which resides in San Diego~~
5 ~~County, California as per 28 U.S.C. §1391(c)(2).~~

6 4. Plaintiff is informed and believes, and on that basis alleges, that SSP
7 is a closely held Limited Liability Company.

8 5. Defendant Mary E. Sherman as ~~(“Sherman”)~~ is an individual
9 (“Sherman”) residing ~~residing~~ in Los Angeles County, California. Mary E. Sherman
10 is sued under nine further separate capacities, each with liability arising from
11 varied rights and duties.

12 2.6. Separate defendant Mary E. Sherman as manager of Silver Strand
13 Plaza, LLC (“the Manager”), ~~and~~ is and was the Manager of Defendant SSP,
14 residing in Los Angeles, California.

15 3. Separate defendants ~~Defendant Mary E. Sherman and Jeffrey M.~~
16 ~~Sherman as Co-Trustees of the J & M Sherman Family Trust (“SFT”) are the co-~~
17 ~~trustees of a California revocable trust and were at all times relevant herein a~~
18 ~~member of Defendant SSP, holding a 14.1571% interest therein. Mary E.~~
19 ~~Sherman was the spokesperson for the Co-Trustees in all business~~
20 ~~communications, but the husband and wife co-trustees were in agreement on~~
21 ~~all actions.~~

22 4.7. Defendant ~~Defendant~~ Mary E. Sherman as Trustee of the Jenna Sherman
23 Irrevocable Trust, Alexa Sherman Irrevocable Trust, Dana Sherman Irrevocable
24 Trust, Broxton Dennis Irrevocable Trust, Curt Dennis Irrevocable Trust, Sean
25 Lynn Irrevocable Trust, and Branden Lynn Irrevocable Trust
26 (collectively, combined as “Grandchildren Trusts”) were ~~was~~ and are ~~is~~ at all
27 relevant times trustees ~~trustee~~ of the member California irrevocable trusts holding
28 a combined 29.2145 interest therein.

8. Separate defendant Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust and separate defendant Jeffrey M. Sherman as Co-Trustee of the J & M Sherman Family Trust are the Co-Trustees of a California revocable trust and were at all times relevant herein a member of Defendant SSP, holding a 14.1571% interest therein.

~~5-9.~~ Separate defendant Linda R. Kramer (“~~L.~~ Kramer”) is an individual residing in San Diego, California, and was at all relevant times herein a member of SSP holding a 14.1571% interest therein. Defendant~~L.~~ Kramer is commonly called “Lynn”, the same as Plaintiff’s surname before her marriage in April 2019, which may make email evidence in this case confusing.

10. Separate defendant~~Defendants~~ Linda R. Kramer as co-trustee of the Lynn and Erik’s Trust and separate defendant ~~and~~ Erik Von Pressintin Hunsaker as Co-~~Trustee~~Trustees of the Lynn and Erik’s Trust (~~“L&E Trust”~~) are the co-trustees of a California revocable trust, ~~assignee of Defendant L. Kramer’s share of SSP, holding a 14.1571% interest therein. Linda R.~~

11. Where there is more than one trustee, all trustees must concur~~Kramer was the spokesperson for the Co-Trustees~~ in the administration of the trust~~all business communications~~, but the entire body can direct one of their number to transact business, which it may be inconvenient for the others to perform, and the acts of the one thus authorized are the acts of all, and binding on all. (Howard Fire Ins. Co. v. Chase, 72 U.S. 509, SCOTUS (1866), h.n. 6) “Generally, powers of trustees of private trust are undivided and trustees cannot act separately...”(Bitker v. Hotel Duluth Co., 83 F.2d 72, 8th Cir Ct. App, (1936)).

12. Mary E. Sherman acted on behalf of the J&M Sherman Family Trust on all matters regarding SSP after Jeffrey M. Sherman signed the OA~~husband and wife co-trustees were~~ in 2009, binding Jeffrey M. Sherman as Co-Trustee to all acts of his Co-Trustee. The two separate defendants collectively are called “the J&M Trust Defendants”.

13. Linda R. Kramer as Co-Trustee of the Lynn and Erik's Trust acted on behalf of the trust on all matters regarding SSP, binding Erik Von Pressintin Hunsaker as Co-Trustee to all acts of his Co-Trustee. The two defendants collectively are referred to as the "L&E Trust Defendants".

~~6.14.~~ Kramer made an assignment of her share of SSP to the L&E Trust Defendants that is void *ab initio* due to Article VII of the Operating agreement as discussed thoroughly in the Second Cause of Action ~~on all actions.~~

~~7.15.~~ Separate defendant ~~Defendant~~ Diane G. Dennis ("Dennis") is an individual who was a member of SSP holding a 14.1571% interest therein at all relevant times herein. The Member List of SSP provided by Defendant Sherman through her attorney on April 5, 2019 shows an address for Defendant Dennis that is a P.O. Box in Santa Fe, New Mexico. ~~Defendant~~ Dennis was living in Colorado when last seen by Plaintiff and has a Colorado telephone number.

16. The aforementioned eleven separate defendants who had voting rights and duties to make major decisions for SSP, called herein as J&M Trust Defendants, Grandchildren Trusts, Kramer and Dennis are collectively referred to as "Defendant Members". The Operating agreement refers to the Defendant Members, deceased Member Roberta Kramer and Plaintiff as "Members" and that denotation is adopted here (except, of course Roberta Kramer was not included after she passed away).

~~8.—~~ The Members are all siblings, except the J&M Trust Defendants. Jeffrey M. Sherman, co-trustee of the J&M Sherman Family Trust, is married to sibling ~~Defendant Ellis Roy Stern, Esq. ("Stern") is an individual and an attorney licensed to practice law in California with an office in Los Angeles County, California. He was counsel to Defendants SSP and Mary Sherman as manager of SSP from December 2013 through May 2018. During this period he also represented Plaintiff's mother Sandra Kramer ("Sandi Kramer"). He also~~

acted like he represented the other members of SSP as individuals, as described below.

9. Defendant Alan N. Goldberg is an individual and an attorney licensed to practice law in California with an office in Los Angeles County, California. As per the fee agreement, he was co-counsel to Defendants SSP and Mary Sherman as manager of SSP from December 2013 through May 2018.

10. Defendant Stern & Goldberg Attorneys ("S & G") is a partnership in Encino, California in which Defendants Stern and Alan N. Goldberg are partners. Defendant Stern acted on behalf of S & G at all relevant times, except perhaps clerical or administrative duties, such as depositing checks. Therefore, actions of Stern will be synonymous with actions of S & G.

17. Defendant Mary E. Sherman.

18. Mary E. Sherman in each and every capacity knows what each and every other Mary E. Sherman capacity is thinking and doing.

19. To make the pleading less cumbersome, when it says Mary E. Sherman in one capacity acted toward the Members or Member Defendants, such as sending an email or convincing them of something, it should be understood that she did not act upon Mary E. Sherman in other capacities, like sending a copy to herself or convincing herself.

20. The Manager and Mary E. Sherman in each of her capacities used only one email account in all email communications of which Plaintiff is aware.

21. Plaintiff does not know the true names, legal capacities or exact nature of the involvement of the Defendants sued herein as DOES 1-99, inclusive, and therefore sues said Defendants by such fictitious names.

22. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether specifically named or designated herein as a DOE, was the agent, representative, servant, employee, principal, assignee, co-conspirator, management company and/or representative of each of the remaining Defendants.

and in doing the acts hereinafter alleged, was acting within the course and scope of said agency, employment, assignment, conspiracy, agreement, management company agreement and/or service with the approval, knowledge, authority, permission and/or consent of the remaining Defendants, and each of them.

23. Plaintiff anticipates the need to file a motion per Civil Code 1714.10 for leave to add previous or present counsel to SSP as Doe Defendants on any cause of action that might involve a civil conspiracy but cannot do so until after discovery.

24. Counsel to SSP from December 18, 2013 to May 2018 was Ellis Roy Stern (“Stern”) of the law partnership Stern and Goldberg.

~~11. Counsel to SSP from May 2018 to about June 2019 was Patrick C. McGarrigle, Esq. (“McGarrigle”) of is an individual and an attorney licensed to practice law in California with an office in Los Angeles County, California. McGarrigle represented both Defendants Sherman as manager of SSP, SSP and maybe as an individual from May 2018 through this writing.~~

~~12. Defendant McGarrigle, Kenney and Zampiello, A Professional Law Corporation (“MKZ”) is a Corporation in Chatsworth, California in which Defendant McGarrigle is a listed on the Statement of Information filed with the Secretary of State as Chief Executive Officer, Secretary, Chief Financial Officer and sole Director as well as Agent for Service of Process. Defendant McGarrigle acted on behalf of MKZ at all relevant times, except perhaps clerical or administrative duties, such as depositing checks. Therefore, actions of McGarrigle will be synonymous with actions of MKZ.~~

26. Counsel to SSP from June 2019 to this writing was Daniel Forde (“Forde”) of Hoffman and Forde, Attorneys at Law.

~~13. Defendant Does 1-99 will be determined through discovery. Plaintiff intends to file a motion per Civil Code 1714.10 for leave to add the attorney defendants on the civil conspiracy causes. Should leave be granted,~~

1 ~~the amendment will be simply adding their names and maybe a couple other~~
 2 ~~sentences.~~

3 14. ~~Plaintiff Laura Lynn Hammett ("Plaintiff") is an individual residing~~
 4 ~~in Faulkner County, Arkansas and was at all times relevant herein a member~~
 5 ~~of Defendant SSP, holding a 14.1571% interest therein.~~

6 7 **Jurisdiction and Venue**

8 15. 27. This Court has original jurisdiction pursuant to 28 U.S.C. §
 9 1332, because this is a civil action in which Plaintiff is a citizen of and residing in
 10 Arkansas; Defendants Sherman and, ~~Jeffrey M. Sherman, L. Kramer, Erik~~
 11 ~~Hunsaker, Stern, and McGarrigle~~ are California citizens and residents; Dennis is
 12 a citizen and residing in Colorado or New Mexico; The J&M Sherman Family
 13 TrustSFT is a revocable trust formed in California; The Lynn and Erik's L&E Trust
 14 is a revocable trust formed in California; The Grandchildren Trusts are irrevocable
 15 trusts formed in California and SSP is a California limited liability company
 16 headquartered in California, ~~S & G is a California partnership and MKZ is a~~
 17 ~~California Corporation~~ and the amount in controversy exceeds \$75,000 exclusive
 18 of interest and costs.

19 28. Venue is proper in the Southern District of California pursuant to
 20 U.S.C. § 1391(b)(2) but Plaintiff will move the Court for a transfer to Central
 21 District of California, which is also proper.

22 29. Plaintiff filed against Sherman, the Manager and SSP in Central
 23 District in May 2018 and then dismissed that suit without prejudice on the
 24 fraudulent inducement of McGarrigle on behalf of the Manager, who promised full
 25 disclosure of SSP financial records, said disclosure still incomplete to this writing.

26 ~~16. 30. because Defendant SSP is subject to the Court's personal~~
 27 ~~jurisdiction in the Southern District with respect to the civil action herein;~~
 28 ~~because Defendant L. Kramer resides in the Southern District; The L&E Trust~~

~~because Defendants L. Kramer and Erik Hunsaker, co-trustees of the L&E Trust reside in the Southern District; because Plaintiff resided in the Southern District until moving to Arkansas and thus has some connection to the District;~~ a substantial part of the events or omissions giving rise to the claim occurred, and a substantial part of property that is the subject of the action is situated in the Southern District; When Plaintiff filed the Complaint, one of her sons lived in the Southern District, so Plaintiff stayed with him when in San Diego, but he moved to Central District in February 2020, so Southern District is less convenient for Plaintiff, ~~and the majority of witnesses reside in the Southern District.~~

Summary

~~20.— Defendant Sherman, in violation of the Amended and Restated Operating Agreement of Silver Strand Plaza, LLC entered into as of January 1, 2009 (“OA”), caused SSP to pay more than double what she told potential buyers of Silver Strand Plaza was a reasonable rate of management fees, about half to herself and half to a third party management company. She caused an unexplained “Asset Account Adjustments” of \$390,677.55, which is an accounting entry that may reconcile a bad debt. She also gave herself bonuses of \$65,000 after the principal asset was sold without getting authorization from the other members or telling them about it until Plaintiff’s former attorney pulled it out of her like the proverbial teeth; bought a \$2,300 computer with company funds after the LLC sold its principal asset and would have no purpose to purchase such an expensive computer; converted \$50,000 from Plaintiff alone, but returned the money after a few days of threats of a lawsuit; then converted money from all the money in retained capital, 14.157% of it belonging to Plaintiff, for the same purpose; and threatened to convert legal fees for herself and SSP from plaintiff alone, in violation of the OA to pay for~~

~~her defense of this action, as detailed below. There is also evidence of self-dealing, misappropriation and keeping two sets of books that requires an accounting. \$65,000 of payments to Defendant Sherman in 2017 were not reported to the IRS on a form 1099, which may cause Plaintiff's tax burden to be greater than it should be (besides being criminal tax evasion). She wrote libelous per se comments about the plaintiff and sent them to several recipients. Her acts were done with malice and oppression toward the plaintiff.~~

~~21.—Defendants Dennis, L. Kramer, L&E Trust, SFT and Grandchildren Trusts refuse to ask for an accounting and blocked SSP since January 2014 from filing an appropriate lawsuit. All have a potential substantial financial gain by aiding and abetting Defendant Sherman's breach of fiduciary duty and no reasonable excuse to deny an accounting. All Defendants agreed to offer Plaintiff a mere 1/6th the value of her membership when they thought Plaintiff was desperate for money. The member defendants paid Defendant Stern to represent them as individuals out of SSP money, effectively giving themselves bonuses not given to Plaintiff. Member defendants paid Defendants Stern and McGarrigle to represent them in these proceedings, which should not be allowed according to the OA.~~

~~22.—To intimidate Plaintiff from pursuing her legal right to damages, the Defendants Dennis, L. Kramer and Sherman, along with their mother Sandi Kramer and Defendant Stern acted in concert to defame Plaintiff. Under the theory that "the best defense is a good offense" the group tried to deflect attention from the misappropriation of SSP funds by creating a gang mentality where Plaintiff was called a malicious criminal and litigious. Even if the Defendants' false statements were true, they would offer no defense to conversion, breach of fiduciary duty and false reporting of LLC finances. The attorneys Defendants Sherman and SSP employed repeated that Plaintiff's emails were malicious and completely "unfounded". At the same time~~

~~Defendant Stern encouraged and condoned the family matriarch's filing of false reports of criminal elder abuse against the Plaintiff. And, not one word was written, to Plaintiff's knowledge, to admonish Defendant Dennis to refrain from making absurd and highly offensive libelous per se comments about Plaintiff to the other defendants and random people in Plaintiff's community. Throughout the general allegations, for ease in reading, "the Aiding and abetting Defendants" will be used to describe Dennis, L. Kramer, Erik Hunsaker, Jeffrey M. Sherman and Mary Sherman as trustee of the Grandchildren Trusts. "The Defamation Defendants" will mean Dennis and Sherman.)~~

~~———~~ General Allegations

~~25.——The Plaintiff and all Defendants agree that there is animosity between Plaintiff and both Defendant Sherman and Sandi Kramer that goes back decades.~~

~~26.——Sandi Kramer controls assets valued at well over \$12 million, mostly as settlor and trustee of a by pass trust. (Dr. Norman H. Kramer, the other settlor of the trust passed away in January 2010 after a litany of health issues including blood clots on his lungs, fluid in his brain, and kidney cancer.) This suit is not addressing nor contesting in any way that revocable and irrevocable trust. It is only mentioned to put a perspective on motivations and ability for Sandi Kramer to use economic incentive to win loyalty from the other SSP members. Sandi Kramer has sent emails to all her children in which she wrote that there "are long strings attached" to gifts she makes. (Plaintiff gave serious consideration to adding a cause of action for interference with contract and libel per se against Sandi Kramer but chose not to name her as a defendant out of respect as a parent and gratitude for the generosity she showed Plaintiff before Norman Kramer's passing.) Plaintiff requested Sandi Kramer cease and desist from making any further defamatory comments and~~

1 ~~will join Sandi Kramer as a defendant if any defamatory statements are made~~
2 ~~after April 17, 2019.~~

3 ~~27.— Before 2009, Defendant Sherman launched a quiet but aggressive~~
4 ~~campaign to cause Norman and Sandi Kramer to cease further financial gifts to~~
5 ~~Plaintiff's sons. She was motivated by greed and a sense of privilege. Norman~~
6 ~~and Sandi Kramer as trustees of a family trust gifted SSP to all their issue,~~
7 ~~with equal shares to their children, but Plaintiff's sons each received 1.28~~
8 ~~percent while the other five grandchildren received 5.33 percent each.~~

9 ~~28.— After their father's passing, Plaintiff discovered some troubling~~
10 ~~information about Defendants Sherman and her husband Jeffrey M. Sherman~~
11 ~~which Plaintiff wrote about and posted on a blog. Plaintiff suspected the~~
12 ~~Shermans of making defamatory ex parte comments about her to the~~
13 ~~Commissioner who presided on the Plaintiff's marital dissolution case. Jeffrey~~
14 ~~Sherman's brother and lifelong business partner was Facebook friends with the~~
15 ~~commissioner. Plaintiff captured a screen shot of the commissioner flanked by~~
16 ~~the Sherman Defendants' three daughters on their uncle's Facebook page.~~
17 ~~Jeffrey Sherman and his brothers went to the same schools K-12 with the~~
18 ~~commissioner, and neither the Shermans nor the Commissioner ever~~
19 ~~mentioned this relationship to Plaintiff or in court. The Commissioner was~~
20 ~~recused from the case eventually, after much damage was done, and the~~
21 ~~Commission on Judicial Performance found the appearance of bias by the~~
22 ~~commissioner against the Plaintiff and issued a "severe" public admonishment~~
23 ~~in 2012. He is no longer serving as a commissioner and is in private practice.~~
24 ~~As a result of the commissioner's decisions, Defendant Sherman and Sandi~~
25 ~~Kramer were able to convince Norman Kramer to remove the Plaintiff's sons~~
26 ~~from any further gifts.~~

27 ~~29.— Defendant Sherman complained by email that Plaintiff wrote~~
28 ~~"slander" about her, but never filed a lawsuit and would have failed if she did~~

1 ~~file a suit. There were no libelous statements made by Plaintiff. The statute of~~
2 ~~limitations is long past.~~

3 30.— ~~Plaintiff earned a Bachelor of Science degree in Technical~~
4 ~~Journalism from Colorado State University and was careful to only write facts~~
5 ~~that were fair comments on matters of public interest that she reasonably~~
6 ~~believed to be true. A few stories she wrote about were later picked up by the~~
7 ~~Associated Press, Los Angeles Times, Metropolitan News Enterprise, and Fox.~~

8 31.— ~~Plaintiff wrote to engage her audience in a voice that was not~~
9 ~~appropriate for legal nor business communication, using provocative language~~
10 ~~and sarcasm. Stern and McGarrigle often accuse Plaintiff of using~~
11 ~~inappropriate language in communications with counsel and the other~~
12 ~~members of SSP, but they are unjustly projecting.~~

13 32.— ~~In retaliation for what Defendant Sherman called “slander”, she~~
14 ~~ramped up her efforts to defame Plaintiff without proper concern for truth, to~~
15 ~~oppress Plaintiff and to alienate Plaintiff from sisters L. Kramer and Dennis. Up~~
16 ~~until 2013, these two defendants and Plaintiff had a friendly relationship.~~
17 ~~Defendant L. Kramer provided capital for a few properties that Plaintiff bought,~~
18 ~~fixed and flipped, and they split the profits 50%/50%. Defendant L. Kramer~~
19 ~~seemed pleased with the business arrangement.~~

20 33.— ~~Since at least 2010, Plaintiff has had an interest of 14.1571% in~~
21 ~~SSP. Plaintiff received distributions from SSP that she was led to believe by~~
22 ~~Defendant Sherman usually reflected SSP’s net operating income (heretofore~~
23 ~~“NOI”).~~

24 34.— ~~In late 2013 Sherman sent an email to the members of SSP stating~~
25 ~~the distributions would be discontinued indefinitely. Plaintiff believed this was~~
26 ~~a malicious decision to harm her because the distributions were a major part of~~
27 ~~her income and there did not appear to be any dire reason to cease~~
28 ~~distributions, which had been over \$7,000 to Plaintiff monthly, so abruptly.~~

1 ~~35.— Sandi Kramer was irate toward Plaintiff at that time. Their~~
2 ~~relationship was strained always, but the animosity escalated when Norman~~
3 ~~Kramer passed away.~~

4 ~~36.— Plaintiff was the only member of the family who was with her~~
5 ~~father in the hospital in Tarzana at his passing. When he suffered a heart~~
6 ~~attack that evening, contrary to a “do not resuscitate order”, Plaintiff allowed~~
7 ~~the attending physicians to try to keep her father alive until his wife could~~
8 ~~return from a party in Beverly Hills she attended with Mary and Jeffrey~~
9 ~~Sherman. When a physician informed Plaintiff that they would need to break~~
10 ~~her father’s ribs to keep him alive any longer, Plaintiff agreed to let him die~~
11 ~~without the excruciating pain.~~

12 ~~37.— Later, Defendant Dennis wrote an email sent to the other siblings~~
13 ~~that said Plaintiff “murdered” their father. Plaintiff’s email account was hacked~~
14 ~~and that email and several others between the siblings were deleted. Those~~
15 ~~were the only emails deleted by the hacker.~~

16 ~~38.— Sandi Kramer complained in an email to her attorney Defendant~~
17 ~~Stern, the same attorney who counseled SSP, that Plaintiff did not let the~~
18 ~~doctors keep Norman Kramer alive long enough for her to be there for his final~~
19 ~~moments.~~

20 ~~39.— The animosity got even worse when Sandi Kramer demanded~~
21 ~~Plaintiff sign a rescission deed to other real property, referred to as “Woodman~~
22 ~~and Magnolia”, that Sandi Kramer had gifted to Plaintiff, and Plaintiff refused.~~
23 ~~Sandi Kramer wrote to the Plaintiff that the transfer to Plaintiff was made for~~
24 ~~income tax purposes and she didn’t need the benefit any longer. Sandi Kramer~~
25 ~~later wrote that she needed to show ownership of the property to obtain a loan~~
26 ~~on another property. But she also had an account with approximately~~
27 ~~\$10,000,000 of highly liquid assets, her house worth over a million and other~~
28

~~commercial properties in multiple states. She bought the other property even without return of Woodman and Magnolia.~~

~~40.—Plaintiff refused to sign the rescission deed and since gifted the property to her own children in an irrevocable trust, called The Irrevocable In God We Trust.~~

~~41.—At the time of the initial transfer and refusal to sign a rescission deed, Sandi Kramer was represented by attorney Gerald Wilson. Mr. Wilson passed away and Defendant Stern assumed representation of Sandi Kramer toward the end of 2013.~~

~~42.—Defendant Stern was simultaneously counsel to Defendants Sherman as manager of SSP and SSP. He neglected to explain the potential conflict of interest to Plaintiff. Plaintiff knew in her gut there was something unethical about this dual representation of an alleged breach of fiduciary duty by the manager and the LLC she managed, but did not know the words, “prima facia evidence of a conflict of interest” or “derivative action”.~~

~~43.—Defendant Stern wrote a letter to Plaintiff December 13, 2013 which states in part: “I have been retained as legal counsel for Sandra Kramer and for Mary Sherman in her capacity as manager of Silver Strand Plaza, LLC.” Nowhere in this letter or subsequent does Defendant Stern explain his capacity as a dual agent to opposing interests or his duty to individual members of the LLC.~~

~~44.—After agreeing that Sandi Kramer enclosed payment of restitution for money she had converted from the Woodman and Magnolia properties, Defendant Stern added this opinion:~~

~~*“However, you should be aware that, in my opinion, your continual email barrage of threats and diatribes directed against Sandra, your mother, rise to the level of elder abuse. Though I look forward to working*~~

1 ~~with you in an effort to resolve all controversies, I will initiate legal action~~
2 ~~against you should your conduct in that regard continue.”~~

3
4 48.— ~~Plaintiff did not feel she had sent any inappropriate emails.~~
5 ~~Plaintiff was under the care of various therapists for the previous decade,~~
6 ~~attended CoDependant Anonymous meetings on a regular basis, was a devout~~
7 ~~Christian who attended Boundaries Seminars with Dr. Henry Cloud and Dr.~~
8 ~~John Townsend, Christian psychologists, and was careful in wording her~~
9 ~~communications directed toward her mother and sisters.~~

10 49.— ~~Sandi Kramer understood Defendant Stern to mean Plaintiff was a~~
11 ~~criminal abuser of elderly.~~

12 50.— ~~Sandi Kramer reported Plaintiff to a government agency to~~
13 ~~investigate claims of elder abuse. This is supported in emails from Sandi~~
14 ~~Kramer to counsel. Plaintiff was never contacted by any government agency~~
15 ~~about the issue. The claim was apparently invalid on its face.~~

16 51.— ~~On April 25, 2019, in response to Plaintiff informing Defendant~~
17 ~~Stern his comments were libelous because she did not abuse her mother in any~~
18 ~~way, he replied:~~

19
20 ~~—You are quoting from a civil statute, not a criminal statute. Elder abuse~~
21 ~~can be either a civil or criminal concern; not automatically criminal. Also,~~
22 ~~your letters, comments and other actions clearly fall within section (a) of~~
23 ~~the statute in that they , in my opinion, constitute “other treatment with~~
24 ~~resulting physical harm or pain or mental suffering.”—Why you can’t see~~
25 ~~and acknowledge that is beyond me.~~

26
27 55.— ~~Defendant Stern has never specified any particular comment or~~
28 ~~behavior that was abusive. In fact, Plaintiff spent weeks reading through old~~

1 ~~emails to her mother and found nothing she would consider even slightly~~
2 ~~abusive. When Plaintiff has disagreed with Sandi Kramer or thought she was~~
3 ~~not respecting Plaintiff's boundaries, Plaintiff's emails sounded much like this~~
4 ~~complaint. Defendant Stern has shown no evidence thus far that he corrected~~
5 ~~Sandi Kramer's misinterpretation of Plaintiff's alleged "elder abuse" as criminal~~
6 ~~rather than civil, even though he is apparently aware of the difference.~~

7 56.— ~~Plaintiff thought the cessation of distributions was in retaliation for~~
8 ~~her refusal to sign the rescission deed and for expressing her opinion and~~
9 ~~unflattering facts about Defendant Sherman.~~

10 57.— ~~All the other board members stood to inherit millions of dollars~~
11 ~~more if Sandi Kramer "cut [Plaintiff] out", as she wrote, and they remained~~
12 ~~aligned with Sandi Kramer, except for a period of several months in 2017 when~~
13 ~~Defendant Dennis acted like she agreed with Plaintiff as discussed below.~~

14 58.— ~~In October 2013, management fees were 5.7% of gross receipts.~~
15 ~~This is higher than normal management fees, but it jumped to over 11% after~~
16 ~~Plaintiff refused to rescind the deed to property in her mother's trust. Also,~~
17 ~~Plaintiff requested Defendant Sherman send monthly financial statements as~~
18 ~~she used to. Sherman said she ceased sending the reports to any of the~~
19 ~~members and she never resumed the practice.~~

20 59.— ~~In January 2014 Plaintiff insisted on inspecting and copying SSP~~
21 ~~documents as authorized by the Operating Agreement.~~

22 60.— ~~The documents offered by Defendant Stern in his office were all~~
23 ~~based on Defendant Sherman's data input and did not include source~~
24 ~~documents. Still, there were discrepancies and areas of concern.~~

25 61.— ~~One concern was that it looked like Defendant Sherman loaned an~~
26 ~~unspecified sum to Defendant SFT, as evidenced by a line item on the "SSP~~
27 ~~LLC MMA" register, 3/31/2013, payee ="THE SHERMAN FA", account ="MSFP~~
28 ~~LOAN", Memo ="Distribution Qt...", deposit amount \$2367.45. Sherman and~~

~~Defendant Stern refused to tell Plaintiff what those represented. Plaintiff's guess, The Sherman Family, Mary Sherman Family ? loan, quarterly distribution. It is repeated 6/30/2013, 9/18/2013, and 12/31/2013. The "SSP LLC CHECKING" register had entries on corresponding days with payee "MSFP H LP", memo "MSFP LOAN INTERE", and payments of \$2,267.45.~~

~~62.— There were quite different line item amounts on two different accounting programs (such as QuickBooks and Excel) that covered the same period. Defendant Sherman explained this by saying to "throw out" one of the accountings.~~

~~63.— There were also payments made for lease of an Audi that was used exclusively by Sandi Kramer, who no longer had any ownership interest in SSP. While Plaintiff understands the other member's feelings that all members should give back to the person who so generously gifted us in the first place, this was possible tax evasion. Acting on feelings in this case was not appropriate. While Plaintiff has the right to forgive Sandi Kramer her role in the concerted effort to take back gifted property, the members did not have the right to commit nor forgive tax evasion. Defendant Sherman said the LLC was already under a lease for the vehicle, but she paid herself mileage at the maximum standard rate for using her own vehicle. (In October 2013, Defendant Sherman, who worked from home in Calabasas and hired an onsite manager, paid herself \$822 for gas, enough to pay for approximately five roundtrip drives at the standard rate. She also paid for tolls for only one trip. Maybe she used the non-toll route for the other four trips.)~~

~~64.— Shockingly, and in violation of Professional Rules of Conduct, Defendant Stern repeatedly counselled his clients to break laws, such as tax evasion and conversion.~~

65.— On February 10, 2014, at Plaintiff’s request, there was a telephonic conference to vote on whether to have an accounting and whether to allow Plaintiff to leave the LLC by selling her share to the other members.

66.— All the other Defendant members denied any authorization for an accounting. Only Defendant L. Kramer voted to consider a purchase of Plaintiff’s share, but the issue could be reconsidered if Plaintiff gave a definite offer price.

67.— Defendant Stern offered a “minutes” order of the meeting that was skewed and false by email. Plaintiff gave a responsive email that corrected the misrepresentations on February 11, 2014.

68.— Defendant Stern replied to Plaintiff and copied the other Defendant Members. Within his reply he wrote:

“The Minutes, as prepared, represent a fair recitation of the Meeting, as it transpired. They will remain unchanged. Hopefully you will take some time to contemplate before taking your threatened legal actions. Having been provided with over 1,000 pages of Company financial information, including income tax returns, all prepared in the Company’s ordinary course of business for each year that you were a member, your accusations of financial impropriety (even if they were true which they are certainly not) do not justify the cost, time and aggravation attendant to the litigation process. Instead you should be thrilled with the gift which was bestowed upon you and your siblings and the income generated therefrom. You should also be grateful for the management services undertaken by your sister, Mary, and the financial results attained.

“In my short interactions with you, I suspect I am simply preaching to a wall. Your apparent hatred of your mother and other family members is

1 ~~unfortunate. However, that hatred should not cloud reasonable business~~
2 ~~decisions. The filing of a legal action against the Company will cost you~~
3 ~~and your sisters a significant sum of attorneys' fees and costs which could~~
4 ~~most certainly better be utilized as distributions to each member. You are~~
5 ~~obviously very intelligent. It is only hoped that you govern your actions~~
6 ~~accordingly."~~

7
8 74.— ~~Defendant Stern did not, to Plaintiff's knowledge, admonish his~~
9 ~~clients Mary Sherman and Sandra Kramer that unilateral revocation of a gift~~
10 ~~already given is not legal and could cost them litigation fees. He neglected to~~
11 ~~admonish them that their emails were sometimes libelous. (Sometimes the~~
12 ~~otherwise libelous statements could be defensible as a common interest but~~
13 ~~calling the Plaintiff a thief and criminal to justify breaching a fiduciary duty to~~
14 ~~her, where the false and malicious statements had no direct connection to the~~
15 ~~business at hand or the duties breached was not defensible.)~~

16 75.— ~~On May 8, 2014, within an email to Defendant Stern, Sandi~~
17 ~~Kramer wrote "Perhaps it would be in [Plaintiff's] best interest to check herself~~
18 ~~into a hospital. [spaces]which is all the staging for a lawsuit.....however~~
19 ~~when the court hears of what she is doing and what she has done to a litany of~~
20 ~~people, they will laugh her out of court." This email is an example of the callous~~
21 ~~disregard for Plaintiff's emotional wellbeing which was the restatement of a~~
22 ~~theme in the concert played by the Defendants and Sandi Kramer.~~

23 76.— ~~Even L. Kramer sent an email to attorney Gerald Wilson in which~~
24 ~~she called Plaintiff "passive aggressive". That diagnosis may be considered~~
25 ~~opinion, or otherwise not actionable on its own, but it shows the maliciousness~~
26 ~~L. Kramer displayed. Before their father's death, L. Kramer told Plaintiff that~~
27 ~~Plaintiff "took on the mafia and won." Plaintiff's behavior had not changed. It~~
28

1 ~~seemed L. Kramer did the simple math and realized she would inherit millions~~
2 ~~of dollars more if she joined the rally with her mother and sisters.~~

3 77.—~~On January 1, 2015, Plaintiff moved to a tiny, remote town in the~~
4 ~~hills of Arkansas. She kept her address private from all her former friends and~~
5 ~~family, including her beloved sons, for the better part of a year. Plaintiff named~~
6 ~~her new home “PTSD” for Peace, Tranquility, Serenity, Divinity.~~

7 78.—~~Plaintiff informed Sherman of her move to Arkansas, but had mail~~
8 ~~sent to a California P.O. Box and then forwarded to protect her privacy.~~
9 ~~Plaintiff wanted no contact with her sisters, other than as required for~~
10 ~~purposes of SSP and later, the irrevocable trust of which they were all~~
11 ~~contingent beneficiaries.~~

12 79.—~~Plaintiff also informed Defendant Sherman that Plaintiff had~~
13 ~~suffered from extremely depressing and stressful situations for such a long~~
14 ~~period of time, that on her therapist’s advice, she was taking a “sabbatical”. All~~
15 ~~Plaintiffs sisters and mother were aware of the stressors in Plaintiff’s life and~~
16 ~~that plaintiff had been prescribed Xanax and voluntarily hospitalized herself~~
17 ~~twice in the previous five years, each time for a day or two.~~

18 80.—~~Plaintiff requested Defendant Sherman send distributions to~~
19 ~~Plaintiff’s younger son as trustee of a revocable living trust. Sherman requested~~
20 ~~a copy of the trust, which plaintiff mailed to her. Defendant Stern and Sandi~~
21 ~~Kramer, so probably Sherman, were also aware that Plaintiff made her 24-year-~~
22 ~~old eldest son trustee of The Irrevocable In God We Trust. The purpose of~~
23 ~~making her young sons trustees was because Plaintiff could no longer handle~~
24 ~~even the smallest stressor. She lived a thirty-minute drive up a curvy mountain~~
25 ~~road from the nearest bank on purpose.~~

26 81.—~~Other than business contact from Defendant Sherman, The~~
27 ~~Plaintiff’s sisters did not contact Plaintiff either until 2017.~~

1 ~~82.— In June 2015 Plaintiff offered to sell her share to the other~~
2 ~~members for a price of \$516,839 which was the tax basis of her share of the~~
3 ~~property shown on the K-1 mailed by the LLC accountant.~~

4 ~~83.— On June 11, 2015 Defendant Sherman wrote an email to L.~~
5 ~~Kramer, Dennis and sister Roberta Kramer (deceased) and Sandi Kramer. She~~
6 ~~wrote:~~

7
8 ~~“Hi All, // Due to the serious nature of Laura’s threats, I~~
9 ~~respectfully request that ALL OF US REFRAIN from replying to her~~
10 ~~emails. Please let the lawyer for the LLC and the Manager for the LLC be~~
11 ~~the only contact for Laura. This will help simplify our legal process.~~
12 ~~//Thank you, // Mary” [capitalization hers]~~

13
14 ~~87.— Then on June 12, 2015 Defendant Sherman sent another longer~~
15 ~~“confidential” email to the same recipients, less Sandi Kramer. She was~~
16 ~~adamant Plaintiff had “no chance of succeeding” in a suit for dissolution. She~~
17 ~~finished by writing:~~

18
19 ~~“Again, thank you for your patience with this process, and thank~~
20 ~~you for avoiding any responses to Laura’s emails during this time. //~~
21 ~~Let’s let our attorney do his job.”~~

22
23 ~~91.— The other members acquiesced to Defendant Sherman’s demands.~~

24 ~~92.— Defendant Stern presented an offer on June 15, 2015, of \$218,000~~
25 ~~for Plaintiff’s share of SSP, along with a 2+ page rationalization for the price~~
26 ~~that begins “[a]s the LLC manager and I see it...”.~~

27 ~~93.— Plaintiff rejected the offer.~~
28

1 94. — On June 16, 2015, Defendant Sherman sent the following message
2 from her iPhone to Defendant Dennis. Sherman presumably copied it to
3 Defendant L. Kramer and Roberta Kramer.

4
5 ~~*“Hi Sisters, // While Laura has initially refused our offer, please*~~
6 ~~*hold tight. She may come back soon after thinking more about our offer.*~~
7 ~~*We do not want to negotiate against ourselves. If any of you have any*~~
8 ~~*comments regarding our offer, please email me. // Thanks, // Mary”*~~

9
10 98. — Plaintiff did not “come back” with a different offer.

11 99. — On June 18, 2015, Plaintiff sent an email to all Defendant
12 members. She noted that one record looked like Mary Sherman owned twice
13 the shares of the other sisters making a total of all shares as 114%. She asked
14 “Mary, what was the total value of checks and cash issued to Mary Sherman

15 100. — Defendant Sherman responded to all with a carbon copy to
16 Defendant Stern. She said only “See attached. // Mary Sherman // Manager,
17 Silver Strand Plaza LLC”. Attached were three pages. Two pages were a
18 “Statement of Operations, April 30, 2015” with current period and year to date
19 columns of income and expenses generated from data input; there was no
20 source documentation. One page was “Strategic Asset Management
21 Group // Monthly General Ledger” with a marking in the corner “page 5 of 12”.
22 It showed contributions (all zero) and distributions to or from six of the twelve
23 known members, including one distribution entry for Mary Sherman. No
24 further explanation of the percentages was made and no total was given by
25 Defendant Sherman.

26 101. — On October 1, 2015, Defendant Sherman sent an email to Plaintiff
27 informing her that Roberta Kramer had ovarian cancer and would be having
28

~~chemo in the weeks to come. Plaintiff sent a message of sympathy to all the sisters and their mother.~~

~~102. In December 2015, Defendant Sherman told the members they would receive distributions of \$75,000 each that month. There was no explanation of how the members were receiving a bonus of more than their regular yearly distributions.~~

~~103. On May 13, 2016 Defendant Sherman sent an email to what she called the "Voting Members of SSP, LLC" asking their opinions on whether or not to sell Silver Strand Plaza. She gave a "guesstimate" sales price of \$9 million.~~

~~104. The email was followed up with a conference call in which Defendant Sherman gave several reasons we should sell. None of them included Roberta Kramer's health, probably the driving force behind Sherman's opinion to sell. The reason for selling was irrelevant to Plaintiff, as she wanted to sell and dissolve the LLC. But it showed that even where the truth would suffice, Defendant Sherman chose to deceive.~~

~~105. Based on SSP's net operating income that Defendant Sherman had reported to the Plaintiff, the members agreed to accept an offer that came in at \$7.9 million or more, giving Plaintiff's share a value of over \$1.1 million.~~

~~106. In October 2016, only 16 months after Defendant members' offer to Plaintiff of \$218,000 for her interest in SSP, the shopping center went into escrow at a purchase price that valued Plaintiff's interest at nearly \$1.5 million; as detailed below, escrow closed and the shopping center was subsequently sold in January 2017.~~

~~107. When marketing of the property began in August 2016, Plaintiff looked up the listing on loopnet, a commercial real estate market website.~~

~~108. Plaintiff sent Defendants Sherman, L. Kramer and Dennis and Roberta Kramer an e-mail that said:~~

~~Dear Mary,~~

~~1.~~

~~There is a typo error on loopnet that should probably be corrected. The proposed loan downpayment is shy a zero.~~

~~1.~~

~~Also, the income numbers don't make sense to me, but I can't figure out the reason they are off. It seems like gross income minus expenses should equal net operating income, but it doesn't.~~

~~Thanks for passing this correction and potential correction on to Chris.~~

~~Laura~~

119. Sherman replied with a forwarded email from the Sales Agent Chris Jackson that began: "Thanks the down payment and NOI was corrected." (sic) Plaintiff believed the broker would not make the same mistake twice and would put in the correct numbers for NOI, income and expenses, and did not verify that the numbers were changed.

120. Plaintiff presumed the numbers on the marketing materials would be consistent with the actual NOI, as reported to the IRS and reflected in the distributions. But the NOI on the marketing memorandum was about 30% higher than the number Plaintiff had been led to believe. Plaintiff caught the discrepancy on the Loopnet listing, but was led to believe it was "corrected".

121. When Plaintiffs former attorney, Michael Early ("Early") asked for an explanation for the difference in NOI after the sale, Defendant Stern responded, in pertinent part, as follows:

~~“The numbers of the package were developed by the broker as part of his sales effort to maximize the sales price of the property, since the sales price is proportional to the net operating income. Our broker added back certain expenses to obtain a higher net operating income, and he reviewed these add backs with the buyer.”~~

~~125. When Plaintiff then asked for 1) evidence that would verify Defendant Stern’s statement and 2) a brief description of the “certain expenses” that were added back “to obtain a higher net operating income,” Defendant Stern forwarded an e-mail from Defendant Sherman in which she stated that the buyer of the SSP property received the same financials that were used to prepare SSP tax documents and that:~~

~~“The Buyer bought the building based on these numbers (with certain add backs, such as all management fees, earthquake insurance, and other costs that they deemed irrelevant since they would not be paying those costs once they owned the building).” No further explanation was provided.”~~

~~129. When Plaintiff inquired further of Defendant Sherman, Defendant Stern further muddled the waters by responding in email:~~

~~Obviously you can do whatever you believe appropriate on behalf of your client. I, however, believe Mary’s response to be crystal clear. Your client was distributed funds in accordance with the financial statements presented to her which represented accurate income and expense figures. There apparently were certain non-recurring expenses that formed the basis for the financial statements presented to the buyer, which, as~~

1 ~~[Defendant Sherman] indicates, were fully identified and explained to the~~
2 ~~buyer.~~

3
4 ~~The point is that your client received distributions in the amount she was~~
5 ~~entitled to. No more and no less.~~

6 1.

7 31. In Defendant SSP is subject to the Court's personal jurisdiction in the
8 Central District with respect to the civil action herein; The J&M Trust Defendants
9 reside in the Central District, the Manager reside in the Central District, the
10 Grandchildren's Trusts reside in the Central District probable Doe Defendant
11 McGarrigle resides and has his office in the Central District, probable Doe
12 Defendants Ellis Stern and his partner Alan Goldberg reside and have an office in
13 the Central District, the two probable Doe defendant law firms reside in the Central
14 District; SSP's Accountant has their office in the Central District.

15 32. Plaintiff spent her first 32 years domiciled in the Central District and
16 about 23 years domiciled in the Southern District of California and has significant
17 contacts in both districts. Plaintiff is unable to work in her business of
18 rehabilitating properties due to physical injury. What should be her liquid assets to
19 live on are being held by SSP in the Central District of California. This means
20 Plaintiff's primary business contacts are in the Central District of California.

21 33. The Central District would serve the interests of justice better than the
22 Southern District because it is more pro se friendly than the Southern District,
23 offering pro-bono services and allowing for limited scope representation without
24 prior approval, thereby giving the plaintiff who cannot afford full representation
25 more equal access to the court, equal justice. Plaintiff was represented on
26 contingency, but the defendants made it clear they would increase the costs of
27 litigation making it not economically feasible for the plaintiff's attorney to
28 continue on contingency.

General Allegations

34. The Amended and Restated Operating Agreement of Silver Strand Plaza, LLC entered into as of January 1, 2009 (“OA”) is incorporated into this complaint as Exhibit 1.

35. The OA is a contract between the Plaintiff and each of the Member Defendants. The Plaintiff is uncertain if Mary E. Sherman signed an employment agreement, but she was the person who helped draft the OA, signed the OA in her capacity as trustee for various trust Members and acted as if she adopted the OA as her employment agreement.

36. Plaintiff has performed all terms and provisions of the OA sued upon herein and has otherwise acted in accordance with the law.

37. Prior to the restatement of the OA in 2009, SSP was co-managed by the Members’ parents, Norman and “Sandi” Kramer, Jeffrey M. Sherman and Mary E. Sherman.

38. The OA contract is poorly written and was not amended to comply with the requirement of California Revised Uniform Limited Liability Company Act Section 17704.07(a) and 17702.01(5), leaving an ambiguity as to if the LLC is member-managed, which is the the default, or manager-managed.

39. Before accepting the contract, Hammett made two suggestions. As drafted, the OA gave the Manager the right to buy any property she wanted and demand the Members contribute capital or jeopardize their ownership interest in SSP. Changing a few words corrected this problem and the changes were made, after some haughty conveyance of her disgust from Sherman.

40. Sherman in each of her capacities made the new version with the two corrections a take-it-or-leave-it offer. Sherman insinuated that leaving it meant not

1 receiving about a half million dollars' worth of capital from Norman and Sandi
2 Kramer's trust.

3 41. Hammett signed the contract as it was because Sherman had vastly
4 more power than Hammett over Norman and Sandi Kramer, making it a contract of
5 adhesion.

6 42. Ambiguities in the contract should be resolved against the
7 "draftsmen", the Manager, Jeffrey M. Sherman as Co-Trustee of the J&M Sherman
8 Family Trust and Mary E. Sherman in all her capacities.

9 43. SSP is controlled by the Manager except what are called "Major
10 Decisions" which are controlled by the Members. (OA Article V, especially at §
11 5.5)

12 44. Regardless of member-managed or manager-managed, the Members
13 and the Manager have a fiduciary duty to one another to discharge the duties to a
14 limited liability company and the other members under the California Revised
15 Uniform Limited Liability Company Act and under the operating agreement and
16 exercise any rights consistent with the obligation of good faith and fair dealing.
17 Each Member Defendant and the Manager failed in this regard.

18 45. Section 5.5 is convoluted. The Manager assured Hammett and the
19 other Members by email on March 23, 2009 that section 5.5 would require that
20 51% of the voting Members consent to make major decisions that might harm each
21 member separately, like ordering each member to contribute capital to buy another
22 property.

23 46. Section 5.5 establishes that Major Decisions must be made by
24 "consent of Members holding at least 51% of the percentage interests." Included,
25 but not exclusive:

26 47. Approving an Assignment. (OA § 5.5(b));

27 48. Admitting any person as a Member. (OA §5.5(e));
28

1 49. Doing any act in contravention of the Articles of Organization filed by
2 the Company. (OA § 5.5(f)); or

3 50. Possessing Company assets, or assigning the Company's rights in
4 specific Company assets, for other than a Company purpose. (OA § 5.5(i)).

5 51. Unfortunately, section 5.5 is a paper tiger, even before Roberta
6 Kramer's death. Even if Hammett could convince Dennis and Kramer to vote
7 against a misappropriation, there is no mechanism, other than a lawsuit, to make
8 the Manager comply with the duties specified in the OA. The Manager could not
9 be removed by a vote. (OA § 5.1(b)) She can only be removed by operation of law,
10 or by an order or decree of any court of competent jurisdiction, filing a bankruptcy
11 petition, or submitting a voluntary resignation.

12 52. Since Mary E. Sherman violates the contract which was accepted by
13 100% of the members, and of which the Manager controlled the drafting, it is
14 reasonable to believe she will not comply with the vote of the non-Mary Sherman
15 Members if she disagrees.

16 53. Sherman told Hammett she controlled more than 50% of the vote
17 anyhow.

18 54. Because the contract was poorly written, the actual percentages are
19 questionable. Section 5.5 does not specify if the voting rights of the deceased
20 Member are split between the remaining Members or if the percentages are
21 recalculated between the remaining Members. In the former, the J&M Trust
22 Defendants are voting over 51% of the shares, in the later, 50.52%.

23 55. The Defendant Members and Member Roberta Kramer were in
24 complete alignment with the Manager since February 2014 in respect to all votes
25 for the major decisions of SSP, and they are each adversarial toward the Plaintiff.

26 56. No Member or assignee has joined Plaintiff in her complaint or filed a
27 separate complaint regarding SSP, its Members, its counsel, its employees or its
28 Manager since Plaintiff first asked them to in 2014. Kramer has given an

1 affirmative “no” to any lawsuit against SSP, the Manager or any Member but
2 Hammett.

3 57. Plaintiff begged and pleaded, told the Defendant Members she had a
4 Hastings and Stanford educated attorney who would help correct the Manager’s
5 misappropriations and breaches of fiduciary duty on contingency, and filed an
6 action through said counsel against just Mary Sherman as an individual and
7 manager of SSP, and SSP to which none of the Defendant Members or assignees
8 joined.

9 58. The Plaintiff therefore chooses to prosecute her claims as direct injury
10 because she is the sole minority Member who does not have dirty hands, who did
11 not breach her fiduciary duty to the other Members, who acted in good faith at all
12 times and who did not receive company assets in cash or in kind for other than
13 company purposes and who had distributions that should have been made withheld
14 unjustly and without her consent.

15 59. Meaningful regulation of the Manager’s fiduciary duties and the
16 Member Defendant’s duty of loyalty to the Plaintiff Member is possible only by
17 Court intervention and the Defendant Members refuse to join in an action.

18 60. The OA § 5.8 limits the liability of Members drastically, but not for
19 any act or failure to act that constitutes fraud or negligence.

20 61. Furthermore, the OA shall not eliminate or limit a member or
21 manager's liability to Members for money damages for (1) Breach of the duty of
22 loyalty;

23 62. (2) A financial benefit received by the member or manager to which
24 the member or manager is not entitled; or

25 63. (3) Intentional infliction of harm on a member. (CA Corp §
26 17701.10(g))

27 64. The Defendant Member’s refusal to dissolve the Company and
28 receive their equal shares of the capital remaining speaks to their intent to keep

1 Plaintiff's share for themselves and their co-conspirators if they can avoid liability
2 for their transgressions successfully.

3 65. Despite Hammett asking numerous times for votes pursuant to OA 5.5
4 (f) and (i), none after February 2014 was held.

5 66. Dennis and Kramer refused to use a reasonable standard of care in
6 their duty to make Major Decisions.

7 67. The Members were not a "Board of Directors" of the company, and
8 therefore not subject to the "business judgment rule" codified in California
9 Corporations Code §309.

10 68. According to Black's Law Dictionary, the Board of Directors is "The
11 governing body of a corporation, partnership, association, or other organization,
12 elected by the shareholders or members to establish policy, elect or appoint officers
13 and committees, and make other governing decisions. — Often shortened
14 (informally) to board. — Also termed board of governors; board of managers;
15 board of trustees (esp. in charitable and educational organizations); executive
16 board."

17 69. The Members were not elected.

18 70. The Members did not establish policy.

19 71. The Members did not elect or appoint officers and committees. The
20 manager appointed officers. (OA §5.4)

21 72. The Members had a distinct and limited management function
22 specified in OA section 5.5. The most pertinent management function was
23 oversight. If the Manager abused her position, each Member must approve or
24 oppose the contravention.

25 73. Federal and state courts have generally applied the law of corporations
26 to LLCs for "business judgment rule". *Montgomery v. eTrepid Technologies,*
27 *LLC*, 548 F.Supp.2d 1175, 1179.

1 74. SSP being analogous to a corporation, the Members were shareholders
2 with a limited but important management function. They were not directors or even
3 officers. Plaintiff could find no case law concerning the application of the business
4 judgment rule to shareholders, but there is case law that supports the denial of
5 application of the business judgment rule to corporate officers.

6 75. Even if offered the protection of the presumptions of the Business
7 Judgement Rule, the Defendant Members failed, as discussed further below in the
8 enumerated causes of action. The Manager and Member Defendants took action
9 without reasonable inquiry and with improper motives. When asked to make
10 “Major Decisions” the Member Defendants did not conduct a good faith and
11 reasonable investigation and usually refused to vote either way.

12 76. Generally, acting in bad faith, the Member Defendants and Roberta
13 Kramer engaged in self-dealing and in conflicted and self-interested relationships
14 with McGarrigle, Stern and their firms; allowed the misappropriation and waste of
15 assets of SSP by engaging in bad-faith voting schemes which were not intended to
16 benefit SSP and were aimed at harming the Plaintiff; failed to abide by the terms of
17 the Operating Agreement; and engaged in other wrongful acts and conduct which
18 were intended to harm both SSP and Hammett, knowing that Hammett was the
19 only member who would not be reimbursed for SSP losses by Sandi Kramer from
20 the Members’ father’s by-pass trust or directly from the SSP money
21 misappropriated by the Manager.

22 77. The rationale for stripping Hammett of her fair share of SSP was that
23 Hammett was given her shares “for breathing”; Hammett was the sole Member
24 who refused to sign a rescission deed on other property Sandi Kramer gifted the
25 members from Norman Kramer’s bypass trust (called “Woodman and Magnolia”);
26 Hammett was an “ungrateful creature”; and Dennis and Mary E. Sherman in all her
27 capacities wrote falsely that Hammett is a “criminal” who evaded taxes, got fired
28

1 and had an illegal pornography business; and who had a judgment against her for
2 child support which purportedly made her a criminal.

3 78. But a gift is not revocable, and Hammett was under no legal
4 obligation to rescind the deed to Woodman and Magnolia.

5 79. Fiduciary duties of loyalty and the covenant of good faith and fair
6 dealing must be extended to even “ungrateful creatures” and someone who
7 commits an unrelated crime.

8 80. Hammett is not a criminal and has never been charged with any crime.
9 Writing that Hammett was a criminal was malicious and defamatory and shows
10 that Dennis and Mary E. Sherman in all her capacities were not acting in good
11 faith.

12 81. A child support judgment against a person does not make the person a
13 criminal.

14 82. Regardless of their rationalizations, Hammett’s siblings were just
15 greedy and mean.

16 83. This Second Amended Complaint is written fifteen months after the
17 First Amended Complaint and Plaintiff has discovered that the breaches of
18 fiduciary duty were even more egregious in 2012 and 2013 than Plaintiff thought
19 when she filed the FAC.

20 84. The exorbitant management fees of 11.45% began in 2012 instead of
21 2014.

22 85. Also, the meaning of “MSFP” in the MSFP “loan” that neither the
23 Manager nor SSP Counsel explained to Hammett was disclosed briefly on a K-1
24 for 2013 produced after the meeting of February 10, 2014 as discussed below. It
25 represents a passthrough entity called “Sherman Family Partnership”. Plaintiff
26 found no record of “Sherman Family Partnership” on the Secretary of State
27 website business search. The Manager offered no explanation upon Plaintiff’s
28 inquiry sent to all the Member Defendants on July 22, 2020.

86. The Member Defendants should have received the same K-1 information that Plaintiff received for 2013, but no inquiry or investigation was made by them that Plaintiff is aware of. (Of course the J&M Trust Defendants and the Grandchildren's Trusts knew what the MSFP loan and Sherman Family Partnership were all along.)

87. The Defendants act as if (and make statements through counsel) that the OA is null and void because Plaintiff filed a suit based on their violations of the OA and the duties that arose from it.

88. The OA is not null and void. The Manager and Members are still bound by the same rights and duties. They continue to violate them.

89. Again, applying the laws of corporations, it would be absurd if Walmart said, "we had a lawsuit filed against us, so we are suspending all annual reports to shareholders."

90. The Member Defendants have absolutely known about the Manager's overpayment of management fees and other misappropriations since no later than October, 2019 when they received the exhibits Plaintiff filed in this case and still refuse to join in an action to remove the Manager by court action. They continue to breach their fiduciary duties and the implied covenant of good faith and fair dealing.

First Cause of Action For Fraud

91. Plaintiff alleges as its First Cause of Action against The Manager, the J&M Trust Defendants, the Grandchildren's Trusts (collectively "the Fraud Defendants" in this section) and Does 1-99 for fraud:

92. To avoid redundancy, the Plaintiff refers to the allegations contained throughout the Complaint and incorporates them as though set forth at length herein.

93. The Manager has an obligation to Hammett as a Member of SSP to provide access to accurate books and records of the company and to make distributions from SSP with a 14.1571 percent of each total distribution made to Hammett. This percentage will be called “Hammett’s Fair Share”.

94. The J&M Trust Defendants and Grandchildren’s Trusts have an obligation of acting in good faith and fair dealing. They shall not conceal acts of willful misconduct by the Manager that they know about. When discussing the Company finances, for example when discussing fair market value for a buyout in lieu of dissolution, they shall not misrepresent what they know the accurate figures to be.

95. The Fraud Defendants made numerous misrepresentations and concealments of the truth to Hammett. A sampling of three specific, discrete misrepresentations are listed herein.

96. The Fraud Defendants knew the falsity of what they misrepresented and had scienter of the concealments.

97. The Fraud Defendants intended to defraud Hammett.

98. Hammett justifiably relied on the misinformation from the Fraud Defendants and was damaged by that reliance.

99. First, the Manager told Plaintiff that she was paying reasonable management fees during the meeting of February 10, 2014.

100. The Manager concealed the overpayment of management fees after the February 2014 meeting by denying Hammett her rightful access to the Company financials pursuant to CA Corp § 17704.10(e) and OA Article IV.

101. The Manager paid Sherman and a professional manager combined about 11.45% management fees from 2012 through 2016 inclusive.

1 102. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
2 and the Grandchildren's Trusts knew the Manager was paying almost three times
3 what they knew to be a reasonable management fee in contravention to OA § 6.1
4 which says the Manager may receive "reasonable compensation".

5 103. The J&M Trust Defendants and the Grandchildren's Trusts concealed
6 the overpayment of management fees from Hammett. In the February 10, 2014
7 meeting, the J&M Trust Defendants and the Grandchildren's Trusts contended that
8 the management fees being paid were reasonable.

9 104. Second, the Manager told Hammett the rents collected on which NOI
10 and thus distributions were based were at market rate except where long term
11 tenants operated on old leases.

12 105. The Manager sent an email on December 3, 2013 that said in part:

13
14 "In 2014, we will have at least 4 suites unleased, and 6 other leases
15 expiring.//

16 Therefore, we are unable to make further distributions until we know our
17 true income v. expenses."

18
19 106. Plaintiff responded that evening, in part:

20
21 "This may be a wonderful opportunity. Without seeing the spreadsheets, I
22 cannot say for sure, but it seems from my experience that the rents were
23 below market rate. (We had good distributions, but I attribute that to the fact
24 that Dad and Mom paid the property off and we had no mortgage expense.)"

25
26 107. In the meeting of February, 2014, the Manager maintained her
27 position that all rents in the area were as low as she reported to Hammett that SSP
28 was collecting.

1 108. On the Offering Memorandum page 34 written in 2016 there were 27
2 tenants listed. Eleven of those leases were commenced after February 2014.

3 109. One tenant of particular note was Partners Health and Wellness. Its
4 lease was commenced on April 1, 2014. It had 8,154 square feet. (The average
5 space was, not considering the three roof cell site tenants, 1,860 square feet.) The
6 gym paid seventy cents per square foot (\$.70/sq. ft.) The average rent in Silver
7 Strand Plaza was \$1.22/sq. ft. The gym was owned by Norman and Sandi Kramer
8 for many years prior to 2014. Plaintiff does not know who owned the gym in April
9 2014. The Secretary of State Business Entity Listing shows the earliest LLC
10 Registration for Partners Health and Wellness to be April 27, 2020.

11 110. A second tenant of note is IB Beautiful who had 929 square feet
12 commencing on February 1, 2016 for twelve cents per square foot (\$.12/sq.ft.)
13 There is no SOS registration for an LLC or partnership called “IB Beautiful”.

14 111. On Offering Memorandum page 18, San Diego retail market rental
15 rates are quoted as being \$2.02 per square foot per month.

16 112. Clearly the Manager was reporting collecting rents that were
17 significantly lower than market rents. (And then paying almost triple the
18 reasonable percentage of that to “management”, with \$65,000 in “bonuses” to
19 Sherman after the sale of the property.)

20 113. The J&M Trust Defendants and Grandchildren’s Trusts knew the
21 Manager was not bringing in market rates of rent on the books and did not disclose
22 this information to Hammett. When Hammett specifically asked about the rents,
23 the Fraud Defendants told her the Manager was not underperforming.

24 114. Third, In June 2015 Hammett offered to sell her shares of SSP to the
25 other Members. Mary E. Sherman in each capacity understood that to mean
26 Hammett wanted a dissolution and used that language in an email to the other
27 Members. (Hammett specifically wrote that she wanted a “dissolution” in 2013 and
28 2014.)

1 115. Stern negotiated on behalf of the other Members, disregarding the
2 intent of a fair dissolution as per CA Corp 17707.03(c)(1): “In any suit for judicial
3 dissolution, the other members may avoid the dissolution of the limited liability
4 company by purchasing for cash the membership interests owned by the members
5 so initiating the proceeding, the ‘moving parties,’ at their fair market value.”

6 116. Stern used different numbers than those given to arms-length buyers
7 in 2016 when giving his opinion of the value of Hammett’s shares of SSP. Stern’s
8 stated opinion of value was approximately one sixth (1/6th) their actual value.
9 Stern was authorized to give this opinion by the Manager and stated that the
10 Manager concurred.

11 117. The offer to purchase for \$218,000 was made on behalf of all the
12 Members but Hammett, including the J&M Trust Defendants and the
13 Grandchildren’s Trust. Hammett was not included in any discussion or vote of
14 what SSP should offer for Hammett’s shares as would be required for a purchase
15 by SSP.

16 118. In 2016 the Manager caused an Offering Memorandum to be printed
17 which said a reasonable rate for management fees was 4%.

18 119. The Fraud Defendants knew the management fees paid were not
19 reasonable.

20 120. In 2016 the Manager advertised the property as having income
21 growth potential and the buyer specializes in distressed properties as per their
22 website.

23 121. The Fraud Defendants knew the Manager was not bringing in market
24 rates of rent on the books and did not disclose this information to Hammett.

25 122. Even though a year and a half passed between the lowball purchase
26 offer and going into escrow, the real estate market at that time did not rise six-fold.
27 It did not double. The Fraud Defendants knew the information given to Hammett
28 to justify a price of \$218,000 was false.

1 123. The intention was to induce Hammett to accept 1/6th the value of her
2 shares in SSP.

3 124. The intention of understating the NOI and the management fee
4 percentage was to pay Hammett less than her fair share of the distributions,
5 without having Hammett file a lawsuit similar to this one.

6 125. Hammett did not agree to the \$218,000, but she was led to believe the
7 value was less than \$500,000. No reasonable person would offer 1/6th the value of
8 property, especially not a licensed attorney who is supposed to represent the
9 Company and comply with the statute on dissolutions.

10 126. Because the other Members agreed with Mary E. Sherman about the
11 income and the management fees, and they were intelligent women with an
12 implied covenant of good faith and fair dealing, Plaintiff was gaslighted into a
13 reasonable belief that Mary E. Sherman was being truthful.

14 127. All the Members knew in February 2014 that Plaintiff was under
15 extreme stressors for several years, mostly involving litigation, and had recently
16 been hospitalized for anxiety and suicidal ideation. Plaintiff could be reasonably
17 expected to stop pursuing an accounting and litigation based upon the
18 misrepresentations of Mary E. Sherman in all her capacities with the voting
19 concurrence of Dennis, Kramer and Roberta Kramer.

20 128. The Manager, J&M Trust Defendants and Grandchildren's Trusts
21 intended to defraud Hammett. Plaintiff had a justifiable reliance on the fraudulent
22 statements and concealments to believe there was no reason for an accounting or
23 legal action to remove Sherman from her position as manager in February 2014.

24 129. The Fraud Defendants successfully delayed court intervention and
25 justice delayed is justice denied.

26 130. Hammett was fraudulently induced to agree to a bottom sales price of
27 \$7.9 million for the property in 2016 based on the numbers she was given by the
28 Manager and Stern.

1 131. Perhaps because Hammett referred buyers to the property, the
2 property sold for closer to its true value, about \$10.2 million. This was at the low
3 end of the broker's price opinion obtained by the manager but not shared with
4 Hammett until after the sale. The Manager said there were three buyers bidding at
5 the same time. Still, the ultimate buyer specializes in purchasing distressed
6 properties "with upside potential" and the property was advertised as having below
7 market rents.

8 132. The Manager knew that Stern, paid for by SSP, was giving false
9 information to Hammett and the Manager encouraged the fraud to induce Hammett
10 to refrain from filing a lawsuit for a receiver and dissolution sooner.

11 133. Because Stern was presented to Hammett as representing SSP and not
12 the other Members, Hammett could and did justifiably rely on the information
13 presented by Stern.

14 134. Emails between the Manager and the Member Defendants that were
15 not copied to Hammett show that Stern was in fact working for the interests of the
16 Member Defendants, not the Company.

17 135. Distributions made by the Manager from 2012 to 2016 inclusive
18 reflected the lower NOI. This caused Hammett's income to be lower than it should
19 have been at a time when Hammett was told by her therapist to "take a sabbatical".

20 136. The K-1 given to Hammett for 2016 reports Hammett's 14.1571% of
21 "Net income from rental real estate activities" as \$70,696, which equates to
22 \$499,368 for the entire company. The Offering Memorandum the Manager caused
23 to be prepared in 2016 has a Net Operating Income of \$649,213 on page 32. The
24 Manager was underperforming by about \$150,000 per year, about 30%.
25 Distributions made to Hammett based on NOI were about \$20,000 per year lower
26 than they should have been.

27 137. About thirty years ago, Jeffrey M. Sherman told Hammett that he and
28 his brothers set up shell companies with the intent of looting them and then filing

1 bankruptcy. (This is when Hammett decided she wanted nothing to do with Jeffrey
2 M. Sherman.)

3 138. Recovering any assets found through an accounting to rightly belong
4 to Hammett will probably be much more difficult now than if the Fraud
5 Defendants did not fraudulently conceal the actual NOI that was or should have
6 been earned from February 2012 to February 2017.

7 139. Finding the true owner of Partners Health and Wellness back in 2014
8 may be impossible now that it was taken over by a new LLC in 2020.

9 140. Any of Hammett's Fair Share of the profits earned by the Sherman
10 Family Partnership will be difficult to recover.

11 141. The motivation for defrauding Hammett was greed, oppression and
12 callous entitlement. Mary E. Sherman and Jeffrey M. Sherman in all their
13 capacities wanted to keep more money for themselves and those they deemed
14 worthy. They wanted vengeance for Hammett's refusal to rescind other property to
15 the Norman and Sandi Kramer trust. Sherman had a history of writing vile and gut
16 wrenching commentary about Hammett and Hammett's children. The Fraud
17 Defendants were driven by this animus.

18 142. Rather than coming clean in 2014, when Hammett first suspected the
19 Manager was not making reasonable distributions to Hammett, the Manager
20 intended to defraud Hammett so Hammett would not pursue a threatened lawsuit.
21 The Manager capitalized on Hammett's poor emotional health for which Sherman
22 was in large part responsible. The Manager was successful until after the sale of
23 Silver Strand Plaza when an attorney took up the case for Hammett.

24
25 **Second Cause of Action**
26 **For Fraudulent Conveyance**
27
28

1 ~~135. Plaintiff alleges as its second cause of action for fraudulent conveyance~~
2 ~~against Linda R. Kramer as an individual, Linda R. Kramer and Erik Von~~
3 ~~Pressintin Hunsaker as Co-Trustees of the Lynn & Erik's Trust, the Manager and~~
4 ~~Does 1-99: this "explanation," items such as management fees and earthquake~~
5 ~~insurance are apparently described as "non-recurring expenses."~~

6 ~~136. Defendant Stern was counsel to SSP as well as to Defendant~~
7 ~~Sherman and should have inspected the financial records himself. His offering~~
8 ~~of records did not include statements from one known bank account, "CBB",~~
9 ~~one known investment account, "Vanguard", the loans shown on records pre-~~
10 ~~2014, and possible other omissions. Defendant McGarrigle did not correct~~
11 ~~these omissions when he substituted in.~~

12 ~~136. In July 2018, Defendant Stern finally gave a copy of the performa~~
13 ~~given to potential buyers to Plaintiff. The performa shows reasonable~~
14 ~~management fees to be 5% of gross rental income. Defendant Sherman~~
15 ~~admitted to spending 10.3% on a February 2018 financial statement, more~~
16 ~~than half to herself and the remainder to a professional management company~~
17 ~~in San Diego. Adding in "office administration" and "leasing commission",~~
18 ~~management costs in 2016 were 11.39% of gross income. This is unreasonably~~
19 ~~high.~~

20 ~~136. Defendant Sherman later claimed in response to Plaintiff's objection~~
21 ~~to the high salary and bonuses paid to Sherman that Sherman obtained a~~
22 ~~higher price for the building than Plaintiff had agreed to when voting to sell the~~
23 ~~property. This is an absurd argument. Plaintiff's value of property was based~~
24 ~~on past distributions. Only when Plaintiff saw the offering memorandum could~~
25 ~~she know that Sherman admitted the current rents were lower than market~~
26 ~~rents and the management fees were more than double the reasonable rate.~~
27 ~~Page 1 of the Offering Memorandum states the center has "significant upside~~

1 ~~potential” and “...strong future income growth potential, due to below market~~
2 ~~in place rents.”~~

3 ~~—— In May 2018, Early filed a suit regarding some of the same issues~~
4 ~~as stated in this complaint on behalf of Plaintiff. There were no defamation~~
5 ~~causes of action in that suit, as those became issues after May 2018.~~
6 ~~Defendant Stern was substituted with Defendant McGarrigle. New counsel did~~
7 ~~not make an appearance but responded informally that Plaintiff’s complaint~~
8 ~~should have been a derivative claim. He also renewed assurances that more~~
9 ~~documentation would be forthcoming. While stating in an email that a~~
10 ~~derivative claim is not required and refuting other defense claims, Plaintiff’s~~
11 ~~counsel agreed to withdraw the complaint without prejudice on May 18, 2018~~
12 ~~in order to attempt to resolve the issues without court intervention.~~

13 ~~137. Defendant McGarrigle continued to argue against an accounting,~~
14 ~~stating several times that Plaintiff has received enough records to make her~~
15 ~~own accounting. He mentions the production in 2013, in which, Defendant~~
16 ~~Stern said, “thousands of pages” were produced. Defendant McGarrigle is~~
17 ~~missing the point of an accounting. The “thousands of pages” of financial~~
18 ~~records produced to the plaintiff are devoid of any source documentation. The~~
19 ~~vast majority are k 1s identical except for the naming of 12 or 13 separate~~
20 ~~members. So, the 1000 pages was closer to 100 distinct pages.~~

21 ~~137. Since 2012 Defendant Sherman ceased providing any financial~~
22 ~~statements to member Plaintiff in violation of OA Article IV, paragraph 4.2, last~~
23 ~~sentence, which states: “Copies of the financial Statements shall be given to all~~
24 ~~Members.” Plaintiff sent an email to Defendant Sherman on December 2, 2012~~
25 ~~that said, “Dear Mary, // Please resume sending all Silver Strand~~
26 ~~communications to this email address. I would like to see the monthly reports,~~
27 ~~etc. // Thank you, // Laura”~~

1 ~~138. Sherman responded, adding cc's to all the sisters and Sandi~~
2 ~~Kramer, "I will put you back on the email list and send you emails that are sent~~
3 ~~to the rest of the partnership." But no financial reports were sent to Plaintiff~~
4 ~~and it is probable there were many emails about SSP that were shared with all~~
5 ~~the members except Plaintiff.~~

6 ~~143. When Plaintiff requested production of documents from SSP,~~
7 ~~Defendant McGarrigle insisted Plaintiff would need to sign a confidentiality~~
8 ~~agreement before being given access to company records. He eventually gave~~
9 ~~Plaintiff a scant offering of statements.~~

10 144. To avoid redundancy, the Plaintiff refers to the allegations contained
11 throughout the Complaint and incorporates them as though set forth at length
12 herein.

13 145. The OA Article VII § 7.2(a) states: "Except in case of permitted
14 assignment (as defined in Section 7.2(b)), no Member shall make an Assignment
15 of all or part of its interest in the Company."

16 146. OA Article VII, Section 7.2(b) defines a "Permitted Assignment" as
17 an assignment only after the death of any Member.

18 147. Linda R. Kramer was not deceased at the time the original complaint
19 in these proceedings was filed, and to the best of Hammett's knowledge and belief
20 Linda R. Kramer is not deceased as of this writing.

21 148. "An Assignee may become a Member only in the manner provided in
22 [the OA]." Id. § 7.1(b)

23 149. The L&E Trust Defendants are listed as a Member on the list
24 generated by the Manager and sent by email by McGarrigle to Hammett on April
25 5, 2019.

26 150. The Assignment of Kramer's interest to the L&E Trust Defendants is
27 void ab initio. (id. §7.3)

1 151. The Manager made distributions to the L&E Trust Defendants in
2 violation of the operating agreement with the full knowledge and consent of
3 Kramer, the L&E Trust Defendants, the J&M Trust Defendants, and the
4 Grandchildren's Trusts.

5 152. The Manager listed the L&E Trust Defendants with the other
6 Members, while listing Roberta Kramer's assignee in a separate section for
7 "permitted assignees".

8 153. OA §7.6 restricts admission of Members to Permitted Assignees who
9 have been approved by vote as per OA §5.5. Plaintiff was not informed of any vote
10 by the Major Decision makers regarding the assignment to the L&E Trust
11 Defendants.

12 154. The void assignment was made after Plaintiff had threatened a lawsuit
13 against Defendant Kramer in 2014 and appears to be an attempt to transfer assets
14 to a trust in order to shield Kramer from Plaintiff's claim in violation of the state's
15 fraudulent conveyance act, CA CIVIL § 3439.04 (b)(4).

16 155. The effect of the conveyance is that it will shield recapture of
17 damages from Kramer by Hammett upon prevailing on this litigation which was
18 threatened as early as January 2014 and the need for Hammett to file litigation in
19 order to nullify the void assignment.

20 156. The assignment was made with actual intent to hinder, delay, or
21 defraud Hammett upon prevailing on this action:

22 157. Without receiving a reasonably equivalent value in exchange for the
23 transfer or obligation; and

24 158. Linda R. Kramer, an individual reasonably should have believed that
25 she would incur a debt beyond her ability to pay as it is awarded in this case. (This
26 is a violation of California Civil Code Section 3439.04(a)(2)(B) whereas the
27 scheme Jeffrey Sherman told Plaintiff he used as described in paragraph 37 is a
28 violation of California Civil Code Section 3439.04(a)(2)(A).)

159. The Manager allowed for the assignment in violation of the OA and made distributions to the L&E Trust Defendants of close to \$1,500,000 to the best of Plaintiff's knowledge and belief.

160. The Company records Hammett was given by Stern in late 2013 did not show the L&E Trust Defendants as a Member of SSP.

161. L&E Trust Defendants had no contractual obligation or fiduciary duty to Hammett as per the OA because the assignment was void, so barring a successful suit for fraudulent transfer or adoption of the trust as an alter ego, Hammett will not be able to recover money given to the L&E Trust Defendants.

162. Kramer did not respond to the Complaint timely. Her intent was to induce Hammett to write Kramer out of the lawsuit by adopting the language of attorney Keith Cochran, i.e. "two defendants" and leaving out "Linda R. Kramer, as an individual".

163. The clerk made no docket entry for Linda R. Kramer as an individual until Hammett called him and made a request for correction on August 1, 2019.

164. On request made by a private phone call of the L&E Trust Defendant's counsel, the clerk altered the docket to show three defendants including Kramer had filed a motion to dismiss on July 30, 2019. After Hammett told L&E Trust Defendant's Counsel that she had printed the docket with the original entry, it was changed back.

165. The Court admonished Plaintiff in the Order Granting Defendant's Motions to Dismiss dated March 23, 2020, ECF No. 111 at f.n. 13:

"The Court cautions Plaintiff against impugning the Clerk or other staff of this Court or District based on gratuitous speculation regarding relationships of favoritism toward litigants or their counsel. See, e.g., ECF No. 85 at 2, 4. Such accusations should not be made lightly and, absent evidence supporting such claims, the Court will not countenance them."

166. This statement tends to chill the Plaintiff's Constitutional right found in the First Amendment to petition for the redress of grievances.

167. This is a verified complaint and Plaintiff's testimony is evidence. Besides, there is also documentary evidence supporting the claim.

168. Plaintiff did not fall for the trick, so Kramer pretended that L&E Trust Defendant's counsel meant "Linda R. Kramer, as an individual and Linda R. Kramer and Erik Von Pressentin Hunsaker as Co-Trustees of the Lynn and Erik's Trust" when he wrote "Linda R. Kramer and Erik Von Pressentin Hunsaker as Co-Trustees of the Lynn and Erik's Trust" on the face of the Motion to Dismiss filed July 30, 2019, ECF No. 19.

169. If Hammett prevails against Linda R. Kramer an individual, Linda R. Kramer an individual will undoubtedly insist she is a separate and distinct person than Linda R. Kramer as co-trustee of the Lynn & Erik's Trust. Therefore, the Court should bind the L&E Trust Defendants to disgorge themselves of assets intended for Linda R. Kramer as an individual.

170. The assignment was made with fraud, malice and oppression and therefore warrants the award of punitive damages.

Third Cause of Action

Dissolution of SSP

171. Plaintiff alleges as its Third Cause of Action against the Member Defendants, SSP and the Manager for dissolution of the Company:

172. Plaintiff refers to the allegations contained in all other sections of this Complaint and incorporates them as though set forth at length herein.

173. Pursuant to California law, Plaintiff is entitled to the dissolution of SSP for the following reasons:

174. Those in control of SSP have been guilty of or have knowingly
countenanced mismanagement, abuse of authority and persistent unfairness toward
Plaintiff;

175. SSP's property is being misapplied or wasted by those in control of SSP;

176. Disagreements and disputes have arisen between Plaintiff and the Defendant Members regarding matters of mismanagement of SSP by the Manager which is countenanced by the Defendant Members and the Defendant Members are making irrational decisions for the Major Decisions they must make pursuant to the OA;

177. The Manager decided, without including Plaintiff in discussions or a vote, to hire counsel for the specific purpose of representing SSP against Plaintiff in particular;

178. Counsel for SSP simultaneously represented the interests of the other defendants, paid for by SSP, and adverse to the interests of SSP and Plaintiff as an individual;

179. The Manager has on several occasions misappropriated SSP's funds
for her own use, without Plaintiff's knowledge, approval, or consent;

180. The manager bought computers with SSP funds for over \$2,800 after the Company's primary property was sold and is believed to have given the asset to someone other than SSP for personal use;

181. The Manager has on several occasions converted Plaintiff's assets and threatened to convert Plaintiff's assets alone, not taking equally from the general fund; and

182. SSP's primary asset was sold in January 2017.

183. Though SSP's counsel and the Manager refuse to provide Plaintiff
with business records or an accounting, the amount of capital Plaintiff supposedly

1 has in capital as shown on K-1s from 2017 is 78,489. This amount is being
2 diminished, though the sole authorized business of the Company has ceased.

3 184. Each member contributed capital at the formation of SSP in direct
4 proportion to the amount of stock owned – in other words, receiving one unit for
5 one dollar invested. Therefore, there is a direct correlation between Plaintiff's
6 capital investment and Plaintiff's membership interest.

7 185. No Member other than Plaintiff has asked a Court to intervene against
8 the Manager and the Member Defendants are in complete alignment.

9 186. Plaintiff desires the sale of all or substantially all of the assets of SSP
10 and distributions made according to the percentage owned by each shareholder;

11 187. SSP has 35 or fewer shareholders and its liquidation is reasonably
12 necessary for the protection of the rights and interests of Plaintiff in that Plaintiff
13 desires but is unable to sell her interest in SSP to third parties because it is not
14 allowed by the OA and the remaining members are unwilling to buy out Plaintiff's
15 shares.

16 188. The Member's conduct has prejudicially affected the carrying on of
17 SSP's business, and it has become impossible to carry on the business to Plaintiff
18 and the Members mutual advantage.

19 189. Because the primary asset of SSP was sold, there are only two reasons
20 to continue the business.

21 190. One reason is to insulate the Defendants from being forced to
22 disgorge themselves of misappropriated assets.

23 191. The second reason is to keep control of Plaintiff's capital so she
24 cannot spend the capital on her own needs.

25 192. Pursuant to the OA, Plaintiff is entitled to the dissolution of SSP for
26 the following reason:

193. “The Company shall be dissolved upon the first to occur of the following events: The sale of all or substantially all of the Company assets; [provision for a sale on an installment basis]” OA Article VIII § 8.2(a)

194. “The Company’s primary activities will be limited to owning, leasing and managing the retail shopping center known as Silver Strand Plaza, which is located at [address].” OA §1.4

195. Silver Strand Plaza was sold in January 2017.

196. The sale of Silver Strand Plaza should have triggered the dissolution of SSP and remaining capital should have been distributed to Hammett based on her percentage of shares.

197. The Manager failed to effect the dissolution, no other Defendant Member voted against the contravention of the OA and no Defendant Member accepted Hammett’s offer to sell her share to a Member for the value of her capital. The OA strictly limits the persons to whom shares may be sold.

Fourth Cause of Action

Appointment of a Receiver

198. Plaintiff alleges as its Fourth Cause of Action against All Defendants for Appointment of a Receiver.

199. Plaintiff refers to the allegations contained in all other sections of this Complaint and incorporates them as though set forth at length herein.

200. Pursuant to California law, Plaintiff is entitled to the dissolution of SSP for the following reasons:

201. Those in control of SSP have been guilty of or have knowingly countenanced mismanagement, abuse of authority and persistent unfairness toward Plaintiff.

202. SSP's property is being misapplied or wasted by those in control of SSP;

203. Disagreements and disputes have arisen between Plaintiff and the Members regarding matters of mismanagement of SSP by the Manager which is countenanced by the Members and the Members are making irrational decisions for the major management decisions they must make pursuant to the OA;

204. The Members decided, without including Plaintiff in discussions or a vote, to hire counsel for the specific purpose of representing SSP against Plaintiff only;

205. Counsel for SSP simultaneously represented the interests of the other defendants, paid for by SSP, and adverse to the interests of SSP;

206. The Manager has on several occasions misappropriated SSP's funds for her own use, without Plaintiff's knowledge, approval, or consent;

207. The Manager bought unneeded computers for over \$2,800 after Silver Strand Plaza was sold and is believed to have given that Company property to an unauthorized recipient for personal use;

208. The Manager has on several occasions converted Plaintiff's funds and threatened to convert more of Plaintiff's funds; and

209. SSP's primary asset was sold in January 2017.

210. Though SSP's counsel and the Manager refuse to provide Plaintiff with business records or an accounting, the amount of capital Plaintiff supposedly has in capital as shown on K-1s from 2017 is \$78,489.

211. Plaintiff desires the sale of all or substantially all of the assets of SSP and distributions made according to the percentage owned by each shareholder;

212. SSP has 35 or fewer shareholders and its liquidation is reasonably necessary for the protection of the rights and interests of Plaintiff in that Plaintiff desires but is unable to sell her interest in SSP to third parties because it is not

1 allowed by the OA and the remaining members are unwilling to buy out Plaintiff's
2 shares.

3 213. The Defendant Member's conduct has prejudicially affected the
4 carrying on of SSP's business, and it has become impossible to carry on the
5 business to the Members' mutual advantage.

6 214. Because the primary asset of SSP was sold, there are only two reasons
7 to continue the business.

8 215. One reason is to insulate the Defendants from being forced to
9 disgorge themselves of misappropriated assets.

10 216. The second reason is to keep control of Plaintiff's capital so she
11 cannot spend the capital on her own needs.

12 217. Unless a receiver is appointed by the Court to take possession of,
13 collect, care for, and manage SSP assets and property, such property and assets are
14 in danger of being lost, removed, or materially destroyed in that the Manager is in
15 control of SSP's business, and is applying SSP's funds for her own use or the use
16 of the other defendants, in excess of their interest in SSP business and refuses to
17 provide Plaintiff, despite Plaintiff's requests therefor, with the basic financial
18 records of SSP and an accounting of income and expenses of SSP.

19 218. The Manager retained counsel to represent SSP, the Manager and
20 each Family Defendant simultaneously from January 2014 through May 2018
21 which is a conflict of interest.

22 219. Daniel Forde, Counsel retained to represent SSP since about May
23 2019 shares an office and works on cases with counsel retained to represent Mary
24 E. Sherman in each of her capacities and Jeffrey M. Sherman as co-trustee of the
25 J&M Sherman Family Trust. This reeks of collusion. Especially considering Forde
26 was sued for legal malpractice in 2017.

27 220. In that case, the plaintiff claimed "Forde Defendants had conflicts of
28 interest in connection with their representation and advice to the Lukes Plaintiffs as

1 well as to John and Samantha Vorzimer, in connection with their handling of the
2 bankruptcy filed by Barbara Lynn Behm [citation omitted].” *Lukes v. Gallo*, 2017
3 *WL 9472131 (Cal. Super.) ¶15 (S).*

4 221. Hammett informed the Member Defendants of this potential conflict
5 and none objected pursuant to their duty found in OA 5.5(f) to this act in
6 contravention of OA 5.3, that the Manager “discharge her duties in good faith, with
7 the care that an ordinarily prudent person in a like position would exercise under
8 similar circumstances, and in a manner that the Manager reasonably believes to be
9 in the best interests of the Company.”

10 222. There is a danger that the Manager will continue to remove or
11 improperly distribute the assets of SSP. The Manager has previously unilaterally
12 removed funds from the accounts of SSP for her own use or the use of the other
13 defendants and has the ability to repeat such improper distributions.

14 223. A receiver is necessary to safeguard the Plaintiff’s interests pending
15 the resolution of this action.

16 224. Plaintiff has no plain, speedy or adequate remedy at law, and will
17 suffer irreparable damage, injury, and harm, unless a receiver is immediately
18 appointed to manage the collection of accounts receivable, to pay creditors, and
19 sell or divide the corporate assets.

20 225. The receiver should appoint an attorney to represent SSP who is not
21 simultaneously representing the other Defendants or sharing an office with another
22 defendant’s attorney.

23
24 **Fifth Cause of Action**
25 **for an Accounting**
26

27 226. Plaintiff alleges as its Fifth Cause of Action against All Defendants
28 for an Accounting:

1 227. Plaintiff refers to the allegations contained in all paragraphs of this
2 Complaint and incorporates them as though set forth at length herein.

3 228. The Manager is in possession of the Company's books, assets and
4 accounts.

5 229. Despite Plaintiff's demands for copies of financial statements, bank
6 statements, an accounting of accounts payable and accounts receivable, the
7 manager has failed and refused to provide the same. The amount of Company
8 assets and liabilities is unknown to Plaintiff and cannot be assessed without an
9 accounting of profits and losses that occurred during the operation of the
10 Company's business.

11 230. Plaintiff is entitled to a true and correct accounting from the Manager
12 of income, and profits collected from the Company.

13 231. Company Counsel Forde wrote to Plaintiff that her right to review
14 company records ended when she filed suit, basing his opinion on a case where the
15 entire record had already been produced in discovery. In this case Plaintiff
16 provided the manager with a comprehensive list of documentation that is missing
17 and the documentation was never provided.

18 232. In particular, but not limited to, there was property known as a
19 "commercial rental" and "Sherman Family Partnership" involving a "MSFP loan",
20 which Plaintiff was required to pay income tax on, but which the Manager and SSP
21 Counsel provided no other information regarding;

22 233. There were no bank statements for one account, "CBB", that was just
23 presented by ledger, and even those ledgers were not complete.

24 ~~139.234.~~ Information from 1099s was given only by ledger, not copies
25 of the actual statement, and no 1096 or other reporting was offered. ~~The \$65,000~~
26 ~~paid to Defendant Sherman in 2017 were not accounted for in the tax~~
27 ~~documents. There were still no cancelled checks. In April 2019, for the first~~
28 ~~time, Defendant McGarrigle offered to produce copies of cancelled checks if~~

1 ~~Plaintiff pays \$5 for each check out of her own pocket. The checks may be~~
2 ~~provided, at Plaintiffs expense, before formal discovery commences. Maybe.~~
3 ~~There was no credit or debit card statements provided, though there were~~
4 ~~payments made to these kinds of funds. There were no statements from the~~
5 ~~Vanguard Account after the offering in 2014. There still was no copy of~~
6 ~~cancelled check nor any documentation of loans made to the SFT, though it~~
7 ~~appears there was a \$25 interest payment one time before 2014 on the ledger.~~

8 235. The \$65,000 paid to Sherman in 2017 as “bonuses” were not
9 accounted for in the 1099 tax documents;

10 236. There were no cancelled checks or other source documents;

11 237. The Defendant Members refuse to vote against the secreting of
12 company financial records which is in contravention of the OA 5.5(f);

13 238. Plaintiff is entitled to a true and correct accounting from the Manager
14 and SSP of the liabilities incurred in connection with the Company pursuant to OA
15 Article IV;

16 239. Plaintiff is entitled to a true and correct accounting from the Manager
17 and SSP of the dividends, distributions, or other manner of disbursements of the
18 net profits of the Company;

19 240. Despite demand therefore, the Manager and SSP have refused (i) to
20 render a true and correct account for the income, and profits collected by the
21 Company for the years 2012 to present, (ii) to render a true and correct account for
22 the liabilities incurred by the Company for said period of time, (iii) to render a true
23 and correct account of the dividends, distributions, or other manner of
24 disbursements of the net profits of the Company for said period of time, (iv) to pay
25 over to Plaintiff her capital retained after the sale of Silver Strand Plaza in an
26 amount not less than \$7.00, and (vi) to pay over to Plaintiff her share of the net
27 profits of the Company.

1 241. On information and belief Plaintiff is entitled to a sum of money
2 exceeding \$100,000.00, which will be shown by a true and full accounting to be
3 Plaintiff's share of the capital and net profits from the Company to the present.

4 242. Plaintiff has no plain, adequate, or speedy remedy at law.

5 243. An accounting is necessary to distribute the Company assets upon
6 dissolution of the Company.

7
8 **Sixth Cause of Action**
9 **for Constructive Trust**

10
11 244. Plaintiff alleges as to its Sixth Cause of Action against All Defendants
12 for imposition of a constructive trust:

13 245. Plaintiff refers to the allegations contained in the other sections of this
14 Complaint and incorporates them as though set forth at length herein.

15 246. By virtue of her ownership of fourteen point one five seven one
16 percent (14.1571%) of the issued and outstanding shares of SSP, Plaintiff has and
17 holds a beneficial interest in the Company's property and all of the income and
18 profits collected by and through SSP.

19 247. By virtue of their conversion, fraudulent deceit, breach of fiduciary
20 duty, and other wrongful acts described herein, Defendants have unjustly enriched
21 themselves to Plaintiff's damage and detriment by wrongfully collecting and
22 holding for their exclusive use and benefit the Company's property and income
23 and profits collected by and through SSP.

24 248. Further, by virtue of the Defendant Member's combined majority
25 eighty-three and a half percent (83.5%) of the issued and outstanding voting shares
26 of SSP; and by virtue of the Manager's exclusive possession, custody, and control
27 of SSP the Member Defendants and the Manager held a position of confidence as
28 constructive trustee for the benefit of Plaintiff, and breached their confidence by

undue influence in that they have taken oppressive and unfair advantage of Plaintiff's minority shareholder status and inability to exercise her rights to access to financial records of the Company.

249. Plaintiff is entitled to appointment of a receiver to take possession, custody, and control of the Company's property and to prevent Defendants further unjust enrichment by violation of their duties as constructive trustees.

250. Plaintiff is informed and believes and thereon alleges that Sherman, the Manager, J&M Trust Defendants, the Grandchildren's Trusts, Kramer, the L&E Trust Defendants, and Dennis each has in their possession some of the funds or other assets of SSP, which items are property of and otherwise belong to SSP.

251. By reason of the manner in which the Defendants, or some of them, may have withdrawn funds from the Company's General Account, and/or disposed of or concealed other property of the Company, the Defendants, and each of them, are involuntary trustees holding Plaintiff's proportionate share of said funds, and the profits and proceeds therefrom, in constructive trust for Plaintiff, with the duty to convey, transfer, and assign the same to Plaintiff forthwith.

Seventh Cause of Action

Conversion

~~140. Plaintiff alleges as its Seventh Cause of Action against Defendants Mary E. Plaintiff has found a few amounts that were taken fraudulently, or embezzled, or misappropriated. There was \$65,000 taken by Defendant Sherman in 2017 without asking or even informing the other members. She claims after the fact that she deserved the "bonus". She tried to enlist the Aiding and Abetting Defendants to support her "bonus" after the fact. She spent \$2,300 and \$876 on computers after the sale of the property. Plaintiff argued that Defendant Sherman's salary was excessive since 2013. The other~~

~~Defendants voted to allow the unreasonable expense. (The broker chosen by Defendant Sherman was of the opinion that management expenses for SSP were more than double what any other buyer would spend.)~~

~~141. Accounting program entries don't identify who loans were made to or what other investments SSP held.~~

252. As Manager of SSP, Defendant Sherman as Manager of Silver Strand Plaza, LLC and DOE 1 through DOE 99, inclusive, for Conversion:

253. Plaintiff refers to the allegations contained in all other sections of this Complaint and incorporates them as though set forth at length herein.

254. The close~~handled all aspects~~ of the sale of Silver Strand Plaza should have triggered the dissolution of SSP. The Company "shall" be dissolved upon sale of substantially all of the Company's assets. (OA §8.2)

255. Upon dissolution, "and within a reasonable time thereafter", the Manager should have made a distribution to Hammett of her Fair Share of the account balances. (OA §8.4)

256. The Manager did in fact agree to distribute the proceeds of the sale upon close of escrow.

~~142.~~257. The Manager~~the shopping center including hiring a licensed real estate broker to market the property and reviewing all offers to purchase; other than obtaining the approval of the other members of SSP to the sale pursuant to SSP's Operating Agreement, Defendant Sherman controlled all aspects of marketing and selling the property, as well as the distribution of the proceeds thereof to SSP's~~ members, including Plaintiff.

~~143.~~258. On December 20, 2016, the Manager~~Defendant Sherman~~ informed Plaintiff and the other members of SSP that the sale of the shopping center was set to close on January 10, 2017 and asked how each Member wanted to receive their distribution.

1 259. On January 1, 2017, Plaintiff e-mailed wire instructions to the
2 Manager ~~Defendant Sherman~~ so that she could receive her funds from the sale by
3 wire transfer.

4 144.260. The Manager ~~Defendant Sherman~~ confirmed receipt of
5 Plaintiff's e-mail that same day. ~~In an e-mail on January 31, 2017, Defendant~~
6 ~~Sherman denied having received wire instructions from Plaintiff.~~

7 261. Escrow closed on January 26, 2017.

8 145. The Manager ~~The closing on the shopping center finally occurred on~~
9 ~~January 26, 2017. While promising to disburse funds "as quickly as possible,"~~
10 ~~Defendant Sherman took actions which were intended to, and which did delay~~
11 ~~disbursement of funds to Plaintiff alone.~~

12 146.262. ~~First, Defendant Sherman~~ falsely stated in an e-mail to
13 Plaintiff late in the evening of January 31, 2017, that she did not have wire
14 instructions from Plaintiff.

15 147. ~~In~~ Second, Defendant Sherman delayed informing Plaintiff until
16 ~~January 31, 2017 that the state of California had denied Plaintiff a waiver from~~
17 ~~the requirement that, according to Defendant Sherman, SSP "withhold 7% of~~
18 ~~all distributions to non-California residents." The denial was based on the~~
19 ~~Franchise Tax Board's ["FTB"] mistaken belief that Plaintiff had not filed tax~~
20 ~~returns without a reasonable belief she was not required to do so, and that she~~
21 ~~owed back taxes, which she did not owe. (More detail in paragraph 137 below.)~~

22 148. ~~Third, Defendant Sherman ultimately withheld 7% of Plaintiff's~~
23 ~~entire distribution, rather than 7% of the amount in excess of her tax basis.~~
24 ~~Plaintiff was required to wait nearly a year to file for a return, had her filing go~~
25 ~~to the audit department and finally received a refund of over \$100,000.~~

26 149. ~~The FTB also issued 1.5% interest to the Plaintiff, which is far less~~
27 ~~than the Capitalization rate earned on SSP at either of the two distinct NOIs~~
28 ~~reported by Defendant Sherman.~~

1 ~~150. Fourth, in an email sent e-mail on~~ February 2, 2017, ~~the~~
2 ~~Manager~~ Defendant Sherman falsely asserted that Plaintiff had “move[d] out of
3 ~~state without notifying SSP LLC until much later” and thereby “put our LLC at~~
4 ~~risk,” when in fact Plaintiff’s 2015 K-1 (prepared by SSP’s accountants) clearly~~
5 ~~indicated that Plaintiff was an out of state resident.~~

6 ~~263. Fifth, in that same February 2, 2017 e-mail, Defendant Sherman~~
7 used the excuse of the time spent communicating on ~~a tax withholding~~ the
8 ~~withhold~~ issue as the reason she could not wire Plaintiff’s distribution to her, even
9 though ~~the Manager’s other members were being paid, and even though~~
10 ~~Defendant Sherman’s~~ e-mail claiming that she “will not have time today to go to
11 the bank” was sent at 10:45 a.m.

12 ~~264.~~ When Plaintiff responded only an hour later that ~~the~~
13 ~~Manager~~ Defendant Sherman had a fiduciary obligation to wire the amount of her
14 distribution less whatever amount ~~the Manager~~ Defendant Sherman believed had
15 to be withheld for California taxes, ~~the Manager~~ Defendant Sherman responded
16 through ~~Mr. Defendant~~ Stern and asserted for the first time that, in addition to
17 California taxes, ~~the Manager~~ Defendant Sherman was required to withhold the
18 amount of a Child Support Division lien against other property unrelated to SSP,
19 Woodman and Magnolia, and that determining the amount of the lien would
20 further delay payment to Plaintiff of her distribution.

21 ~~151.265.~~ ~~The Manager~~ Defendant Sherman and attorney ~~Defendant~~
22 Stern had been aware of the Child Support Division lien against Woodman and
23 Magnolia for over a year, and had never previously indicated that money would
24 have to be withheld to pay that lien. ~~With this excuse, Defendant Sherman~~
25 ~~delayed wiring any of Plaintiff’s distribution (even the amount that was~~
26 ~~undisputed) until February 6, 2017.~~

266. With this excuse, the Manager delayed wiring any ~~However, in breach~~ of Plaintiff's distribution, even the \$1,099,563.59 that was undisputedly owed above any possible tax obligations or liens until February 6, 2017.

267. The Manager then ~~her fiduciary duty to Plaintiff, Defendant Sherman~~ improperly withheld and converted \$50,000 from Plaintiff's distribution wired on February 6, 2017.

268. -The stated reason: the funds were held as a litigation fund that ~~the Manager Defendant Sherman~~ could use if Plaintiff litigated ~~against the Manager or SSP to~~ to obtain the funds!

152, 269. -Through ~~Defendant Stern, the Manager Defendant Sherman~~ not only defended this unlawful conversion and breach of fiduciary duty, but informed Plaintiff that the funds would not be released until Plaintiff released any of her claims against ~~the Manager Defendant Sherman~~ for breach of fiduciary duty: "Perhaps we can discuss a method to protect the Manager ~~Defendant Sherman~~ in connection with release of the reserved funds. Otherwise, they will be withheld to cover the litigation expense or for the period of time until the statute of limitations has run its course."

270. Through ~~Defendant Stern, the Manager~~ reiterated this effort to extort a release from Plaintiff in a second e-mail on February 9, 2017, in which ~~Stern he~~ wrote: "The \$50,000.00 will be released promptly upon your furnishing to me a signed General Release by your client, releasing Mary Sherman from all claims in her capacity as Manager of the LLC."

153, 271. -Plaintiff did not respond to this blatant effort to extort a release from her. Realizing that she was only compounding her breach of fiduciary duty, ~~the Manager released the \$50,000 by wiring the funds to Plaintiff on February 10, 2017 Defendant Sherman released the \$50,000 by wiring the funds to Plaintiff on February 10, 2017. However, Defendant Sherman still withheld over \$148,000 in an SSP account as a litigation fund, which she improperly used to~~

1 ~~fund the defense of her breach of fiduciary duty, conversion and even libel at~~
2 ~~the expense of Plaintiff. She also paid herself \$1,500 per month salary, even in~~
3 ~~the nine months between close of escrow and when Early sent his first letter.~~
4 ~~Plaintiff did not send any emails about her misconduct in the interim.~~

5 ~~154. After several more months of wrangling with Defense counsel with~~
6 ~~little progress toward a resolution, Early determined that it is not cost effective~~
7 ~~for him to pursue the matter. His fees on non-contingency cases are upwards~~
8 ~~of \$500 per hour. Plaintiff agreed to continue by representing herself.~~

9 ~~155. Defendant McGarrigle represented Defendant Sherman as an~~
10 ~~individual and in her capacity as manager of SSP. He also represented SSP. He~~
11 ~~was paid by SSP. But he insisted, over and over, that Plaintiff must bring a~~
12 ~~derivative suit. Then he refused to set a formal meeting of the members to vote~~
13 ~~on whether to bring a suit, whether to indemnify Plaintiff, whether to have an~~
14 ~~accounting or any other issue.~~

15 ~~156. Any member vote after the death of member Roberta Kramer in~~
16 ~~2017 was futile anyhow. Defendant Sherman as trustee of SFT and the~~
17 ~~Grandchildren Trusts, had more than 50% of the outstanding voting shares.~~
18 ~~Regardless, the other Aiding and Abetting Defendants refused to support any~~
19 ~~action against manager Mary Sherman. (Plaintiff believes this was an~~
20 ~~unfortunate oversight by Norman and Sandi Kramer's attorney.)~~

21 ~~157. The Plaintiff made several pleas with Defendant McGarrigle and~~
22 ~~the other members over two months to obtain source documentation regarding~~
23 ~~the discrepancy in NOI and to have a complaint filed by the LLC to no avail.~~
24 ~~The other two members gave adamant responses by email that they are not~~
25 ~~interested in suing Defendant Sherman or the LLC, thereby waiving their~~
26 ~~rights.~~

27 ~~158. In response to repeated requests for a board meeting to vote on~~
28 ~~whether there should be an accounting and a suit filed on behalf of the LLC,~~

1 Defendant McGarrigle wrote to the Plaintiff that the documentation she was
2 requesting would be provided if she signed a confidentiality agreement. The
3 confidentiality agreement he drafted was over broad, unilateral and had no
4 exclusions. To Plaintiff's objection, Defendant McGarrigle wrote that it was a
5 "standard" confidentiality agreement.

6 159. Plaintiff sent a sample of exclusions harvested from a CLE course
7 online that could be incorporated, as follows: "Protected information does not
8 include documents or information that is: a. independently developed by the
9 receiving party without use of or reliance on any of the producing party's
10 protected information; b. rightfully acquired by the receiving party from an
11 independent source, without restrictions as to use or obligations as to
12 confidence; c. prior to disclosure, rightfully in the possession or knowledge of
13 the receiving Party without restrictions of confidentiality..."etc through f.

14 160. Defendant McGarrigle responded, inter alia, "there is no
15 circumstance where SSP tax documentation, banks statements and leases will
16 be subject to *any* exclusions." [emphasis added]

17 161. Without restrictions, the agreement drafted by Defendant
18 McGarrigle would not just chill Plaintiff's Constitutional right to free speech, it
19 would freeze it. The proposed order would destroy Plaintiff's ability to make a
20 meaningful inquiry into the veracity of the information offered and information
21 already in her possession. Defendant McGarrigle used his ploy meant to cheat
22 Plaintiff out of a fair inquiry to further delay a resolution.

23 162. There is no confidentiality clause in the OA, though most model
24 agreements contain one. One must presume a confidentiality clause was left
25 out on purpose.

26 163. Defendant McGarrigle refused to put Plaintiff's request for litigation
27 and an accounting before the board for a formal vote.

1 ~~164. On January 19, 2019, Plaintiff sent an email directly to Defendants~~
2 ~~Sherman, L. Kramer and Dennis asking for a vote to take back the \$65,000 in~~
3 ~~bonuses Sherman gave herself (that she admitted to) and to see actual bank~~
4 ~~records.~~

5 ~~165.1. The only response came from Defendant Dennis. She replied~~
6 ~~to all.~~

7
8 272. “Gosh Laura, I figured you were so busy looking at your illegally
9 obtained porn, that you would not have time for this nonsense. BTW, anything I
10 supposedly said to you, needs to be looked at in the context it was given. You are a
11 criminal, by any sense of the word. Lay off the lawsuit thing. The first part of
12 Hammett’s distribution was made on February 6, 2017, ten days after the proceeds
13 of sale were available to SSP.

14 273. The Manager withheld \$50,000 of Plaintiffs distribution to use as
15 Sherman and the Manager’s defense fund in the event Plaintiff sued Mary E.
16 Sherman in any capacity to obtain that \$50,000, and demanding a general release
17 as a condition to release of those funds. She finally released those funds to
18 Hammett fourteen days after they were available.

19 274. These constituted conversion of specific, segregated sums of money.

20 275. The Manager prevented the plaintiff from having access to her
21 property for a significant period of time.

22 276. Hammett was damaged by the conversion economically as follows:

23 277. Interest on the withheld funds = \$1,049,563 at 10% per year interest,
24 highest rate allowed by law from date of conversion to return, over 10 days would
25 yield two thousand, eight hundred and seventy five dollars and fifty-two cents
26 (\$2,875.51.52);

27 278. Plus, \$50,000 at 10% per year for 14 days yields one hundred, ninety
28 one dollars and seventy-eight cents (\$191.78).

279. Hammett is entitled to reasonable compensation for the time she spent trying to collect the converted funds and her travel expenses for the recovery trip, no less than \$3,000.

280. The plaintiff was excruciatingly nervous while waiting for the distribution. Hammett knew the manager and her husband to be conniving, entitled, and crooked.

281. Hammett travelled from Arkansas to California to be available if any signatures were needed, the wire wouldn't go through so a check would need to be issued or any other issue the Manager could dream up.

282. While waiting the two weeks to recover her money, Hammett visited an urgent care in Pacific Beach and was prescribed 15 tablets of .25 mg Xanax. This was the first anxiety medication Hammett had taken since moving to Arkansas over two years before. Plaintiff used 12 of the tablets and had 3 left a year later. The urgent care and medication cost Hammett about \$125 out of pocket.

283. The Manager misappropriated the funds from Hammett in conscious disregard for, and with malice and oppression towards, the rights of Plaintiff, in a bid to extort release of the Manager from her several torts and breaches of fiduciary duty, justifying an award of punitive damages against the Manager.

Eighth Cause of Action
Breach of Fiduciary Duty
Count One

284. Plaintiff alleges as its Eighth Cause of Action against Defendants Mary E. Sherman as manager of SSP, SSP and DOE 1 through DOE 99, inclusive, for Breach of Fiduciary Duty:

285. Plaintiff incorporates by reference all other sections of this complaint as though fully set forth herein.

1 286. Given the relationship between Plaintiff and the Manager, and the
2 trust and confidence Plaintiff reposed in the Manager, the Manager, and each and
3 every doe defendant, owed and still owes a fiduciary duty to Plaintiff. The
4 Manager, and each and every doe defendant, had a duty to act with the utmost
5 good faith in the best interests of Plaintiff. The Manager and Doe defendants, and
6 each of them, had an affirmative duty to notify Plaintiff, a Member of SSP, of the
7 true and correct financial records of the Company and had, and continue to have,
8 an affirmative duty not to conceal material facts from Plaintiff. The Manager, and
9 each and every doe defendant, had a duty to notify Plaintiff, the lienholder, that the
10 rents being reported were significantly lower than market rent, the management
11 fees being paid were almost three times reasonable rates and the nature of the
12 Company's involvement with the Sherman Family Partnership.

13 287. The Manager, and each and every doe defendant, breached their
14 fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) causing
15 SSP to make loans interest-free or at below market interest to Sherman and/or to
16 entities in which she or her spouse have an interest; (b) fraudulent
17 misrepresentation of the net operating income of SSP; (c) concealing material facts
18 from Plaintiff; and, (d) converting over a million dollars from Plaintiff which was
19 only returned after Plaintiff retained the services of an attorney to advocate for her.

20 288. As a direct and proximate cause, result and consequence of that
21 breach, Plaintiff suffered damages, and continues to suffer damages, in amounts
22 according to proof at the time of trial. The Manager's and Doe defendants'
23 conduct was a substantial factor in causing Plaintiff's harm.

24 289. The Manager owed Plaintiff a fiduciary duty as a result of her position
25 as Manager of SSP under an Operating Agreement that gave her "sole authority to
26 manage [SSP]" other than "Major Decisions" listed in OA § 5.5 and "to make any
27 contracts [or] enter into any transactions ... to conduct or further [SSP's] business."

1 290. The Manager also owed a fiduciary duty to Plaintiff pursuant to Cal.
2 Corp. Code § 17704.09.

3 291. SSP is liable for the actions of its manager by the theory of respondeat
4 superior.

5 292. As outlined in the conversion cause of action, the Manager breached
6 that duty to Plaintiff by creating ever-changing reasons to delay disbursement to
7 Plaintiff of the proceeds of the sale of the SSP shopping center; refusing to
8 disburse any funds to her even though over \$1,000,000 was undisputedly owed to
9 her above any tax obligations or liens; withholding and converting \$50,000 of
10 Plaintiffs distribution to use as a defense fund in the event Plaintiff sued to obtain
11 that \$50,000 (while at the same time withholding about \$500,000 from all
12 members in a separate defense fund), and demanding a general release as a
13 condition to release of those funds.

14 293. On a Quickbooks type program generated ledger offered to Hammett
15 by the Manager just prior to the February 2014 meeting, called the MMA register,
16 there was an entry for “MSFP” loan with payee of “ThE SHERMAN FA...”. The
17 Manager refused to explain the meaning of this entry. She said only that SSP, LLC
18 made \$40 off the investment “our” advisor suggested.

19 294. On the K-1 for 2013 the Manager caused to be sent to Hammett after
20 the February 2014 meeting, there was a commercial rental documented that
21 generated a reported income for Hammett’s share of the entity of \$246 in 2013.
22 The entity owned by SSP was called “Sherman Family Partnership”.

23 295. The Manager continues to refuse to explain this entity to Hammett.
24 Hammett’s most recent inquiry was made by email on July 22, 2020, with no
25 response.

26 296. Plaintiff is informed and believes and thereon alleges that the
27 Manager has breached her fiduciary duty to Plaintiff by hiring attorneys to
28 represent SSP that were simultaneously representing Sherman and each of the

1 defendants, even though the interests of these defendants conflicted with the
2 interests of SSP. This unfair business practice was compounded by the Manager
3 causing SSP to pay the entire bill for representation of counsel to all defendants
4 with SSP assets, but not making an equal distribution to Hammett prorated by her
5 percentage of ownership.

6 297. This circumstance inherently raises an inference of conflict of interest
7 that contradicts the “business judgment rule” and the obligation of good faith and
8 fair dealing.

9 298. Plaintiff is informed and believes and thereon alleges that the
10 Manager has breached her fiduciary duty to Plaintiff by hiring management
11 personnel, including herself, at an expense that was almost triple what her own
12 experts contend is reasonable; paying herself about \$1,500 per month in salary
13 after close of escrow on the shopping center; paying Sherman \$65,000 after the
14 Silver Strand Plaza was sold; did not report the \$65,000 to Sherman on 1099s,
15 increasing Plaintiff’s tax burden; sharing Plaintiff’s (erroneous) private tax
16 information with Members to whom she had no right to make these disclosures.

17 299. Mary E. Sherman wrote an email to Kramer, Dennis and Roberta
18 Kramer on February 2, 2017 in which she stated:

19
20 “Frankly, [Hammett] has used up every ounce of goodwill, and then some.”
21

22 300. The Manager did not act in good faith toward Hammett. The
23 manager, in doing the bad acts complained of above, acted intentionally,
24 oppressively, and maliciously toward Plaintiff in conscious disregard of Plaintiffs
25 rights and of the Manager's fiduciary obligations under contract, thereby entitling
26 Plaintiff to an award of punitive damages.

27
28 **Ninth Cause of Action**

Breach of Fiduciary Duty

Count Two

301. Plaintiff alleges as its Ninth Cause of Action against All Member Defendants including but not limited to Jeffrey M. Sherman as Co-Trustee of the J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive, for Breach of Fiduciary Duty:

302. Plaintiff incorporates by reference all paragraphs in this complaint as though fully set forth herein.

303. Given the relationship between Plaintiff and the Member Defendants, and Does 1-99 and the trust and confidence Plaintiff reposed in the Member Defendants, the Member Defendants and each and every Doe defendant owed and still owes a fiduciary duty to Plaintiff. The Member Defendants had a duty to act with the utmost good faith in the best interests of Plaintiff. Defendants, and each of them, had an affirmative duty to discharge their duty to vote on Major Decisions using reasonable business judgement and continue to have an affirmative duty not to conceal material facts from Plaintiff.

304. The Member Defendants breached their fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) refusing to vote against acts of the Manager that were in contravention to the OA; (b) refusing to dissolve the Company timely; (c) Using the Company attorneys, Stern and McGarrigle to represent them as individuals, even letting SSP pay for the representation without following OA requirements; and, (d) agreeing to consider buying Plaintiff's shares in lieu of a voluntary dissolution that would be a reasonable action under the circumstances, but then using Stern to represent a fair price as about 1/6th the actual fair value.

305. As a direct and proximate cause, result and consequence of that breach, Plaintiff suffered damages, and continues to suffer damages, in amounts

1 according to proof at the time of trial. Member Defendants' and Doe defendants'
2 conduct was a substantial factor in causing Plaintiff's harm.

3 306. The Member Defendants had a fiduciary duty to Plaintiff pursuant to
4 Cal. Corp. Code § 17704.09 to discharge their duties to SSP and the other members
5 under the Cal. Corp. Code or under the operating agreement and to exercise any
6 rights consistent with the obligation of good faith and fair dealing. They did not.

7 307. Liabilities of the Member Defendants to the Plaintiff arose from acts
8 of fraud or negligence and from acts or omissions which were not within the scope
9 of authority conferred on such Member by the OA. OA §5.8.

10 308. The Members were not Directors of the Company, and therefore not
11 subject to the shield of the "Business Judgment Rule".

12 309. Still, if the Business Judgment Rule was applied, it would fail to
13 protect the Member Defendants from their actions that were not in good faith;

14 310. Not in best interests of the Company;

15 311. The cause of a direct conflict of interest pursuant to Rules of
16 Professional Conduct 3-310;

17 312. Abdication of corporate responsibility;

18 313. And, in all but the Grandchildren Trusts and Mary Sherman as Co-
19 Trustee of the J&M Sherman Family Trust, indicate a lack of sufficient diligence
20 to inform herself or himself of how the Manager was handling SSP assets.

21 314. To the extent that the Member Defendants knew of the contraventions
22 of the OA by the Manager and refused to vote against the misconduct or join in an
23 action for judicial intervention, they became liable to the Plaintiff for damages due
24 to their omission of voting against the contravention or joining in an action for
25 judicial intervention, contrary to their duty of good faith and fair dealing.

26 315. It was obviously not in the best interest of the Company to pay three
27 times the reasonable rate for management, especially when the rents collected were
28 below market rents.

1 316. It was not in the best interest of the Company to pay bonuses of
2 \$65,000 to the Manager after the sale of the sole property. The Company was
3 supposed to dissolve. There is no reason for the Company to retain the good will of
4 the Manager or anyone. Sherman's good will that came with the tacit approval of
5 the bonus equal to two years salary was directed toward the Member Defendants,
6 not toward the Company.

7 317. Not reporting the \$65,000 bonuses to the IRS on a 1099 was not in the
8 best interest of the Company. The Company was participating in tax evasion for
9 Sherman. The result was individual Members, including Hammett, paid the tax
10 bill, which would be a conversion of Plaintiff's share.

11 318. None of the other defendants, each independently wealthy and
12 standing to be found liable for millions of dollars in this litigation, hired an
13 attorney other than Stern and McGarrigle to represent them prior to June 17, 2019.
14 The Grandchildren Trusts, J&M Trust Defendants, and L&E Trust Defendants
15 could not be represented by their trustees who were not authorized to practice law.

16 319. McGarrigle wrote a declaration in this case that all his
17 communications regarding Silver Strand Plaza were in anticipation of litigation.
18 The Member Defendants knew they were receiving legal advice as individuals and
19 having SSP pay for it. This was a financial benefit received by the Member to
20 which the Member is not entitled.

21 320. The communications from the other defendants to Plaintiff will be
22 proven at trial to be negligible, with the exception of the bizarre and defamatory
23 communications from Dennis, and a jury would find the Member Defendants more
24 probably than not were represented by Stern and McGarrigle. This was a prima
25 facia conflict of interest.

26 321. The Defendants knew Plaintiff had a healthy distrust in the integrity
27 of the courts due to the appearance of bias and embroilment exhibited in her family
28 law case by former Commissioner Alan H. Friedenthal. They forced her to look to

1 the court for intervention anyhow. Dennis even said they met with Mr. Friedenthal
2 after the first suit was filed against Sherman and SSP in May 2018. Being forced to
3 litigate what should have been a simple issue, which as McGarrigle entered as
4 evidence, Plaintiff was willing to settle for less than she had in capital, was the
5 proximate cause of severe emotional distress for Hammett.

6 322. As a proximate result of the Member Defendants' and Doe
7 Defendants' wrongful conduct as alleged herein, Plaintiff has sustained damages in
8 an amount in excess of \$75,000, exclusive of attorney's fees and costs, as her Fair
9 Share of SSP assets wasted and misappropriated with the tacit approval, inaction or
10 negligent discharge of their duties.

11 323. As stated above, Mary E. Sherman wrote an email that describes her
12 lack of good will toward Hammett: "Frankly, she has used up every ounce of
13 goodwill, and then some."

14 324. The breach of fiduciary duty by the Member Defendants and Doe
15 Defendants was the proximate cause of considerable anxiety, distress, aggravation
16 and sleepless nights for the Plaintiff. The Plaintiff partakes in therapy at least once
17 per week, has an appointment with a psychiatrist monthly or bi-monthly and has a
18 prescription for anti-anxiety medications to handle the stress.

19 325. The Member Defendants and Doe Defendants, in doing the acts
20 described in Paragraphs above, acted intentionally, oppressively, and maliciously
21 toward Plaintiff in conscious disregard of Plaintiffs rights and of the Member
22 Defendants' and Doe Defendants' fiduciary obligations under contract, thereby
23 entitling Plaintiff to an award of punitive damages.

24
25 **Alternatively, the Ninth Cause of Action**
26 **for Breach of Covenant of Good Faith and Fair Dealing**
27
28

326. Plaintiff alleges as its Ninth Cause of Action alternatively against All Member Defendants including but not limited to Jeffrey M. Sherman as Co-Trustee of the J&M Sherman Family Trust and DOE 1 through DOE 99, inclusive, for Breach of Covenant of Good Faith and Fair Dealing:

327. Plaintiff incorporates by reference all sections of this complaint as though fully set forth herein.

328. There was a contract between each of the Members.

Plaintiff performed all of her duties according to that contract. *You will likely have more "lawsuit" than you can handle, in the near future."*

~~Finally, in early March, 2019, Plaintiff wrote to Defendant McGarrigle stating that she would be on vacation the following week and then writing a complaint. She sent a draft, unfinished copy of the complaint to the Defendants.~~

~~167. While on vacation, the Defendants and their counsel sent several emails to Plaintiff, probably more than during the previous year combined.~~

~~167. Defendant McGarrigle sent several lengthy emails that Plaintiff characterizes as "diatribes". He did finally send some of the requested documentation, but still no source documents. There were ledgers for Union Bank checking and money market accounts. There was also copies of the Union Bank statements.~~

~~167. But there were no bank statements to correspond to the ledgers kept by the professional management company, Strategic Asset Management Group ("SAMG"), though there are entries that suggest an account at "CBB". There were no statements for SSP investment accounts, a Citi Bank credit card and other possible financial vehicles.~~

~~167. Defendant Sherman and her agents took unreasonable amounts of time to produce documents and answers to simple questions to Plaintiff in an~~

1 attempt to string her out past the applicable statutes of limitations. They were
2 even able to convince a very intelligent attorney to “withdraw without
3 prejudice” Plaintiffs complaint filed May 2018, instead of using a “motion for
4 stay”.

5 ——— This was different from the treatment of other members of SSP. For
6 example, On March 25, 2017 Defendant Dennis sent an email to Defendant
7 Sherman in which she wrote “Hi Mary// I just spoke with mom.(sic)//I’m
8 formally requesting to have 3 years of financials from SS LLC (sic) be given to
9 me, by you, the managing partner.//xo”

10 168. Ms. Sherman responded the following day. “Diane,//These
11 requested financials will be sent to you via email by March 31, 2017. Brock
12 and Curt will receive a copy via email of their trust by March 31, 2017.//
13 Mary”

14 168. There was no demand made on Diane Dennis to sign any
15 confidentiality agreement. Ms. Dennis received her information by email. This
16 exchange also points to the fact that the members gave reverence to Sandi
17 Kramer’s authority.

18 168. By a preponderance of emails to be admitted in trial, it is obvious
19 that the reverence was due to Sandi Kramer’s long purse strings and not out of
20 respect or gratefulness. Especially Defendant Dennis wrote dozens of emails
21 that called Sandi Kramer a “narcissist”, said Sandi Kramer used threats of
22 removing her children from “her will” if they did not give her total control over
23 their lives, and discusses the co-dependent relationship between Sandi Kramer
24 and Defendant Sherman.

25 168. Defendant Sherman began her defamation campaign much further
26 back than 2014, but Plaintiff did not have documentary evidence. Plaintiff
27 wrote emails in June 2014 referring to suspected comments by Defendant
28 Sherman that Plaintiff was not paying her rent. Defendant Sherman had called

~~Plaintiff to ask why she was not paying rent on a commercial building and Plaintiff explained to her that the landlord had sold the building without offering Plaintiff the contracted first right of refusal, and Plaintiff got a court order that limited the rent she would need to pay until the breach of contract and interference with contract suit was resolved. (Plaintiff prevailed in that suit, also self-represented.) Still, Defendant L. Kramer repeated the comment that Plaintiff was not paying her rent to the Plaintiff. It is likely she heard the information from Defendant Sherman or Sandi Kramer. (Because of the statute of limitations, this communication is not included in the damages for libel and is used only to show a pattern, maliciousness by disregarding the truth, and that Plaintiff would speak out as soon as she knew she was being defamed.)~~

329. In

330. There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement (“the Covenant”).

331. Plaintiff brought evidence to the Member Defendants in January and February 2014 that would make a reasonable person demand an accounting of SSP finances pursuant to the OA §5.5(f) and (i). The Member Defendants voted against an accounting. That was a breach of the Covenant.

332. Plaintiff brought the discrepancy between NOI reported on Hammett’s K-1 and NOI given on the Offering Memorandum to the Member Defendants in late 2017. Plaintiff pled with the Member Defendants throughout 2018 until April 2, 2019 to demand an accounting of SSP finances. To no avail. That was a breach of the Covenant.

333. On September 19, 2019, Plaintiff filed exhibits in this case, ECF Nos. 73-3 and 74, augmented by exhibits that SSP and the Manager had tried to keep confidential, ECF Nos. 104-1 to 6 lodged on November 4, 2019. No reasonable person could read these exhibits and not know the Manager agreed 4% was a

1 reasonable percentage of gross rents to pay management, but she paid management
2 of Silver Strand Plaza about 11.45%, thereby violating OA § 5.3, a contravention
3 of the OA.

4 334. The failure of the Member Defendants to exercise their decision
5 making duty found in OA § 5.5 enabled the Manager to continue with her
6 misconduct. This diminished the distributions that were paid to Plaintiff over three
7 years.

8 335. The Manager chose the same attorney to represent herself as she
9 chose to represent SSP. That was a conflict of interest. It was in contravention to
10 OA § 5.3. The Member Defendants not only shirked their responsibility as per OA
11 § 5.5, they relied on the SSP attorney to represent their interests as well and had
12 SSP pay their bills.

13 336. The Member Defendants did not provide a written undertaking
14 pursuant to OA § 9.1(b).

15 337. Any indemnification payment was therefore a distribution in kind of
16 legal services owned by the Company paid to the Member Defendants. Plaintiff,
17 who did not receive the services, should have received an appropriate Capital
18 Account adjustment prior to the payment of the legal services fee, pursuant to OA
19 § 3.3(b).

20 338. The Member Defendants refused to vote pursuant to OA § 5.5(h) for
21 dissolution of the Company as required by OA § 8.2(a).

22 339. Because the Company is not dissolved and Plaintiff's capital
23 distributed to her, Plaintiff is frustrated from completing two construction projects
24 and is anxious about her finances during the Coronavirus epidemic and civil unrest.

25 340. By these breaches of contract, Plaintiff was damaged economically by
26 an amount to be determined at trial and was caused anxiety for which she is in
27 treatment at least weekly.

1 341. Furthermore, in doing the acts described in Paragraphs above, the
2 Member Defendants' acted intentionally, oppressively, and maliciously toward
3 Plaintiff in conscious disregard of Plaintiffs rights and of the Member Defendants'
4 fiduciary obligations under contract, thereby entitling Plaintiff to an award of
5 punitive damages.

6
7 **Tenth Cause of Action**
8 **Aiding and Abetting a Breach of Fiduciary Duty**
9

10 342. Plaintiff alleges as its Tenth Cause of Action against the J&M Trust
11 Defendants, Grandchildren's Trusts, Kramer, Dennis and DOE 1 through DOE 99,
12 inclusive, for Aiding and Abetting a Breach of Fiduciary Duty by the Manager:

13 343. Plaintiff incorporates by reference all paragraphs of this complaint as
14 though fully set forth herein.

15 344. The Member Defendants conspired together with the Manager and
16 Doe Defendants to assist and encourage the Manager to

17 345. Mary E. Sherman in each capacity knew everything the Manager
18 knew.

19 346. Dennis and Kramer, at least as of October 2019 but probably before,
20 knew all the details of the Manager's Breach of Fiduciary Duty to that point,
21 because they were provided with the evidence by Plaintiff.

22 347. Mary E. Sherman in each of her capacities committed fraud. (See the
23 First Cause of Action)

24 348. Mary E. Sherman as the Manager committed Breach of Fiduciary
25 Duty. (See the Eighth Cause of Action.)

26 349. The J&M Trust Defendants, Grandchildren's Trusts, Kramer and
27 Dennis were able and had a duty to vote against the commission of acts in
28 contravention to the OA and refused to do so. They assisted the Manager to enable

1 her to over-pay management fees, hire attorneys for SSP who also represented
2 several other individuals and entities that had a direct conflict of interest with SSP
3 and to interfere with the contractual relations between Hammett and Kramer and
4 Dennis.

5 350. The aim of this conspiracy was to minimize the Manager's exposure
6 for financial irregularities by painting Plaintiff as biased and unbelievable and her
7 expressed concerns as unfounded.

8 351. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
9 and Grandchildren's Trusts knew all the details of the Manager's breach of
10 fiduciary duty because they are literally "of one mind".

11 352. The J&M Trust Defendants and Grandchildren's Trusts had
12 substantial participation in the breach, by refusing to vote against the acts in
13 contravention to the OA, especially the overpayment of management fees which
14 caused unjust enrichment for Mary E. Sherman and by refusing to vote for
15 dissolution of the Company which would protect Plaintiff's capital from further
16 waste.

17 353. The J&M Trust Defendants, Grandchildren's Trusts and Doe
18 defendants gave significant encouragement to the Manager to breach her fiduciary
19 duty.

20 354. The J&M Trust Defendants, Grandchildren's Trusts and Doe
21 defendants concealed information about the wrongful acts of the Manager from the
22 Plaintiff.

23 355. A person may be liable for aiding and abetting a breach of fiduciary
24 duty under two theories: first, if the aider and abettor owes a fiduciary duty to the
25 victim provides substantial assistance to the person breaching his or her fiduciary
26 duty, courts impose liability for concerted action that violates the aider and
27 abettor's fiduciary duty. (American Master Lease LLC v. Idanta Partners, Ltd., 225
28 Cal.App.4th 1451, (2014) h.n. 12 on fraud) The J&M Trust Defendants,

1 Grandchildren's Trusts and Doe defendants had a fiduciary duty to Hammett
2 pursuant to CA Corp §17704.09(d), the obligation of good faith and fair dealing
3 and to the extent SSP was member-managed, §17704.09 (a)(b)(c) and (e).

4 356. Second, if the aider and abettor commits an independent tort by
5 making a conscious decision to participate in tortious activity for the purpose of
6 assisting another in performing a wrongful act. (American Master Lease, h.n. 12 on
7 fraud). The J&M Trust Defendants, Grandchildren's Trusts and Doe defendants
8 committed fraud. Their fraud gave the Manager significant aid in her breach of
9 fiduciary duty.

10 357. The J&M Trust Defendants, Grandchildren's Trusts and Doe
11 defendants' conduct was a substantial factor in causing harm to plaintiff. They had
12 a combined 50.52% or more of the voting power on Major Decisions and could
13 have easily put the Manager in check but chose not to do so.

14
15 **Eleventh Cause of Action**

16 **Defamation Per Se**

17 **Alternatively Per Quod**

18 **Count One**

19
20 358. Plaintiff alleges as its Eleventh Cause of Action against Sherman, the
21 Manager, the J&M Trust Defendants and the Grandchildren Trusts, defamation per
22 se:

23 359. Plaintiff incorporates by reference all paragraphs in this complaint as
24 though fully set forth herein.

25 360. Plaintiff made a similar allegation in the First Amended Complaint. It
26 was dismissed based on the Court's ruling that Arkansas law must be applied and
27 Arkansas does not recognize defamation per se.

28 361. Plaintiff realleges the cause of action here as the Court erred.

1 362. The defamatory statement emanated from California.

2 363. The Plaintiff has substantial ties to California.

3 364. The defamatory statement was read in California, by some of
4 Plaintiff's business contacts and siblings who are residents of California. One
5 recipient was in Colorado, which also recognizes Defamation Per Se as a cause of
6 action. There were no recipients in Arkansas.

7 365. The Plaintiff's reputation was presumably harmed in every state in
8 which the defamatory statement was read, including California. "Tort of libel is
9 generally held to occur wherever offending material is circulated, and since
10 reputation of libel victim may suffer harm even in state in which he has hitherto
11 been anonymous, state may extend its concern to injury that in-state libel causes
12 within the state to nonresident." *Keeton v. Hustler Magazine, inc.*, 465 U.S. 770
13 (1984).

14 ~~169, 366.~~ In March 2019 Plaintiff read a libelous email published by
15 Sherman, the Manager, the J&M Trust defendants and the Grandchildren's Trusts
16 under the pretext of being SSP business~~written by Defendant Sherman~~ on
17 February 2 by a private email to Roberta Kramer, ~~Defendants~~ Dennis and ~~L.~~
18 Kramer. While there is no year on the email, it is consistent with 2017. She wrote
19 in part:

20
21 "SSP LLC refuses to be bullied any longer by this ungrateful creature who
22 has sent hundreds of accusatory emails over the past 12 years with no basis, since
23 our business flourished and grew and we each reaped financial reward. [Plaintiff]
24 chooses to break the law over and over and over (as evidenced by being fired from
25 the County, having a \$250K judgment imposed against her by CSSD, and not
26 paying CA taxes since 2011)." ("The Ungrateful Creature email")
27
28

1 ~~170. These statements are false. The underlying statement that implies~~
2 ~~the Plaintiff is a criminal is false. The Plaintiff has never been arrested, gets the~~
3 ~~good driver discount on her insurance and supports community groups and~~
4 ~~charities for those in recovery, though she has never abused any substance~~
5 ~~herself.~~

6 ~~171. The “evidence” given was also false. Plaintiff was not “fired from the~~
7 ~~County”; was not found in contempt of Court for failure to pay child support;~~
8 ~~and did not owe any taxes since 2011 (as described in detail below). Defendant~~
9 ~~Sherman could have easily asked for verification of this alleged criminal activity~~
10 ~~before making her statements but refused to make any inquiry out of wanton~~
11 ~~disregard for the truth.~~

12 ~~172. Plaintiff had failed to file tax returns in California because she did~~
13 ~~not owe tax and was confused when IRS instructions said not to file a CA (540)~~
14 ~~if there was no difference in Federal and State adjustments. Plaintiff, who~~
15 ~~already thought filing a return that had no money owed was “frivolous”,~~
16 ~~thought the CA (540) was the California 540, and stopped filling out the form,~~
17 ~~sighed with relief and didn’t think about California taxes again until Defendant~~
18 ~~Sherman withheld over \$100,000 from Plaintiff’s share of the proceeds from the~~
19 ~~sale of Silver Strand Plaza. (Hopefully after many discussions and letters~~
20 ~~between the Plaintiff and the FTB audit department, a change will be made to~~
21 ~~disambiguate the CA (540) and the California 540. In Arkansas they call the~~
22 ~~adjustment form ADJ; California might try (ADJ) 540.)~~

23 ~~173. In early February 2017, Around the time it was obvious sibling~~
24 ~~Roberta Kramer was terminally ill, Defendant Dennis reached out to Plaintiff.~~

25 ~~174. Defendant Dennis seemed to understand how stressful and~~
26 ~~unhealthy it was to deal with Defendant Sherman. She wrote, “Mary and mom~~
27 ~~are toxic. If mary wants the f ing money, it's just not worth my heart racing~~
28 ~~and feeling like I'm dead. // I told mom to f off. I can't change their warped~~

1 ~~minds. Is it too late for me to do what you did with [Woodman and Magnolia]~~
2 ~~so I can at least get a little of what dad wanted me to have?"~~

3 ~~175. Defendant Dennis was apologetic. She wrote "I feel responsible for~~
4 ~~what happened with you and mom. I never saw it. Bobbie is the one that~~
5 ~~showed me. She never stopped loving you."~~

6 ~~176. On April 11, 2017 Defendant Dennis sent the following email:~~

7
8 ~~"Laura, // Into it full force with the narsasistic (sic) psychopathic golden~~
9 ~~child. She's trying to pull my children into her web of hell. // OMDB~~
10 ~~[probably "over my dead body"] // You were smart to get away from her. I~~
11 ~~completely understand why you left. I'm so sorry I couldn't help you back~~
12 ~~then. I didn't understand what was happening. // I don't know that it is~~
13 ~~something mom is able to see. Minds are what they are. // I'm so sorry I~~
14 ~~couldn't protect you. I will try and protect you now."~~

15
16 ~~180. Defendant Dennis expressed that Defendant Sherman used her~~
17 ~~duty over our assets to act maliciously. On April 18, 2017 she wrote, "That~~
18 ~~translates to me that mother gave mary permanent power over the funds, to~~
19 ~~continue their legacy of abuse." (sic)~~

20 ~~181. For about six months Defendant Dennis acted like Plaintiff was her~~
21 ~~best friend and said she thought her mother and sister Sherman were~~
22 ~~"Narcissists". Defendant Dennis spent hours on the phone with Plaintiff, sent~~
23 ~~about 142 texts, 42 emails, many with multiple attachments, and a flash drive~~
24 ~~containing volumes of emails. Defendant Dennis warned Plaintiff in writing~~
25 ~~that the emails were disturbing. Plaintiff read one or two from Sandi Kramer to~~
26 ~~Defendant Dennis, then quit reading them (until March 2019). Plaintiff was~~
27 ~~finally recovering from her emotionally abusive upbringing, the resulting low~~
28 ~~self-esteem, and feelings of betrayal from the people who should have protected~~

1 ~~her most. She relied on Defendant Dennis' characterizations that there was~~
2 ~~nothing in the emails that would help in a lawsuit against Defendant Sherman.~~
3 ~~It became obvious in 2019 that Defendant Dennis was not aware that stating~~
4 ~~falsely a person is a criminal is often found to be libelous per se.~~

5 ~~182.— Plaintiff made two trips to Defendant Dennis' home in Colorado,~~
6 ~~each for a couple weeks. The last trip ended about July 1, 2017.~~

7 ~~183.— Plaintiff's main motivation was helping Defendant Dennis find~~
8 ~~serenity. Defendant Dennis asked Plaintiff about her Christian faith, attended~~
9 ~~church with her, spoke to her 70 year old Christian friend on the telephone~~
10 ~~and spoke to the Plaintiff's Pastor's wife at length.~~

11 ~~184.— The sisters had fun together, too, attending a blues festival, bike~~
12 ~~riding, going for long walks and day trading stocks. Plaintiff accompanied~~
13 ~~Defendant Dennis to view and purchase a condominium vacation home in~~
14 ~~Winter Park. Plaintiff lent Defendant Dennis a pendant with a large aqua~~
15 ~~marine set in solid gold she had inherited from their grandmother because the~~
16 ~~stone matched Defendant Dennis' eye color. Defendant Dennis promised to give~~
17 ~~the pendant to Plaintiff's granddaughter at her 16th birthday.~~

18 ~~185.— Plaintiff discussed SSP and the irrevocable trust, but was guarded,~~
19 ~~and wisely so. The sisters planned to have Plaintiff return in a month or two.~~
20 ~~But suddenly, on August 17, 2017, Defendant Dennis changed her demeanor~~
21 ~~and acted hatefully toward Plaintiff again.~~

22 ~~186.— On August 14, 2017 Defendant Dennis sent an email that said~~
23 ~~"Market's on fire!!! // Happy B-day", and sent a text, "You look beautiful. I love~~
24 ~~you."~~

25 ~~187.— On August 17, 2017 Defendant Dennis sent texts that said: "You~~
26 ~~are not a friend to me. Dream on." And "You're a dyke. Like lynn. You're a nut~~
27 ~~job." It went downhill from there.~~

1 ~~188. Defendant Dennis made bizarre telephone calls to Plaintiff. She left~~
2 ~~voicemails in an eerie voice. She made comments with the intention of~~
3 ~~disturbing Plaintiff's peace. Some were threatening, but maybe not quite~~
4 ~~enough to get a restraining order, considering the physical distance between~~
5 ~~them. Plaintiff blocked Defendant Dennis' calls and emails until Plaintiff took~~
6 ~~over the case from her former attorney.~~

7 ~~189. About December 28, 2018 Defendant Dennis sought out random~~
8 ~~people in the small community of Witts Spring by sending messages through~~
9 ~~Facebook to Witts Springs Community Voices. This is a community group~~
10 ~~Plaintiff was involved with and to which she had contributed \$50,000. Plaintiff~~
11 ~~had business transactions with some of the recipients, such as Doug Weaver,~~
12 ~~whom Plaintiff bought a house from and whom agreed to buy the same house~~
13 ~~back in a year. Plaintiff goes to church with most of the recipients.~~

14 ~~190. Defendant Dennis kept referring to Plaintiff's house on 40 acres~~
15 ~~with no outbuildings as a "compound", which sounds offensive to the other~~
16 ~~people in the community of mostly retired school teachers and farmers. Most of~~
17 ~~the property in Witts Spring is 40 acres or more because it is fields where our~~
18 ~~country's food is grown and the residents are not fanatical cultists who live in~~
19 ~~"compounds".~~

20 ~~191. Defendant Dennis wrote "Laura has told me of her 'porn'~~
21 ~~business", and "I'm sure the authorities will find her."~~

22 ~~192. Plaintiff has never authorized any potentially pornographic~~
23 ~~pictures of herself for commercial publication and has never asked for~~
24 ~~permission to post any pornographic pictures of anyone else and has not~~
25 ~~violated any privacy laws by posting pornographic pictures of anyone else~~
26 ~~without their permission.~~

27 ~~193. Plaintiff moved from Witts Spring in February 2018 but kept her~~
28 ~~property there. After church during a visit January 27, 2019 five community~~

1 ~~members met with Plaintiff at Doug Weaver's house and asked about the~~
2 ~~messages sent from "Bod Ion". Plaintiff explained that her sister, whom she~~
3 ~~had often prayed for in church, used the name "Bo Dion" at times. She told~~
4 ~~them for the first time an estimate of the size of the irrevocable trust her father~~
5 ~~left and that a Stanford and Hastings trained attorney had filed litigation~~
6 ~~against one of her sisters for breach of fiduciary duty concerning the sale of a~~
7 ~~shopping center they owned together. She told them that she did not have any~~
8 ~~porn business and had no idea what the Defendant was talking about, except it~~
9 ~~might be that estate buy out Plaintiff made a few years back where the~~
10 ~~deceased had a house full of pornography, some illegal. Plaintiff had called the~~
11 ~~FBI to report the child pornography and had destroyed all of it after the FBI~~
12 ~~told her it was not useful to them. Even though the community members~~
13 ~~always treated Plaintiff as if she was of fine character, these kinds of comments~~
14 ~~are libelous on their face, and it is difficult to know how they will affect~~
15 ~~Plaintiff's reputation in the community.~~

16 ~~194. In March 2019 Defendant Dennis repeated her libelous comments~~
17 ~~to the other defendants and Defendant McGarrigle by email. On March 12,~~
18 ~~2019 one email said, "How is your alleged illegal porn business going?"~~
19 ~~Another, "Child pornography is illegal. Criminals eventually get caught."~~
20 ~~Another, "Are you and Michael enjoying watching your illegal porn on your~~
21 ~~vacation?"~~

22 ~~195. When Plaintiff wrote in an email to the other member Defendants~~
23 ~~and Defendant McGarrigle that she was going to include a cause of action for~~
24 ~~libel in her suit, Defendant Dennis replied to all:~~

25
26 ~~"I would like that. That means we can depose the long list of your cohorts.~~
27 ~~(you know: Stephen Miller, Catherine Malone, Richard Meyers, Clem~~
28 ~~Williams, Sharon Williams, Reuben Candellaria, Animal, Stanley Reese,~~

1 ~~Richard Weil, Cathy Tabor, Linda and Tim Coughlin, and I could continue,~~
2 ~~but I'm sure you get the picture. Enjoy your poker. BTW, How's the prn bz~~
3 ~~going?"~~

4
5 ~~199. Plaintiff knows no one by any of those names.~~

6 ~~200. Defendant Dennis also sent threatening emails to Plaintiff referring~~
7 ~~to "target practice" and hiring a hit man on the internet.~~

8 ~~201. It is notable that while Defendant McGarrigle admonished Plaintiff~~
9 ~~several times for writing inappropriate, but unspecified comments, in emails he~~
10 ~~sent to Defendants Sherman, L. Kramer and Dennis, he never told Defendant~~
11 ~~Dennis her comments were inappropriate in an email copied to Plaintiff.~~

12 ~~202. Defendant Dennis wrote other emails to the Plaintiff, Defendants~~
13 ~~Sherman, L. Kramer and Defendant McGarrigle that, while not libelous, were~~
14 ~~inappropriate. For example, after a lengthy email from Defendant McGarrigle~~
15 ~~that had run on sentences and was difficult to understand, Defendant Dennis~~
16 ~~replied to all: "I'm not sure what you just said, but I had a giant orgasm."~~

17 ~~203. On March 13, 2019 Plaintiff wrote to the same group, in part, "...it~~
18 ~~appears [Defendant] Mr. McGarrigle is trying to intimidate me into accepting~~
19 ~~absurd agreements by stringing together multiple clause sentences with long~~
20 ~~words. //Mr. Defendant McGarrigle has won suits. I think he can write well~~
21 ~~when he has something to say."~~

22 ~~204. Defendant Dennis replied to all, "At least he has morals and [is]~~
23 ~~not running an illegal porn ring. Patrick makes an honest living. How's the~~
24 ~~vacation?"~~

25 ~~205. The "morals" comment reflects a comment Plaintiff made to Sandi~~
26 ~~Kramer over 30 years ago, which Sandi Kramer still brought up in one of her~~
27 ~~most recent emails to Plaintiff. (When Plaintiff told her parents she was~~
28 ~~marrying the man who is now her former spouse, Sandi Kramer asked "Why~~

1 don't you just live together?" Plaintiff responded, "Because *his* family has
2 morals.")

3 206. Defendants may claim Defendant Dennis is "crazy" or under the
4 influence of drugs and alcohol. But Defendant Dennis is malingering. During
5 the total of about a month Plaintiff lived in Defendant Dennis' homes, Dennis
6 did drink alcohol regularly and smoke marijuana daily. But she was lucid,
7 reasonable and is basically a functioning alcoholic.

8 207. For a short time in March 2019, Defendant Dennis expressed an
9 interest in having an accounting and was civil in emails to Plaintiff. Defendant
10 Dennis and Plaintiff spoke on the telephone on March 10, 2019. Dennis
11 expressed interest in voting about the confidentiality of documents and said
12 Defendant Sherman had asked her to vote about whether or not to approve,
13 retroactively, the money Sherman paid herself. Dennis sounded lucid and
14 reasonable and was civil. Plaintiff documented well, as she is a trained
15 journalist. Defendant Dennis said, talking about how much she thinks
16 Defendant Sherman stole, "I'm sure it was more than 65,000." Also, "I think
17 the records should be seen."

18 208. The next day Defendant Dennis sent an email in which she
19 queried: "Also, I'm curious how much [Plaintiff's sons] get from my father's
20 estate every month. Since [Defendant Dennis' sons] don't take from it, I am
21 just curious the amount that [Plaintiff's sons] are taking? Just curious."

22 209. Plaintiff said she did not know, but thought her sons received
23 nothing more from Norman Kramer's irrevocable trust to date.

24 210. The next day, Defendant Dennis was back to sending bizarre
25 emails about "illegal porn". Most of the evidence Plaintiff has thus far that
26 Sandi Kramer was offering bribes for allegiance are circumstantial, but, as
27 Vincent Bugliosi once wrote, circumstantial evidence is evidence. Defendant
28 Dennis asking about how much money their mother is distributing to the

1 ~~Grandchildren just before switching allegiance back is a suspicious~~
2 ~~circumstance.~~

3 ~~211. Plaintiff L. Kramer sent just two emails regarding her approval or~~
4 ~~disapproval of a lawsuit in 2019. One said, "I vote NO. // No lawsuits. No~~
5 ~~lawyers. My time, energy, and spirit are better spent on positive energies. //~~
6 ~~Lynn". [Capitalization hers.] This is hypocritical, while trying to sound spiritual.~~

7 ~~212. As the very spiritual Apostle Luke admonished, it is better to settle~~
8 ~~your debts than to force someone to take you to court. (Paraphrased from Luke~~
9 ~~12:58)~~

10 ~~213. The second L. Kramer email was on March 18, 2019 in reply to~~
11 ~~Plaintiff's email which had the subject "One more try". Plaintiff ended that~~
12 ~~email, "It is not too late now to change your stance and vote with me to file a~~
13 ~~derivative suit against Mary. It will be too late by Friday, maybe sooner, when I~~
14 ~~finish the complaint."~~

15 ~~214. Defendant L. Kramer replied simply, "Shit or get off the pot."~~

16 ~~215. There is no good motivation possible that Defendants L. Kramer~~
17 ~~and Dennis would block Plaintiff from suing for an accounting on behalf of the~~
18 ~~LLC, other than if they get more money from Sandi Kramer, they were active~~
19 ~~participants in misappropriating from SSP, or at best, they think it is alright for~~
20 ~~the other defendants to take back what was gifted by Plaintiff's mother and~~
21 ~~father. There is no defense of "Plaintiff is an 'ungrateful creature'" available to~~
22 ~~them.~~

23 ~~216. The OA section IX on indemnification states in full:~~

24
25 ~~9.1.(a) The Company shall indemnify any Member or Manager who was or~~
26 ~~is a party to any threatened, pending or completed action, suit or~~
27 ~~proceeding, whether civil, criminal, administrative, arbitrative or~~
28 ~~investigative, and whether formal or informal (a "Proceeding"), including a~~

1 ~~proceeding brought on behalf of the Members of the Company, because~~
2 ~~such person is or was a Member or Manager of the Company, or was or is~~
3 ~~serving at the request of the Company as a manager, director, trustee,~~
4 ~~partner or officer of another entity, against any liability or any reasonable~~
5 ~~expenses (including reasonable attorneys' fees) incurred by such Person in~~
6 ~~connection with such Proceeding, unless such person has engaged in~~
7 ~~willful misconduct or a knowing violation of the criminal law, or unless~~
8 ~~such Proceeding is to enforce contractual obligations of a Member including~~
9 ~~the capital contribution obligations contained in this Agreement. No~~
10 ~~amendment of this Article IX shall have any effect on the rights provided~~
11 ~~herein with respect to any act or omission occurring prior to such~~
12 ~~amendment.~~

13
14 ~~(b) The Company shall promptly make advances or reimbursements for~~
15 ~~reasonable expenses (including attorneys' fees) incurred by any person~~
16 ~~claiming indemnification under this Article IX, unless it has been~~
17 ~~determined that such Person is not entitled to indemnification because of a~~
18 ~~failure to meet the standards set forth in this Article IX or is inconsistent~~
19 ~~with a court order. Such advances or reimbursements shall be conditioned~~
20 ~~upon receipt from the Person claiming indemnification of a written~~
21 ~~undertaking to repay the amount of such advances or reimbursements if it~~
22 ~~is ultimately determined that such Person is not entitled to indemnification.~~

23
24 ~~(c) The determination that indemnification under this Article IX is~~
25 ~~permissible, and of the reasonableness of expenses and attorneys'~~
26 ~~fees, shall be determined as follows: (i) if the claimant is a Member~~
27 ~~that is not a Related Person with respect to the Manager, by the~~
28 ~~manager; and (ii) if the claimant is the Manager or a Related Person~~

1 ~~with respect to the Manager, either by: (A) a majority interest of the~~
2 ~~Members entitled to vote, or (B) outside counsel to the Company;~~
3 ~~provided, that the Manager or Member requesting indemnification~~
4 ~~under this Article IX shall not be entitled to vote to approve such~~
5 ~~indemnification. The determination may be made before or after a~~
6 ~~claim for indemnification is made.~~

7
8 ~~(d) No Person shall be entitled to indemnification pursuant to this~~
9 ~~Article IX to the extent such Person is entitled to indemnification by~~
10 ~~another, including an insurer.~~

11
12 ~~(e) Notwithstanding any other provisions of this Article IX, no~~
13 ~~indemnification under this Article IX is permitted if inconsistent with:~~
14 ~~(i) an agreement prohibiting indemnification executed by the~~
15 ~~Company, by the Manager, or by the Member in question; or (ii) a~~
16 ~~court order.~~

17
18 ~~(f) In no event shall indemnification under this Article IX be made to~~
19 ~~the extent that additional capital contributions from the Members are~~
20 ~~required pursuant to Section 2.2. The initial capital contributions~~
21 ~~described in Section 2.1 may be used for indemnification under this~~
22 ~~Article IX.~~

23
24 ~~230. Plaintiff's claims for breach of fiduciary duty, aiding and abetting~~
25 ~~such, and conversion are for willful misconduct. The defamation claims are~~
26 ~~also about willful misconduct and are irrelevant to SSP. Therefore,~~
27 ~~indemnification is owed to none. Yet, Defendant Sherman paid for her personal~~
28 ~~representation with SSP funds. (Another embezzlement.)~~

1 ~~231. If the Defendants claim that the company counsel made the~~
2 ~~determination that the exclusion does not apply, then it certainly should not~~
3 ~~apply to Plaintiff, either.~~

4 ~~232. In her usual manner of dealing unfairly with Plaintiff, Defendant~~
5 ~~Sherman hired attorneys to represent SSP who also represented Sherman as~~
6 ~~an individual and the manager of SSP. The attorneys had to get informed~~
7 ~~written consent explaining the conflict or were violating California Rules of~~
8 ~~Professional Conduct 3-310(c)1. The attorney authorized indemnification of~~
9 ~~Defendant Sherman and Plaintiff was not provided equal protection.~~

10 ~~233. On March 17, 2019, within a lengthy email directed toward~~
11 ~~Plaintiff but sent to the Member Defendants also, Defendant McGarrigle wrote:~~

12
13 ~~*“Your on going approach of communicating mis statements to SSP*~~
14 ~~*and its Members continues to cause SSP to otherwise incur fees and*~~
15 ~~*expenses which are avoidable (and which SSP reserves the right to*~~
16 ~~*back charge to you) but for your effort to create a false record.”*~~

17
18 ~~237. Nowhere in the OA is this authorization to charge an individual~~
19 ~~member for total costs of indemnification or defense of the LLC found. The~~
20 ~~Aiding and Abetting Defendants once again acquiesce to Defendant Manager~~
21 ~~Sherman’s threatened conversion.~~

22 ~~238. Defendant Sherman and the attorneys working for Defendant SSP~~
23 ~~and Defendant Sherman jointly, had a few defense mantras. One, was that the~~
24 ~~case must be brought as a derivative case, even though all the other members~~
25 ~~were aligned with Sherman. In fact Sherman as trustee of several trusts~~
26 ~~controlled more than 50% of the vote.~~

27 ~~239. Second, that Defendant Sherman was worth every penny she paid~~
28 ~~herself, especially in light of selling the property for \$10.2M instead of the~~

1 ~~agreed upon bottom line of \$7.9M. The \$7.9M price was based on the NOI~~
2 ~~reported to members that was artificially lowered by paying outrageous~~
3 ~~management fees and bonuses.~~

4 ~~240. The broker expert hired by Defendant Sherman said the~~
5 ~~management fees paid to by SSP were more than double reasonable fees. In~~
6 ~~what the Plaintiff would call a run-on sentence written by Defendant~~
7 ~~McGarrigle on March 13, 2019, he used the phrase, “while the property was~~
8 ~~largely managed by a third party firm”.~~

9 ~~241. Third, if Plaintiff were to make a competent accounting on her own,~~
10 ~~she would easily see where the asset account adjustment was made and that~~
11 ~~there were no inappropriate expenditures. But, they only offer data for the~~
12 ~~accounting that is what Defendant Sherman chooses to present. Plaintiff’s prior~~
13 ~~attorney who studied at Stanford and Hastings and has practiced business law~~
14 ~~for decades also asked for and was denied an accounting. An accounting any~~
15 ~~time between 2014 and present would have cost far less than the attorney fees~~
16 ~~expended to protect the Defendants.~~

17 ~~242. Fourth, they claim, Plaintiff is an “ungrateful creature” and outside~~
18 ~~of SSP is a criminal, and therefore it is somehow acceptable to take her money~~
19 ~~and treat her unfairly. Even on its face this is a faulty argument. If a person is~~
20 ~~ungrateful and dishonest in other areas of her life, there is still no defense to~~
21 ~~stealing from her.~~

22 ~~243. Fifth, they contend some of Plaintiff’s claims are time barred. The~~
23 ~~defamation claims are about statements made less than a year before filing the~~
24 ~~complaint, except the “ungrateful creature” email. The “ungrateful creature”~~
25 ~~email was not seen by the Plaintiff until March 2019. Plaintiff anticipates there~~
26 ~~are more defamatory statements made by the defendants that will be seen in~~
27 ~~discovery, if defendants do not spoil evidence. For instance, Sandi Kramer~~
28 ~~wrote an email in which she states Plaintiff commits tax evasion. The most~~

likely way she got that idea is from hearing it from Defendant Sherman, but Sandi Kramer was not copied on the ungrateful creature email. There must have been other communications similar.

244. The Breach of Fiduciary duty and conversion actions may extend back into 2013. But plaintiff made a diligent effort since December 2013 to obtain the information that would give her reasonable proof to file a complaint. Defendants blocked all attempts at a proper accounting. Counsel for SSP never explained the conflict of interest and possible violation of the Professional Rules of Conduct for dual representation, and Defendant McGarrigle still refuses to recuse himself from representing both SSP and Defendant Sherman. Therefore, all claims should be equitably tolled from December 2013.

245. Counsel to SSP convinced Plaintiff's previous counsel to withdraw without prejudice the complaint filed in May 2018, instead of filing a motion for stay. This should give equitable tolling from the date of filing the withdrawn complaint.

246. As late as April 2, 2019, Defendant McGarrigle insisted the Plaintiff should not have filed yet. He wrote in an email to Plaintiff "...your hasty decision to apparently file a lawsuit against your family members".

247. Defendants postponed any settlement conference with Plaintiff, again and again. On April 14, 2019, Plaintiff wrote about a scheduled settlement conference for April 16: "Since there is a potential for including some sort of legal malpractice action or settlement against both attorneys in our settlement, it seems like Mr. Stern should be invited to participate in the discussion."

248. Defendant McGarrigle responded on April 15: "Your note below was not well received and unfortunately reveals a settlement call would be premature at this time. As such, the settlement call for tomorrow afternoon is off calendar."

1 ~~249. Plaintiff's response: "I am not surprised that your offer to have a~~
2 ~~settlement conference was just another delay tactic. // You will not deceive me~~
3 ~~into any further delay. Our settlement conference will be as per court order for~~
4 ~~ADR."~~

5 ~~250. Defendant McGarrigle responded: "Ms. Sherman and Ms. Kramer~~
6 ~~were willing to have a settlement call and I would have participated on behalf of~~
7 ~~SSP. You decided to change the landscape after the fact and, therefore, you~~
8 ~~have only yourself and tactics to blame."~~

9 ~~251. But Defendant McGarrigle's proposal of the settlement conference~~
10 ~~stated: "Also, if you are agreeable, I will participate in the call as well." He did~~
11 ~~not say he would represent SSP or Sherman, and Plaintiff had expressed~~
12 ~~several times that she believed he and Defendant Stern caused much of the~~
13 ~~damages due to their dual representation and defamatory comments.~~

14 ~~252. Then on the night of April 15, Defendant McGarrigle sent another~~
15 ~~lengthy email. It included this opening paragraph:~~

16
17 ~~You have clearly — again — mis-stated the facts in an effort to~~
18 ~~manufacture a false record. There was but one discussion elapsing~~
19 ~~over a handful of days in the past 2 weeks concerning one settlement~~
20 ~~conference ultimately that was to involve you, Linda Kramer and Ms.~~
21 ~~Sherman (and, in light of your non-objection to my being on the phone~~
22 ~~for SSP, me). In that modest span of time, schedules (other than your~~
23 ~~own) were re-arranged and coordinated, the conference call itself was~~
24 ~~arranged and telephonic information was provided to you. Notably,~~
25 ~~at no time (until this past Sunday) did you mention that the settlement~~
26 ~~discussion should include Mr. Stern, should involve "claims" which~~
27 ~~you have no standing to assert (on several grounds) or concerned~~
28 ~~"claims" which — based on what you have asserted those purported~~

1 ~~claims to be are time barred and/or meritless/frivolous. You~~
2 ~~derailed the settlement discussion before it could occur with an inapt~~
3 ~~approach that errantly presupposes that you somehow control SSP's~~
4 ~~rights and remedies, which is clearly not the case as was addressed~~
5 ~~in detail on March 12, 2019 and which you were previously informed~~
6 ~~at least as early as May 2018.~~

7
8 ~~256. These emails are typical of the contradictory facts argued by~~
9 ~~Defendants. According to Defendants, Plaintiff had no control over bringing a~~
10 ~~derivative claim, and her efforts to do so were futile yet Plaintiff could not bring~~
11 ~~a direct injury action, it had to be derivative; Plaintiff did not bring her direct~~
12 ~~action claim quickly enough yet Plaintiff was too hasty in filing her claim.~~

13 ~~257. Defendants are allowed to argue alternative defenses but they are~~
14 ~~not allowed to argue two contradictory sets of facts. They can argue Plaintiff~~
15 ~~missed the statute of limitations and even if she filed in time, she had no~~
16 ~~standing. (They may omit the words "even if" in their legal argument.) They~~
17 ~~cannot successfully argue that Plaintiff was too slow and too hasty to file her~~
18 ~~complaints. They cannot successfully argue that the Plaintiff has to file her~~
19 ~~complaint as a derivative action but has no standing to file a derivative action.~~

20 ~~258. Finally, they claim that even if the Defendants took money, it was~~
21 ~~not enough to file a lawsuit over. Presumed compensatory damages for~~
22 ~~defamation per se can be significant. Punitive damages for Breach of Fiduciary~~
23 ~~Duty, Aiding and Abetting Breach of Fiduciary Duty and Defamation Per Se are~~
24 ~~based in part on Defendants' net worth and income, which is quite substantial~~
25 ~~in this case. And if the original sums taken were insignificant, the Defendants~~
26 ~~should have just paid them back, as Sandi Kramer paid back her conversion of~~
27 ~~income from Woodman and Magnolia and Defendant Sherman paid back the~~
28 ~~\$50,000 converted at the close of escrow.~~

1 ~~259. As Defendant Stern wrote, litigation is aggravating. The parties~~
2 ~~need not try to make life unpleasant for the other parties. Indicative of the~~
3 ~~Defendants' motive to vex and disturb Plaintiff is a reply email written by~~
4 ~~Dennis to Plaintiff on May 5, 2019. It had just four words with no period. It was~~
5 ~~not pertinent to the original emails in the chain. She wrote:~~

6 ~~260. "Cum if you're able"~~

7 ~~261. The Member Defendants calculated that by joining their wealthy~~
8 ~~mother in her attempts to rip off and defame the Plaintiff they would come out~~
9 ~~ahead financially. The Attorney Defendants lamented that even if the manager~~
10 ~~did take money from the company, it was not enough to file a lawsuit over, but~~
11 ~~they did not counsel their client to return Plaintiff's share to her. Defendants~~
12 ~~Stern, Sherman and L. Kramer are likely to be administrating the multi-~~
13 ~~million dollar irrevocable trust left by Dr. Norman Kramer and need to be~~
14 ~~deterred from stealing ever larger sums. Their actions were willful and~~
15 ~~malicious. They are without remorse.~~

16
17 ~~— On the First Cause of Action for Breach of Fiduciary Duty~~

18 ~~— (Against Defendant Sherman and SSP jointly and severally)~~

19 ~~265. Plaintiff incorporates by reference paragraphs 1—201 above as~~
20 ~~though fully set forth herein.~~

21 ~~266. At all relevant times herein, Defendant Sherman owed Plaintiff a~~
22 ~~fiduciary duty as Manager of SSP. SSP is liable for the actions of its manager~~
23 ~~by the theory of respondeat superior as well as because the board was aware of~~
24 ~~possible misconduct and made it a policy to ignore said conduct and the~~
25 ~~attorneys hired by SSP approved of and tried to conceal said conduct.~~

26 ~~267. As outlined above, Defendant Sherman breached that duty to~~
27 ~~Plaintiff by creating ever changing reasons to delay disbursement to Plaintiff of~~
28 ~~the proceeds of the sale of the SSP shopping center; refusing to disburse any~~

~~funds to her even though over \$1 million was undisputedly owed to her above any alleged tax obligations or liens; withholding and converting \$50,000 of Plaintiff's distribution to use as a defense fund in the event Plaintiff sued to obtain that \$50,000; demanding a general release as a condition to release of those funds (the money was returned, thus curing the conversion, but shows that Defendant tried to extort a release and does act entitled to taking money that is not hers); hiring the same attorney to represent her interests and the interests of all the members of SSP; hiring management personnel, including herself, at an expense that was more than double what her own experts contend is reasonable; paying herself over \$40,000 in salary after close of escrow on the shopping center; sharing Plaintiff's (erroneous) private tax information with Members whom she had no right to disclose to; and demanding, through McGarrigle, Plaintiff bring her suit as a derivative action and whom then stating:~~

~~—California Corporation's Code Section 800(b) bars you from instituting any legal action on SSP's behalf. These laws that you scoff at in your emails to SSP Members are not "technical" issues but reflect California's determination that the LLC, not a single shareholder, owns the right to assess and pursue (or not) claims and rights owned by the Company under the business judgment rule. — SSP's rights in this regard have not been and are not divested to you and any reasonable reading of not only the most recent month of emails from you but years of ad hominem attacks at the Manager and your family establishes that (a) your bias disqualifies you from representing the best interests of SSP and (b) your threats are not advanced to right any wrong affecting the best interests of SSP but to further your on-going vendetta at the expense (financially and otherwise) of others. — Should you nonetheless file a legally barred derivative action,~~

1 ~~in addition to your liability for the legal fees of SSP, et al., such action will~~
2 ~~also lead to your waste of unrecoverable resources and the depletion of~~
3 ~~SSP reserves that would otherwise be available (less wind down~~
4 ~~expenses, etc.) to distribute to Members (a fact which you have known of~~
5 ~~for months but have chosen to disregard).~~

6
7 ~~271. Cal. Corp. Code 800(b) states:~~

8
9 ~~No action may be instituted or maintained in right of any domestic or~~
10 ~~foreign corporation by any holder of shares or of voting trust certificates of~~
11 ~~the corporation unless both of the following conditions exist:~~

12
13 ~~275. The plaintiff alleges in the complaint that plaintiff was a shareholder, of~~
14 ~~record or beneficially, or the holder of voting trust certificates at the time~~
15 ~~of the transaction or any part thereof of which plaintiff complains or~~
16 ~~that plaintiff's shares or voting trust certificates thereafter devolved~~
17 ~~upon plaintiff by operation of law from a holder who was a holder at~~
18 ~~the time of the transaction or any part thereof complained of; provided,~~
19 ~~that any shareholder who does not meet these requirements may~~
20 ~~nevertheless be allowed in the discretion of the court to maintain the~~
21 ~~action on a preliminary showing to and determination by the court, by~~
22 ~~motion and after a hearing, at which the court shall consider such~~
23 ~~evidence, by affidavit or testimony, as it deems material, that (i) there is~~
24 ~~a strong prima facie case in favor of the claim asserted on behalf of the~~
25 ~~corporation, (ii) no other similar action has been or is likely to be~~
26 ~~instituted, (iii) the plaintiff acquired the shares before there was~~
27 ~~disclosure to the public or to the plaintiff of the wrongdoing of which~~
28 ~~plaintiff complains, (iv) unless the action can be maintained the~~

1 ~~defendant may retain a gain derived from defendant's willful breach of~~
2 ~~a fiduciary duty, and (v) the requested relief will not result in unjust~~
3 ~~enrichment of the corporation or any shareholder of the corporation; and~~

4
5 ~~277. The plaintiff alleges in the complaint with particularity plaintiff's efforts~~
6 ~~to secure from the board such action as plaintiff desires, or the reasons~~
7 ~~for not making such effort, and alleges further that plaintiff has either~~
8 ~~informed the corporation or the board in writing of the ultimate facts of~~
9 ~~each cause of action against each defendant or delivered to the~~
10 ~~corporation or the board a true copy of the complaint which plaintiff~~
11 ~~proposes to file.~~

12
13 ~~279. Plaintiff's allegations are that she was a shareholder at the relevant~~
14 ~~times and made the efforts required in 800(b)2.~~

15 ~~280. The Plaintiff may choose to file only direct injury claims and did so~~
16 ~~in May 2018. But Defendant McGarrigle fraudulently claimed he would provide~~
17 ~~the necessary documentation to Early to perform an accounting and then did~~
18 ~~not produce several necessary documents and wasted so much time, it was not~~
19 ~~feasible for Early to work on contingency and not feasible for Plaintiff to pay~~
20 ~~him or any attorney \$500 per hour. Even if Plaintiff is awarded millions of~~
21 ~~dollars, coming up with the money up front is burdensome.~~

22 ~~281. By hiring counsel who has a prima facie conflict of interest~~
23 ~~Defendant Sherman increased costs for Plaintiff to resolve their dispute and~~
24 ~~increased the amount of time it would take dramatically. Plaintiff may need to~~
25 ~~liquidate stocks earlier than hoped or sell real estate cheaper to make it liquid~~
26 ~~enough to tide her over until she receives her share of the misappropriated~~
27 ~~funds, even representing herself.~~

1 ~~282. Plaintiff is informed and believes and thereon alleges that Defendant~~
2 ~~Sherman has breached her fiduciary duty to Plaintiff by misrepresenting the~~
3 ~~net operating income of SSP. Besides causing Plaintiff to expect too little in the~~
4 ~~sale of the property to a third party, Defendant Sherman used the lower figure~~
5 ~~to rationalize the low ball offer to Plaintiff of only 1/6th of the actual value.~~
6 ~~Even if there were no damages from the low ball offer, it shows the defendants~~
7 ~~tried to get away with that, like the difference between murder and attempted~~
8 ~~murder, only civil.~~

9 ~~283. If Roberta Kramer had not become terminally ill, or whatever~~
10 ~~triggered the sudden change in the other member's motivation to sell, Plaintiff~~
11 ~~would still be receiving about 30% less than her fair share of SSP income.~~

12 ~~284. Finally, Plaintiff is informed and believes and thereon alleges that~~
13 ~~Defendant Sherman has breached her fiduciary duty to Plaintiff by causing~~
14 ~~SSP to make loans interest-free or at below market interest to Defendant~~
15 ~~Sherman and/or to trusts in which she or her spouse have an interest.~~

16 ~~285. As a proximate result of Defendant Sherman's wrongful conduct as~~
17 ~~alleged herein, Plaintiff has sustained damages in an amount in excess of~~
18 ~~\$75,000, exclusive of attorney's fees and costs.~~

19 ~~286. Furthermore, in doing the acts described in Paragraphs 1 through~~
20 ~~212, above, Defendant Sherman acted intentionally, oppressively, and~~
21 ~~maliciously toward Plaintiff in conscious disregard of Plaintiff's rights and of~~
22 ~~Defendant Sherman's fiduciary obligations, thereby entitling Plaintiff to an~~
23 ~~award of punitive damages.~~

24
25 ~~On the~~ Second Cause of Action for Aiding and Abetting A Breach of Fiduciary
26 Duty

27 ~~(Against All Defendants, excluding Mary Sherman as manager of SSP, SSP and~~
28 ~~until a motion is filed, the attorney defendants, jointly and severally)~~

1 ~~290. Plaintiff incorporates by reference paragraphs 1—213 above as~~
2 ~~though fully set forth herein.~~

3 ~~291. The Plaintiff intends to file a motion per Civil Code 1714.10 to allow~~
4 ~~inclusion of the attorney defendants in this civil conspiracy cause of action.~~
5 ~~The facts will remain the same if the 1714.10 motion is approved. A brief~~
6 ~~explanation of the gist of the motion is given herein.~~

7 ~~292. When Plaintiff sent a copy of her latest rewrite of the FAC to all~~
8 ~~defendants on May 13, 2019 Defendants McGarrigle and Stern replied within a~~
9 ~~couple hours, much quicker than usual.~~

10 ~~293. Defendant Stern claimed to represent just SSP and Mary Sherman~~
11 ~~as the manager of SSP, not an individual. Defendant Stern attached a copy of~~
12 ~~his fee agreement. Section 1, Services to be Provided by Attorneys states in full:~~

13
14 ~~*Client (Dr. Mary E. Sherman as Manager of Silver Strand Plaza, LLC, a*~~
15 ~~*California) [sic] hereby engages Attorneys (Stern & Goldberg) to provide all*~~
16 ~~*legal services reasonably required to represent Client in connection with*~~
17 ~~*the operation and conduct of the business of Silver Strand Plaza, LLC and,*~~
18 ~~*in particular, any issues that may arise concerning Laura Lynn, a member*~~
19 ~~*of Silver Strand Plaza, LLC (collectively, the “Matter”).*~~

20
21 ~~*In order to enable Attorneys effectively to render these services, Client*~~
22 ~~*shall be truthful with the attorneys in discussing the Matter and providing*~~
23 ~~*information to Attorneys; shall keep Attorneys apprised of all*~~
24 ~~*developments regarding the matter; and shall identify and gather all*~~
25 ~~*documentation with respect to the Matter as required, for use by attorneys*~~
26 ~~*in the performance of the Attorneys’ undertakings. Client shall otherwise*~~
27 ~~*cooperate with Attorneys in the Matter and shall be reasonably available*~~
28

~~to attend meetings, if necessary, or other proceedings in connection with the Matter.~~

~~299. Singling out Plaintiff implies the other members and the attorneys were acting together against Laura Lynn toward the same result or goal. This is the exact definition of a conspiracy according to dictionary.com, not a legal definition, but an indication that this was not an action to promote the common good of the company, but action against an individual member by all the other individual members joined.~~

~~300. Defendant Stern did not contact Plaintiff even once before concluding that she was causing all the animosity. This was implied malice in defamation according to Black's Law Dictionary.~~

~~301. Defendant McGarrigle wrote "we have previously notified you that your assumption that attorneys for SSP, a limited liability company, are somehow your counsel or other members' personal counsel is misplaced." The next paragraph begins:~~

~~You have no evidence to support any allegations that either me (individually) or the law firm (collectively, "MKZ") represent any members of SSP in any individual capacity. As you know, there has been no pending action since the action that you filed in May 2018 and dismissed just weeks later as errantly filed; our office did not file any responsive pleading in that action as a result. In the ensuing period, and in the context of your on-going threats of legal action, our engagement has been to represent SSP in addressing your attorney's and, after you terminated his services, your demands for documents and information.~~

~~1.~~

1 ~~305. To correct a mis statement that Mr. McGarrigle knew to be false~~
2 ~~when he made it, Plaintiff told Defendant in writing through Early that she was~~
3 ~~withdrawing without prejudice to avoid lengthy and untenable motions to~~
4 ~~dismiss; it was expeditious to “jump through the hoops”, as Plaintiff has, to~~
5 ~~make any threatened motion to dismiss based on California Corporation Code~~
6 ~~800 a frivolous motion meant to add costs and time to the litigation. Plaintiff~~
7 ~~did not need to bring any derivative causes of action, and was not going to, but~~
8 ~~information collected and counsels’ subsequent conduct over the past year led~~
9 ~~to a change of her mind.~~

10 ~~306. The May 2018 complaint named Mary E. Sherman as an individual.~~
11 ~~She did not personally respond to the complaint in any way. The first letter~~
12 ~~sent by Defendant McGarrigle begins, “[a]s you know, this office represents~~
13 ~~Defendants Mary E. Sherman (“Sherman”) and Silver Strand Plaza, LLC (“SSP”)~~
14 ~~(collectively, “Defendants”) Please direct all further communications concerning~~
15 ~~this matter to the attention of the undersigned.” He did not say “Mary E.~~
16 ~~Sherman as manager of SSP” as Defendant Stern did in his first letter to~~
17 ~~Plaintiff.~~

18 ~~307. Defendant McGarrigle presented himself as representing Mary E.~~
19 ~~Sherman as an individual. Then he claimed he never represented her in any~~
20 ~~capacity. One position is fraudulent.~~

21 ~~308. On the issue of exactly who McGarrigle and MKZ represented, they~~
22 ~~behaved as if they represented the interests of the individual defendants. After~~
23 ~~hundreds of emails sent by Plaintiff to all the defendants, including~~
24 ~~attachments of each successive rewrite of the complaint over the last year,~~
25 ~~Defendant L.Kramer wrote the two short emails as in paragraphs 170 and 173~~
26 ~~and Mary Sherman has sent nothing. Diane Dennis has shown intermittent~~
27 ~~interest in investigating the manager’s possible breaches, and then nestles~~
28 ~~back in with the pack. None of the other defendants, each independently~~

1 ~~wealthy and standing to be found liable for millions of dollars in this litigation,~~
2 ~~has hired an attorney (other than the Defendant attorneys) to represent them.~~
3 ~~In fact, Jeffrey M. and Mary Sherman's daughter Dana Sherman is an attorney~~
4 ~~and she has not contacted the Plaintiff or Early.~~

5 ~~309. Defendant Stern wrote "as the LLC manager and I see it...", then~~
6 ~~gave a detailed reasoning to Plaintiff why he believed a fair price for her share~~
7 ~~of SSP in 2015 was 1/6th what it fetched on the open market in 2016.~~

8 ~~310. But the Defendant Attorneys are adamant that they represented~~
9 ~~only SSP and its manager. So, we must take them at their word. The intent of~~
10 ~~1714.10 is to allow for the zealous representation of clients. When the attorney~~
11 ~~defendants began to represent zealously the interests of the individual~~
12 ~~members, including Mary Sherman as an individual and the SFT, they opened~~
13 ~~themselves up to inclusion in the conspiracy.~~

14 ~~311. In fact, the zealous representation of non-clients at the peril of the~~
15 ~~LLC led to the derivative cause of action for malpractice.~~

16 ~~312. Defendant Sherman breached her fiduciary duty to Plaintiff.~~

17 ~~313. Defendants McGarrigle and Stern knew of Defendant Sherman's~~
18 ~~breach of fiduciary duty. They knew or should have known that a gift cannot be~~
19 ~~taken back without consent of the one gifted, unless the gift is made through a~~
20 ~~revocable trust. Yet they continued to argue against an accounting, delayed~~
21 ~~production of documents, refused production of documents and did not share~~
22 ~~communications with each member of SSP that requested it equally. They~~
23 ~~represented different clients on the same case who had a potential conflict of~~
24 ~~interest — some officially and some not. They counselled Defendant SSP that it~~
25 ~~was acceptable to pay with SSP money for the defense and business~~
26 ~~negotiations benefitting the defendant members without making an equal~~
27 ~~distribution to Plaintiff. They threatened litigation against Plaintiff for asserting~~
28 ~~her rights and Stern called her reasonable, civil emails "elder abuse".~~

1 ~~314. Defendants L. Kramer and Dennis are extremely intelligent, well~~
2 ~~educated women, both who have experience dealing in real estate. If they are~~
3 ~~not aware of the extent of misappropriation of funds by Defendant Sherman, it~~
4 ~~is due to their own inaction. They were aware of the misappropriations. Plaintiff~~
5 ~~even without a full production of bank records named several.~~

6 ~~315. Defendant Dennis used abusive and threatening language in an~~
7 ~~attempt to deter Plaintiff from proceeding to assert her rights.~~

8 ~~316. Defendant Sherman was trustee of the Grandchildren Trusts. She~~
9 ~~was aware of her own misdeeds. (The beneficiaries may have a cause of action~~
10 ~~for a breach of fiduciary duty.)~~

11 ~~317. The Attorneys for Defendant SSP wrote emails to Defendant Dennis~~
12 ~~and L. Kramer to persuade them to refrain from demanding an accounting or a~~
13 ~~lawsuit. The emails would be considered libelous, but for the litigation~~
14 ~~privilege. They denied indemnification to Plaintiff that would help her pursue~~
15 ~~her claims. They stalled the return of converted property and the disclosure of~~
16 ~~pertinent business records. They were deceptive about giving opinions and~~
17 ~~legal advice that was supposedly for the benefit of Defendant SSP but was~~
18 ~~actually for the benefit of Defendant Sherman. Defendant SSP was responsible~~
19 ~~for the attorney's actions by the theory of Respondeat Superior.~~

20 ~~318. Defendant Dennis refused to ask for an accounting or a lawsuit.~~
21 ~~She retaliated against Plaintiff for threatening to proceed with reasonable~~
22 ~~claims, by publishing libelous comments to Plaintiff's church family, business~~
23 ~~associates, community, Defendant L. Kramer, the Defendant Attorneys and~~
24 ~~with the threat of reporting falsely to "the authorities".~~

25 ~~319. Defendant L. Kramer refused to ask for an accounting or a lawsuit.~~
26 ~~She was aware that Defendant Sherman had ceased sending financial~~
27 ~~statements to Plaintiff. If Defendant L. Kramer also did not receive financial~~
28 ~~statements since 2012 even after Plaintiff brought to her attention some~~

1 ~~accounting discrepancies and possible overpayment of management fees, then~~
2 ~~she should not be allowed to argue the head in the sand defense.~~

3 ~~320. Defendant L. Kramer did express her support of Sandi Kramer's~~
4 ~~demand for Plaintiff to sign the rescission deeds on Woodman and Magnolia.~~
5 ~~On April 9, 2013, she wrote, "You would restore peace if you signed the paper.~~
6 ~~Nothing bad will come of it.//Lynn".~~

7 ~~321. Defendant E&L Trust paid cash for a commercial building in San~~
8 ~~Diego about three months earlier with what Sandi Kramer wrote was a loan~~
9 ~~from her that would not require repayment until L. Kramer receives her share~~
10 ~~of Sandi Kramer's still revocable trust.~~

11 ~~322. Defendants' actions caused Plaintiff to spend substantial time and~~
12 ~~resources pursuing claims that were very simple and of a much lower economic~~
13 ~~value and would be much easier to collect on when she first asked for the~~
14 ~~accounting. If Defendants L. Kramer and Dennis had advocated for an~~
15 ~~accounting in 2014, Defendant Sherman may have felt less empowered to~~
16 ~~misappropriate growing sums. There is a possibility of reduced recoverable~~
17 ~~damages due to the time lapse.~~

18 ~~323. All defendants committed an independent tort of conversion against~~
19 ~~Plaintiff in furtherance of the conspiracy.~~

20 ~~324. The Defendants were malicious and oppressive in their actions.~~
21 ~~Defendant L. Kramer was adamant that she wanted no attorneys in her life,~~
22 ~~but willingly joined the others to force Plaintiff to deal with attorneys.~~

23 ~~325. A derivative action for breach of fiduciary duty against Defendant~~
24 ~~Sherman would be contradictory, since all the other defendants were in concert~~
25 ~~with her.~~

26
27 On the Third Cause of Action for Defamation Per Se
28 (Against Defendants Dennis and Sherman severally)

1 ~~329. Plaintiff incorporates by reference paragraphs 1-241 above as~~
2 ~~though fully set forth herein.~~

3 ~~330. Defendant Dennis made the Statements “Laura has told me of her~~
4 ~~‘porn’ business”, and “I’m sure the authorities will find her” to Janis Hester-Lee~~
5 ~~and Doug Weaver and other members of Witts Spring Community Voices.~~

6 ~~331. Defendant Dennis made the following statement to Mary Sherman~~
7 ~~and Linda Kramer:~~

8
9 ~~“Gosh Laura, I figured you were so busy looking at your illegally obtained~~
10 ~~porn, that you would not have time for this nonsense. BTW, anything I~~
11 ~~supposedly said to you, needs to be looked at in the context it was given.~~
12 ~~You are a criminal, by any sense of the word. Lay off the lawsuit thing. You~~
13 ~~will likely have more ‘lawsuit’ then you can handle, in the near future.”~~

14
15 ~~335. Also, Defendant Dennis wrote to Sherman, L. Kramer and~~
16 ~~Defendant McGarrigle:~~

17 ~~“Laura has told me of her ‘porn’ business”, and “I’m sure the authorities~~
18 ~~will find her.”~~

19
20 ~~“How is your alleged illegal porn business going?”~~

21
22 ~~“Child pornography is illegal. Criminals eventually get caught.”~~

23
24 ~~“Are you and Michael enjoying watching your illegal porn on your~~
25 ~~vacation?”~~

26 ~~1.~~

27 ~~And, “At least he has morals and not running an illegal porn ring. Patrick~~
28 ~~makes an honest living. How's the vacation?”~~

~~346. Those who read the statements reasonably understood that the statements were about Plaintiff.~~

~~347. That because of the facts and circumstances known to the reader of the statements, they tended to injure Plaintiff in her business and charity work with the readers and to expose her to hatred, contempt, ridicule, or shame and to discourage others from associating or dealing with her.~~

~~348. Defendant Dennis failed to use reasonable care to determine the truth or falsity of the statements. The statements were false. There is no evidence that Plaintiff is aware of that she is or did engage in a pornographic business. The statement was a malicious lie.~~

~~349. Those who read the statements reasonably understood the statements to mean Plaintiff had an illegal porn business and is a criminal.~~

~~350. Defendant Dennis acted with malice, oppression and fraud.~~

~~351. In her Ungrateful Creature email Defendant Sherman made the statement that Plaintiff “chooses to break the law over and over and over (as evidenced by being fired from the County, having a \$250K judgment imposed against her by CSSD, and not paying CA taxes since 2011)” to Diane Dennis, Linda Kramer and Roberta Kramer.~~

~~352.~~367. Diane Dennis, Linda Kramer and Roberta Kramer reasonably understood that this statement was about the Plaintiff.

~~353.~~368. Those who read the statement reasonably understood the statements to mean Plaintiff had willfully committed crimes such as tax evasion.

369. The statement was false.

370. Plaintiff has no criminal record and has no criminal charges ever filed against her.

371. Plaintiff was not fired from her job with “the County”.

1 372. Plaintiff has not evaded taxes and easily qualified for the withholding
2 waiver in the State of California.

3 373. Having a judgment is not a crime.

4 374. Not paying child support in some circumstances is treated as contempt
5 of court, a quasi-criminal adjudication.

6 375. An Order to Show Cause as to why Plaintiff should not be found in
7 contempt for failure to pay a child support order was issued against Plaintiff, but it
8 was easily opposed.

9 ~~354.~~ 376. Defendant Sherman in each capacity failed to use reasonable
10 care to determine the truth or falsity of the statement.

11 ~~355.~~ 377. Those who read the statement reasonably understood the
12 statement to mean Plaintiff was a repeat criminal who was fired for some crime,
13 willfully disobeyed a valid court order and committed tax evasion.

14 378. Defendant Sherman in each of her capacities acted with malice, in that
15 she did not ask Plaintiff if she owed taxes or wanted to file a waiver for the
16 withholding;

17 ~~356.~~ 379. Plaintiff was extremely vocal about her child
18 custody ~~oppression~~ and support case and never said she was found guilty of
19 contempt; fraud.

20
21 380. ~~On the Fourth~~ Plaintiff never said she was fired from the County. In
22 fact Plaintiff was clear that she “quit” her job in an email to Mary Sherman.
23 Hammett receives a pension from the county job, which would not be due if she
24 had been fired;

25 381. Sherman knew Plaintiff had a real estate broker’s license and had her
26 own brokerage between resigning from the County and when the ridiculous child
27 support order was enacted in 2010, which was based on the proposition that Silver
28 Strand Plaza would generate \$34,000 per month for Hammett;

1 382. It is rare that someone convicted of a crime would be qualified to hold
2 a real estate license.

3 383. Sherman in all her capacities made no reasonable inquiry to determine
4 the truth.

5 384. Though actual damage to reputation is not required to be proven in
6 California, there was actual damage to Plaintiff's reputation.

7 385. Dennis wrote that Sherman was "very persuasive and manipulative".
8 One paragraph written by Dennis:

9
10 "The verbiage used by mary (sic) to describe you, i.e. "creature", were very
11 persuasive and manipulative. I'm so sorry I didn't see it, or maybe didn't
12 want to see it."

13
14 386. Clearly, Mary E. Sherman's words damaged Hammett's reputation,
15 however slight.

16 387. Plaintiff believes Sherman continues to make defamatory statements
17 about her.

18 388. Sherman's wrongful conduct was a substantial factor in causing harm
19 to Plaintiff's business relationship with the other Members of SSP, making
20 Plaintiff ineffectual in garnering support for a dissolution or legal action to remove
21 Sherman as the Manager and harm to Plaintiff's reputation.

22 389. Because Sherman is malicious and oppressive, there should be
23 punitive damages against her enough to encourage her to refrain from future harm.

24
25
26 **Twelfth Cause of Action** ~~for Civil Conspiracy to Defame~~
27 **For False Light Invasion of Privacy**
28 **Count One**

390. Plaintiff alleges as its Twelfth Cause of Action against Sherman, the Manager, the J&M Trust Defendants and the Grandchildren's Trusts, false light invasion of privacy ("FLIP"):

~~— (Against Defendants Sherman and Dennis jointly and severally)~~

391. Plaintiff incorporates by reference all paragraphs in this complaint ~~1—256 hereof~~ as though fully set forth herein ~~in full here~~.

392. There is no true conflict between Arkansas and California law for FLIP.

393. FLIP and Defamation may be plead concurrently, but recovery can only be had on one or the other.

394. Arkansas law makes more sense for the FLIP cause than defamation because the damage in defamation is to reputation, which occurs where the recipient is domiciled, but the damage in FLIP is to the Plaintiff's feelings or emotional well being, which would be wherever the Plaintiff is domiciled.

395. In March 2019 Plaintiff read a libelous email written by Sherman under the pretext of being SSP business on February 2 to Roberta Kramer, Dennis and Kramer. While there is no year on the email, it is consistent with 2017. She wrote in part:

"SSP LLC refuses to be bullied any longer by this ungrateful creature who has sent hundreds of accusatory emails over the past 12 years with no basis, since our business flourished and grew and we each reaped financial reward. [Plaintiff] chooses to break the law over and over and over (as evidenced by being fired from the County, having a \$250K judgment imposed against her by CSSD, and not paying CA taxes since 2011)."

396. The statement was false.

1 397. Plaintiff has no criminal record and has no criminal charges ever filed
2 against her.

3 398. Plaintiff was not fired from her job with “the County”.

4 399. Plaintiff has not evaded taxes and easily qualified for the withholding
5 waiver in the State of California.

6 400. Having a judgment is not a crime.

7 401. Not paying child support in some circumstances is treated as contempt
8 of court, a quasi-criminal adjudication.

9 402. An Order to Show Cause as to why Plaintiff should not be found in
10 contempt for failure to pay a child support order was issued against Plaintiff, but it
11 was easily opposed.

12 ~~360. Enforcing the child support order would require Alan H. Friedenthal to~~
13 ~~testify about his unethical actions and involvement with the Shermans. Defendants~~
14 ~~Sherman and Dennis joined with non-named Sandi Kramer and Ellis Stern to~~
15 ~~defame Plaintiff per se.~~

16 ~~403. The Defamation Conspirators’ objective was to harm Plaintiff’s~~
17 ~~reputation and to inflict~~ Mr. Friedenthal, through Court Counsel, was not willing
18 to testify. So Plaintiff was found to be not in contempt.

19 404. The Ungrateful Creature Email caused Hammett emotional distress. In
20 fact, Hammett did not read ~~-on the email Plaintiff. This is the emotional distress~~
21 ~~caused~~ when it was first transmitted to her on a disk by Dennis in 2017. Dennis
22 warned Hammett that the contents ~~scapegoat watches the pandering of the disk~~
23 were troubling ~~a fascist to an agitated mob~~ and apologized for ~~knows~~ the “hurt” it
24 would cause Hammett to read them.

25 405. Hammett did not read the Ungrateful Creature email until she was
26 writing the original complaint in this case and thought she better read all the emails
27 Dennis had transmitted.

1 406. Most of the emails were hurtful to Dennis, and Hammett, having
2 empathy, was disturbed reading just those. Dennis wrote that there are hundreds
3 more emails that Hammett should read, but those will likely be deleted now that
4 Dennis has realigned with Sherman.

5 407. Hammett is profoundly embarrassed, knowing Sherman~~mob~~ is stating
6 to people, in a tone of authority, that Hammett is a criminal.

7 408. Hammett is in therapy and under the care of a psychiatrist again. She
8 did not need to get professional help for anxiety from January 2015 until February
9 2017 when it seemed the Manager was going to refuse to return the money she
10 converted from Hammett. Reading the defamatory email increased the awful
11 feelings of embarrassment and not knowing which childhood friends were hearing
12 the same kinds of defamatory statements. (There were several indications that
13 Sherman was making defamatory statements to others.) Plaintiff took twelve
14 Xanax in 2017, had acupuncture treatment for anxiety and did yoga and hiked
15 every day to destress.

16
17 Thirteenth Cause of Action

18 Defamation Per Se

19 Alternatively Per Quod

20 Count Two to Six

21
22 409. Plaintiff alleges as its Thirteenth Cause of Action against Diane
23 Dennis, an individual, defamation per se, count two:

24 410. Plaintiff incorporates by reference all paragraphs in this complaint as
25 though fully set forth herein.

26 411. Plaintiff made the same allegation in the First Amended Complaint. It
27 was dismissed based on the Court's ruling that Arkansas law must be applied and
28 Arkansas does not recognize defamation per se.

1 412. Plaintiff realleges the cause of action for Defamation per se here to
2 preserve her right on appeal, but if the Court still finds that Arkansas law applies,
3 then Plaintiff asks that she may proceed on the alternative cause of Defamation Per
4 Quod.

5 413. The Plaintiff has substantial ties to California.

6 414. The Plaintiff was domiciled in California for the first 52.5 years of her
7 life, from 1962 to 2015.

8 415. The defamatory statement was read in California, by some of
9 Plaintiff's business contacts and siblings who are residents of California.

10 416. The defamatory statements emanated from Colorado or New Mexico,
11 both states which also recognize Defamation Per Se as a cause of action. There
12 were no recipients in Arkansas.

13 ~~361.~~ 417. The Plaintiff's reputation was presumably harmed in every state
14 in which the defamatory statements were read, including California. "Tort of libel
15 is generally held to occur wherever offending material is circulated, and since
16 reputation of libel victim may suffer~~cause her great~~ harm even in state in which
17 he has hitherto been anonymous, state may extend its concern to injury that in-state
18 libel causes within the state to nonresident." Keeton v. Hustler Magazine, inc., 465
19 U.S. 770 (1984). .

20 418. Defendant Dennis made the following discrete presentation of
21 information by email to Mary Sherman and Linda Kramer on January 20, 2019
22 which is Count Two:

23
24 "Gosh Laura, I figured you were so busy looking at your illegally obtained
25 porn, that you would not have time for this nonsense. BTW, anything I
26 supposedly said to you, needs to be looked at in the context it was given.
27 You are a criminal, by any sense of the word. Lay off the lawsuit thing. You
28 will likely have more 'lawsuit' then you can handle, in the near future."

~~362. Defendant Sherman was calling the shots as evidenced by the cooperation with demands the other members not communicate with Plaintiff.~~

419. Yet Defendant Dennis wrote the following discrete presentations of information by email to Mary Sherman, Linda Kramer and Mr. McGarrigle:

420. Count Three. "How is your alleged illegal porn business going?" on March 12, 2019;

421. Count Four. Sherman and the attorneys for SSP refused to admonish "Child pornography is illegal. Criminals eventually get caught." On March 12, 2019;

422. Count Five. "Are you and Michael enjoying watching your illegal porn on your vacation?" on March 12, 2019;

423. And Count Six. "At least he has morals and not running an illegal porn ring. Patrick makes an honest living. How's the vacation?" on March 13, 2019.

424. Those who read the statements reasonably understood that the statement was about Plaintiff.

425. That because of the facts and circumstances known to the reader of the statement, they tended to injure Plaintiff in her business with the readers and to expose her to hatred, contempt, ridicule, or shame and to discourage others from associating or dealing with her.

~~363.~~426. Defendant Dennis failed to use reasonable care to determine the truth or falsity of the statement. The statement was false. There is no evidence that Plaintiff is aware of that she is or did engage in any illegal pornographic business, obtain any illegal pornographic material for personal viewing or engage in criminal activity of any kind. The statement was a malicious lie to refrain from sending defamatory emails.

1 427. Those who read the statement reasonably understood the statement to
2 mean Plaintiff watches illegal pornography and is a criminal.

3 428. Dennis's wrongful conduct was a substantial factor in causing harm to
4 Plaintiff's business relationship with the other Members of SSP and McGarrigle as
5 it caused the meanspirited receivers to ridicule Hammett and encouraged them to
6 continuing breaching their fiduciary duties to Hammett and conspiring to harm
7 Plaintiff financially.

8 429. Even if Plaintiff has not proved any actual damages for harm to
9 reputation or shame, mortification or hurt feelings, the law assumes that she has
10 suffered this harm.

11 430. Defendant Dennis acted with malice, oppression and fraud and should
12 pay Hammett punitive damages.

13
14 ~~—— **Fourteenth** Each Defamation Conspirator sent at least one~~
15 ~~defamatory email or message. Even though the emails, as specified above, were~~
16 ~~sometimes sent more than a year ago, the conspirators never disengaged from~~
17 ~~the conspiracy and are therefore liable equally with the acts of the other~~
18 ~~conspirators that were discovered within the statute of limitations.~~

19 ~~364. The injury in defamation per se is presumed.~~

20
21 ~~On the Fifth Cause of Action for Conversion~~

22 **False Light Invasion of Privacy**

23 **Count Two**

24
25 431. Plaintiff alleges as its Fourteenth Cause of Action against Diane
26 Dennis, an individual, false light invasion of privacy ("FLIP"):

27 ~~—— (Against all defendants severally)~~
28

1 ~~367.~~432. Plaintiff incorporates by reference all paragraphs ~~1—263~~
2 ~~hereof as though set forth in this complaint as though fully set forth herein~~
3 ~~here.~~

4 433. There is no true conflict between Arkansas and California law for
5 FLIP.

6 434. FLIP and Defamation may be plead concurrently, but recovery can
7 only be had on one or the other.

8 435. Arkansas law makes more sense for the FLIP cause than defamation
9 because the damage in defamation is to reputation, which occurs where the
10 recipient is domiciled, but the damage in FLIP is to the Plaintiff's feelings or
11 emotional well-being, which would be wherever the Plaintiff is domiciled.

12 436. Defendant Dennis made the following discrete presentation of
13 information by email to Mary Sherman and Linda Kramer on January 20, 2019
14 which is Count Two:

15
16 "Gosh Laura, I figured you were so busy looking at your illegally obtained
17 porn, that you would not have time for this nonsense. BTW, anything I
18 supposedly said to you, needs to be looked at in the context it was given.
19 You are a criminal, by any sense of the word. Lay off the lawsuit thing. You
20 will likely have more 'lawsuit' then you can handle, in the near future."

21
22 437. Defendant Dennis wrote the following discrete presentations of
23 information by email to Mary Sherman, Linda Kramer and Mr. McGarrigle:

24 438. Count Three. "How is your alleged illegal porn business going?" on
25 March 12, 2019;

26 439. Count Four. "Child pornography is illegal. Criminals eventually get
27 caught." On March 12, 2019;

1 440. Count Five. “Are you and Michael enjoying watching your illegal
2 porn on your vacation?” on March 12, 2019;

3 ~~368. And Count Six. “At least he has morals and not running an illegal porn~~
4 ~~ring. Patrick makes an honest living. How's the vacation?”~~ Plaintiff owned
5 ~~14.157% of SSP. She was entitled to 14.157% of all assets of SSP distributed to~~
6 ~~the members. If any other 14.157% member received a distribution, the same~~
7 ~~distribution was due to each 14.157% member.~~

8 ~~369. Defendant Sherman is calling many of the assets she embezzled~~
9 ~~“bonuses”. It is for the jury to decide if the payments were actually income or~~
10 ~~misappropriated, and therefore distributions. If they were distributions, then~~
11 ~~an equal distribution should have been made to Plaintiff.~~

12 ~~370. Following are the assets Plaintiff believes were embezzled, not paid~~
13 ~~out as ordinary income. Full disclosure of the 1099s would help document how~~
14 ~~the money was taken, as income or as distribution.~~

15 ~~371. The \$2,300 and \$876 computers; It is more probable than not that~~
16 ~~purchase of these computers was not necessary for the business of managing~~
17 ~~SSP, when the only business left to transact was waiting to see no lawsuit was~~
18 ~~filed against SSP. But for Defendant Sherman’s misconduct, no suit would~~
19 ~~have been filed against SSP. The value of the computers was not included on~~
20 ~~the 1099 to Defendant Sherman.~~

21 ~~372. Lease money paid for an Audi for Sandi Kramer’s personal use.~~
22 ~~This asset was transferred to Sandi Kramer by Defendant Sherman. It was not~~
23 ~~reflected in a 1099.~~

24 ~~373. \$65,000 taken after close of escrow and then called a bonus when~~
25 ~~the embezzlement was discovered. It was not reported on a 1099.~~

26 ~~374. Attorney fees to defend herself which were over \$14,900 in 2014,~~
27 ~~2017 and 2018, and the amount not disclosed to Plaintiff for 2015, 2016. The~~
28 ~~jury will need to determine a fair percentage that is attributable to SSP, but as~~

1 ~~mentioned above, No lawsuit against SSP would be filed but for defendants'~~
2 ~~willful misconduct.~~

3 ~~375. All member defendants used Defendant Stern to represent them~~
4 ~~and negotiate for them when Plaintiff offered to sell her share of SSP to them.~~
5 ~~Defendant Sherman was clear that Defendant Stern would not "negotiate~~
6 ~~against [them]" in her email of June 16, 2015. Plaintiff was selling her share to~~
7 ~~the other members, not the LLC. If SSP was the prospective purchaser, Plaintiff~~
8 ~~should have been included in discussions. Counsel for the LLC should have~~
9 ~~found a fair price to be more than 1/6th the actual value. Defendants Sherman~~
10 ~~and Stern were using their control of SSP to use SSP as a pawn. Stern was~~
11 ~~paid by Defendant SSP. Those payments are the equivalent of distributions and~~
12 ~~the Plaintiff had the right to the same distributions. Defendant Stern knew he~~
13 ~~was paid with tainted assets.~~

14 ~~376. The entirety of emails presented at trial show that beyond a~~
15 ~~reasonable doubt, the attorney defendants were not representing SSP to do the~~
16 ~~right thing for all the members, they were representing all the other members~~
17 ~~against Plaintiff. Plaintiff asked SSP counsel many times to send her copies of~~
18 ~~all the emails between them and any SSP member. None were forwarded. They~~
19 ~~were not fair dealing. And all the other members continued to let SSP pay their~~
20 ~~bill, 14.157% of it coming directly out of capital that should have been returned~~
21 ~~to Plaintiff if not used for legitimate legal work on behalf of SSP.~~

22 ~~377. In the same way Defendant Sherman paid for her representation by~~
23 ~~both Defendants Stern and McGarrigle directly out of SSP funds, these~~
24 ~~payments amounted to distributions. Plaintiff should have received a~~
25 ~~distribution equal to the payments made for all defendants except SSP's legal~~
26 ~~services. Again, the attorney defendants knew each payment they cashed was~~
27 ~~subsidized unwillingly by Plaintiff.~~

378. Defendants Stern and McGarrigle knew they were receiving money from SSP to defend the other defendant's interests. They knew that money, to the extent not used to represent SSP alone, should have been retained by SSP and paid to Plaintiff at SSP's dissolution. Instead of counseling Defendant Sherman to pay Plaintiff equal distributions as she paid herself by paying her fees with SSP money, Defendant McGarrigle threatened to have SSP pay him to represent Sherman and SSP out of Plaintiff's share alone.

379. On May 13, 2019, Plaintiff emailed a working copy of this complaint to the defendants. Defendant Stern responded by email within a few hours:

441. ~~Laura; -- Your naming the attorneys is outrageous and frivolous.~~
Mr. on March 13, 2019.

442. The statement was false. There is no evidence that Plaintiff is aware of that she is or did engage in any illegal pornographic business, obtain any illegal pornographic material for personal viewing or engage in criminal activity of any kind. The statement was a malicious lie.

443. The false light in which Dennis put Plaintiff would be highly offensive to any reasonable person. A jurisdiction which recognizes defamation per se includes false statements that a person is a criminal or watches illegal pornography as presumptively harmful to ones reputation.

444. Dennis knew the statement was false or acted in reckless disregard of the falsity and the false light in which it would place the Plaintiff. Dennis cannot present any evidence that Plaintiff watched illegal pornography or did any criminal act, because Plaintiff has not done these things.

445. Plaintiff came upon illegal pornography in an estate she bought out once and reported it to the FBI, then Plaintiff burned all of the paper and threw out anything else. It was the most disturbing thing Plaintiff has ever seen and having such horrible things attributed to her makes the Plaintiff nauseous.

1 446. It is humiliating to think someone even heard these things. When
2 Dennis made similar statements to people in Arkansas, they asked Hammett why
3 anyone would make those statements about her and Hammett had to defend
4 herself. There is always at least a bit of curiosity if such a statement might be true.

5 Dennis wrote that when she read or heard defamatory statements made by
6 Sherman about Hammett, that Dennis believed them “or wanted to believe
7 them” because of her animosity toward Hammett. It is possible that Kramer
8 and Sherman would want to believe Dennis. ~~McGarriele (sic) has already~~
9 ~~pointed out to you the possibility of sanctions being awarded against you~~
10 ~~for such course of action. At the appropriate time, upon prevailing, your~~
11 ~~conduct is such that I believe a strong case can be made and successfully~~
12 ~~argued against you for malicious prosecution and the award of punitive~~
13 ~~damages. You should consider the risks and rewards prior to taking such~~
14 ~~action.~~

15
16 ~~Ellis Stern, Esq.~~

17
18 ~~—Both Defendant attorneys have threatened to file malicious~~
19 ~~prosecution cases against Plaintiff if she tries to protect her property rights~~
20 ~~against them in court.~~

21 ~~381. Barring a contractual agreement, only The Court has the right to~~
22 ~~order payment of attorney fees by one party against another. The Defendant~~
23 ~~Counsel taking attorney fees without due process to protect member~~
24 ~~defendants for their misdeeds, especially defamatory statements not related to~~
25 ~~the business, is not only a conversion, but may be considered a violation of the~~
26 ~~Plaintiff's rights provided in the Fourth Amendment, Fifth Amendment (Federal)~~
27 ~~and Fourteenth Amendment (State) to not be deprived of property without due~~
28 ~~process of law. A license to practice law is an honor that confers on its~~

~~recipients the status attained by adhering to the Rules of Professional Conduct. It is not a license to steal.~~

~~Each distribution to Plaintiff that should have occurred and did not became the rightful property of Plaintiff. It is impossible to distinguish where each converted dollar was spent, but each defendant knew they were receiving tainted assets. Therefore each is liable for payments to them or on their behalf.~~

~~382. The actual dollar figure is not super important. Punitive damages and breach of fiduciary duty damages will far outweigh conversion damages probably. It is important to know that each defendant converted at least \$1 from plaintiff. Any act of conversion is a tort and committing an independent tort is an element of the civil conspiracy of aiding and abetting a breach of fiduciary duty.~~

~~382. As a proximate result of Defendants wrongful conduct as alleged herein, Plaintiff sustained damages in an amount to be proven at trial.~~

~~382. Plaintiff is entitled to fair compensation for time and money properly expended in pursuit of property. The amount of time is to be determined by jury, but it is reasonable to believe Plaintiff did as much work trying to collect the documentation required for an accounting and doing the actual accounting, as manager Sherman did to over see the professional property managers she hired.~~

~~382. Furthermore, in doing the acts described in Paragraphs 1 through 282, above, Defendants acted intentionally, oppressively, and maliciously toward Plaintiff in conscious disregard of Plaintiff's rights and of Defendant Sherman's fiduciary obligations, thereby entitling Plaintiff to an award of punitive damages.~~

The Derivative Claims

1 ~~383. Adding derivative claims is not a collusive act to confer jurisdiction~~
2 ~~this Court would otherwise lack. Jurisdiction is conferred as per paragraph 14.~~

3 ~~—— Plaintiff made a diligent effort to secure from the board an~~
4 ~~investigation of certain expenses as enumerated in the paragraphs above, a~~
5 ~~determination that the manager was paying unreasonable management fees,~~
6 ~~an accounting, a return of money converted from plaintiff, indemnification, hire~~
7 ~~of an attorney to represent SSP who does not also represent the manager in~~
8 ~~any capacity, all to no avail. The plaintiff has informed the company and the~~
9 ~~board in writing of the ultimate facts of each cause of action against each~~
10 ~~defendant and delivered to the company and the board a true copy of the~~
11 ~~complaint which plaintiff proposes to file on several occasions, addressing~~
12 ~~objections which were made exclusively by Defendant McGarrigle and Stern at~~
13 ~~each rewrite.~~

14
15 ~~On the Sixth Cause of Action for Legal Malpractice~~

16 ~~(Against Ellis Roy Stern, Esq., Alan N. Goldberg, Esq., Stern & Goldberg,~~
17 ~~Patrick C. McGarrigle, Esq., McGarrigle, Kenney & Zampielo, APC jointly~~
18 ~~and severally)~~

19 ~~384. All paragraphs above are incorporated here as if fully set forth~~
20 ~~herein.~~

21 ~~384. The attorney defendants had a duty to SSP to use such skill,~~
22 ~~prudence, and diligence as members of their profession commonly possess and~~
23 ~~exercise.~~

24 ~~384. The attorney defendants breached that duty.~~

25 ~~384. In the least, an attorney should know who he has a written~~
26 ~~statement to represent. Defendant McGarrigle made conflicting written~~
27 ~~statements of representation.~~

385. On May 16, 2018 he stated by letter: “As you know, this office represents Defendants Mary E. Sherman (“**Sherman**”) and Silver Strand Plaza, LLC (“**SSP**”) (collectively, “**Defendants**”). Please direct all further communications concerning this matter to the attention of the undersigned.” (Bold his.)

— The suit he was addressing was filed against SSP, Mary E. Sherman individually and Mary E. Sherman as manager of SSP.

386. In contradiction, on May 13, 2019, a year later during which Mary E. Sherman made no communications to Plaintiff or plaintiff’s counsel other than through Defendant McGarrigle, the attorney wrote the following two statements within an email:

386. “Third, we have previously notified you that your assumption that attorneys for SSP, a limited liability company, are somehow your counsel or *other members’ personal counsel* is misplaced.” (Emphasis added.)

386. “You have no evidence to support any allegations that either me (individually) or the law firm (collectively, “MKZ”) represent any members of SSP in any individual capacity.”

386. The attorney defendants, if not committing outright fraud, neglected to collect bank statements from a bank that is listed on other financial documents, the MSFP loan, and a specific determination of what several “asset account adjustments” of \$390,677.55 represented.

386. With abundant evidence of overpayment of management fees and underperformance of the manager who admits charging below market rate for rents presented by Plaintiff and a Stanford Hastings trained attorney, Michael Early, the attorney defendants neglected to make a meaningful inquiry except from Manager Mary Sherman, whom all attorney defendants put in writing that they represented.

387. The attorney defendants knew Defendant Sherman as manager of SSP converted \$50,000 from Plaintiff alone at close of escrow, and Defendant Stern counselled Defendant Sherman to return the money. Defendant Stern knew another of his clients, Sandi Kramer, converted \$19,600 from plaintiff, and counselled her to return the money. Yet, the attorney defendants repeated and scolded Plaintiff and acted as if claims that Plaintiff was “malicious” toward their clients in some unspecified way not only was a defense to conversion but was of more concern than the known conversions.

—— Defendant McGarrigle made several adamant statements that Plaintiff must bring a derivative suit and had no standing to file a derivative suit, yet he represented successfully a plaintiff named Kenneth Barton in several related actions and half a dozen related appeals against a corporation called RPost International, LTD and the two other shareholders based on fraud, breach of fiduciary duty and conversion that has uncanny similarities to the present case. Not only would random members of his profession use more skill, prudence and diligence on a similar case, but Defendant McGarrigle himself would use more skill, prudence and diligence on a similar case.

388. The attorney defendants held themselves out to be representing SSP but did not represent the best interests of SSP.

388. The defendant attorneys fraudulently induced SSP to pay them legal fees when representation was actually on behalf of individual members.

388. The attorney defendants’ negligence led to years of frustration and inconvenience to individual members of SSP; possible loss of damages, if a statute of limitations defense is successfully argued by the manager or other defendants; payment of attorney fees to the attorney defendants to prolong the simple issues that should have been resolved much quicker; and opportunity for Manager Mary Sherman to divert ever growing sums from SSP to herself or other defendants without just cause.

389. The delays caused by the attorneys gave the other defendants ample time to make fraudulent transfers and there is the potential Plaintiff will need to become involved in further litigation, such as in bankruptcy court, to collect any damage award.

— Due to attorney defendants' negligence, SSP suffered financial losses to be proven at trial.

Wherefore, Plaintiff prays for equitable, declaratory relief as is hereinafter set forth.

On the First, Second and Fifth Cause of Action for an Accounting

1. — Plaintiff incorporates by reference paragraphs 1 — 303 above as though fully set forth herein.

2. — As of May 8, 2019, Defendant Sherman and attorneys who represent her and Defendant SSP refuse to provide adequate documentation for an accurate accounting to be made. It is possible that Plaintiff can make the accounting on her own, but only if the defendants are compelled to provide the following items which have not been provided after years of begging, pleading, and demanding by both the Plaintiff and her former Stanford and Hastings trained attorney:

A) Bank Statements for "CBB" referred to in SAMG's cash flow statements, 2014 — date

A) "AP Expense Distribution" from SAMG all months from September 2014 to present (Dec 2016 already provided)

~~A) Statements for the Citibank card and any other credit or debit card paid by SSP 2014—date~~

~~—Statements from the Vanguard Account and any other investments of SSP other than Silver Strand Plaza 2014—date~~

~~B) 1099s for 2015 and 2016~~

~~B) any other reporting of payments required by IRC 2014—date~~

~~B) An explanation that specifies the purpose and justifies the quantity of the "asset account adjustments" of \$390,677.55 found on several ledgers.~~

~~H) A supplemental provision of copies of specified checks after Plaintiff has an opportunity to inspect the foregoing~~

~~3.—Plaintiff is not an accountant and even if she makes an accounting and finds more discrepancies, Defendant Sherman and her counsel are apt to argue that Plaintiff is wrong and “inapt”, as they have argued since 2013. For example, to an inquiry about the repeated \$390,677.55 “asset account adjustment” Defendant McGarrigle wrote “In short, SSP provided a prompt and evidence-based response to your assertion and has received no substantive reply or counter information/documentation from you.”~~

~~4. Early inquired about the figure by email on November 27, 2018.~~

~~5. Plaintiff inquired about it again in March, 2019.~~

~~6. The “prompt and evidenced-based response” was sent on March 17, 2019 at 1:09 a.m. It consisted of a lot of words, but Plaintiff still had no idea what the adjustment was made for with specificity. (The following text is a complete section of the email, cut and pasted in one block.):~~

~~—“Asset Account Adjustment” is a “Capital” account line item reflected (in the same amount) for several years and is not a cash account/Asset per SSP’s own balance sheets. On March 14, 2019, you~~

1 ~~have asked what the “Asset Account Adjustment” line item~~
2 ~~“represents.” As that is a financial/CPA type question, we are~~
3 ~~awaiting feedback from the CPA in greater detail and from the property~~
4 ~~management whose financial statement forms bear the references.~~
5 ~~What that information is obtained, it will be shared with the members.~~
6 ~~In the interim, however, SSP had already provided you with~~
7 ~~documentation (and detail) showing what the “Asset Account~~
8 ~~Adjustment” line item was referencing. For example, please:~~

9
10 ~~1. See, the SAMG April 2015 Financial Statements (to the~~
11 ~~extent not provided to you prior to our involvement, provided by our~~
12 ~~office to Mr. Early in July 2018), p. 8 (of the pdf), under the “Capital”~~
13 ~~section of the Balance sheet (which is under the “Liabilities” section~~
14 ~~(not Assets) that shows the (\$390,677.55) listed as an “Asset Account~~
15 ~~Adjustment”;~~

16
17 ~~2. See, the SAMG 2015 Year End Financial Statement (to the~~
18 ~~extent not provided to you prior to our involvement, provided by our~~
19 ~~office to Mr. Early in July 2018), p. 3 (of the pdf, under the Capital~~
20 ~~section of the Balance sheet (which is under the “Liabilities” section~~
21 ~~(not Assets)) that shows the same (\$390,677.55) listed as an “Asset~~
22 ~~Account Adjustment”;~~

23
24 ~~3. See, the SAMG 2017 financial statement (attached), p. 21,~~
25 ~~that shows the same (\$390,677.55) listed as an “Asset Account~~
26 ~~Adjustment.”; and~~

1 ~~4. See, the SAMG Feb 2017 financial statement provided to~~
2 ~~you in October 2018 that shows the same line item amount in the~~
3 ~~Liabilities section, “Capital,” of that Balance sheet.~~

4
5 ~~As SSP’s CPA confirmed, the “Asset Account Adjustment” line~~
6 ~~item in the “Capital” account sections of the Liabilities sub-parts of the~~
7 ~~SSP Balance sheets is not a cash account/asset, but an accounting~~
8 ~~ledger entry addressing capital accounts of SSP factoring various~~
9 ~~accounting inputs. The Balance sheets of SSP and the detail~~
10 ~~supporting same each reference the “Asset Account Adjustment” in the~~
11 ~~context of the Members’ capital accounts. SSP will obtain, if available~~
12 ~~and applicable, a more specific accounting definition to explain what~~
13 ~~the line item refers to. What is clear, however, is that this inquiry does~~
14 ~~not appear to justify an “accounting” of all of SSP’s financial operations~~
15 ~~or a lawsuit therefor and SSP’s response herein and to be further~~
16 ~~supplemented further moots any threatened action by you — regardless~~
17 ~~of the iteration it may ultimately take. That said, if you have already~~
18 ~~acquired information about this type of line item, please share it with~~
19 ~~SSP.~~

20 ~~To the extent that you believe an “accounting” is necessary~~
21 ~~regarding this line item, so that SSP can consider the request, please~~
22 ~~explain to why you believe this line item must be subject to a~~
23 ~~“professional accounting,” what that phrase means and what the~~
24 ~~scope of the accounting would be? If there is other~~
25 ~~information/documentation you believe you need regarding this line~~
26 ~~item, please identify it so that SSP can respond. It remains most~~
27 ~~efficient for your comments and questions to be specific and refined~~
28 ~~and devoid of personal attacks — if you have any specific~~

~~comments/questions, you may put them in writing and SSP (relying on its expert advisors, as necessary) will promptly address same. Thus far, however, you have not demonstrated any prima facie basis for SSP to conduct an accounting of any type regarding this line item or any others or explained what the scope would be or identified any dispute regarding the line items.~~

~~7.— No further explanation was made as of May 13, 2019. Just as no explanation has ever been offered of the MSFP loan. Just as no specific expense “backed out” of the NOI was ever given. Even when Plaintiff identifies discrepancies, no reasonable explanations are offered and counsel for SSP expresses disgust that Plaintiff uses the word “discrepancies”.~~

~~8.— Ordering an accounting by an independent accountant would be expeditious. The actual cash accounting is not difficult if bank statements that identify payees and documentation that shows where each dollar that came in was spent is provided. A positive “asset account adjustment” is made when there is a debit that needs adjustment, such as if there is a bad debt, an unpaid account receivable, such as a loan made by the company that is not expected to be repaid.~~

~~9.— A professional accounting might find other “bonus” money paid to Mary Sherman, her husband, children or even the other defendants.~~

~~10.— Accordingly, Plaintiff is entitled to and does hereby seek an accounting to determine what amounts are owed to her;~~

~~11.— For costs;~~

~~12.— and for other relief as the Court deems appropriate.~~

~~On All Causes of Action for Specific Performance for Indemnity~~

1 447. 1. —

2 448. Also, Hammett shared personal information with Dennis during a time
3 when the sisters were getting along well. Plaintiff told Dennis she suspects one or
4 more of their mother's friends molested the Plaintiff when she was a child. The
5 friends had access to "date rape" drugs because they were doctors.

6 449. It was especially cruel for Dennis to alter information that was given
7 in confidentiality when Hammett was trying to ascertain if Dennis was also
8 sexually abused.

9 450. Plaintiff had many years of therapy to deal with her childhood sexual
10 and emotional abuse but was perfectly content and at peace about this issue for at
11 least two years before Dennis started bringing up past trauma. Now Hammett is
12 working with a therapist again to try to regain her serenity in regards to the earlier
13 abuse.

14 451. This makes Hammett feel angry, upset, embarrassed and helpless.

15
16 **Fifteenth Cause of Action**
17 **For Unjust Enrichment**
18

19 452. Plaintiff alleges as its Sixteenth Cause of Action against Each and
20 Every Named Defendant and Does 1-99, For Unjust Enrichment:

21 Plaintiff incorporates by reference all paragraphs in this complaint ~~above~~ as
22 though ~~fully set forth herein.~~

23 ~~2. — After close of escrow, Defendant Sherman kept capital in an~~
24 ~~account or accounts for SSP for "a defense fund." Without production of the~~
25 ~~documents requested, Plaintiff cannot determine the amount in the account.~~
26 ~~No other litigation has been threatened in regards to Silver Strand Plaza or~~
27 ~~SSP, LLC since the close of escrow over two years ago.~~
28

1 453. ~~3. The “defense fund” was used to pay attorneys for the benefit~~
2 ~~of Defendant Sherman and the Aiding and Abetting Defendants for purposes~~
3 ~~that are not allowed under OA section 9.1(a), as fully set forth herein above,~~
4 ~~“...unless such person has engaged in willful misconduct or a knowing~~
5 ~~violation of the criminal law, or unless such Proceeding is to enforce~~
6 ~~contractual obligations of a Member including the capital contribution~~
7 ~~obligations contained in this Agreement.” One contractual obligation that each~~
8 ~~of the defendants violated and from which the financial causes arise is the~~
9 ~~covenant of good faith and fair dealing. They each willfully agreed to excuse~~
10 ~~Defendant Sherman’s embezzlement. Paying for their own defense out of the~~
11 ~~SSP defense fund only compounds their transgressions.~~

12 454. Within the last two years, at Los Angeles, California, Defendants, and
13 each of them, were unjustly enriched at the expense of Plaintiff, in an amount
14 subject to proof at trial.

15 455. Neither the whole nor any part of said sum has been paid, although
16 demand therefor has been made, and there is now due, owing and unpaid an
17 amount subject to proof at trial.

18
19 ~~4. SSP paid Defendant Stern to represent the defendants in their~~
20 ~~negotiations to buy out Plaintiff’s share of SSP, for which he made the~~
21 ~~\$218,000 offer with rationale. He was not representing SSP in that negotiation.~~
22 ~~He represented the individuals who were all members but excluded Plaintiff.~~

23 ~~5. It is improper to pay the attorneys with SSP money for any~~
24 ~~member, but if one member is indemnified, they all must be, since it is to~~
25 ~~resolve the same issues. The defendants have created a financial burden on~~
26 ~~Plaintiff who must pay all her own costs of litigation without her final payment~~
27 ~~of capital, plus 14.157% of each defendant’s costs.~~

6.— Should The Court agree with Plaintiff that indemnification for none is the proper ruling, then Plaintiff prays The Court will order a dissolution of SSP and a return of Plaintiff's capital, based upon the accounting.

7.— Plaintiff would not be able to collect an award from SSP, so SSP's need for representation would be moot.

On All Causes of Action for Disqualification of Counsel to SSP

— Plaintiff incorporates by reference all paragraphs above as though fully set forth herein.

1.— Defendant MKZ's duties to Defendant Sherman prevent it from providing SSP neutral guidance.

1.— Counsel for SSP should be disqualified, as supported in Jeffery GONG, v. RFG OIL, INC. et al., 166 Cal.App.4th 209 Court of Appeal, Fourth District, Division 1, California.

On All Causes of Action for Receivership

0.— Plaintiff incorporates by reference all paragraphs above as though fully set forth herein.

0.— It is apparent that Defendant Sherman is violating her fiduciary duties and any sound management practices by paying double reasonable rates for management, hiring counsel to represent the manager for breach of fiduciary duty claims and the LLC, which is a prima facie conflict of interest, and refusing to provide complete bank and investment statements to a member for seven years.

0.— Therefore, the Court should appoint a receiver to manage SSP through dissolution.

1
2 Wherefore, Plaintiff prays for Remedies ~~Under the Law~~ as is
3 hereinafter set forth.

4
5 On the First Cause of Action for Fraud against The Manager, the J&M
6 Trust ~~Defendant Sherman severally and Second Causes of Action against~~
7 ~~All Member Defendants, and the Grandchildren's Trusts and Does 1-99,~~
8 **Jointly and Severally:**

- 9 1. For general damages in an amount to be determined at trial;
10 2. For punitive damages enough ~~suggested~~ to deter Mary E. Sherman ~~be~~
11 ~~the amount~~ from acting fraudulently in ~~each defendant that each~~
12 ~~defendant was willing to under pay Plaintiff for her~~
13 administration share ~~of the property entrusted to her in the future;~~
14 2.3. For attorney fees; ~~Which is approximately equal to~~
15 ~~\$1.200,000 times 13;~~
16 3.4. For costs; and
17 4.5. For such other relief as the Court deems appropriate.

18
19 On the ~~Second~~ Third Cause of Action for fraudulent conveyance against
20 The Manager, Linda R. Kramer as an individual, Linda R. Kramer
21 ~~Defendant Sherman and Erik Von Pressintin Hunsaker as Co-Trustees of the~~
22 Lynn & Erik's Trust, Dennis severally and on the Fourth Cause of Action
23 **jointly and severally:**

- 24 1. For Nullification of the Assignment of rights to Kramer's percentage
25 interest of SSP to the L&E Trust Defendants.
26 2. For disgorgement of improperly taken funds from SSP by Linda R.
27 Kramer and Erik Von Pressintin Hunsaker as Co-Trustees of the Lynn
28

- 1 & Erik's Trust to the extent of damages found against Linda R.
2 Kramer, an individual by the Jury awarded to Hammett in this case.
3 3. In the case that the disgorgement does not yield enough money to
4 cover the award by the Jury, the remainder to be collected from the
5 remaining culpable defendants named in the Second Cause of Action.
6 4. Alternatively, for an order determining the L&E Trust Defendants to
7 be an alter-ego for Linda R. Kramer an individual;
8 5. For punitive damages;
9 6. For attorney fees;
10 ~~1. Compensatory damages for loss of reputation and emotional~~
11 ~~distress in an amount to be determined by jury;~~
12 ~~2. Punitive damages with a suggested amount equal to the amount~~
13 ~~each will inherit from Sandi Kramer by treating Plaintiff~~
14 ~~maliciously and taking back as much of the gifted property they~~
15 ~~can, instead of, to use Defendant Dennis' word, "protecting"~~
16 ~~Plaintiff. That is approximately \$4,000,000 total.~~
17 3. 7. For costs; and
18 4. 8. For such other relief as the Court determines ~~deems~~
19 ~~appropriate.~~

20
21 **On the Third Cause of Action for Dissolution against the Member Defendants,**
22 **SSP and the Manager**

- 23 1. That the Court decree a winding up and dissolution of defendant
24 Silver Strand Plaza, LLC;
25 2. That the Court entertain those proceedings as may be necessary or
26 proper for the involuntary winding up or dissolution of defendant
27 SSP, and make those orders for winding up and dissolution of
28 defendant SSP as justice and equity require;

1 3. For costs and reasonable attorneys' fees;

2
3 **On the Fourth Cause of Action for Appointment of a Receiver Against All**
4 **Defendants**

- 5 1. For the appointment of a receiver to take over management and
6 control of all SSP property and assets, to collect accounts
7 receivable, to wind up SSP affairs, to control SSP business until
8 winding up is completed, and to keep SSP assets until their
9 division between the parties is ordered by the Court;
10 2. That the receiver be appointed with the full power and authority
11 to manage, maintain, and control all SSP property, including
12 the right to collect and receive all accounts receivable, issues,
13 profits, and revenues generated by the SSP; to divert or receive
14 all mail relating to the revenues of SSP; to take possession of
15 and transfer all bank accounts relating to the revenues of the
16 SSP; and pursuant to Court approval, sell all SSP property and
17 hold the proceeds from that sale in a receivership account for
18 the benefit of SSP and its shareholders; as well as all other
19 powers normally entrusted to a receiver; and
20 3. For costs and reasonable attorneys' fees.

21
22 **On the Fifth Cause of Action for an Accounting Against ~~against~~ All**
23 **~~Defendants~~ ~~severally~~:**

- 24 1. For an accounting of SSP affairs from January 1, 2012 to the present, that
25 the account be settled between Plaintiff and Defendants, and that Plaintiff
26 have judgment against Defendants for such sums as may be found due and
27 owing to Plaintiff under such accounting;
28 2. For costs and reasonable attorneys' fees.

~~—Amount of conversions retained as per accounting;~~

~~1. Punitive damages;~~

~~1. Interests and costs.~~

On the Sixth Cause of Action for Constructive Trust Against All Defendants

1. That this Court declare that all Defendants, and each of them, hold all funds found to have been converted from the rents, issues, profits, or revenues generated from the Company, and the proceeds thereof, in trust for Plaintiff;
2. That this Court compel all Defendants, and each of them, to transfer legal title and possession of the converted rents, issues, profits, and revenues and their proceeds to Plaintiff;
3. For the value of the converted income, issues, profits and revenues and an order compelling the Defendants to fully account therefor, and pay interest thereon at the highest legal rate;
4. For costs and reasonable attorneys' fees.

On the Seventh Cause of Action for Conversion against Defendants Mary E. Sherman as Manager of Silver Strand Plaza, LLC and DOE 1 through DOE 99, inclusive

1. For interest on the sum of all converted funds at the highest legal rate from the date of conversion, according to proof;
2. For costs of recovering the converted property according to proof, but no less than \$3,000;
3. For pain and suffering according to proof;
4. For punitive damages, according to proof.

**On the Eighth Cause of Action for Breach of Fiduciary Duty, Count One
Against Defendants Mary E. Sherman as manager of SSP, SSP and DOE 1
through DOE 99, inclusive, Jointly and Severally:**

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of
conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

**On the Ninth Cause of Action for Breach of Fiduciary Duty, Count Two
Against All Member Defendants including but not Limited to Jeffrey M.
Sherman as Co-Trustee of the J&M Sherman Family Trust and DOE 1
through DOE 99, inclusive, Jointly and Severally:**

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of
conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

**On, Alternatively, the Ninth Cause of Action for Breach of Covenant of Good
Faith and Fair Dealing against All Member Defendants including but not
limited to Jeffrey M. Sherman as Co-Trustee of the J&M Sherman Family
Trust and DOE 1 through DOE 99, inclusive, Jointly and Severally:**

1. For specific performance of OA Article VIII for Dissolution
pursuant to §8.2(a);
2. For all other breaches, a sum subject to proof at trial;
3. For interest on the sum at the highest legal rate from the date of
conversion, according to proof;

4. For costs and reasonable attorneys' fees;
5. For punitive damages, according to proof.

On the Tenth Cause of Action for Aiding and Abetting a Breach of Fiduciary Duty by the Manager Against the J&M Trust Defendants and the Grandchildren's Trusts and DOE 1 through DOE 99, inclusive, Jointly and Severally:

1. For a sum subject to proof at trial;
2. For interest on the sum at the highest legal rate from the date of conversion, according to proof;
3. For costs and reasonable attorneys' fees;
4. For punitive damages, according to proof.

On the Eleventh Cause of Action, for Defamation Per Se or Per Quod Count One Against Sherman, the J&M Trust Defendants, the Manager and the Grandchildren Trusts,~~**against Defendants Ellis Roy Stern, Esq., Alan N. Goldberg, Esq., Stern & Goldberg, Patrick C. McGarrigle, Esq., McGarrigle, Kenney & Zampielo, APC jointly and severally:**~~

Compensatory

- ~~2.1. Amount to be determined at trial for compensatory damages~~ for presumed harm to reputation;
2. Or Compensatory damages to actual harm to reputation;
3. Past medical expenses;
4. Future medical expenses;
- ~~3.5. Emotional distress; Fees and costs.~~
6. Punitive damages according to proof.

On the Twelfth Cause of Action for False Light Invasion of Privacy Count One Against Sherman, the Manager, the J&M Trust Defendants and the Grandchildren's Trusts

1. Compensatory damages for emotional distress;
2. Past medical expenses;
3. Future medical expenses;
4. Punitive damages according to proof;
5. Costs;
6. Attorney Fees.

On the Thirteenth Cause of Action for Defamation Per Se or Per Quod Count Two to Six Against Diane Dennis:

1. Compensatory damages for presumed harm to reputation;
2. Or Compensatory damages for actual harm to reputation;
3. Past medical expenses;
4. Future medical expenses;
5. Emotional distress; and
6. Punitive damages according to proof.

On the Fourteenth Cause of Action for False Light Invasion of Privacy Count Two Against Diane Dennis:

1. Compensatory damages for emotional distress;
2. Past medical expenses;
3. Future medical expenses;
4. Punitive damages according to proof;
5. Costs;

6. Attorney Fees.

On the Fifteenth Cause of Action for Unjust Enrichment Against Each and Every Named Defendant and Does 1-99

1. For general damages according to proof

Trial by jury is demanded in the causes remedied under law.

POSTSCRIPT

~~391. At 7:20 PM CDT on May 23, 2019, Defendant McGarrigle sent an email to Plaintiff that explained why the asset account adjustment was taken. As all Defendants knew, Plaintiff had already printed and readied the pleading above to file, and so, in the spirit of saving resources, will add a brief postscript. All the facts and causes of action remain the same. The amount converted was to be determined at trial, and thus, this new information does not alter the pleading. This latest offering does underscore the defendants' tactic of delaying litigation indefinitely and the need for court-imposed time frames for production of documents.~~

~~392. Seven of the eight sets of data or explanations requested in this pleading are still not provided or unanswered. While the Plaintiff's share of the asset account adjustment was about \$60,000, that was just a small percentage of anticipated damages. And, there is still no bank account statements for the money that passed through the management company. In fact, the wording of~~

~~Defendant Sherman's explanation included in the email sounds like SAMG had no bank account that held SSP funds. It did.~~

~~393. In the latest email, Defendant McGarrigle argued that Plaintiff should not file her First Amended Complaint in the morning as planned. "At a minimum, based on the above evidence, all the 'asset account adjustment' allegations should be removed *in toto* from any pleading you may plan on filing."~~

~~394. Plaintiff's statements concerning the Asset Account Adjustment were and still are correct, except that she now knows the adjustment was not made for bad debts. It was used when Defendant Sherman changed professional management companies and broke SSP assets into two accounts. The Asset Account Adjustment was the capital retained in the Union Bank Account controlled by Defendant Sherman minus the refundable security and mailbox deposits.~~

~~395. Defendant McGarrigle did not use due diligence to provide this tidbit of information a year after it was requested. It is probable that Defendant Sherman and McGarrigle both knew the answer long ago, and decided, in collusion, to withhold the information to vex the plaintiff.~~

~~396. Neither excerpt of the explanation cut and pasted into the untimely email shows a date the information was sent to the Defendant McGarrigle by Defendant Sherman or the Accountant.~~

~~397. Plaintiff dreads the process ahead of obtaining the original emails. It is yet another tooth to be pulled.~~

DATED: August 7, 2020

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//s Laura Lynn

Hammett

Laura Lynn Hammett
Plaintiff in Pro Se

VERIFICATION

I, Plaintiff Laura Lynn, state that the contents of the pleading above are true to my knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

//s Laura Lynn

Hammett

Laura Lynn Hammett
Plaintiff in Pro Se

Frank J. Polek, SBN 167852
POLEK LAW
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San Diego, California 92103
619-550-2455
619-274-8166 (fax)
frank@poleklaw.com

Attorney for Defendants
MARY E. SHERMAN individually and
in her capacities as Manager, Co-Trustee and
Trustee; and JEFFREY M. SHERMAN
in his capacity as Co-Trustee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual;
et al.,

Defendants.

Case No.: 19-CV-0605-JLS-AHG

**OPPOSITION TO EX PARTE
APPLICATION FOR STAY [DOC. 126]**

CTRM: 4D

Hon. Janis L. Sammartino

Defendants Mary Sherman and Jeffrey Sherman (in all of their named capacities) oppose Plaintiff's Ex Parte Application for a three month stay. The Application should be denied because Plaintiff's stated reasons for requesting a stay do not justify the remedy.

On March 23, 2020, this Court ruled on all of the then-pending motions to dismiss, etc., ordering Plaintiff's First Amended Complaint dismissed, and granting Plaintiff 45 days to file a further amended complaint. The deadline to file an amended complaint, May 7, 2020, is still three weeks away as of the filing of this Opposition. Plaintiff offers no cogent or compelling reason she cannot prepare and file her amended complaint by the current deadline.

1 Plaintiff offers a wide variety of supposed justifications for a stay, including a
2 troubled childhood, becoming ill after a professional poker tournament in February, her
3 husband's inability to compete in professional bass fishing tournaments, a postponed
4 surgery, medication side effects that mimic COVID-19 symptoms, a California Court
5 Commissioner from years ago, stress, this Court's supposed bias against Plaintiff, etc.

6 These are indeed difficult times for all of the parties and their attorneys.
7 Defendants and their counsel have their own challenges to cope with. However, there are
8 no valid reasons advanced by Plaintiff to justify a stay of proceedings.

9 Accordingly, Defendants Mary Sherman and Jeffrey Sherman request that
10 Plaintiff's Ex Parte Application be DENIED.

11 Dated: April 16, 2020

POLEK LAW

13 By: Frank J. Polek
14 Frank J. Polek
15 Attorney for Defendants MARY E. SHERMAN
16 individually and in her capacity as Manager, Co-
Trustee and Trustee; and JEFFREY M.
SHERMAN in his capacity as Co-Trustee

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants.

Case No.: 19-CV-0605-JLS-AHG

PLAINTIFF'S DECLARATION IN
SUPPORT OF EX PARTE MOTION
FOR A STAY OF PROCEEDINGS DUE
TO MEDICAL CONDITIONS
ASSOCIATED WITH THE
CORONAVIRUS PANDEMIC

Honorable Janis L. Sammartino presiding
Hon. Magistrate Allison H. Goddard

I, LAURA LYNN HAMMETT, do hereby declare:

1. I am the Plaintiff in the above entitled action. I have personal knowledge of the following facts and, if called upon as a witness, could competently testify to the truth of those facts thereto.
2. A new Coronavirus is causing a pandemic and severe socio-economic upheaval. The disease caused by the virus is called COVID-19.

DECLARATION OF PLAINTIFF IN SUPPORT OF EX PARTE MOTION FOR A STAY OF PROCEEDINGS DUE TO
MEDICAL PURPOSES ASSOCIATED WITH THE CORONAVIRUS

- 1 3. COVID-19, according to the Center for Disease Control and Prevention
- 2 ("CDC") and what is common knowledge, can be deadly, especially in my age
- 3 group.
- 4 4. All the defendants, the Judge presiding and many of the attorneys are also in the
- 5 high-risk age group. I believe Defendant Linda R. Kramer is also at further risk
- 6 due to her pre-existing condition of a history of asthma. It is likely that one or more
- 7 of the defendants will ask for a continuance also, if I file my amended complaint
- 8 and other motions promptly.
- 9 5. I had a knee surgery scheduled for April 10, 2020. The surgeon postponed all
- 10 his surgeries indefinitely about April 5. I have a prescription for Hydrocodone-
- 11 Acetamin to manage pain in the knee. I had a tele-medic appointment for 4/9/2020
- 12 to discuss possible contraindications to using this medication with symptoms of
- 13 COVID-19 present. It makes me extremely drowsy, a symptom of COVID-19.
- 14 6. Also discussed at the tele-medic appointment was an indication of a mass in the
- 15 same leg, upward of the knee. I had an MRI with contrast on April 13, 2020 with a
- 16 follow-up discussion set for April 17 about if a biopsy is necessary.
- 17 7. I was symptomatic of COVID-19 in early February 2020, after returning from a
- 18 World Series of Poker Tournament in a casino.
- 19 8. A flu test came back negative, but tests for COVID-19 were not available.
- 20 9. After two visits to urgent care and one to the emergency room, and literally
- 21 telling my husband I thought I might die from this disease, I recovered.
- 22 10. A knee surgery scheduled for February 14, 2020 was postponed due to the virus
- 23 and infection. That was performed on March 6, 2020. I was in physical therapy
- 24 preparing for the second knee surgery that is now postponed.
- 25 11. The pandemic triggered a stock market crash, and I had a substantial financial
- 26 setback. I was highly invested on margin in American Airlines and Ford along with
- 27 other conservative holdings. Even with bad knees and a bad back, I feel compelled
- 28 to switch my focus from the stock market to my real estate investments and finally

DECLARATION OF PLAINTIFF IN SUPPORT OF EX PARTE MOTION FOR A STAY OF PROCEEDINGS DUE TO
MEDICAL PURPOSES ASSOCIATED WITH THE CORONAVIRUS

1 writing book. These do not produce the steady income stream I enjoyed when
2 trading equities.

3 12. My husband is a champion bass fisherman, but his tournaments are cancelled
4 due to the pandemic. Of course, as his spouse, I feel his pain.

5 13. He is refocusing back to his past carpentry career. His previous clients are
6 thrilled to have him back, but he agreed to a partnership with me flipping houses.
7 The agreement is similar to that I had with my sister Linda Kramer and other
8 investors, but my role would be less involved with the hands on work for which
9 my husband is magical.

10 14. I am worried that his 56-year-old body will be injured while doing the labor
11 most young people are not strong enough to do.

12 15. Five months after the Motions to Dismiss, to enter default judgment and to
13 award attorney fees were fully briefed, and about the same time California was put
14 on "lock-down", the Court made her order. It was filled with legal error that will
15 require appeal and error of which if repeated after my amendment is made, will
16 require appeal. For example, the Court, who is usually brilliant on other cases and
17 has vast experience, misconstrued the application of the business judgment rule.

18 16. My prior experience with Commissioner Alan Friedenthal, who later admitted
19 to a bias against me and recused himself and whom the CJP found to appear biased
20 and embroiled in my case, was that his erroneous orders were upheld on appeal.
21 Thinking that I need to go through a similar experience again is stressful.

22 17. To deal with these stressors, I am in therapy multiple times per week and under
23 the care of a psychiatrist. I have a prescription for Clonazepam 0.25 mg. I try not to
24 use it, but sometimes the stress causes me to feel short of breath.

25 18. Unfortunately, shortness of breath is also a symptom of COVID-19.

26 19. Clonazepam helps me sleep, but there are unpleasant effects. I took a pill on the
27 morning of April 14, 2020, when I opened another document filed on behalf of the
28 Attorney Defendants, ECF No. 117, which looks like they are trying to obtain a

1 judgment, without calling it a judgment and without giving me notice and an
2 opportunity to respond to their new “request”.

3 20. I took a second Clonazepam at bedtime. I awoke at about 4 a.m. just in time to
4 not urinate in bed. The deep sleep I experience under medication makes memories
5 pop of a disturbing childhood.

6 21. Over the last decade, since first trying sleeping medication, I have discussed
7 this with several psychiatrists and therapists and Diane Dennis. I think it is the
8 thread of truth running through her accusations that I am an “incestuous lesbian”.

9 22. The truth is that I think I was sexually molested as a child by my “God Father”,
10 a friend of my parents who was a psychiatrist and therefore had access to these
11 same kinds of drugs. One of his daughters is a lesbian, and I told Diane Dennis I
12 think this man molested his daughter and me, together.

13 23. There was a second man, married to my mother’s best friend, who I also suspect
14 of the same inappropriate behavior. He too had easy access to prescription drugs. I
15 heard from several mutual friends that his 57-year-old son recently died alone in a
16 hotel room soon after calling his parents. He struggled since Junior High with drug
17 addiction and alcoholism.

18 24. I did not bring these issues up earlier out of concern for the feelings of the
19 children of the perpetrators who grew up with me in Southern California, and
20 frankly, don’t care to share these things about myself with the world at large; but
21 the defendants have successfully made it sound like my contention with my mother
22 is about “favoritism” and some allegedly slanderous statements. It is much more
23 nefarious.

24 25. All of this is upsetting, and I probably should not be forced to think about it
25 while writing my amended complaint and dealing with the Coronavirus
26 Pandemic...but it is such an integral part of my reason for distancing myself from
27 my mother. She did not protect me from her friends and she did not protect me
28 from Mary Sherman.

1 26. My usual blood pressure is low, sometimes 80/58. This causes dizziness, nausea
2 and lethargy, also symptoms of COVID-19.

3 27. Not knowing for certain that my COVID-19 like symptoms are the disease or
4 not, I have self-quarantined.

5 28. I have made another attempt to find a business attorney who will take my case
6 on contingency, but business litigators don't usually work on contingency. The one
7 who expressed interest seems distracted, like most of the population, to adjusting
8 to the pandemic.

9 29. Because of the foregoing, I do not feel my work product will be good enough to
10 prevail on appeal of orders by a Court that appears to have a bias against me,
11 unless I am given time to recover from my health issues and adjust to pandemic
12 life.

13 30. I declare under penalty of perjury pursuant to the laws of the United States of
14 America that the foregoing is true and correct to my personal knowledge, and
15 where I lack personal knowledge, to the best of my information and belief.

16
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18 Date 4/15/2020 Signature s/Laura Lynn Hammett

19 Plaintiff in Pro Se Laura Lynn Hammett
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LEWIS BRISBOIS BISGAARD & SMITH LLP

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 ALAN N. GOLDBERG, and STERN &
 GOLDBERG

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
 individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual;
 MARY E. SHERMAN, as manager of
 Silver Strand Plaza, LLC; SILVER
 STRAND PLAZA, LLC, a California
 limited liability company; MARY E.
 SHERMAN as CO-TRUSTEE OF THE
 J & M SHERMAN FAMILY TRUST, a
 California revocable trust; JEFFREY
 M. SHERMAN as CO-TRUSTEE OF
 THE J & M SHERMAN FAMILY
 TRUST; MARY E. SHERMAN as
 TRUSTEE OF THE ALEXA
 SHERMAN IRREVOCABLE TRUST,
 a California irrevocable trust; MARY E.
 SHERMAN as TRUSTEE OF THE
 DANA SHERMAN IRREVOCABLE
 TRUST, a California irrevocable trust;
 MARY E. SHERMAN as TRUSTEE
 OF THE JENNA SHERMAN
 IRREVOCABLE TRUST, a California
 irrevocable trust; MARY E.
 SHERMAN as TRUSTEE OF THE
 BROXTON DENNIS IRREVOCABLE
 TRUST, a California irrevocable trust;
 MARY E. SHERMAN as TRUSTEE
 OF THE CURT DENNIS
 IRREVOCABLE TRUST, a California
 irrevocable trust; MARY E.

CASE NO. 19-CV-0605-JLS-AHG

**DEFENDANTS ELLIS STERN,
 ALAN N. GOLDBERG, AND
 STERN & GOLDBERG'S REPLY
 TO OPPOSITION TO MOTION
 FOR AWARD OF ATTORNEY'S
 FEES AND COSTS PURSUANT TO
 CODE OF CIVIL PROCEDURE
 SECTION 425.16(c);**

Hearing Date: October 24, 2019
 Time: 1:30 p.m.
 Courtroom: 4D

Action Filed: April 2, 2019
 Trial Date: None Set

1 SHERMAN as TRUSTEE OF THE
 2 SEAN LYNN IRREVOCABLE
 3 TRUST, a California irrevocable trust;
 4 MARY E. SHERMAN as TRUSTEE
 5 OF THE BRANDEN LYNN
 6 IRREVOCABLE TRUST, a California
 7 irrevocable trust; LINDA R. KRAMER,
 8 an individual; LINDA R. KRAMER, as
 9 CO-TRUSTEE OF THE LYNN AND
 10 ERIK'S TRUST; ERIK VON
 11 PRESSINTIN HUNSAKER as CO-
 12 TRUSTEE OF THE LYNN AND
 13 ERIK'S TRUST; DIANE G. DENNIS,
 14 an individual; ELLIS ROY STERN,
 15 ESQ., an individual; ALAN N.
 16 GOLDBERG, ESQ., an individual;
 17 STERN & GOLDBERG, a California
 18 Partnership; PATRICK C.
 19 MCGARRIGLE, ESQ. an individual;
 20 MCGARRIGLE, KENNEY &
 21 ZAMPIELLO, A PROFESSIONAL
 22 LAW CORPORATION, a California
 23 corporation; DOES 1-99

Defendants.

15 I. INTRODUCTION

16 Plaintiff Laura Lynn Hammett ("Plaintiff" or "Ms. Hammett") filed claims
 17 clearly barred by California's anti-SLAPP statute—against her litigation
 18 adversary's counsel, Defendants Ellis Stern and Alan N. Goldberg, who are
 19 partners of the law firm of Stern & Goldberg, a California partnership (collectively
 20 "S&G"). S&G Defendants promptly filed an anti-SLAPP motion.

21 In response to the anti-SLAPP motion, Ms. Hammett dismissed both of her
 22 causes of action alleged against S&G. Under controlling law, Ms. Hammett's
 23 dismissal of the alleged claims against S&G Defendants does not excuse her
 24 obligation to pay S&G's legal fees incurred to defeat the claims through the anti-
 25 SLAPP motion process. Rather, S&G Defendants are entitled to recover from Ms.
 26 Hammett the fees and costs incurred in pursuing the anti-SLAPP motion and the
 27 relief sought herein. *Coltrain v. Shewalter*, 66 Cal. App. 4th 94 (1998); *Gottesman*
 28 *v. Santana*, 263 F. Supp. 3d 1034 (S.D. Cal. 2017). Accordingly, as the prevailing

1 party, S&G Defendants respectfully requests that this Court award, and order Ms.
2 Hammett to pay, to S&G Defendants their fees associated with its anti-SLAPP
3 motion, totaling \$23,093.00.

4 **II. S&G DEFENDANTS MOTION IS TIMELY**

5 Plaintiff argues that Defendants have made an untimely application for
6 prejudgment costs pursuant to C.R.C. § 3.1700. Even if state procedural rules
7 applied as plaintiff suggests, motions for statutory attorney's fees in state court are
8 governed by C.R.C. § 3.1702 (60 days post Entry of Judgment), not C.R.C.
9 § 3.1700. Defendants motion for statutory attorney fees is made pursuant to the fee
10 award provisions of C.C.P. § 425.16, and is timely under the time limits set by
11 FRCP 54(d)(2)(b). Defendants motion is timely by either measure.

12 When a plaintiff voluntarily dismisses the claim or claims which are the target
13 of an anti-SLAPP motion, the Court retains the authority pursuant to C.C.P. §
14 425.16 to award to defendant the fees and costs associated with the motion upon
15 application. *See Gottesman*, 263 F. Supp. 3d 1034, 1039-1040 (S.D. Cal. 2017). As
16 stated in *Gottesman, supra.*: “Indeed, Plaintiff is incorrect that his voluntary
17 dismissal prevents the Court from determining whether Attorney Defendants are
18 nevertheless entitled to statutory attorneys’ fees and costs. The Court retains the
19 authority to make this determination even though Plaintiff voluntarily dismissed
20 Attorney Defendants. *See, e.g., Law Offices of Andrew L. Ellis v. Yang*, 178 Cal.
21 App. 4th 869, 879 (2009) (“[T]he anti-SLAPP statute . . . anticipates circumstances
22 in which parties dismiss their cases while the motions are strike are pending. In
23 such circumstances, the trial court is given the limited jurisdiction to rule on the
24 merits of the motion to decide if it should award attorneys fees and costs to the
25 defendants.”) S&G defendants are entitled to a hearing for an award of fees and
26 costs pursuant to C.C.P. § 425.16(c). *eCash Techs, Inc. v Guagliardo*, 127 F. Supp.
27 2d 1069, 1083 (C.D. Cal. 2000)

1 **III. ARGUMENT**

2 **A. S&G Defendants Are Entitled To Fees And Costs Following The**
3 **Voluntary Dismissal Of The SLAPP Suit, S&G Defendants Are**
4 **"Prevailing Defendants" Under The Anti-SLAPP Statute**

5 Attorneys' fees are mandatory where a defendant prevails on a special motion
6 to strike. *Ketchum v. Moses* 24 Cal. 4th 1122, 1141-1142 (2001); Cal. Civ. Proc.
7 Code § 425.16(c). The fee award should ordinarily include compensation for all the
8 hours reasonably spent, including those fees incurred in enforcing Defendant's
9 mandatory right to fees. *Id.* at 1133, 1141 (citing *Serrano v. Unruh* 32 Cal. 3d 621,
10 624, 639 (1982)).

11 Though some courts differ in their approach when determining whether a
12 defendant is a prevailing defendant under the anti-SLAPP statute when that
13 defendant has been voluntarily dismissed from the action, this Court has explained
14 that it follows the approach detailed in *Coltrain*, 66 Cal. App. 4th 94 (1998), which
15 explains that "a plaintiff's voluntary dismissal raises a presumption that the
16 defendant is the prevailing party that the plaintiff can rebut by explaining its reason
17 for dismissal." *Gottesman*, 263 F. Supp. 3d at 1043. In citing *Coltrain*, this Court
18 noted that "the 'critical issue is which party realized its objective in the litigation.' *Id.*
19 (citing *Coltrain*, 66 Cal. App. 4th at 107).

20 In her Notice of Voluntary Dismissal [ECF 38], plaintiff indicated that she
21 dismissed her Sixth ("Malpractice") cause of action "because the Pro Se Plaintiff
22 errantly titled the Sixth Cause of Action, omitting 'on behalf of Silver Strand Plaza,
23 LLC as plaintiff and nominal defendant.'" As to the Fifth ("Conversion") cause of
24 action, Plaintiff stated that she "chooses to withdraw the less significant claim of
25 conversion now and revive it after she files a motion pursuant to CCP 1714.10 to
26 include a claim of Aiding and Abetting of Fiduciary Duty."

27 In other words, plaintiff is dismissing the claims *she knows are legally*
28 *untenable*, while threatening further frivolous litigation. It should be noted that on

1 August 23, 2019, S&G Defendants offered plaintiff a waiver of all fees and costs in
2 return for a Civil Code § 1542 Release. Plaintiff refused the offer, demanded
3 \$100,000.00 and indicated a desire to refile against S&G Defendants. [Vanden
4 Heuvel Dec. ¶ 5]

5
6 **B. S&G Defendants Have Made A Threshold Showing That The**
7 **Challenged Causes Of Action “Arise From An Act In Furtherance**
8 **Of The Right Of Petition”**

9 Observing the operative allegations of the FAC as to S&G Defendants
10 (section II, *infra.*), it is clear that the operative allegations consist entirely of
11 statements made by counsel to an adverse party regarding threatened litigation and
12 settlement.

13 The actions and statements complained of consist in general of the following:

- 14 • Stern “often accused Plaintiff of using inappropriate language in
15 communications with counsel or other members of SSP.” [FAC ¶ 26]
- 16 • Stern disclosed in a letter that he was legal counsel to Sandra Kramer and
17 Mary Sherman in her capacity as manager of Silver Strand, LLC. [FAC ¶
18 38]
- 19 • Stern wrote a letter to Plaintiff December 13, 2013 which stated:
20 “However, you should be aware that, in my opinion, your continual email
21 barrage of threats and diatribes against Sandra, your mother, rise to the
22 level of elder abuse.” [FAC ¶ 39]
- 23 • Stern allowed plaintiff to view various accounting documents from Silver
24 Strand when it was demanded under the Operating Agreement, but
25 “refused to tell Plaintiff what they represented.” [FAC ¶ 49-50]
- 26 • After a telephonic conference with the LLC members to discuss allowing
27 Plaintiff to sell her portion of the LLC to the other members, Stern
28 allegedly offered a “skewed minute order of the meeting. [FAC ¶ 54-56]

- 1 • Stern sent an email to plaintiff regarding the minutes, the companies
- 2 financial information, and her threatened litigation. [FAC ¶ 57]
- 3 • Stern sent various emails to plaintiff and her attorney Michael Early
- 4 regarding the valuation of Silver Strand and documents explaining same.
- 5 [FAC ¶ 86-91]
- 6 • Stern sent an email on February 9, 2017 demanding a release for his client.
- 7 [FAC ¶ 111]
- 8 • “Defendant Stern did not contact Plaintiff even once before concluding
- 9 that she was causing all the animosity.” [FAC ¶ 219]
- 10 • Defendant Stern wrote an email explaining the amount offered for
- 11 Plaintiffs share of the LLC “as the LLC manager and I see it.” [FAC ¶
- 12 225]
- 13 • Stern communicated an offer for plaintiff share of the LLC which was “1/6
- 14 the actual value.” [FAC ¶ 272]
- 15 • Stern wrote plaintiff an email about her proposed litigation, calling her
- 16 naming of counsel “outrageous and frivolous.” [FAC ¶ 276]

17 “Under the plain language of section 425.16, subdivision (e)(1) and (2), as

18 well as the case law interpreting those provisions, *all* communicative acts performed

19 by attorneys as part of their representation of a client in a judicial proceeding or

20 other petitioning context are per se protected as petitioning activity by the anti-

21 SLAPP statute.” (*Finton Construction v. Bidna Keys APLC*, 238 Cal.App.4th 206,

22 210 (2015), *italics added*.)

23 Both section 425.16 and Civ. C. § 47(b) protect litigants’ right of access to the

24 courts without being fear of being harassed subsequently by derivative tort actions.

25 (*Healy v. Tuscan Hills Landscape and Recreation Corp.*, 137 Cal App 4th 1, 5

26 (2006)) Courts look to the Civ. Code § 47(b) litigation privilege “as an aid” in

27 determining whether a given communication falls within the ambit of section

28 425.16. (*Flatley v. Mauro*, 39 Cal 4th 299, 323 (2006).)

1 The litigation privilege applies "to any communication (1) made in judicial or
 2 quasi-judicial proceedings; (2) by litigants or other participants authorized by law;
 3 (3) to achieve the objects of the litigation; and (4) that have some connection or
 4 logical relation to the action." (*Silberg v. Anderson*, 50 Cal.3d 205, 212 (1990).) The
 5 privilege is "absolute in nature, applying `to *all* publications, irrespective of their
 6 maliciousness." (*Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal.4th
 7 1232, 1241 (2007).) "Any doubt about whether the privilege applies is resolved in
 8 favor of applying it." (*Crossroads Investors, L.P. v. Federal Nat'l Mortgage Ass'n*,
 9 13 Cal. App. 5th 757 (2017); *Finton Construction, supra*, 238 Cal.App.4th at p.
 10 212.)

11 "Many cases have explained that [Civil Code] section 47[, subdivision] (b)
 12 encompasses not only testimony in court and statements made in pleadings, but also
 13 statements made prior to the filing of a lawsuit, whether in preparation for
 14 anticipated litigation or to investigate the feasibility of filing a lawsuit." (*Bergstein*
 15 *v. Strook & Strook & Lavan, LLP*, 236 Cal.App.4th 793, 814 (2015).)

16 Accordingly, the various statements made by S&G Defendants to an adverse
 17 party are absolutely privileged under 47(b). Likewise, the alleged "low ball" offer is
 18 not actionable. (*Seltzer v. Barnes*, 182 Cal App 4th 964-967(2010).) (settlement
 19 negotiations and agreements are made "in connection with" litigation for purposes
 20 of § 425.16); (*Suarez v. Trigg Laboratories, Ltd*, 3 Cal App 5th 118, 123-124
 21 (2016).) (anti-SLAPP protection applies even against allegations of nondisclosure or
 22 misleading statements made during settlement process.)

23 C. Numerous Defenses Apply To Each Cause Of Action

24 Here, S&G Defendants met their burden of showing that the litigation
 25 privilege applies because the communicative conduct at issue — as established by
 26 the pleadings and declarations— was made in response to threatened adversarial
 27 proceedings, by attorneys to achieve the object of the proceedings and had some
 28 connection or logical relation to the proceeding. Consequently, the litigation

1 privilege (*Civil Code* § 47(b)) applies to bar Plaintiff's claims against S&G
2 Defendants.

3 Once a defendant establishes the anti-SLAPP law applies, the burden shifts to
4 the plaintiff to present "sufficient evidence to establish a prima facie case, i.e.
5 showing by competent and admissible evidence, of facts which, if proven at trial,
6 would support a judgment in his favor...." (*Du Chattne v. International Brotherhood*
7 *of Electrical Workers*, 110 Cal.App.4th 107, 112 (2003).) A plaintiff cannot rely
8 solely on his complaint, but rather, he must provide competent, admissible evidence.
9 (*Hailstone v. Martinez*, 169 Cal.App.4th 728, 736 (2008).)

10 As set forth in sections IV and V of S&G Defendants moving papers,
11 numerous legal defenses apply to the two purported causes of action for "Legal
12 Malpractice" and "Conversion." As to the Fifth ("Conversion") cause of action,
13 plaintiff failed to obtain a pre-filing order pursuant to California Civil Code section
14 1714.10(a), plaintiff has no standing to assert the claim on behalf of the LLC, and a
15 generalized claim for money is not actionable as conversion. As to the Sixth
16 ("Legal Malpractice") cause of action, it is barred by operation of law as a
17 derivative action, plaintiff was never a client of S&G Defendants, the claim is time
18 barred, and S&G Defendants actions are privileged in nature.

19 S&G Defendants incorporate those defenses and arguments by reference
20 herein. Plaintiff does not even challenge these defenses other than to argue that she
21 may in the future seek an order pursuant to California Civil Code section 1714.10(a)
22 [Opposition, p. 5, ll. 3-4], and as to the malpractice claim "will probably pay an
23 attorney to work on the LLC's behalf after this matter is resolved..." [Opposition, p.
24 5, ll. 10-11], or, alternatively, "may be able to sue Defendants for legal malpractice
25 as a third party." [Opposition, p. 5, ll. 13-14]

26 Plaintiffs speculation that she may hire a lawyer to file another lawsuit at a
27 later time, or might try out a frivolous third party malpractice theory is not a
28 sufficient showing for the court to "determine (that) the plaintiff has demonstrated a

1 probability of prevailing on the claim." (*Navellier v. Sletten*, 29 Ca1.4th 82, 88
2 (2002).) This is simply an admission by plaintiff that she cannot prevail on the legal
3 claims as stated in the FAC. Plaintiffs' First Amended Complaint is a pure SLAPP
4 suit designed to harass S&G Defendants for representing their client in an
5 adversarial proceeding.

6 **D. PLAINTIFF CONCEDES THE CLAIMED FEES, RATES, AND**
7 **LODESTAR OF S&G DEFENDANT ARE APPROPRIATE**

8 S&G Defendants have made very detailed and factually supported
9 documentation of the hours sought in connection with their Special Motion to
10 Strike. S&G Defendants have further set forth in great detail the support for their
11 claimed fee rates and resultant lodestar. There is a strong presumption that the
12 lodestar figure represents a reasonable fee, and any upward or downward
13 adjustments are proper only in rare and exceptional cases. *Van Gerwen v Guar. Mut.*
14 *Life Co.*, 214 F. 3d 1041, 1045 (9th Cir. 2000) By failing to oppose the hours and
15 rates claimed, or the resultant lodestar, plaintiff has effectively conceded these
16 issues.

17 **IV. CONCLUSION**

18 S&G is entitled to recover their fees and costs incurred for their anti-SLAPP
19 motion, which successfully dismissed plaintiff's SLAPP suit. Accordingly, S&G
20 Defendants respectfully requests that the Court grant this motion and award S&G

21 ///

22 ///

23 ///

24 ///

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26 ///

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28 ///

1 Defendants \$23,093.00 in attorneys' fees pursuant to Code of Civil Procedure
2 section 425.16(c).

3
4 DATED: October 10, 2019 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6
7 By: /s/ Tim J. Vanden Heuvel
8 Kenneth C. Feldman
9 Tim J. Vanden Heuvel
10 Attorneys for Defendants ELLIS STERN,
11 ALAN N. GOLDBERG, and STERN &
12 GOLDBERG
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FEDERAL COURT PROOF OF SERVICE*Laura Lynn Hammett v. Mary E. Sherman, et al.*

United States District Court – Southern District Case No. 19-CV-0605-JLS-LL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 701 B Street, Suite 1900, San Diego, CA 92101. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On October 10, 2019, I served the following document(s):

**DEFENDANTS ELLIS STERN, ALAN N. GOLDBERG, AND STERN & GOLDBERG'S
REPLY TO OPPOSITION TO MOTION FOR AWARD OF ATTORNEY'S FEES AND
COSTS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16(c);**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

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Keith M. Cochran, Esq.

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7	<i>Attorney for Defendants Linda R. Kramer as</i>	
8	<i>Co-Trustee of the Lynn and Erik's Trust and</i>	
9	<i>Erik Von Pressintin Hunsaker as Co-Trustee of</i>	
10	<i>the Lynn and Erik's Trust</i>	

7 The documents were served by the following means:

8 ☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the

9 documents with the Clerk of the Court using the CM/ECF system, which sent notification

10 of that filing to the persons listed above.

11 I declare under penalty of perjury under the laws of the United States of America and the

12 State of California that the foregoing is true and correct.

13 Executed on October 10, 2019, at San Diego, California.

14 /s/ Rachel Vorman

15 Rachel Vorman

28

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7 Corporation

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LAURA LYNN HAMMETT,

12 Plaintiff,

13 v.

14 MARY E. SHERMAN, et al.

15 Defendants.
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Case No. 19-CV-0605 JLS-LL

**REPLY IN SUPPORT OF
DEFENDANTS PATRICK C.
MCGARRIGLE AND
MCGARRIGLE KENNEY &
ZAMPIELLO, APC'S MOTION
FOR ATTORNEYS' FEES AS
PREVAILING PARTIES (CAL.
CODE CIV. PROC. SEC.
425.16(C)(1))**

Judge: Hon. Janis Lynn Sammartino
Date: October 24, 2019
Time: 1:30 p.m.
Crtrm.: 4D

1 **I. INTRODUCTION**

2 MKZ's Motion is well taken and should be granted. First, Ms. Hammett's
3 opposition fails to meet her burden to overcome the controlling presumption that
4 MKZ is the prevailing party as a result of her voluntary dismissal. Ms. Hammett's
5 threat to "refile" her claims is a red herring and is evidence that her wrongful filing
6 (and then dismissal) of the claims against MKZ in no way achieved any legitimate
7 litigation objective. Moreover, Ms. Hammett's opposing papers are untethered to
8 supporting evidence, are riddled with improper *ad hominem* attacks, and
9 conspicuously fail to rebut the compelling evidentiary presentation and controlling
10 case law that demonstrate the merit to the underlying anti-SLAPP motion. Second,
11 MKZ has readily established that the \$16,312.00 in attorneys' fees requested in the
12 instant Motion is authorized by statute and is eminently reasonable. Ms. Hammett
13 tacitly concedes as such, offering no rebuttal to the evidence and authority
14 presented. Accordingly, as MKZ has satisfied the legal and evidentiary standards for
15 the requested award, MKZ respectfully requests that the Motion be granted and Ms.
16 Hammett ordered to reimburse MKZ \$16,312.00 in attorneys' fees.

17 **II. ARGUMENT**

18 Ms. Hammett's First Amended Complaint asserted claims against MKZ
19 plainly in violation of the anti-SLAPP statute—claims that she had been informed
20 were legally untenable well before her decision to name SSP's litigation counsel as
21 parties. Ms. Hammett persisted nonetheless, forcing MKZ to defend itself and seek
22 this Court's order dismissing the claims against MKZ under California's anti-
23 SLAPP statute. In addition to the legal authority compelling dismissal under the
24 anti-SLAPP statute, MKZ presented a detailed evidentiary record documenting its
25 defense of SSP and its manager from the claims in *Hammett v. Sherman I*.
26 Specifically, MKZ presented unchallenged evidence establishing its May 2018
27 engagement as litigation counsel for SSP and its manager, Ms. Hammett's on-going
28 threats to refile the prior action and, later, threats to sue MKZ and MKZ' efforts to

1 dissuade Ms. Hammett from re-filing and otherwise addressing her meritless
2 litigation threats. Rather than present any evidence or authority to oppose the anti-
3 SLAPP motion and its persuasive showing, Ms. Hammett (after forcing MKZ to
4 engage counsel, incur significant expenses and interfere with its representation of
5 SSP) voluntarily dismissed her claims against MKZ.

6 Ms. Hammett's dismissal, however, provides no absolution for her decision to
7 file the claims in the FAC against MKZ, as controlling law establishes the
8 presumption that MKZ is the prevailing party. In order to rebut that presumption,
9 Ms. Hammett is required to provide admissible evidence that she dismissed her
10 claims against MKZ as a result of her litigation objectives being achieved. Ms.
11 Hammett has provided no such evidence and no cogent argument, supported by any
12 law, that she achieved a single bona fide litigation objective. Ms. Hammett's
13 reasoning—that she can re-file the claims later—is not a “litigation objective.”
14 Moreover, even if this Court does not to follow the presumption established in
15 *Coltrain*, and decides to consider the merits of the anti-SLAPP motion, Ms.
16 Hammett has not established that she would have defeated MKZ's anti-SLAPP
17 motion. Based on the controlling law and relevant facts, MKZ is the prevailing
18 party, and Ms. Hammett is obligated to reimburse MKZ for its legal fees incurred in
19 connection with the anti-SLAPP motion. MKZ's Motion should be granted.

20 **A. Ms. Hammett Has Not Rebutted The Presumption That MKZ Is**
21 **The Prevailing Party.**

22 Because Ms. Hammett voluntarily dismissed MKZ from the action with
23 MKZ's anti-SLAPP motion pending, MKZ is the presumptive prevailing party.
24 *Gottesman v. Santana*, 263 F. Supp. 3d 1034, 1039-1040 (S.D. Cal. 2017); *Coltrain*
25 *v. Shewalter*, 66 Cal. App. 4th 94 (1998). And, in order to rebut that presumption, it
26 is Ms. Hammett's burden to produce admissible evidence and supporting authority
27 that establishes the dismissal was a result of Ms. Hammett realizing her objectives in
28 the litigation. *Gottesman*, 263 F. Supp. 3d at 1043. Ms. Hammett has failed to meet

1 her burden to overcome the presumption here.

2 First, Ms. Hammett's newly-minted reasoning for the dismissal— that she
3 may refile the claims against MKZ in the future (ECF No. 78-1 at 6:11 (referencing
4 paragraphs 127-133 of her declaration))—is not representative of her achievement
5 of a bona fide litigation objective. To that end, Ms. Hammett cites no authority that
6 the dismissal of claims with plans to re-file in the future is a litigation objective that
7 the law recognizes as legitimate. Ms. Hammett's assertion that she may refile the
8 defective claims actually supports the conclusion that her dismissal did not come as
9 a result of her achieving her litigation goals. Rather, her dismissal was filed to avoid
10 the disposition of the anti-SLAPP motion, and thus triggering the presumption that
11 MKZ is the prevailing party.

12 Second, Ms. Hammett misstates the applicable law and facts governing the
13 issues and which support the instant motion. For example, Ms. Hammett asserts,
14 "The Attorney Defendants seem to understand the provisions of CCP §425.16 (c),
15 that Plaintiff is only liable for attorney fees if she withdraws the claims **because**
16 **they lack merit.**" ECF No. 78-1 at 6:1-3. Ms. Hammett's characterization is off the
17 mark. In reality, pursuant to *Coltrain* and *Gottesman*, a dismissal *without* some
18 showing that the plaintiff had substantially achieved its goals through a settlement or
19 other means, definitively results in the moving party prevailing as it relates to the
20 motion for attorneys' fees. *Gottesman*, 263 F. Supp. 3d at 1043; *Coltrain*, 66 Cal.
21 App. 4th at 107.

22 Despite MKZ briefing the nature and extent of Ms. Hammett's burden as to
23 the presumption created by her voluntary dismissal, she has not rebutted the
24 presumption. As previously stated, Ms. Hammett presented no authority that her
25 dismissal comes as a result of a litigation objective recognized by any court.
26 Accordingly, MKZ requests that this Court find that MKZ is a prevailing defendant
27 and entitled to recover its attorneys' fees incurred as established in the instant
28 motion.

B. Setting Aside Her Failure to Overcome The Presumption Supporting MKZ's Motion, Ms. Hammett Has Also Failed To Establish That She Would Have Prevailed In Opposing The Anti-SLAPP Motion.

The Court need not entertain this analysis in light of the fact that the Court follows the sound reasoning of *Coltrain*, as confirmed in *Gottesman*. However, in an abundance of caution, MKZ addresses Ms. Hammett's flawed arguments that she would have successfully opposed MKZ's anti-SLAPP motion.

1. Ms. Hammett's assertion that the claims against MKZ are not subject to anti-SLAPP fails.

Ms. Hammett's opposition and declaration include a lengthy diatribe, ostensibly in an attempt to convolute the relationship between MKZ, SSP, and SSP's prior counsel¹ and relies on conclusions not connected to the law or the record. None of Ms. Hammett's offerings support her new assertion that the FAC's claims against MKZ would have survived dismissal based on MKZ's anti-SLAPP motion.

First, Ms. Hammett's effort to conflate MKZ's litigation services, which commenced in May 2018, with the actions of SSP's prior counsel dating back many years prior to MKZ's engagement, is unavailing and highlights the impropriety of her decision to sue MKZ in the first place. As shown by MKZ in its anti-SLAPP motion, MKZ was hired by SSP in direct response to Ms. Hammett filing claims against SSP and its manager in *Hammett v. Sherman I*. MKZ had nothing to do with any of the actions taken by or on behalf of SSP or its manager prior to the filing of *Hammett v. Sherman I*. ECF No. 20-1 at 4:15. Ms. Hammett's tactic of conflation is

¹ Ms. Hammett's assertion that MKZ did not comply with Code of Civil Procedure section 425.16 subsection (j)(1) is not jurisdictional and has no relevance as to whether or not the anti-SLAPP statute applies. Moreover, Plaintiff's declaration related to her inquiry with the Judicial Council is inadmissible hearsay.

1 transparent, unpersuasive, and certainly does not rebut MKZ's showing that all of
2 the claims against MKZ are subject to the anti-SLAPP statute.

3 Second, Ms. Hammett's assertion that the anti-SLAPP statute is inapplicable
4 because the malpractice claims and the conversion claims are not "in connection
5 with a public issue" (ECF No. 78-1 at 2:14-3:3) is not the standard under Section
6 425.16. Instead, "[A]ll communicative acts performed by attorneys as part of their
7 representation of a client in a judicial proceeding or other petitioning context are per
8 se protected as petitioning activity by the anti-SLAPP statute." *Cabral v. Martins*,
9 177 Cal. App. 4th 471, 480 (2009). There is no requirement that they be "in
10 connection with a public issue." Statements made in connection with or in
11 preparation for litigation are protected activity under the anti-SLAPP statute. *Briggs*
12 *v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106, 1115 (1999); see also
13 *People ex rel. Fire Ins. Exch. v. Anapol*, 211 Cal. App. 4th 809, 824 (2012)
14 ("Communications preparatory to, or in anticipation of, bringing an action are
15 within the protection of the anti-SLAPP statute."). If a pre-litigation statement
16 concerns the subject of the dispute and is made in anticipation of litigation,
17 contemplated in good faith and under serious consideration, it falls within the scope
18 of section 425.16. *People ex rel. Fire Ins. Exch.*, 211 Cal. App. 4th, at 824. Clearly,
19 all of Ms. Hammett's claims against MKZ are directly related to MKZ's
20 representation of SSP and its manager against claims filed by Ms. Hammett in
21 *Hammett v. Sherman I*, which Ms. Hammett threatened to re-file, the related,
22 subsequent pre-litigation activity that took place prior to the re-filing of the claims
23 in this action ("*Hammett v. Sherman II*").

24 Moreover, Ms. Hammett's dismissed claims for legal malpractice are atypical
25 insofar as she was and is SSP's litigation adversary and lacked standing to sue on a
26 derivative basis. As established in the anti-SLAPP motion, Ms. Hammett's legal
27 malpractice claim against a litigation adversary's counsel is derivative of petitioning
28 activity, which is unquestionably subject to the anti-SLAPP statute. Likewise, a

litigation adversary cannot file a lawsuit against its litigation adversary under the guise of a derivative claims in order to avoid the anti-SLAPP statute. *Thayer v. Kabateck Brown Kellner L.L.P.*, 207 Cal. App. 4th 141, 154, 158 (2012) (“If the plaintiff is a nonclient who alleged causes of action against someone else’s lawyer based on the lawyer’s representation of other parties, the anti-SLAPP statute is applicable to bar such non-meritorious claims.”).

Similarly, Ms. Hammett’s argument related to conversion is misplaced and misguided. Specifically, Ms. Hammett offers the bare assertion that the “Court will rarely if ever strike conversion claims pursuant to CCP §425.16 because conversion is an independent tort that does not arise from free speech or petitioning activity, even if other claims in the same case do not fall within the gamut.” ECF No. 78-1 at 4:14-16. Ms. Hammett’s conclusory plea is unpersuasive. In the context of an anti-SLAPP analysis, the Court looks to the conduct underlying the cause of action rather than titles, assessing whether the gravamen of the claim hinges on the defendant’s petitioning activity, separate and apart from the consequences of those acts or the form of plaintiff’s claims. See *Contreras v. Dowling*, 5 Cal. App. 5th 394, 405 (2016); *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). As briefed in more detail in MKZ’s anti-SLAPP motion, Ms. Hammett’s conversion claims against MKZ stem from the payments made by SSP for MKZ’s services provided in connection to *Hammett v. Sherman I.* ECF No. 20-1 at 17:6-8; 23:5-15. If Ms. Hammett were allowed to proceed with her conversion claims against counsel for her litigation adversary, any plaintiff could easily circumvent the protections offered by the anti-SLAPP statute by including a claim for conversion. . Thus the anti-SLAPP statute is directly applicable to Ms. Hammett’s conversion claims.

Lastly, Ms. Hammett’s statement that if the “conversion claim is subject to anti-SLAPP legislation, her error was completely innocent, and the suit was not brought to chill free speech,” but rather to “chill stealing” is completely irrelevant to the issues before the Court. ECF No. 78-1 at 5:24-6:2. The evidence before the

1 Court clearly illustrates that Ms. Hammett filed claims against counsel for her
2 litigation adversaries that arise directly from petitioning activity. Ms. Hammett's
3 scurrilous assertions only serve to highlight the clear applicability of the anti-
4 SLAPP statute and the absence of merit to the claims advance. Accordingly, the
5 claims against MKZ are barred by the anti-SLAPP statute.

6 **2. Ms. Hammett fails to show any probability of success on the**
7 **merits.**

8 To the extent Ms. Hammett attempts to show any probability of success on
9 the merits, she fails. Ostensibly in an attempt to overcome MKZ's argument based
10 on *McDermott Will & Emery v. Superior Court*, that her claims against MKZ cannot
11 proceed because MKZ's duties to SSP and its Manager hinder the presentation of a
12 meaningful substantive defense, Ms. Hammett claims that SSP "waive[d] attorney
13 client privilege in several ways" and cites to *Garner v. Wolfenbarger*, 430 F. 2d
14 1093 (1970). ECF No. 78-1 at 7:19-23. Ms. Hammett's assertion is also unavailing
15 insofar as MKZ is obligated to preserve and protect the client's communications,
16 regardless of whether the client allegedly discussed legal matters with other SSP
17 members. None of Ms. Hammett's analysis or case citations hold that the entity's
18 counsel is freely permitted to violate the client's confidences because the client may
19 have discussed some other issue with some entity members. Likewise, Ms. Hammett
20 cites no evidence showing that SSP and its manager have expressly waived the
21 attorney-client privileges and protections, thereby authorizing MKZ to discuss
22 attorney-client communications in its defense.

23 Ms. Hammett's reliance on *Garner* is misplaced as related to her claims
24 against MKZ because *Garner* dealt with the application of Alabama law in the
25 context of a federal question case. However, the instant matter is a diversity case,
26 and thus California law applies. Fed. R. Evid. 501; *Star Editorial, Inc. v. United*
27 *States District Court for the Central District of California*, 7 F. 3d 856, 859 (9th
28 Cir.1993). Accordingly, where the attorney-client privilege exists, a client may

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1 refuse to disclose, and may prevent others from disclosing, confidential
2 communications between a client and his or her attorney. Cal. Evid. Code §
3 954; *Kerner v. Superior Court* 206 Cal. App. 4th 84, 111 (2012). A client is
4 statutorily defined as “a person who, directly or through an authorized
5 representative, consults a lawyer for the purpose of retaining the lawyer or securing
6 legal service or advice from him in his professional capacity.” Cal. Evid. Code §
7 951. In the context of a corporation or business entity, “A corporation is a person
8 whose confidential communications with its attorney are protected by the attorney-
9 client privilege under California law.” *Kandel v. Brother Intern. Corp.*, 683 F.
10 Supp. 2d 1076, 1082 (2010); see also *In Re Jordan*, 12 Cal. 3d 575, 580 (1974) (A
11 lawyer’s duty to preserve the confidentiality of client information involves public
12 policies of paramount importance.).

13 Here, Exhibits 11, 12, 13, and 14 attached to Ms. Hammett’s opposition, do
14 not illustrate a waiver of attorney client privilege by SSP or its manager or, more
15 importantly, express authorization that MKZ has been released from its
16 confidentiality obligations to SSP and its manager.² Rather, the exhibits clearly
17 show SSP’s manager communicating with the members about the status of litigation
18 and transactions relevant to the LLC.³

19 Further, Ms. Hammett’s argument that “SSP waive[d] attorney-client
20 privilege by claiming they acted ‘on advice of counsel’” is insufficient to constitute
21 a waiver of attorney-client privilege. ECF No. 78-1 at 8:12-13. “[R]elevant case law
22 makes it clear that mere disclosure of the fact that a communication between client
23

24
25 ² Ms. Hammett also failed to address MKZ’s argument for the application of
26 the litigation privilege under California Civil Code section 47(b), which is
dispositive of her causes of action.

27 ³ Additionally, Ms. Hammett’s urging this Court to review documents *in*
28 *camera* is not proper pursuant to California law. See Cal. Evid. Code § 951; *DP*
Pham, LLC v. Cheadle, 246 Cal. App. 4th 653, 667 (2016).

1 and attorney had occurred does *not* amount to disclosure of the specific content of
2 that communication, and as such does not necessarily constitute a waiver of the
3 privilege.” *Mitchell v. Superior Court*, 37 Cal. 3d 591, 602 (1984). Thus, to the
4 extent Ms. Hammett attempts to overcome MKZ’s argument that attorney-client
5 privilege prevents any substantive defense, she fails.

6 With regard to the conversion claim, Ms. Hammett brings the claim in her
7 individual capacity, but she has no rights to the assets held by SSP, unless and until
8 SSP makes a distribution to her. The law is clear that “[w]here plaintiff neither has
9 title to the property alleged to have been converted, nor possession thereof, he
10 cannot maintain an action for conversion.” *Moore v. Regents of the Univ. of Cal.*, 51
11 Cal. 3d 120, 136 (1990), internal citations omitted. Ms. Hammett has a membership
12 interest in the LLC, not an ownership interest in the LLC’s personal property and
13 assets. Therefore, Ms. Hammett’s direct claim for conversion fails.

14 Even if Hammett had alleged this cause of action against MKZ on behalf of
15 SSP, derivatively, which she did not (and cannot), the claim would still fail because
16 a required element of a conversion claim is that the plaintiff did not consent to the
17 defendant exercising control over the property. See *Tavernier v. Maes*, 242 Cal.
18 App. 2d 532, 552 (1966); CACI 2100. Here, Ms. Hammett, as a member, expressly
19 empowered SSP’s manager to engage and pay for counsel and other advisors. ECF
20 No. 20-1 at 21:11-16; ECF No. 20-4 at ¶ 5.2. Further, SSP explicitly consented to
21 the payments made to MKZ. ECF No. 20-1 at 23:11-15. Therefore, the conversion
22 cause of action, as alleged against MKZ, fails as a matter of law.

23 Lastly, not only is most of Ms. Hammett’s declaration objectionable, it does
24 not provide any foundation for any probability of success on her claims against
25 MKZ. Rather, her declaration shows that MKZ was acting solely as counsel for SSP
26 and its manager in the litigation and pre-litigation activities initiated and maintained
27 by Ms. Hammett. As counsel for SSP, MKZ was obligated to take direction from the
28 manager—not to simply concede to Ms. Hammett’s demands.

C. Ms. Hammett's reference to Patrick C. McGarrigle's declaration is an attempt to misdirect the Court's attention.

In addition to filing an ex parte application to strike MKZ's motion for fees based on a scrivener's error in Mr. McGarrigle's declaration, Ms. Hammett again raises the issue in her opposition. ECF No. 78-1 at 6:15-25. However, this issue is nothing more than form over substance. It was a simple error, which was later corrected by a Notice of Errata. Moreover, even if the Court were to decide not to consider Mr. McGarrigle's declaration, Ms. Hammett has not rebutted the presumption that MKZ is the prevailing party, a requirement that was clearly set forth in MKZ's moving papers.

D. MKZ's fee request is reasonable.

Ms. Hammett tacitly concedes that the fees requested by MKZ are reasonable. She does not contest the total incurred, the rates of counsel and the time expended. That comes as no surprise in light of the fact that MKZ demonstrated the reasonableness of the fees in its moving papers. Therefore, this Court should grant MKZ's fee motion, in full.

III. CONCLUSION

For the foregoing reasons, MKZ requests that this Court grant its motion for attorneys' fees in the amount of \$16,312.00.

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DATED: October 10, 2019

By: /s/ Daniel S. Agle

Daniel S. Agle
Attorneys for Defendants PATRICK C.
McGARRIGLE, ESQ. and
McGARRIGLE, KENNEY &
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REP TO ATTY FEE MOT 3104-1096 (V.2)(18120324.1)

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LAURA LYNN HAMMETT,

Plaintiff,

v.

MARY E. SHERMAN, et al.

Defendants.

Case No. 19-CV-0605 JLS-AHG

**OBJECTION AND REQUEST TO
STRIKE OBJECTIONS TO
EVIDENCE [ECF No. 86] FILED BY
LAURA LYNN HAMMETT**

Judge: Hon. Janis Lynn Sammartino
Date: October 24, 2019
Time: 1:30 p.m.
Dept: 4D

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE THAT, Defendants PATRICK C.
McGARRIGLE, ESQ AND McGARRIGLE, KENNEY & ZAMPIELLO, A
Professional Law Corporation (collectively "MKZ") hereby object to Plaintiff,
LAURA LYNN HAMMETT's Evidentiary Objections to the Declaration of Patrick
C. McGarrigle filed on October 9, 2019, and ask that the Court strike the objections
for the following reasons.

///

///

First, Plaintiff's evidentiary objections were not filed by the deadline for Plaintiff to file her papers in opposition to MKZ's motion for attorneys' fees. All opposition papers were required to be filed no later than September 26, 2019. ECF No. 46 at 2:5-9. Plaintiff did not obtain leave of court to file her late objections.

Second, Plaintiff's evidentiary objections are largely nothing more than additional argument by Plaintiff, in a transparent attempt to circumvent this Court's order limiting the total pages Plaintiff was allowed to oppose the motions set for hearing on October 24, 2019. ECF No. 51 at 1:19-20.

Third, to the extent the Court intends to consider the late filed, and otherwise improper, objections, MKZ request an opportunity to be heard on the lack of merit to the objections at the October 24, 2019 hearing on MKZ's motion for fees.

KLINEDINST PC

DATED: October 10, 2019

By: /s/ Daniel S. Agle

Heather L. Rosing
Daniel S. Agle
Brittany M. Vojak
Attorneys for Defendants PATRICK C.
McGARRIGLE, ESQ. and
McGARRIGLE, KENNEY &
ZAMPIELLO, A Professional Law
Corporation

OBJ TO PLTF'S OBJ IN EVIDENCE 3104-1096 (FINAL)(18120579.1)

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Laura Lynn Hammett,

Plaintiff,

vs.

Mary E. Sherman, et. al.,

Defendants.

Case No. 19-cv-0605-JLS-LL

**EVIDENTIARY OBJECTIONS TO
THE DECLARATIONS OF (1)
ALAN N. GOLDBERG IN
SUPPORT OF SPECIAL MOTION
TO STRIKE FIRST AMENDED
COMPLAINT, ECF No. 21-4; AND
(2) ELLIS STERN IN SUPPORT OF
SPECIAL MOTION TO STRIKE
COMPLAINT, ECF 21-2**

DATE: October 24, 2019

TIME: 1:30 p.m.

DEPT: 4D

**Hon. Judge Janis Lynn Sammartino
Hon. Magistrate Allison H. Goddard**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Laura Lynn Hammett (hereinafter referred to as the “Plaintiff”) objects to (A) Declaration of Alan N. Goldberg in Support of Special Motion to Strike First Amended Complaint, ECF No. 21-4 (B) and Declaration of Ellis Stern in Support of Special Motion to Strike Complaint, ECF No. 21-2 upon the following grounds:

(Plaintiff did not need to object or respond to “evidence” in the declarations of Alan N. Goldberg or Ellis Roy Stern because the Claims against them were withdrawn without prejudice on August 20, 2019, ECF No. 38, and their related Motion for Attorney Fees was filed late pursuant to both C.R.C. Rule 3.1700(a)(1) and F.R.C.P. 54.1, the effective “amended” version on September 6, 2019, ECF No. 58. The following objections are lodged so as to preserve Plaintiff’s right on appeal to argue the issues raised if the Court errantly allows the late filed Motion for Attorney Fees to proceed or any other purpose.)

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Declaration Text	Lack of certification under penalty of perjury	Ruling
(1), To ¶2, ECF 21-4, 3:7, the statement: “Neither I nor Stern & Goldberg have ever represented Plaintiff Laura Lynn Hammett in any capacity, she has never been our client, and we have never had any sort of attorney-client relationship. In fact, I have never met Plaintiff Hammett, I have never spoken to her, and heard her name for the first time in the context of this action.	(1) Irrelevant as per F.R.E. 401 and 402. The declarant and the firm he is a partner in were and will be sued for legal malpractice in their capacity as counsel to Silver Strand Plaza, LLC. The person taking property of a rightful owner in conversion need not have a attorney-client relationship with the person from whom they convert.	(1) Sustained Over-ruled
----- (2) ECF 21-2, 2:28, statement: “My partner, Alan N. Goldberg, was not involved in the representation of Mrs. Sherman.”	----- (2) Irrelevant, as per F.R.E. 401 and 402, as the partners of Stern & Goldberg were and will be sued for their incompetent and unprofessional representation of Silver Strand Plaza, LLC, not “Mrs. Sherman”. -----3-----	----- (2) Sustained Over-ruled -----
OBJECTIONS TO DECLARATION OF ELLIS STERN AND ALAN N. GOLDBERG 19-CV-0605-JLS-AHG		

1	(3) ¶4, ECF No. 21-2,	(3) Irrelevant, as per F.R.E. 401 and 402, as	(3)
2	3:9-11, statement:	the Ellis Stern and Stern & Goldberg were	Sustained
3	“Neither I nor Stern &	and will be sued for their incompetent and	Over-
4	Goldberg have ever	unprofessional representation of Silver	ruled
5	represented Ms. Hammett	Strand Plaza, LLC, not “Ms. Hammett”.	
6	in any capacity. Ms.		
7	Hammett has never been		
8	our client and we have		
9	never had any sort of		
10	attorney-client		
11	relationship.		
12	-----	-----	-----
13	(4) ECF No. 21-2, 3:15-	(4) Plaintiff objects to a member of the	(4)
14	18, statement: “I was not	California Bar Association telling easily	Sustained
15	informed that [Mr. Early]	provable perjury where the Court has that	Over-
16	had ceased his	proof before it already.	ruled
17	representation of Ms.	Here, Patrick C. McGarrigle, Esq.	
18	Hammett until I was	lodged exhibits as ECF 20-4 which	
19	served with the First	included emails sent to Mr. Stern before	
20	Amended Complaint in	May 29, 2019 which would inform him that	
21	this action, which was	Mr. Early had ceased his representation of	
22	filed on May 29, 2019,	Ms. Hammett. He also replied to at least	
23	and on which Ms.	one of those emails. For example, the email	
24	Hammett stated she was	from Laura Lynn Hammett on March 9,	
25	in pro se.”	2019 at page 88 and the email of Patrick C.	
26		McGarrigle of April 25, 2019 at page 140.	
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1 The Court should take appropriate
2 action regarding Ellis Roy Stern,
3 Esquire for committing perjury in violation
4 of Rule of Professional Conduct 3.3,
5 candor toward the tribunal, pursuant to
6 Code of Conduct for United States Judges,
7 Canon 3 (B)(6), which states:

8 “A judge should take appropriate action
9 upon receipt of reliable information
10 indicating the likelihood that a judge’s
11 conduct contravened this Code, that a
12 judicial employee’s conduct contravened
13 the Code of Conduct for Judicial
14 Employees, or that a lawyer violated
15 applicable rules of professional conduct.

16 Appropriate action would not be to base
17 the decision to order Plaintiff to pay Mr.
18 Stern’s attorney’s fees for a motion based
19 on perjury.
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(5) ECF 21-2, 3:23-26, statement: “I have been informed in writing by Mrs. Sherman that neither Mrs. Sherman as Manager of Silver Strand, LLC nor Silver Strand, LLC will waive any attorney-client privilege in regard to communications made during that representation.”

(5) Irrelevant as per F.R.E. 401 and 402 the way written as the suit does not concern “Silver Strand, LLC”.

If this is another alleged “typographical error” and the attorneys omitted “Plaza” inadvertently, then it is hearsay and lacks foundation. It is also not following the best evidence rule, which would require a copy of the writing to be lodged as an exhibit.

No exception to the hearsay rule was given by declarant or his counsel.

(5)
Sustained
Over-
ruled

Dated 10/10/2019

/s Laura Lynn Hammett

Laura Lynn Hammett, Plaintiff In Pro Se
Bohemian_Books@yahoo.com