

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
VOLUME 5 OF 7
(SER 000947 - 001106)

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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;
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

Case No.: 19-CV-0605-JLS-LL

**NOTICE OF MOTION AND MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT FOR FAILURE TO STATE
A CLAIM (F.R.C.P. 12(b)(6))**

DATE: September 26, 2019
TIME: 1:30 p.m.
CTRM: 4D

Hon. Janis L. Sammartino

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; ELLIS ROY STERN, ESQ., an individual; ALAN N. GOLDBERG, ESQ., an individual; STERN & GOLDBERG, a California Partnership; PATRICK C. MCGARRIGLE, ESQ., an individual; MCGARRIBL, KENNEY & ZAMPIELLO, A PROFESSIONAL LAW CORPORATION, a California corporation; DOES 1-99

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 26, 2019 at 1:30 p.m., in Courtroom 4D of the above-entitled Court, located at 221 West Broadway, San Diego, CA 92101, the Honorable Janis L. Sammartino presiding, Defendants: (1) MARY E. SHERMAN, an individual; (2) MARY E. SHERMAN, as Manager of Silver Strand Plaza, LLC; (3) MARY E. SHERMAN as CO-TRUSTEE of the J & M SHERMAN FAMILY TRUST, a California revocable trust; (4) JEFFREY M. SHERMAN, as CO-TRUSTEE OF THE J & M SHERMAN FAMILY TRUST; (5) MARY E. SHERMAN, as TRUSTEE OF THE ALEXA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (6) MARY E. SHERMAN, as TRUSTEE OF THE DANA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (7) MARY E. SHERMAN, as TRUSTEE OF THE JENNA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (8) MARY E. SHERMAN as TRUSTEE OF THE BROXTON DENNIS IRREVOCABLE

1 TRUST, a California irrevocable trust; (9) MARY E. SHERMAN as TRUSTEE OF THE
2 CURT DENNIS IRREVOCABLE TRUST, a California irrevocable trust; (10) MARY E.
3 SHERMAN, as TRUSTEE OF THE SEAN LYNN IRREVOCABLE TRUST, a
4 California irrevocable trust; and (11) MARY E. SHERMAN, as TRUSTEE OF THE
5 BRANDEN LYNN IRREVOCABLE TRUST, a California irrevocable trust
6 (collectively, "Defendants"), will move and hereby move to dismiss the First Amended
7 Complaint for failure to state a claim (F.R.C.P. 12(b)(6)).

8 This motion will be based upon this Notice of Motion and Motion, the
9 Memorandum of Points and Authorities in Support thereof, any matters upon which this
10 Court may properly take judicial notice, and the complete records and files of this action.

11 Dated: August 29, 2019

POLEK LAW

12
13 By: Frank J. Polek
14 Frank J. Polek
15 Attorney for Defendants MARY E. SHERMAN
16 individually and in her capacities as Manager,
17 Co-Trustee and Trustee; and JEFFREY M.
18 SHERMAN in his capacity as Co-Trustee
19
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25
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27
28

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.

Defendant.

Case No.: 19-CV-0605-JLS-LL

NOTICE OF VOLUNTARY
DISMISSAL ON (1) SIXTH CAUSE OF
ACTION FOR LEGAL
MALPRACTICE AGAINST ELLIS
ROY STERN, ESQ., ALAN N.
GOLDBERG, ESQ., STERN &
GOLDBERG, PATRICK C.
McGARRIGLE, ESQ, McGARRIGLE,
KENNEY & ZAMPIELLO, APC,
WITHOUT PREJUDICE AND (2)
FIFTH CAUSE OF ACTION FOR
CONVERSION AGAINST ELLIS ROY
STERN, ESQ., ALAN N. GOLDBERG,
ESQ., STERN & GOLDBERG,
PATRICK C. McGARRIGLE, ESQ,
McGARRIGLE, KENNEY &
ZAMPIELLO, APC WITHOUT
PREJUDICE
[FRCP, Rule 41 (a)(1)]

Honorable Janis L. Sammartino presiding

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2
3 Pursuant to Federal Rules of Civil Procedure, Rule 41 (a)(1)(A)(i), Plaintiff Laura
4 Lynn Hammett hereby voluntarily dismisses the Sixth Cause of Action for Malpractice
5 and the Fifth Cause of Action for Conversion against defendants ELLIS ROY STERN,
6 ESQ., an individual; ALAN N. GOLDBERG, ESQ., an individual; STERN &
7 GOLDBERG, a California Partnership; PATRICK C. MCGARRIGLE, ESQ., an
8 individual; and MCGARRIGLE, KENNEY & ZAMPIELLO, A PROFESSIONAL LAW
9 CORPORATION, a California corporation.

10 This dismissal is necessitated because the Pro Se Plaintiff errantly titled the Sixth
11 Cause of Action, omitting “on behalf of Silver Strand Plaza, LLC as plaintiff and nominal
12 defendant.”

13 Plaintiff is not a licensed attorney and is therefore ineffective counsel and cannot
14 represent a limited liability company.

15 None of the defendants appearing in the case included this in their motions or
16 memorandums of points and authorities and it came to Plaintiff’s attention through her
17 own research. Plaintiff apologizes to the Court and the defendants for her error.

18 Because the two anti-SLAPP motions filed by the Attorney Defendants require
19 early discovery, the Plaintiff chooses to withdraw the less significant claim of conversion
20 now and revive it after she files a motion pursuant to CCP 1714.10 to include a claim of
21 Aiding and Abetting a Breach of Fiduciary Duty (FAC ¶13, 215 and 226). This will
22 conserve resources of time and money for the Court and all the parties.

23
24 Date 8/20/2019 Signature s/Laura Lynn Hammett
25 Plaintiff in Pro Se Laura Lynn Hammett
26
27
28

HOFFMAN & FORDE, ATTORNEYS AT LAW
 DANIEL R. FORDE (Bar No. 248461)
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 dforde@hoffmanforde.com
 Attorney for Defendant
 SILVER STRAND PLAZA, LLC

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, on behalf
 of herself,

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
 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. 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,

Case No. 19-CV-0605-JLS-LL

**DEFENDANT SILVER STRAND
 PLAZA'S NOTICE OF MOTION
 AND MOTION TO DISMISS
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT UNDER FEDERAL
 RULES OF CIVIL PROCEDURE,
 RULE 12(b)(6).**

Judge:	Hon. Janis Lynn Sammartino
Department:	4D
Hearing Date:	September 26, 2019
Time:	1:30 p.m.

1 an individual; LIINDA R. KRAMER, as
2 CO-TRUSTEE OF THE LYNN AND
3 ERIK'S TRUST; ERIK VON
4 PRESSINTIN HUNSAKER as
5 CO-TRUSTEE OF THE LYNN AND
6 ERIK'S TRUST; DIANE G. DENNIS,
7 An individual; ELLIS ROY STERN,
8 ESQ., an individual; ALAN N.
9 GOLDBERG, ESQ., an individual;
10 STERN & GOLDBERG, a California
11 Partnership; PATRICK C.
12 MCGARRIGLE, ESQ., an individual;
13 MCGARRIGLE, KENNEY &
14 ZAMPIELLO, A PROFESSIONAL
15 LAW CORPORATION, a California
16 Corporation; DOES 1-99

17 Defendants.

18 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

19 PLEASE TAKE NOTICE THAT on September 26, 2019, at 1:30 p.m., or as
20 soon thereafter as the matter may be heard in Courtroom 4D of the United States
21 District Court for the Southern District of California located at 221 West Broadway,
22 Suite 4194, San Diego, California 92101, Defendant Silver Strand Plaza, LLC
23 ("SSP") moves this Court, pursuant to Federal Rules of Civil Procedure, Rule
24 12(b)(6) to dismiss, with prejudice, the First Cause of Action for Breach of Fiduciary
25 Duty, the Second Cause of Action for Aiding and Abetting Breach of Fiduciary duty,
26 the Fifth Cause of Action for Conversion, and the Sixth Cause of Action for Legal
27 Malpractice alleged by Plaintiff Laura Lynn Hammett ("Hammett") against SSP in
28 Hammett's First Amended Complaint ("FAC"), on the grounds that these causes of
action fail to state a valid claim upon which relief can be granted.

This motion to dismiss is based upon Federal Rule of Civil Procedure 12(b)(6)
on the following grounds: (1) Hammett's complaint is a prohibited shareholder direct
suit against a company, and (2) Hammett's derivative suit belongs to SSP, and SSP
members voted, under the protection of the business judgement rule, to terminate that
suit.

1 **(1) Hammett’s complaint is a prohibited direct suit.**

2 (a) The FAC and each claim alleged against SSP fails to state a claim upon
3 which relief can be granted because shareholders are prohibited from bringing both
4 a direct suit and a derivative suit in the same action. *Schuster v. Gardner*, 127 Cal.
5 App. 4th 305, 312 (2005).

6 (b) The FAC and each claim alleged against SSP fails to state a claim upon
7 which relief can be granted because Hammett alleges that all SSP members were
8 harmed when SSP was unable to make distributions caused by the manager’s alleged
9 misuse of SSP funds, meaning the “gravamen of [Hammett’s] complaint” is an injury
10 to the company, and the misappropriated assets must be recovered *on behalf of the*
11 *company*. *Jones v. H. F. Ahmanson & Co.*, 1 Cal. 3d 93, 106-107 (1969) (emphasis
12 added).

13 (c) The FAC and each claim alleged against SSP fails to state a claim upon
14 which relief can be granted because an individual shareholder is prohibited from
15 filing a direct suit when the action concerns the misuse or misappropriation of the
16 company’s assets even when the shareholder’s personal stake in the company has
17 been substantially devalued by the manager’s fraudulent use of company assets.
18 *PacLink Communications Intern., Inc. v. Superior Court*, 90 Cal. App. 4th 958, 965-
19 966 (2001).

20 (d) The FAC and each claim alleged against SSP fails to state a claim upon
21 which relief can be granted because Hammett was not harmed in her individual
22 capacity, independent of her membership status in SSP. *Jones*, 1 Cal. 3d at 107.

23 (e) The FAC and each claim alleged against SSP fails to state a claim upon
24 which relief can be granted because the alleged harm was not caused by a majority
25 shareholder, and Hammett was not a minority shareholder, therefore precluding
26 Hammett from receiving any direct suit protection afforded to some minority
27 shareholders. *Jones*, 1 Cal. 3d at 107.

1 **(2) Hammett’s derivative suit belongs to SSP, and SSP members voted,**
2 **under the protection of the business judgement rule, to terminate that suit.**

3 (a) The FAC and each claim alleged against SSP fails to state a claim upon
4 which relief can be granted because a derivative suit belongs to SSP, not Hammett.
5 *PacLink Communications Intern., Inc.*, 90 Cal. App. 4th at 964.

6 (b) The FAC and each claim alleged against SSP fails to state a claim upon
7 which relief can be granted because the power to manage a company belongs to the
8 manager and voting members, not to an individual shareholder, and that company
9 power includes the “prosecution, defense, and control of [company] litigation.”
10 *Bader v. Anderson*, 179 Cal. App. 4th 775, 787-789 (2009).

11 (c) The FAC and each claim alleged against SSP fails to state a claim upon
12 which relief can be granted because, upon Hammett’s demand to SSP members to
13 file a derivative suit against its manager, Mary E. Sherman (“Sherman”), for breach
14 of fiduciary duty, SSP members’ vote to reject the derivative lawsuit is presumptively
15 protected by the business judgement rule. *Bader*, 179 Cal. App. 4th at 788; see also
16 *Spiegel v. Buntrock*, 571 A. 2d 767, 787 (Del. 1990).

17 (d) The FAC and each claim alleged against SSP fails to state a claim upon
18 which relief can be granted because the Court will not disturb any decision made, in
19 good faith and after reasonable investigation, by a board under the protection of the
20 business judgement rule unless the plaintiff alleges specific facts that show the
21 members engaged in gross negligence or malfeasance, and Hammett has failed to
22 state any facts “with particularity,” rising above “general accusations,” that SSP
23 members engaged in such conduct. *Shields v. Singleton*, 15 Cal. App. 4th 1611
24 (1993); see also Cal. Corp Code § 800(b)(2).

25 (e) The FAC and each claim alleged against SSP fails to state a claim upon
26 which relief can be granted because Hammett’s demand on SSP immediately
27 extinguished her right to bring a derivative suit on behalf of SSP. *Zapata Corp. v.*
28

1 *Maldonado*, 430 A. 2d 779, 784-786 (Del. 1981).

2 (f) The FAC and each claim alleged against SSP fails to state a claim upon
3 which relief can be granted because Hammett's assertion that demand was futile
4 voided the moment she made demand on SSP. *Spiegel*, 571 A. 2d at 775, 786-787;
5 see also *Bader*, 179 Cal. App. 4th at 788.

6 (g) The FAC and each claim alleged against SSP fails to state a claim upon
7 which relief can be granted because Hammett is unable to overturn the members'
8 presumption of disinterest by failing to provide specific facts that show voting
9 members were aware of, participated in, or gained a benefit from, the Sherman's
10 alleged breach of fiduciary duty, and therefore, demand was not futile. See *Kamen v.*
11 *Kemper Financial Services, Inc.*, 500 U.S. 101-102 (1991); see also *Beam v. Stewart*,
12 845 A. 2d 1040, 1049 (Del. 2004)

13 (h) The FAC and each claim alleged against SSP fails to state a claim upon
14 which relief can be granted because Hammett does not state facts above "mere
15 allegations" showing Sherman—or any SSP member—so dominated the other
16 members through professional or personal relationships that the voting members
17 would be "beholden" to the Sherman, thus failing to defeat the members'
18 presumption of disinterest, and therefore, demand was not futile. *Bade*, 179 Cal. App.
19 4th at 788 (quoting *Rales v. Blasband*, 634 A. 2d 927, 933 (Del. 1993)); see also
20 *Beam*, 845 A. 2d at 1049.

21 (i) The FAC and each claim alleged against SSP fails to state a claim upon
22 which relief can be granted because Hammett impermissibly threatened SSP
23 members with litigation for aiding and abetting breach of fiduciary duty after the
24 members voted to decline to pursue a derivative suit against Sherman, and therefore,
25 demand was not futile. *Bader*, 179 Cal. App. 4th at 792-793.

26 (j) The FAC and each claim alleged against SSP fails to state a claim upon
27 which relief can be granted because Hammett's demand for an accounting is based
28

1 upon a non-existent right; LLC members have no legal authority to demand an
2 accounting—members are merely permitted to view the company’s books at the
3 company’s principal place of business during normal business hours—and therefore,
4 Hammett’s assertion that she is entitled to an accounting is wrong as a matter of law.
5 *Jara v. Suprema Meats, Inc.*, 121 Cal. App. 4th 1238, 1263-1264 (2004); see also
6 Cal. Corp. Code §§ 1601(a)(1), 1601(a)(2), 1602.

7 (k) The FAC and each claim alleged against SSP fails to state a claim upon
8 which relief can be granted because members are only permitted to receive
9 indemnification if the company’s operating agreement unambiguously allows for the
10 member to receive indemnification, and Hammett was denied indemnification under
11 the unambiguous terms of SSP’s Operating Agreement, and therefore, Hammett’s
12 assertion that she is entitled to indemnification from SSP is incorrect as a matter of
13 law. *Hibbert v. Hollywood Park, Inc.*, 457 A.2d 339, 343 (Del. 1983).

14 This motion to dismiss is based on this Notice of Motion, the accompanying
15 memorandum of Points and Authorities, the Request for Judicial Notice with the
16 Exhibit attached hereto, the pleadings and papers filed herein, and any oral argument
17 presented at the time of the hearing, should the Court desire oral argument.
18

19 Dated: August 14, 2019

HOFFMAN & FORDE, ATTORNEYS AT LAW

20 By: /s/ Daniel R. Forde

21 DANIEL R. FORDE, ESQ.

22 Attorney for Defendant,

23 Silver Strand Plaza, LLC
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 Attorney for Defendant
 SILVER STRAND PLAZA, LLC

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, on behalf
 of herself,

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.
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 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

Case No. 19-CV-0605-JLS-LL

**DEFENDANT SILVER STRAND
 PLAZA'S REQUEST OF JUDICIAL
 NOTICE IN SUPPORT OF
 DEFENDANT'S 12(b)(6) MOTION
 TO DISMISS PLAINTIFF'S FIRST
 AMENDED COMPLAINT.**

Judge:	Hon. Janis Lynn Sammartino
Department:	4D
Hearing Date:	September 26, 2019
Time:	1:30 p.m.

1 IRREVOCABLE TRUST, a California
 2 irrevocable trust; LINDA R. KRAMER,
 3 an individual; LINDA R. KRAMER, as
 4 CO-TRUSTEE OF THE LYNN AND
 5 ERIK'S TRUST; ERIK VON
 6 PRESSINTIN HUNSAKER as
 7 CO-TRUSTEE OF THE LYNN AND
 8 ERIK'S TRUST; DIANE G. DENNIS,
 9 An individual; ELLIS ROY STERN,
 10 ESQ., an individual; ALAN N.
 11 GOLDBERG, ESQ., an individual;
 12 STERN & GOLDBERG, a California
 13 Partnership; PATRICK C.
 14 MCGARRIGLE, ESQ., an individual;
 15 MCGARRIGLE, KENNEY &
 16 ZAMPIELLO, A PROFESSIONAL
 17 LAW CORPORATION, a California
 18 Corporation; DOES 1-99

19 Defendants.

20
 21
 22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 PLEASE TAKE NOTICE that Pursuant to Federal Rule of Evidence 201,
 24 Defendant Silver Strand Plaza, LLC ("SSP") hereby requests the Court take judicial
 25 notice of the following document, attached as Exhibit 1, in support of
 26 SSP's Motion to Dismiss Plaintiff Laura Lynn Hammett's ("Hammett") First
 27 Amended Complaint ("FAC") pursuant to Federal Rules of Civil Procedure, Rule
 28 12(b)(6): "The Amended and Restated Operating Agreement of Silver Strand Plaza,
 LLC" (the "Operating Agreement"), a true and correct copy of which is attached
 hereto as **Exhibit A**.

When ruling on a 12(b)(6) motion, the Court may look beyond the pleadings
 "at [a] document[] incorporated by reference, and matters of which a court may take
 judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509
 (2007). Under the incorporation by reference doctrine (the "Doctrine"), a court may
 consider a document when the plaintiff complaint relies on it in her complaint, and
 the document's authenticity is uncontested. *Van Buskirk v. CNN*, 284 F.3d 977, 980
 (9th Cir. 2002); *see also In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986

(9th Cir. 1999). The court, then, “may assume [that the] incorporated document’s contents are true for the purposes of a motion to dismiss under Rule 12(b)(6).” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018) (internal citations omitted). The Doctrine “prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.” *Id.* at 1002 (internal citation omitted).

Under Federal Rule of Evidence 201, judicial notice is proper when a fact is not subject to reasonable dispute, and “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 966 (C.D. Cal. 2005); Fed. R. Evid. 201.

The Operating Agreement (Exhibit A)

Throughout the entirety of her FAC, Hammett relies on, and makes references to, the Operating Agreement. FAC ¶¶ 1, 3-7, 14, 17, 21-22, 28, 48, 88, 95, 100, 113, 120, 180, 265, 285. In fact, Hammett quotes, word-for-word, several paragraphs of Operating Agreement in her FAC. FAC ¶¶ 175. Furthermore, Hammett personally signed the Operating Agreement, eliminating any reasonable dispute about the authenticity of the Operating Agreement. *Wible*, 375 F. Supp. 2d at 966.

Dated: August 14, 2019

HOFFMAN & FORDE, ATTORNEYS AT LAW

By: /s/ Daniel R. Forde

DANIEL R. FORDE, ESQ.

Attorney for Defendant,

Silver Strand Plaza, LLC

EXHIBIT A

“The Amended and Restated Operating Agreement of Silver Strand Plaza, LLC”

(the “Operating Agreement”)

Page Count: 27 (including cover page)

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."

(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.

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

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:

(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;

(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).

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

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;

- (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.

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

“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

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

(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,

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.

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.

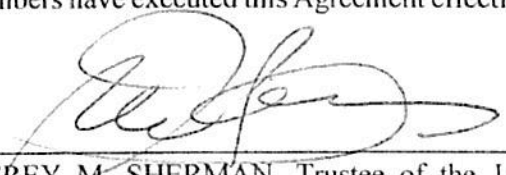
10.9. Power of Attorney. Each Member hereby constitutes and appoints the Manager (and each of them if there is more than one) such Person's true and lawful attorney-in-fact in such Person's name, place and stead, to execute, acknowledge and deliver or file any certificate required by law to be filed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

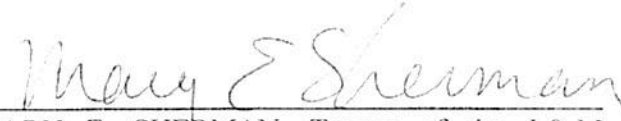
10.10. No Third Party Beneficiaries. No provision in this Agreement shall affect the Members' and Assignors' insulation from personal liability for Company debts that is provided

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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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

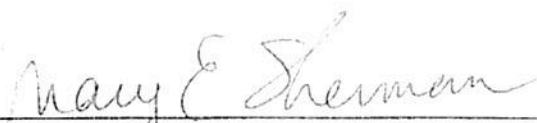
DIANE G. DENNIS

LAURA J. LYNN

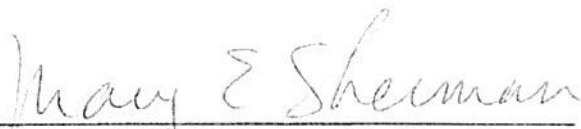


LINDA R. KRAMER

[Signature Pages Continue]



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



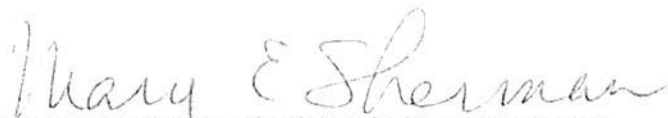
MARY E. SHERMAN, Trustee of The Dana Sherman Irrevocable Trust dated September 7, 2001



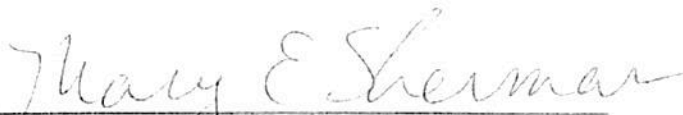
MARY E. SHERMAN, Trustee of The Jenna Sherman Irrevocable Trust dated September 7, 2001



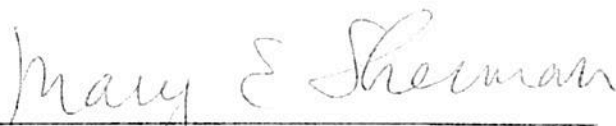
MARY E. SHERMAN, Trustee of The Broxton Dennis Irrevocable Trust dated September 7, 2001



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

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%

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

KRAMER-SILVER STRAND 09B.DOC

LEWIS BRISBOIS BISGAARD & SMITH LLP

KENNETH C. FELDMAN, SB# 130699
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Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Defendants ELLIS STERN,
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

CASE NO. 19-CV-0605-JLS-LL

**DEFENDANTS ELLIS STERN,
ALAN N. GOLDBERG, AND
STERN & GOLDBERG'S NOTICE
OF SPECIAL MOTION TO STRIKE
FIRST AMENDED COMPLAINT
PURSUANT TO C.C.P. § 425.16; OR
IN THE ALTERNATIVE MOTION
TO DISMISS PURSUANT TO FED
R. CIV. PROC. RULE 12(B)(6)**

Hearing Date: September 26, 2019
Time: 1:30 p.m.
Courtroom: 4D

Action Filed: April 2, 2019
Trial Date: None Set

4824-2171-4078.1

19-CV-0605-JLS-LL

S&G DEFENDANTS' NOTICE OF SPECIAL MOTION TO STRIKE AND MOTION TO
DISMISS FIRST AMENDED COMPLAINT

SER - 000991

1 IRREVOCABLE TRUST, a California
 2 irrevocable trust; MARY E.
 3 SHERMAN as TRUSTEE OF THE
 4 SEAN LYNN IRREVOCABLE
 5 TRUST, a California irrevocable trust;
 6 MARY E. SHERMAN as TRUSTEE
 7 OF THE BRANDEN LYNN
 8 IRREVOCABLE TRUST, a California
 9 irrevocable trust; LINDA R. KRAMER,
 10 an individual; LINDA R. KRAMER, as
 11 CO-TRUSTEE OF THE LYNN AND
 12 ERIK'S TRUST; ERIK VON
 13 PRESSINTIN HUNSAKER as CO-
 14 TRUSTEE OF THE LYNN AND
 15 ERIK'S TRUST; DIANE G. DENNIS,
 16 an individual; ELLIS ROY STERN,
 17 ESQ., an individual; ALAN N.
 18 GOLDBERG, ESQ., an individual;
 19 STERN & GOLDBERG, a California
 20 Partnership; PATRICK C.
 21 MCGARRIGLE, ESQ. an individual;
 22 MCGARRIGLE, KENNEY &
 23 ZAMPIELLO, A PROFESSIONAL
 24 LAW CORPORATION, a California
 25 corporation; DOES 1-99

26 Defendants.

27 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

28 PLEASE TAKE NOTICE THAT on September 26, 2019, at 1:30 p.m., or as
 soon thereafter as the matter may be heard in Courtroom 4D of the above-entitled
 Court, located at 333 West Broadway, San Diego, California 91101, Defendants Ellis
 Stern ("Stern" herein), Alan N. Goldberg ("Goldberg" herein), and Stern & Goldberg,
 a California partnership ("Stern & Goldberg" herein) (collectively "S&G Defendants"
 herein), by and through their undersigned counsel, will and hereby do move this
 Court, pursuant to C.C.P. § 425.16, subd. (b)(1) , to strike, with prejudice, the Fifth
 Cause of Action for Conversion and the Sixth Cause of Action for Legal Malpractice
 alleged by Plaintiff Laura Lynn Hammett ("Plaintiff" or "Hammett" herein) against
 S& G Defendants in the First Amended Complaint ("FAC").

1 This motion shall be made on the grounds that these two causes of action arise
 2 from an act in furtherance of the right of petition or in a matter of public interest, and
 3 plaintiff has no probability of prevailing on those claims. Accordingly, the court
 4 should strike both claims pursuant to California's anti-SLAPP statute. C.C.P. §
 5 425.16, subd. (b)(1), and litigation privilege statute Cal. Civ. C. § 47(b).

6 Regardless if the Court grants S&G Defendants Federal Rules of Civil
 7 Procedure, Rule 12(b)(6) motion to dismiss, the California anti-SLAPP statute
 8 motion, brought pursuant C.C.P. § 425.16, subd. (b)(1), is not rendered moot and
 9 must be adjudicated. (*White v Lieberman*, 103 Cal. App. 4th 210, 220 (2002).)

10 Alternatively, S&G Defendants will and hereby do move this Court, pursuant
 11 to Federal Rules of Civil Procedure, Rule 12(b)(6), to dismiss, with prejudice, the
 12 Fifth Cause of Action for Conversion and the Sixth Cause of Action for Legal
 13 Malpractice alleged by Plaintiff against S& G Defendants in the FAC, on the grounds
 14 that these two causes of action fail to state a valid claim upon which relief can be
 15 granted.

16 Pursuant to prong two of California's anti-SLAPP statute, (C.C.P. § 425.16,
 17 subd. (b)(1)) plaintiff must demonstrate a probability of prevailing on her claims after
 18 defendants establish that these two causes of action arise from an act in furtherance of
 19 the right of petition or free speech in connection with a public issue. Plaintiff cannot
 20 make that showing based upon the following facts, which also form the factual basis
 21 for the Federal Rules of Civil Procedure, Rule 12(b)(6) motion to dismiss:

22 1. Plaintiff Hammett's Sixth Cause of Action for "Legal Malpractice" is
 23 brought as a derivative claim and is barred as a matter of law. (*McDermott v Superior*
 24 *Court* (2000) 83 Cal. App. 4th 378.)

25 2. Plaintiff Hammett was never a client of S&G Defendants and she will be
 26 unable to establish an attorney-client relationship, which is an element of a claim for
 27 Legal Malpractice. *Borissoff v. Taylor & Faust*, 33 Cal.4th 523, 529 (2004).

28 3. Plaintiff Hammett's claim for Legal Malpractice against S&G

Defendants is time barred as Plaintiff has admitted that she was aware of her claim over one (1) year prior to filing it. Cal. Code. Civ. Proc. § 340.6.

4. Plaintiff Hammett's Fifth Cause of Action for Conversion against S&G Defendants is nothing more than a claim of civil conspiracy, which cannot be filed without a court order permitting such filing, pursuant to California Civil Code section 1714.10(a). Plaintiff has failed to obtain such an order before filing the Complaint. *Cortese v. Sherwood*, 26 Cal.App.5th 445 (2018).

5. Plaintiff cannot state a claim for Conversion against S&G Defendants as she has neither the title nor possession of any such assets of Silver Strand Plaza, LLC, a California limited liability company ("Silver Strand" herein), as they are owned by the company, and she has no standing to pursue such claims on behalf of the company. *Jones v. H.F. Ahmanson & Co.*, 1 Cal.3d 93, 106-107 (1969).

6. Plaintiff Hammett's claim of Conversion against S&G Defendants is a 'generalized claim for money [which is] not actionable as conversion.'" *Moore v. Regents of University of California*, 51 Cal.3d 120, 136 (1990); See also, 5 Witkin, California Procedure, Pleading, § 702, p. 118 (5th Ed. 2008). Plaintiff Hammett has failed to specify any alleged sum of money she claims S&G Defendants converted. Indeed, she states, "[t]he dollar figure is not super important." [FAC¶ 280]

7. The actions complained of by plaintiff as to S&G Defendants are all subject to the litigation privilege which applies "to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212 [266 Cal.Rptr. 638, 786 P.2d 365].)

Pursuant to Federal Rules of Evidence, Rule 201, Defendant hereby requests this court to take Judicial Notice of the pleadings in this case and Plaintiff's Complaint filed on May 7, 2018 against Defendant Mary E. Sherman and Silver Strand in the United States District Court for the Central District of California,

1 entitled *Lynn v. Sherman, et al.*, Case No. 2:18-cv-03757-FMO-JPR, which Plaintiff
2 Hammett then voluntarily dismissed on May 8, 2018. For ease of convenience, a
3 copy of the Complaint filed on May 7, 2018 and dismissal is attached to the Request
4 for Judicial Notice.

5 This Motion will be based on this Notice of Motion, the attached Memorandum
6 of Points and Authorities, the Declarations of Ellis Stern, Alan N. Goldberg and
7 Exhibits in support thereof (these declarations are submitted *solely* in Support of the
8 Special Motion to Strike), the request for Judicial Notice, the record and files of this
9 case, and upon such oral or documentary evidence as may be presented at the hearing
10 of this Motion.

11
12 DATED: July 30, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14
15 By: /s/ Tim J. Vanden Heuvel

16 Tim J. Vanden Heuvel
17 Attorneys for Defendants ELLIS STERN,
18 ALAN N. GOLDBERG, and STERN &
19 GOLDBERG
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5 Attorneys for Defendants ELLIS STERN,
 6 ALAN N. GOLDBERG, AND STERN &
 GOLDBERG
 7

8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA
 10

11 LAURA LYNN HAMMETT, an
 12 individual,

13 Plaintiff,

14 vs.

CASE NO. 19-CV-0605-JLS-LL

**DECLARATION OF ELLIS STERN
 IN SUPPORT OF SPECIAL
 MOTION TO STRIKE
 COMPLAINT**

Hearing Date: September 26, 2019
 Time: 1:30 p.m.
 Courtroom: 4D

Action Filed: April 2, 2019
 Trial Date: None Set

15 MARY E. SHERMAN, an individual;
 MARY E. SHERMAN, as manager of
 16 Silver Strand Plaza, LLC; SILVER
 STRAND PLAZA, LLC, a California
 17 limited liability company; MARY E.
 SHERMAN as CO-TRUSTEE OF THE
 18 J & M SHERMAN FAMILY TRUST, a
 California revocable trust; JEFFREY
 19 M. SHERMAN as CO-TRUSTEE OF
 THE J & M SHERMAN FAMILY
 20 TRUST; MARY E. SHERMAN as
 TRUSTEE OF THE ALEXA
 21 SHERMAN IRREVOCABLE TRUST,
 a California irrevocable trust; MARY E.
 22 SHERMAN as TRUSTEE OF THE
 DANA SHERMAN IRREVOCABLE
 23 TRUST, a California irrevocable trust;
 MARY E. SHERMAN as TRUSTEE
 24 OF THE JENNA SHERMAN
 IRREVOCABLE TRUST, a California
 25 irrevocable trust; MARY E.
 SHERMAN as TRUSTEE OF THE
 26 BROXTON DENNIS IRREVOCABLE
 TRUST, a California irrevocable trust;
 27 MARY E. SHERMAN as TRUSTEE
 OF THE CURT DENNIS
 28 IRREVOCABLE TRUST, a California

1 irrevocable trust; MARY E.
 2 SHERMAN as TRUSTEE OF THE
 3 SEAN LYNN IRREVOCABLE
 4 TRUST, a California irrevocable trust;
 5 MARY E. SHERMAN as TRUSTEE
 6 OF THE BRANDEN LYNN
 7 IRREVOCABLE TRUST, a California
 8 irrevocable trust; LINDA R. KRAMER,
 9 an individual; LINDA R. KRAMER, as
 10 CO-TRUSTEE OF THE LYNN AND
 11 ERIK'S TRUST; ERIK VON
 12 PRESSINTIN HUNSAKER as CO-
 13 TRUSTEE OF THE LYNN AND
 14 ERIK'S TRUST; DIANE G. DENNIS,
 15 an individual; ELLIS ROY STERN,
 16 ESQ., an individual; ALAN N.
 17 GOLDBERG, ESQ., an individual;
 18 STERN & GOLDBERG, a California
 19 Partnership; PATRICK C.
 20 MCGARRIGLE, ESQ. an individual;
 21 MCGARRIGLE, KENNEY &
 22 ZAMPIELLO, A PROFESSIONAL
 23 LAW CORPORATION, a California
 24 corporation; DOES 1-99

25 Defendants.

26 I, Ellis Stern, declare and say as follows:

27 1. I am an attorney duly authorized to practice law in the State of
 28 California and am a partner in the law firm of Stern & Goldberg. I know all of the
 facts set forth herein of my own personal knowledge and if called upon as a witness
 could and would competently testify thereto.

2. On December 18, 2013, Mary Sherman ("Sherman" herein), in her
 capacity as the Manager of Silver Strand Plaza, LLC ("Silver Strand" herein),
 entered into an Attorney Fee Agreement with Stern & Goldberg. Stern & Goldberg
 was retained by the Manager of Silver Strand Plaza, LLC in connection with the
 operation and conduct of the business of Silver Strand Plaza, LLC, in particular, any
 issues which arose concerning Laura Lynn Hammett. I continued to provide
 representation until March 2018, when Stern & Goldberg issued its last billing
 statement. My partner, Alan N. Goldberg, was not involved in the representation of

1 Mrs. Sherman. I had previously represented Sandra Kramer, the mother of Ms.
2 Hammett, for her estate planning needs.

3 3. On or about May 7, 2018, I was informed by Mrs. Sherman by email
4 that Ms. Hammett had filed an action against Mrs. Sherman and Silver Strand in the
5 United States District Court for the Central District of California. Mrs. Sherman
6 advised me that she would be hiring another attorney, Patrick McGarrigle, to
7 represent herself and Silver Strand in that matter. I am informed that the action was
8 voluntarily dismissed by Ms. Hammett on May 18, 2018.

9 4. Neither I nor Stern & Goldberg have ever represented Ms. Hammett in
10 any capacity. Ms. Hammett has never been our client and we have never had any
11 sort of attorney-client relationship.

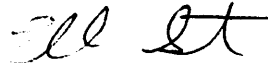
12 5. On or about July 1, 2015, I was advised by attorney Michael Early that
13 he represented Ms. Hammett. We continued to have numerous correspondence and
14 a number of communications over the next few years, regarding on behalf of Ms.
15 Hammett and me on behalf of Mrs. Sherman and Silver Strand Plaza, LLC. I was
16 not informed that he had ceased his representation of Ms. Hammett until I was
17 served with the First Amended Complaint in this action, which was filed on May 29,
18 2019, and on which Ms. Hammett stated she was in pro se.

19 6. In connection with my representation in the underlying matter, I
20 obtained attorney-client privileged information from the Manager of Silver Strand
21 Plaza, LLC in connection with the operation and conduct of the business of Silver
22 Strand Plaza, LLC, and in particular, issues which arose concerning Laura Lynn
23 Hammett and her allegations against regarding Silver Strand Plaza, LLC. I have
24 been informed in writing by Mrs. Sherman that neither Mrs. Sherman as Manager of
25 Silver Strand, LLC, nor Silver Strand, LLC will waive any attorney-client privilege
26 in regard to communications made during that representation.

27 7. Attached hereto as Exhibit "1" is a correct and true copy of the
28 Operating Agreement for Silver Strand Plaza, LLC, obtained through the Manager

1 during my representation. It is referred to in paragraph 17 of the First Amended
2 Complaint.

3 I declare under penalty of perjury under the laws of the State of California
4 that the foregoing is true and correct, and that this declaration is executed on July
5 29, 2019, at Encino, California.

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8 Ellis Stern
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EXHIBIT “1”

TABLE OF CONTENTS TO EXHIBITS: DECLARATION OF ELLIS STERN

Exhibit "1": Amended and Restated Operating Agreement of Silver Strand Plaza, LLC 26
pages.

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."

(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.

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

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:

(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;

(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).

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

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;

- (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.

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

"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

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

- (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, arbitrative or investigative, and whether formal or informal (a "Proceeding"), including a Proceeding brought on behalf of the Members of the Company,

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.

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.

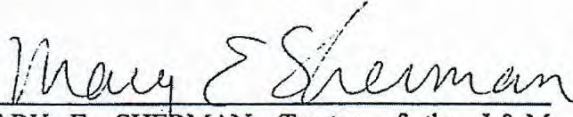
10.10. No Third Party Beneficiaries. No provision in this Agreement shall affect the Members' and Assignors' insulation from personal liability for Company debts that is provided

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

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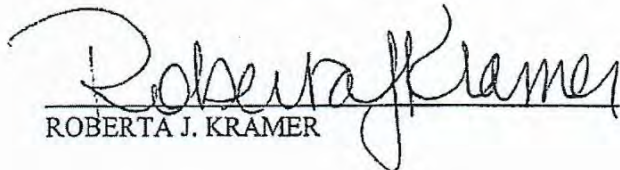
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Diane G. Dennis
DIANE G. DENNIS

LAURA J. LYNN

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[Signature Pages Continue]

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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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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

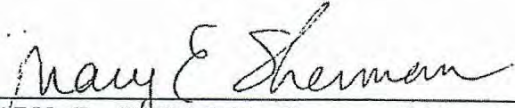
DIANE G. DENNIS

LAURA J. LYNN

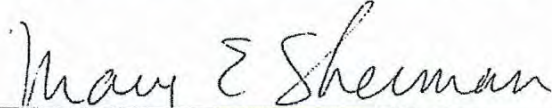


LINDA R. KRAMER

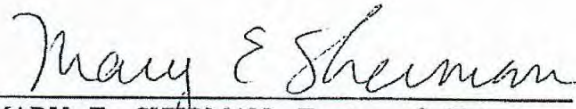
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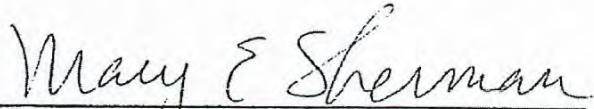
MARY E. SHERMAN, Trustee of The Alexa
Sherman Irrevocable Trust dated September 7, 2001



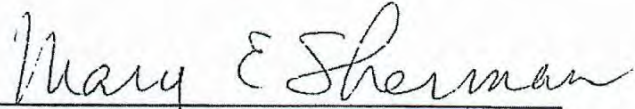
MARY E. SHERMAN, Trustee of The Dana Sherman
Irrevocable Trust dated September 7, 2001



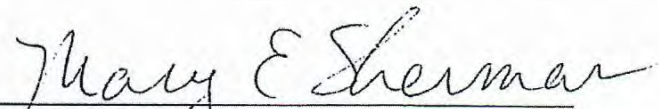
MARY E. SHERMAN, Trustee of The Jenna
Sherman Irrevocable Trust dated September 7, 2001



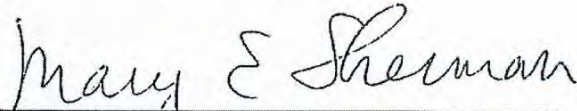
MARY E. SHERMAN, Trustee of The Broxton
Dennis Irrevocable Trust dated September 7, 2001



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

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LEWIS BRISBOIS BISGAARD & SMITH LLP
 KENNETH C. FELDMAN, SB#130699
 TIM J. VANDEN HEUVEL, SB# 140731
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Attorneys for Defendants Ellis Stern,
 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-LL

**DECLARATION OF ALAN N.
 GOLDBERG IN SUPPORT OF
 SPECIAL MOTION TO STRIKE
 FIRST AMENDED COMPLAINT**

Hearing Date: September 26, 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
ERIK'S TRUST; DIANE G. DENNIS,
an individual; 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.

1 I, Alan N. Goldberg, declare and say as follows:

2 1. I am an attorney duly authorized to practice law in the State of
3 California and am a partner in the law firm of Stern & Goldberg, a California
4 partnership ("Stern & Goldberg" herein). I know all of the facts set forth herein of
5 my own personal knowledge and if called upon as a witness could and would
6 competently testify thereto.

7 2. Neither I nor Stern & Goldberg have ever represented Plaintiff Laura
8 Lynn Hammett in any capacity, she has never been our client, and we have never
9 had any sort of attorney-client relationship. In fact, I have never met Plaintiff
10 Hammett, I have never spoken to her, and heard her name for the first time in the
11 context of this action.

12 I declare under penalty of perjury under the laws of the State of California
13 that the foregoing is true and correct, and that this declaration is executed on July
14 30, 2019, at Encino, California.

15
16 
17 Alan Goldberg

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
 KENNETH C. FELDMAN, SB# 130699
 2 TIM J. VANDEN HEUVEL, SB# 140731
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5 Attorneys for Defendants ELLIS STERN,
 6 ALAN N. GOLDBERG, AND STERN &
 GOLDBERG
 7
 8

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA
 11

12 LAURA LYNN HAMMETT, an
 individual,

13 Plaintiff,

14 vs.
 15

16 MARY E. SHERMAN, an individual;
 MARY E. SHERMAN, as manager of
 Silver Strand Plaza, LLC; SILVER
 17 STRAND PLAZA, LLC, a California
 limited liability company; MARY E.
 18 SHERMAN as CO-TRUSTEE OF THE
 J & M SHERMAN FAMILY TRUST, a
 19 California revocable trust; JEFFREY
 M. SHERMAN as CO-TRUSTEE OF
 20 THE J & M SHERMAN FAMILY
 TRUST; MARY E. SHERMAN as
 21 TRUSTEE OF THE ALEXA
 SHERMAN IRREVOCABLE TRUST,
 22 a California irrevocable trust; MARY E.
 SHERMAN as TRUSTEE OF THE
 23 DANA SHERMAN IRREVOCABLE
 TRUST, a California irrevocable trust;
 24 MARY E. SHERMAN as TRUSTEE
 OF THE JENNA SHERMAN
 25 IRREVOCABLE TRUST, a California
 irrevocable trust; MARY E.
 26 SHERMAN as TRUSTEE OF THE
 BROXTON DENNIS IRREVOCABLE
 27 TRUST, a California irrevocable trust;
 MARY E. SHERMAN as TRUSTEE
 28 OF THE CURT DENNIS

CASE NO. 19-CV-0605-JLS-LL

**DEFENDANTS ELLIS STERN,
 ALAN N. GOLDBERG, AND
 STERN & GOLDBERG'S
 REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF
 SPECIAL MOTION TO STRIKE
 FIRST AMENDED COMPLAINT
 PURSUANT TO C.C.P. § 425.16; OR
 IN THE ALTERNATIVE TO
 DISMISS PURSUANT TO
 FEDERAL RULE CIVIL
 PROCEDURE 12(B)(6)**

Hearing Date: September 26, 2019
 Time: 1:30 p.m.
 Courtroom: 4D

Action Filed: April 2, 2019
 Trial Date: None Set

1 IRREVOCABLE TRUST, a California
 2 irrevocable trust; MARY E.
 3 SHERMAN as TRUSTEE OF THE
 4 SEAN LYNN IRREVOCABLE
 5 TRUST, a California irrevocable trust;
 6 MARY E. SHERMAN as TRUSTEE
 7 OF THE BRANDEN LYNN
 8 IRREVOCABLE TRUST, a California
 9 irrevocable trust; LINDA R. KRAMER,
 10 an individual; LINDA R. KRAMER, as
 11 CO-TRUSTEE OF THE LYNN AND
 12 ERIK'S TRUST; ERIK VON
 13 PRESSINTIN HUNSAKER as CO-
 14 TRUSTEE OF THE LYNN AND
 15 ERIK'S TRUST; DIANE G. DENNIS,
 16 an individual; ELLIS ROY STERN,
 17 ESQ., an individual; ALAN N.
 18 GOLDBERG, ESQ., an individual;
 19 STERN & GOLDBERG, a California
 20 Partnership; PATRICK C.
 21 MCGARRIGLE, ESQ. an individual;
 22 MCGARRIGLE, KENNEY &
 23 ZAMPIELLO, A PROFESSIONAL
 24 LAW CORPORATION, a California
 25 corporation; DOES 1-99

Defendants.

16 Pursuant to Federal Rule of Evidence 201 and thee ruling in *In re Silicon*
 17 *Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999), defendants ELLIS ROY
 18 STERN, ESQ., ALAN N. GOLDBERG, ESQ., and STERN & GOLDBERG, a
 19 California Partnership hereby request Judicial Notice of the following adjudicative
 20 facts in support of their Special Motion To Strike First Amended Complaint pursuant
 21 to C.C.P. § 425.16.

22 1. Complaint in United States District Court for the Central District of
 23 California, entitled *Lynn v. Sherman*, et al., Case No. 2:18-cv-03757-FMO-JPR. A
 24 correct and true copy of that Complaint is attached hereto as Exhibit "1."

25 2. Dismissal of case in *Lynn v. Sherman*, et al., Case No. 2:18-cv-03757-
 26 FMO-JPR. A correct and true copy of that Complaint is attached hereto as Exhibit
 27 "2."

28 3. The Complaint in this matter, dated April 2, 2019.

1 4. The First Amended Complaint in this matter, filed May 29, 2019.

2 5. The Operating Agreement of Silver Strand Plaza, LLC, whose contents
3 are alleged in the First Amended Complaint, but which are not physically attached to
4 the plaintiff's pleading. *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th
5 Cir. 1999). The Operating Agreement of Silver Strand Plaza, LLC, is referred to in
6 paragraph 17 of the First Amended Complaint. A correct and true copy of that
7 Operating Agreement is attached hereto as Exhibit "3," and authenticated in the
8 Declaration of Ellis Stern ¶ 7.

9
10 DATED: July 30, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12
13 By: /s/ Tim J. Vanden Heuvel

Tim J. Vanden Heuvel

14 Attorneys for Defendants Ellis Stern, Alan
15 N. Goldberg, and Stern & Goldberg
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TABLE OF CONTENTS TO EXHIBITS: REQUEST FOR JUDICIAL NOTICE

Exhibit “1”: Complaint in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 10 pages.

Exhibit “2”: Notice of Voluntary Dismissal Without Prejudice [FRCP, Rule 41 (a)(1)] in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 2 pages.

Exhibit “3”: Amended and Restated Operating Agreement of Silver Strand Plaza, LLC 26 pages.

EXHIBIT “1”

Case 2:18-cv-03757-FMO-JPR Document 6 Filed 05/07/18 Page 1 of 2 Page ID #:17

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Central District of California

LAURA LYNN

Plaintiff(s)

v.

MARY E. SHERMAN, an individual; and SILVER
STRAND PLAZA, LLC, a California limited liability
company

Defendant(s)

Civil Action No. 2:18-cv-03757 FMO (JPRx)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MARY E. SHERMAN, an individual
24178 Park Riviera
Calabasas CA 91302
and,
SILVER STRAND PLAZA, LLC, a California limited liability company
24178 Park Riviera
Calabasas CA 91302

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

MICHAEL D. EARLY | Klein, Hockel, Iezza & Patel
455 Market Street, Suite 1480
San Francisco, CA 94105
(415) 951-0535

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 7, 2018


Signature of Clerk or Deputy Clerk

Case 2:18-cv-03757-FMO-JPR Document 6 Filed 05/07/18 Page 2 of 2 Page ID #:18

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (f))

This summons for *(name of individual and title, if any)*
was received by me on *(date)* _____

- ☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or
- ☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or
- ☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or
- ☐ I returned the summons unexecuted because _____; or
- ☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Case 2:18-cv-03757 Document 1 Filed 05/04/18 Page 1 of 8 Page ID #:1

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 MELIS ATALAY (SBN 301373)
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Attorneys for Plaintiff
 Laura Lynn

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAURA LYNN, an individual,	) Case No.:
)
Plaintiff,	) COMPLAINT FOR BREACH OF
	) FIDUCIARY DUTY, CONVERSION AND
vs.	) AN ACCOUNTING
)
MARY E. SHERMAN, an individual; and	) JURY TRIAL DEMAND
SILVER STRAND PLAZA, LLC, a California))
limited liability company,)
)
Defendants.)
)

Plaintiff Laura Lynn alleges as follows:

The Parties

- Defendant Silver Strand Plaza, LLC ("SSP") is a California limited liability company whose principal asset was a multi-tenant shopping center in Imperial Beach, California. Defendant SSP's principal place of business is in Calabasas, California.
- Defendant Mary E. Sherman is an individual residing in Los Angeles County, California, and is and was the Manager of Defendant SSP.

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

Case 2:18-cv-03757 Document 1 Filed 05/04/18 Page 2 of 8 Page ID #:2

1 3. Plaintiff Laura Lynn is an individual residing in Arkansas, and was at all times
2 relevant herein a member of Defendant SSP, holding a 14.1571% interest therein.

3 **Jurisdiction, Venue and Jury Trial Demand**

4 4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, because this is a
5 civil action in which Plaintiff is a citizen of and residing in Arkansas and Defendants Sherman
6 and SSP are, respectively, a California citizen/resident and a California limited liability company
7 headquartered in California, and the amount in controversy exceeds \$75,000 exclusive of interest
8 and costs.

9 5. Venue is proper in the Central District of California pursuant to U.S.C. § 1391
10 because Defendant SSP is a limited liability company whose principal place of business is in the
11 Central District and because Defendant Sherman resides in the Central District.

12 6. Plaintiff hereby demands trial by jury (Rule 38, FRCP).

13 **General Allegations**

14 7. Since at least 2010, Plaintiff has had an interest of 14.1571% in SSP. Plaintiff
15 received distributions from SSP annually based on its net operating income.

16 8. By 2015, Plaintiff began to have concerns regarding the amounts of the
17 distributions, among other things, and requested that Defendant Sherman consider a purchase by
18 SSP of Plaintiff's interest.

19 9. Defendant Sherman responded through her attorney, Ellis Stern, with an offer on
20 June 15, 2015, of \$218,000 for Plaintiff's share of SSP. Plaintiff rejected the offer. Not long
21 thereafter, Defendant Sherman recommended selling the shopping center that was the sole asset
22 of SSP, and the members accepted that recommendation. In October 2016, only 16 months after
23 Defendant Sherman's offer to Plaintiff of \$218,000 for her interest in SSP, the shopping center
24 went into escrow at a purchase price that valued Plaintiff's interest at nearly \$1.5 million; as
25 detailed below, escrow closed and the shopping center was subsequently sold in January 2017.

26 10. As Manager of SSP, Defendant Sherman handled all aspects of the sale of the
27 shopping center; other than obtaining the approval of the other members of SSP to the sale
28 pursuant to SSP's Operating Agreement, Defendant Sherman controlled all aspects of marketing

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1 and selling the property, as well as the distribution of the proceeds thereof to SSP's members,
2 including Plaintiff.

3 11. On December 20, 2016, Defendant Sherman informed Plaintiff and the other
4 members of SSP that the sale of the shopping center was set to close on January 10, 2017.

5 12. On January 1, 2017, Plaintiff e-mailed wire instructions to Defendant Sherman so
6 that she could receive her funds from the sale by wire transfer. Defendant Sherman confirmed
7 receipt of Plaintiff's e-mail that same day. In an e-mail on January 31, 2017, Defendant Sherman
8 denied having received wire instructions from Plaintiff.

9 13. The closing on the shopping center finally occurred on January 26, 2017. While
10 promising to disburse funds "as quickly as possible," Defendant Sherman took actions which
11 were intended to, and which did delay disbursement of funds to Plaintiff alone.

12 14. First, as noted previously, 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 instructions from
14 Plaintiff.

15 15. Second, Defendant Sherman delayed informing Plaintiff until January 31, 2017
16 that the state of California had denied Plaintiff a waiver from the requirement that, according to
17 Defendant Sherman, SSP "withhold 7% of all distributions to non-California residents."

18 16. Third, Defendant Sherman ultimately withheld 7% of Plaintiff's entire
19 distribution, rather than 7% of the amount in excess of her tax basis.

20 17. Fourth, in an e-mail on February 2, 2017, Defendant Sherman falsely asserted that
21 Plaintiff had "move[d] out of state without notifying SSP LLC until much later" and thereby "put
22 our LLC at risk," when in fact Plaintiff's 2015 K-1 (prepared by SSP's accountants) clearly
23 indicated that Plaintiff was an out of state resident.

24 18. Fifth, in that same February 2, 2017 e-mail, Defendant Sherman used the excuse
25 of the time spend communicating on the withhold issue as the reason she could not wire
26 Plaintiff's distribution to her, even though other members were being paid, and even though
27 Defendant Sherman's e-mail claiming that she "will not have time today to go to the bank" was
28 sent at 10:45 a.m. When Plaintiff responded only an hour later that Defendant Sherman had a

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

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1 fiduciary obligation to wire the amount of her distribution less whatever amount Defendant
2 Sherman believed had to be withheld for California taxes, Defendant Sherman responded
3 through her attorney Ellis Stern and asserted for the first time that, in addition to California taxes,
4 Defendant Sherman was required to withhold the amount of a Child Support Division lien
5 against other property unrelated to SSP, and that determining the amount of the lien would
6 further delay payment to Plaintiff of her distribution. Defendant Sherman and her attorney had
7 been aware of the Child Support Division lien against other property for over a year, and had
8 never previously indicated that money would have to be withheld to pay that lien. With this
9 excuse, Defendant Sherman delayed wiring any of Plaintiff's distribution (even the amount that
10 was undisputed) until February 6, 2017.

11 19. However, in breach of her fiduciary duty to Plaintiff, Defendant Sherman
12 improperly withheld and converted \$50,000 from Plaintiff's distribution wired on February 6,
13 2017. The stated reason: the funds were held as a litigation fund that Defendant Sherman could
14 use if Plaintiff litigated to obtain the funds! Through her attorney, Defendant Sherman not only
15 defended this unlawful conversion and breach of fiduciary duty, he informed Plaintiff that the
16 funds would not be released until Plaintiff released any of her claims against Defendant Sherman
17 for breach of fiduciary duty: "Perhaps we can discuss a method to protect the Manager
18 [Defendant Sherman] in connection with release of the reserved funds. Otherwise, they will be
19 withheld to cover the litigation expense or for the period of time until the statute of limitations
20 has run its course."

21 20. Defendant Sherman's attorney reiterated this effort to extort a release from
22 Plaintiff in a second e-mail on February 9, 2017, in which he wrote: "The \$50,000.00 will be
23 released promptly upon your furnishing to me a signed General Release by your client, releasing
24 Mary Sherman from all claims in her capacity as Manager of the LLC." Plaintiff did not respond
25 to this blatant effort to extort a release from her. Realizing that she was only compounding her
26 breach of fiduciary duty, Defendant Sherman released the \$50,000 by wiring the funds to
27 Plaintiff on February 10, 2017. However, Defendant Sherman still withheld over \$100,000 in an
28

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

4

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1 SSP account as a litigation fund so that she could fund the defense of her breach of fiduciary
2 duty at the expense of Plaintiff and the other members of SSP.

3 21. Plaintiff had had concerns about the sale of SSP even before Defendant
4 Sherman's mishandling of Plaintiff's distribution. In August 2016, Plaintiff informed Defendant
5 Sherman by e-mail that the numbers for SSP's net operating income (hereafter, "NOI") did not
6 look right. They were not only not corrected, but the NOI numbers subsequently used to solicit
7 offers for the SSP shopping center showed a NOI for 2016 that was significantly higher than the
8 NOI reported to Plaintiff on her 2016 K-1.

9 22. When Plaintiff pressed for an explanation for the difference in NOI after the sale,
10 Defendant Sherman's attorney Ellis Stern responded, in pertinent part, as follows: "The numbers
11 of the package were developed by the broker as part of his sales effort to maximize the sales
12 price of the property, since the sales price is proportional to the net operating income. Our
13 broker added back certain expenses to obtain a higher net operating income, and he reviewed
14 these add backs with the buyer."

15 23. When Plaintiff then asked for 1) evidence that would verify Mr. Stern's statement
16 and 2) a brief description of the "certain expenses" that were added back "to obtain a higher net
17 operating income," Mr. Stern forwarded an e-mail from Defendant Sherman in which she stated
18 that the buyer of the SSP property received the same financials that were used to prepare SSP tax
19 documents and that: "the Buyer bought the building based on these numbers (with certain add
20 backs, such as all management fees, earthquake insurance, and other costs that they deemed
21 irrelevant since they would not be paying those costs once they owned the building)." No further
22 explanation was provided.

23 24. When Plaintiff inquired further of Defendant Sherman, her attorney further
24 muddled the waters by responding that: "There apparently were certain non-recurring expenses
25 that formed the basis for the financial statements presented to the buyer, which, as [Defendant
26 Sherman] indicates, were fully identified and explained to the buyer." Stern's "explanation" of
27 Sherman's e-mail requires that yearly management fees and earthquake insurance are "non-
28 recurring expenses."

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

5

First Cause of Action for Breach of Fiduciary Duty

(Against Defendant Sherman)

25. Plaintiff incorporates by reference paragraphs 1 – 23 above as though fully set forth herein.

26. Defendant Sherman owed Plaintiff a fiduciary duty as a result of her position as Manager of SSP under an Operating Agreement that gave her “sole authority to manage [SSP]” and “to make any contracts [or] enter into any transactions...to conduct or further [SSP’s] business.”

27. As outlined above, Defendant Sherman breached that duty to Plaintiff by creating ever-changing reasons to delay disbursement to Plaintiff of 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 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 (while at the same time withholding over \$100,000 from all members in a separate defense fund), and demanding a general release as a condition to release of those funds, as described in Paragraphs 11 through 19, above.

28. Plaintiff is informed and believes and thereon alleges that Defendant Sherman has breached her fiduciary duty to Plaintiff by misstating the net operating income of SSP as described in Paragraphs 20 through 23, above.

29. Finally, Plaintiff is informed and believes and thereon alleges that Defendant Sherman has breached her fiduciary duty to Plaintiff by causing SSP to make loans interest-free or at below market interest to Defendant Sherman and/or to trusts in which she or her spouse have an interest.

30. As a proximate result of Defendant Sherman’s wrongful conduct as alleged herein, Plaintiff has sustained damages in an amount in excess of \$75,000, exclusive of attorney’s fees and costs.

Case 2:18-cv-03757 Document 1 Filed 05/04/18 Page 7 of 8 Page ID #:7

31. Furthermore, in doing the acts described in Paragraphs 11 through 19, above, Defendant Sherman 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.

Wherefore, Plaintiff prays for relief as is hereinafter set forth.

Second Cause of Action for Conversion

(Against Defendant Sherman)

32. Plaintiff incorporates by reference paragraphs 1 – 19 hereof as though set forth in full here.

33. Defendant Sherman's actions, as described in Paragraphs 11 through 19 above, in refusing to disburse any funds to Plaintiff even though over \$1 million was undisputedly owed above any tax obligations or liens, withholding and converting \$50,000 of Plaintiff's distribution to use as Defendant Sherman's defense fund in the event Plaintiff sued Defendant Sherman to obtain that \$50,000, and demanding a general release as a condition to release of those funds, constituted conversion of a specific, segregated sum of money.

34. As a proximate result of Defendant Sherman's wrongful conduct as alleged herein, Plaintiff sustained damages in an amount to be proven at trial.

35. Furthermore, in doing the acts described in Paragraphs 11 through 19, above, Defendant Sherman 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.

Wherefore, Plaintiff prays for relief as is hereinafter set forth.

Third Cause of Action for an Accounting

(Against all Defendants)

36. Plaintiff realleges and incorporates herein by reference the allegations in paragraphs 1 through 34 above as though fully set forth herein.

37. At all relevant times herein, Defendant Sherman owed Plaintiff and other members of SSP a fiduciary duty as Manager of SSP.

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

Case 2:18-cv-03757 Document 1 Filed 05/04/18 Page 8 of 8 Page ID #:8

1 38. Based on the conduct of Defendant Sherman and her agents as described in
2 Paragraphs 20 through 23 above, an accounting of SSP records is necessary for the period from
3 2014 to the present to establish if net operating income of SSP was understated in those years
4 prior to the sale of the shopping center, and to determine what amounts were improperly
5 withheld from Plaintiff and other members of SSP as a result of such understatement.

6 39. Accordingly, Plaintiff is entitled to and does hereby seek an accounting to
7 determine what amounts are owed to her and other members of SSP.

8 Wherefore, Plaintiff prays for relief as follows:

9 **On the First and Second Causes of Action against Defendant Sherman:**

- 10 1. For general damages in an amount in excess of \$75,000, exclusive of interest and
11 costs;
12 2. For punitive damages;
13 3. For costs; and
14 4. For such other relief as the Court deems appropriate.

15 **On the Third Cause of Action against all Defendants:**

- 16 1. For an accounting of the finances of SSP for the years 2014 to the present;
17 2. For costs; and
18 3. For such other relief as the Court deems appropriate.

19
20 DATED: May 3, 2018

KLEIN, HOCKEL, IEZZA & PATEL P.C.

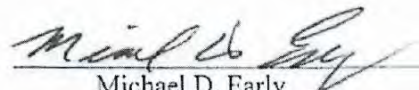
21
22 
23 Michael D. Early
24 Attorneys for Plaintiff Laura Lynn
25
26
27
28

TABLE OF CONTENTS TO EXHIBITS: REQUEST FOR JUDICIAL NOTICE

Exhibit “1”: Complaint in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 10 pages.

Exhibit “2”: Notice of Voluntary Dismissal Without Prejudice [FRCP, Rule 41 (a)(1)] in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 2 pages.

Exhibit “3”: Amended and Restated Operating Agreement of Silver Strand Plaza, LLC 26 pages.

EXHIBIT “2”

Case 2:18-cv-03757-FMO-JPR Document 11 Filed 05/18/18 Page 1 of 2 Page ID #:22

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Attorneys for Plaintiff
 Laura Lynn

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAURA LYNN, an individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual; and
 SILVER STRAND PLAZA, LLC, a California
 limited liability company,

Defendants.

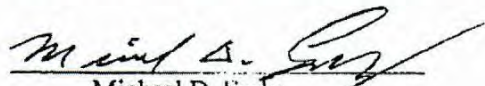
) Case No.: 2:18-cv-03757-FMO-JPR

) **NOTICE OF VOLUNTARY DISMISSAL**
) **WITHOUT PREJUDICE**
) [FRCP, Rule 41 (a)(1)]

Pursuant to Federal Rules of Civil Procedure, Rule 41 (a)(1)(A)(i),
 Plaintiff Laura Lynn hereby voluntarily dismisses the above-entitled
 action in its entirety against all defendants, without prejudice.

DATED: May 18, 2018

KLEIN, HOCKEL, IEZZA & PATEL P.C.


 Michael D. Early
 Attorneys for Plaintiff Laura Lynn

VOLUNTARY DISMISSAL [FRCP, Rule 41(a)(1)]

PROOF OF SERVICE

Laura Lynn v. Mary E. Sherman and Silver Strand Plaza, LLC
USDC, Central District of California Case No.: 2:18-cv-03757-FMO-JPR

I, EZRA M. DENMAN, declare:

I work in the City and County of San Francisco, State of California. My business address is 455 Market Street, Suite 1480, San Francisco, California 94105. I am over the age of 18 years and not a party to the foregoing action.

On *May 18, 2018* I served the following Document: ***NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE***, on the interested parties in said action,

Mary E. Sherman
 24178 Park Riviera
 Calabasas, CA 91302
Defendant

Silver Strand Plaza, LLC
 24178 Park Riviera
 Calabasas, CA 91302
Defendant


 x (by mail) by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above. At Klein, Hockel, Iezza & Patel P.C., mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of San Francisco, California.

— (by personal delivery) by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth above.

— (by Federal Express) by depositing a true copy thereof in a sealed packet for overnight delivery, with charges thereon fully prepaid, in a Federal Express collection box, at San Francisco, California, and addressed as set forth above.

— (by electronic transmission) by electronically mailing a true and correct copy through Klein, Hockel, Iezza & Patel PC's electronic mail system to the email address(es) per the agreement of the parties.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct and that this declaration was executed on *May 18, 2018* at San Francisco, California.


 EZRA M. DENMAN

PROOF OF SERVICE

TABLE OF CONTENTS TO EXHIBITS: REQUEST FOR JUDICIAL NOTICE

Exhibit “1”: Complaint in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 10 pages.

Exhibit “2”: Notice of Voluntary Dismissal Without Prejudice [FRCP, Rule 41 (a)(1)] in *Laura Lynn v Mary E. Sherman and Silver Strand Plaza, LLC*, United States District Court for the Central District of California 2:18-cv-03757 FMO (JPRx) 2 pages.

Exhibit “3”: Amended and Restated Operating Agreement of Silver Strand Plaza, LLC 26 pages.

EXHIBIT “3”

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."

(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.

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

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:

(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;

(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).

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

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;

- (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.

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

"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

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

- (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,

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.

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.

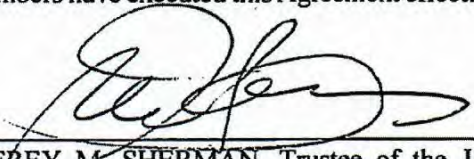
10.9. Power of Attorney. Each Member hereby constitutes and appoints the Manager (and each of them if there is more than one) such Person's true and lawful attorney-in-fact in such Person's name, place and stead, to execute, acknowledge and deliver or file any certificate required by law to be filed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

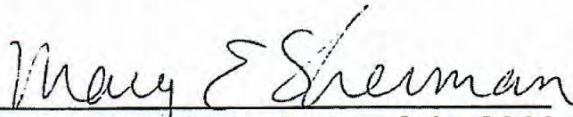
10.10. No Third Party Beneficiaries. No provision in this Agreement shall affect the Members' and Assignors' insulation from personal liability for Company debts that is provided

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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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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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

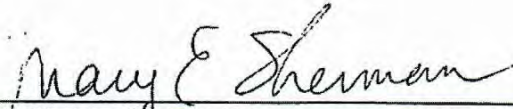
DIANE G. DENNIS

LAURA J. LYNN

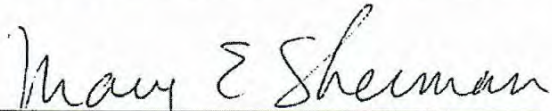


LINDA R. KRAMER

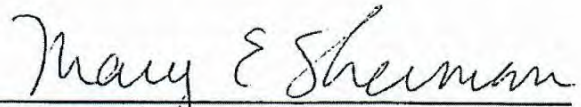
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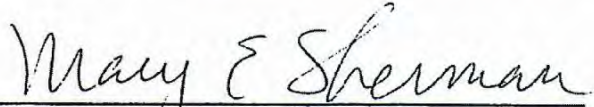
MARY E. SHERMAN, Trustee of The Alexa
Sherman Irrevocable Trust dated September 7, 2001



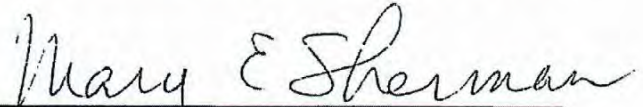
MARY E. SHERMAN, Trustee of The Dana Sherman
Irrevocable Trust dated September 7, 2001



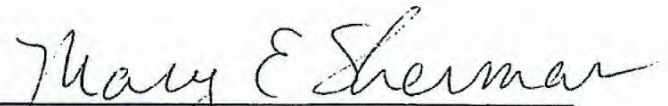
MARY E. SHERMAN, Trustee of The Jenna
Sherman Irrevocable Trust dated September 7, 2001



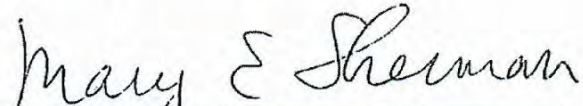
MARY E. SHERMAN, Trustee of The Broxton
Dennis Irrevocable Trust dated September 7, 2001



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 A**MEMBER 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

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KLINEDINST PC
501 WEST BROADWAY, SUITE 600
SAN DIEGO, CALIFORNIA 92101

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Daniel S. Agle, Bar No. 251090
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Attorneys for Defendants PATRICK C.
McGARRIGLE, ESQ. and
McGARRIGLE, KENNEY &
ZAMPIELLO, A Professional Law
Corporation

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-LL

**NOTICE OF MOTION AND
SPECIAL MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT;**

AND, ALTERNATIVELY,

**NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

**[Cal. Code Civ. Proc. § 425.16; Fed.
R. Civ. Proc., R. 12(b)(6)]**

Judge: Hon. Janis Lynn Sammartino
Date: September 26, 2019
Time: 1:30 p.m.
Crtrm.: 4D

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on September 26, 2019, at 1:30 p.m., or
as soon afterwards as the matter may be heard, in Courtroom 4D of the United
States District Court for the Southern District of California located at 221 West
Broadway, Suite 4194, San Diego, California 92101, Defendants PATRICK C.

McGARRIGLE, ESQ. and McGARRIGLE, KENNEY & ZAMPIELLO, A Professional Law Corporation (collectively “McGarrigle”) will and hereby do move this Court: (1) for an order striking the First Amended Complaint (“FAC”) (Document 3) filed by Plaintiff LAURA LYNN HAMMETT (“Plaintiff”), pursuant to California Code of Civil Procedure section 425.16; and, alternatively, (2) for and order dismissing the FAC, pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6). The motions are filed under one notice of motion and one memorandum in support, consistent with the limitations set forth in Local Rule 7.1.h.

(1) Special Motion to Strike – Anti-SLAPP

The special motion to strike is made and based on the grounds that each claim asserted by Plaintiff against McGarrigle in the FAC arises from acts in furtherance of the right to petition, protected under the United States Constitution and the California Constitution. (Cal. Code Civ. Proc. § 425.16(b)(1).) Plaintiff’s claims are, therefore, subject to a special motion to strike under California Code of Civil Procedure section 425.16(b)(1). (*See U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 972-73 (9th Cir. 1999).) This motion is made on the further grounds that Plaintiff cannot establish a probability of prevailing on any of the theories and claims alleged against McGarrigle within the FAC (Cal. Code Civ. Proc. § 425.16(b)(1)) for the following reasons:

(a) The FAC and each claim alleged against McGarrigle is barred by the litigation privilege codified by California Civil Code section 47(b);

(b) The FAC and each claim alleged against McGarrigle is barred by public policy and by applicable law as expressed in *McDermott, Will & Emery v. Superior Court*, 83 Cal. App. 4th 378 (2000) and *Solin v. O’Melveny & Meyers*, 89 Cal. App. 4th 451 (2001), which bars litigation where attorney defendants such as McGarrigle are ethically hindered by the attorney-client privilege from mounting a meaningful, substantive defense to Plaintiffs’ factual allegations; and

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SAN DIEGO, CALIFORNIA 92101

(c) Plaintiff's conversion claim fails as a matter of law because Plaintiff did not have title to, or possession of, the property transferred to McGarrigle, and the party to whom the property belonged actually consented to the transfer to McGarrigle.

McGarrigle further requests that, in addition to striking Plaintiff's FAC, with prejudice, that the Court's order provide that McGarrigle, as the moving defendant prevailing on the motion, is entitled to recover its attorneys' fees and costs. Such attorneys' fees and costs sought by McGarrigle include the attorneys' fees and costs incurred in connection with McGarrigle's present motion to strike the First Amended Complaint. Such attorneys' fees and costs will be determined by separate motion for attorneys' fees and/or by cost memorandum, to be heard and considered by the Court at the appropriate time. (Cal. Code Civ. Proc. § 425.16(c)(1).)

This motion to strike is based on this Notice of Motion and Motion, the accompanying Combined Memorandum of Points and Authorities, the Declaration of Patrick C. McGarrigle, the Request for Judicial Notice with the Exhibit attached thereto, the Notice of Lodgment with all Exhibits filed concurrently herewith, the pleadings and papers filed herein, and any oral argument presented at the time of hearing, should the court desire oral argument.

(2) Motion to Dismiss – 12(b)(6)

The motion to dismiss is based upon Federal Rule of Civil Procedure 12(b)(6) on the following grounds:

(a) The FAC and each claim alleged against McGarrigle fails to state a claim upon which relief can be granted because each claim is barred by the litigation privilege codified by California Civil Code section 47(b);

(b) The FAC and each claim alleged against McGarrigle fails to state a claim upon which relief can be granted because each claim is barred by public policy and by applicable law as expressed in *McDermott, Will & Emery v. Superior*

1 *Court*, 83 Cal. App. 4th 378 (2000) and *Solin v. O'Melveny & Meyers*, 89 Cal. App.
 2 4th 451 (2001), which bars litigation where attorney defendants such as McGarrigle
 3 are ethically hindered by the attorney-client privilege from mounting a meaningful,
 4 substantive defense to Plaintiffs' factual allegations; and

5 (c) Plaintiff's conversion claim fails to state a claim upon which relief can
 6 be granted because Plaintiff did not have title to, or possession of, the property
 7 transferred to McGarrigle, and the party to whom the property belonged actually
 8 consented to the transfer to McGarrigle.

9 This motion to dismiss is based on this Notice of Motion and Motion, the
 10 accompanying Memorandum of Points and Authorities, the Request for Judicial
 11 Notice with the Exhibit attached thereto, the pleadings and papers filed herein, and
 12 any oral argument presented at the time of hearing, should the court desire oral
 13 argument.

14 KLINEDINST PC

15
16
17 DATED: July 30, 2019

By: /s/ Daniel S. Agle

Heather L. Rosing

Daniel S. Agle

Brittany M. Vojak

Attorneys for Defendants PATRICK

C. McGARRIGLE, ESQ. and

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25 NOM - ANTI-SLAPP _3104-1096(18022482.1)

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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-LL

**DECLARATION OF PATRICK C.
MCGARRIGLE IN SUPPORT OF
DEFENDANTS PATRICK C.
McGARRIGLE, ESQ. AND
McGARRIGLE, KENNEY &
ZAMPIELLO'S (1) SPECIAL
MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND (2) MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Judge: Hon. Janis Lynn Sammartino
Date: September 26, 2019
Time: 1:30 p.m.
Crtrm.: 4D

I, PATRICK C. McGARRIGLE, do hereby declare:

1. I am a party in the above-entitled action and am the principal of McGarrigle Kenney & Zampiello, APC ("MKZ") which law firm entity is also a named Defendant in this action, and an attorney licensed to practice before the courts of the State of California. I have personal knowledge of the following facts and, if called upon as a witness, could competently testify thereto

2. I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

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1 3. On May 4, 2018, Laura Lynn Hammett¹ filed a complaint (“*Hammett v.*
2 *Sherman I*” or the “2018 Complaint”) against Silver Strand Plaza, LLC (“SSP”) and
3 its manager, Mary Sherman (the “Manager” or “Sherman”). The allegations in the
4 2018 Complaint related to the January 2017 sale by SSP of its shopping center
5 located at 600 Palm Avenue, Imperial Beach, California (the “Shopping Center”). A
6 true and correct copy of the 2018 Complaint Ms. Hammett filed in *Hammett v.*
7 *Sherman I* is attached to the Request for Judicial Notice filed herewith as Exhibit 1.

8 4. On or about May 9, 2018, SSP retained MKZ as counsel to represent
9 SSP and Sherman in *Hammett v. Sherman I*. Prior to the filing of the *Hammett v.*
10 *Sherman I* action, my firm had never represented SSP or its Manager and I had no
11 prior knowledge of Ms. Hammett, SSP or SSP’s Manager, Ms. Sherman. Upon
12 MKZ’ engagement, I immediately emailed Ms. Hammett’s counsel, Michael D.
13 Early, and advised him of my firm’s representation of the defendants SSP and
14 Sherman in *Hammett v. Sherman I*, and that MKZ would accept service on their
15 behalf. A true and correct copy of the May 9, 2018 email is attached to the Notice of
16 Lodgment filed herewith as Exhibit 2.

17 5. Following the initial communication, I analyzed the complaint filed in
18 *Hammett v. Sherman I* and found many deficiencies. On May 16, 2018, I sent Mr.
19 Early a letter that outlined many of the significant deficiencies in the 2018
20 Complaint including, but not limited to, Ms. Hammett’s lack of standing to pursue
21 what was ostensibly a derivative action, the failure to plead the requisite elements of
22 breach of fiduciary duty and conversion, and the dearth of merit undergirding the
23 accounting cause of action. Specific to the accounting cause of action, I explained
24

25 ¹ At the time of the filing of *Hammett v. Sherman I*, Ms. Hammett went by the name
26 Laura Lynn. Ms. Lynn changed her name to Hammett later in 2019. For consistency
27 sake, however, I will refer to Ms. Lynn as Ms. Hammett throughout this Declaration
28 notwithstanding her name change just prior to the filing of the instant *Hammett v.*
Sherman II action.

1 that the claim for an accounting was, at best, premature because Ms. Hammett had
2 made no request or attempt to review SSP's books of account as required by
3 California law and SSP's Operating Agreement (the "OA"). Additionally, given the
4 extent of the deficiencies, I informed Mr. Early that the continued prosecution of the
5 action could very well warrant relief under Federal Rule of Civil Procedure 11. A
6 true and correct copy of the May 16, 2018 correspondence to Mr. Early is attached
7 to the Notice of Lodgment filed herewith as Exhibit 3. A true and correct copy of
8 the Operating Agreement for SSP is attached to the Notice of Lodgment filed
9 herewith as Exhibit 4.

10 6. Mr. Early responded the following day. A true and correct copy of Mr.
11 Early's May 17, 2018 email with the attached letter is attached to the Notice of
12 Lodgment filed herewith as Exhibit 5.

13 7. I received another email from Mr. Early on May 21, 2018, which stated
14 that Ms. Hammett had voluntarily dismissed the 2018 Complaint, without prejudice,
15 and requested that SSP documents be made available for inspection. A true and
16 correct copy of Mr. Early's May 21, 2018 email is attached to the Notice of
17 Lodgment filed herewith as Exhibit 6.

18 8. On May 24, 2018, I received the first of the document demands from
19 Mr. Early (an email with an attached May 23, 2018 letter from Ms. Hammett). A
20 true and correct copy of Mr. Early's May 24, 2018 letter (and Ms. Hammett's May
21 23, 2018 letter appended thereto) are attached to the Notice of Lodgment filed
22 herewith as Exhibit 7. I evaluated Ms. Hammett's letter promptly to assess whether
23 the request was intended to resolve the issues or was, at its core, a pretext for a
24 much broader fishing expedition into matters beyond the few claimed areas of
25 concern stated by Ms. Hammett in the 2018 Complaint. First, Ms. Hammett's letter
26 broadly requested that SSP's "books of account" be produced; no limitation or focus
27 as to time or subject matter was articulated or proposed by Ms. Hammett or her
28 counsel. Second, Ms. Hammett also requested, among other things, that documents

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1 regarding (what she perceived and cited in the Complaint she filed in *Hammett v.*
2 *Sherman I*) to be an alleged “discrepancy” between SSP’s net operating income
3 (NOI) reported to SSP’s members (on the one hand) and the NOI that the buyer of
4 SSP’s Shopping Center penciled out in their investment analysis (on the other hand)
5 be produced; as with her generic “books of account” demand, Ms. Hammett and her
6 counsel did not specify what documents she contended would comprise this “NOI”
7 category, put no limitation on the time period and offered no particular category(ies)
8 of concern.

9 9. Based on my near three decades of experience with commercial real
10 estate litigation (including representing public and non-publicly traded REITs and
11 investment firms) involving claims for operating expense reviews/audits, requests
12 for all documents related to the NOI of a property and all “books of account” with
13 no time frame or key areas or ledger accounts being focused upon were the type of
14 requests that were overbroad on their face and unduly burdensome (from cost and
15 time commitment standpoints, for example) to the property owner/management.
16 Additionally, it appeared to me that the broad requests would ultimately be used as
17 pretext for refiling the accounting claim against SSP and Sherman. Because the
18 substantially overbroad and non-tailored demands would not be permitted if the
19 legal action had continued, and in an attempt to resolve the issues with less cost and
20 burden to SSP, I communicated my views as noted above to Mr. Early and
21 proceeded to negotiate with him in the hope of narrowing the scope and focus of the
22 document requests to focus on the actual allegations set forth in *Hammett v.*
23 *Sherman I* and, further, those documents actually necessary to answer Ms.
24 Hammett’s inquiries, to the extent reasonably possible.

25 10. Without waiving any attorney-client and attorney work-product
26 privileges, my efforts focused on providing SSP documents (and, as applicable,
27 records from SSP’s real estate broker involved in the marketing of the Shopping
28 Center for sale and the actual sale transaction) to Ms. Hammett (through her counsel)

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1 that would substantively answer and resolve the NOI issue and any other specific
2 issues alleged in the 2018 Complaint, where possible. The ultimate goal in my
3 efforts as counsel was, for SSP's benefit, to resolve the issues in the 2018 Complaint
4 (so as to obviate and render unjustified any effort on Ms. Hammett's part to re-
5 institute legal action) and allow SSP to proceed with a final distribution and wind
6 down.

7 11. Pursuant to these communications with Mr. Early, I provided detailed
8 and substantial SSP records in July 2018 and October 2018. During this period and
9 continuing until his disengagement as Ms. Hammett's counsel, I supplemented the
10 SSP document productions (responsive to the 2018 Complaint's allegations and Ms.
11 Hammett's corresponding demands) with communications focused on convincing
12 Ms. Hammett's counsel that the 2018 Complaint's allegations were at odds with
13 SSP's business records. Mr. Early and I communicated directly concerning Ms.
14 Hammett's 2018 Complaint's attacks upon SSP and its Manager. Ms. Hammett
15 asserted in the 2018 Complaint and her counsel continued to advance the lawsuit's
16 averments: (a) that all fees paid by SSP to Ms. Sherman in her capacity as manager
17 were allegedly unauthorized and therefore criminal, (b) that the alleged discrepancy
18 in the shopping center's "NOI" listed in the SSP financials and then in the broker's
19 advertising materials somehow decreased Ms. Hammett's distribution, and (c) that
20 documents related to SSP's financials were improperly withheld from Ms. Hammett.
21 Despite providing clear explanations to the above allegations and numerous
22 documents disproving their premise, Mr. Early continued to reiterate the claims
23 made in the 2018 Complaint without substantively addressing the content of my
24 explanations. Unfortunately, these efforts to lead to a final resolution of the claims
25 asserted in the 2018 Complaint—by supplying the documents that disposed of the
26 issues in my view—were rebuffed. My concerns that the document productions and
27 expository correspondence were essentially an "informal" discovery process for Ms.
28 Hammett and her counsel and a pretext for reconstituting the litigation were borne

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1 out as Ms. Hammett (through Mr. Early and then directly) readily communicated to
2 me that she was not satisfied with any production or explanation. Ms. Hammett also
3 would not and did not, for example, answer whether she was obtaining the input of
4 commercial real estate brokers and/or property management accountants to assess
5 SSP's documents and our explanations as to why her claims were without merit.

6 12. Since the document productions and explanations provided were not
7 leading to a resolution of the dispute, I requested that Mr. Early focus on ending this
8 quasi-discovery/litigation holding pattern and articulate the settlement end game
9 from Ms. Hammett's perspective. Thereafter, a series of settlement
10 communications—directly with Mr. Early and, after he was let go, directly with Ms.
11 Hammett—proceeded over several months.

12 a. For example, on December 12, 2018, I wrote to Mr. Early,
13 addressed all claims in the 2018 Complaint in the context of the documents
14 produced and further information made available, and made a settlement overture.
15 Specifically, I wrote, “[P]lease advise what your client’s end game is concerning
16 this exercise. SSP has reserved funds that it would like to distribute in large part and
17 to thereupon wind up the entity and complete a final tax return for the tax year 2018.
18 However, as long as [Ms. Hammett] is threatening legal action and pursuing these
19 matters, then, without definitive closure, the reserve must remain.” A true and
20 correct copy of the December 12, 2018 letter is attached to the Notice of Lodgment
21 filed herewith as Exhibit 8.

22 b. On December 17, 2018, Mr. Early responded by again restating
23 his client’s prior allegations, all of which I had previously addressed, and none of
24 which provided good cause for any type of payout that Ms. Hammett possibly
25 sought. A true and correct copy of the December 17, 2019 letter is attached to the
26 Notice of Lodgment filed herewith as Exhibit 9. I responded via email on December
27 18, 2018.
28

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1 c. Mr. Early replied on December 21, 2018 stating that Ms.
2 Hammett was willing to settle her claims for payment to her of \$54,500 (which sum,
3 I was told, was comprised of Ms. Hammett's just over 14% interest in SSP
4 multiplied by the alleged NOI "discrepancy," the management fees/bonus paid to
5 SSP's Manager and SSP's post-sale retention for winding down, etc.). On January
6 10, 2019, I communicated SSP's consideration and declination of Ms. Hammett's
7 December 21, 2018 offer and made a counteroffer of resolution that allowed SSP to
8 make final distributions and wind down. A true and correct copy of the email chain
9 that includes the December 18, 2018 email, the December 21, 2018 email, and the
10 January 10, 2019 email is attached to the Notice of Lodgment filed herewith as
11 Exhibit 10.

12 d. In early 2019, Ms. Hammett dismissed Mr. Early and began
13 communicating with me directly. With Mr. Early's departure, however, Ms.
14 Hammett's communications (from early 2019 through May 2019) continued the
15 threats of renewed litigation and then peppered other communications with a broad
16 swath of settlement demands ranging from larger monetary demands, threats of
17 punitive damages, threats against SSP's former counsel, threats against MKZ, and
18 demands for policy limit payments by SSP's former counsel's insurer and by MKZ's
19 insurer. In this same time period, as Ms. Hammett also communicated that she was
20 drafting her new complaint, Ms. Hammett expanded the scope of her threatened
21 claims to include assertions of defamation against her sisters (who are SSP
22 members).

23 e. Specific to MKZ, Ms. Hammett proceeded to assert that MKZ
24 had breached fiduciary duties and somehow "aided and abetted" SSP's Manager's
25 actions that took place fifteen months *before* SSP engaged MKZ. In the Spring of
26 2019, Ms. Hammett made inquiries into my firm's professional liability insurance,
27 and demanded the policy limits to settle all potential claims (making similar
28 settlement demands to SSP's former counsel). Ms. Hammett was simultaneously

1 making settlement demands of SSP and its Manager, both before and after she filed
2 the instant action, *Hammett v. Sherman II*.

3 f. Hence, during the period post-dismissal of *Hammett v. Sherman*
4 *I* through pre-filing and post-filing of *Hammett v. Sherman II*, Ms. Hammett and/or
5 her counsel engaged in no less than a dozen different settlement communications
6 involving the potential resolution of the claims alleged in the 2018 Complaint, the
7 potential resolution of which was linked to the months of document productions and
8 explanations responding to the 2018 Complaint's allegations and a handful of
9 expanded inquiries based on the records produced.

10 13. Additionally, following Mr. Early's January 2019 dismissal, Ms.
11 Hammett began to shift her demands for documents to include source banking
12 records of SSP. As my efforts to narrow the scope were proving futile, I turned my
13 attention in February 2019, to attempting to protect the privacy of SSP's financial
14 information from public disclosure or misuse by Ms. Hammett by asking that she
15 execute a confidentiality agreement. In the alternative, I also offered Ms. Hammett
16 the choice to fly to California and inspect the records in person, at far less cost and
17 burden to SSP. Ms. Hammett declined to execute a confidentiality agreement, and
18 never flew to California to review the records. Nonetheless, over the next few
19 months (March-May 2019), I continued to work to lead Ms. Hammett to a point
20 where no lawsuit would be re-filed. Ms. Hammett, however, continued to threaten
21 litigation and engage in what she represented were settlement overtures/discussions.

22 14. In point of fact, Ms. Hammett made no less than fifteen threats of
23 litigation and then used those threats as a cudgel to urge SSP, its Manager and the
24 former and current counsel (MKZ) to capitulate to whatever demands Ms. Hammett
25 would advance, regardless that they were untethered to actual evidence. Ms.
26 Hammett—having subscribed to Westlaw—proceeded to send a litany of unsolicited
27 emails to my attention attaching copies of cases in which (she contended) the
28 availability of punitive damages was adjudicated, among other issues. The pattern of

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1 litigation threats and settlement communications—in addition to what is outlined
2 above—continued throughout the first five months of 2019. For example:

3 a. On January 23, 2019, I received an email from Ms. Hammett that
4 concluded with the following: “If the board does not vote for those items, I shall file
5 a derivative suit in pro persona and be joined by any members who care to join.” A
6 true and correct copy of the January 23, 2019 email is attached to the Notice of
7 Lodgment filed herewith as Exhibit 11.

8 b. On February 19, 2019, I received an email from Ms. Hammett
9 that stated: “In hopes of settlement before a suit is filed, I am willing to sign a much
10 broader confidentiality agreement in which non-enumerated items revert to non-
11 confidential if subpoenaed in litigation.” The email concluded with the following
12 statement: “My intention is to obtain all relevant information from your client, so I
13 can make a fair evaluation of her position, leading to a mediated and agreed
14 settlements where appropriate.” A true and correct copy of the February 19, 2019
15 email is attached to the Notice of Lodgment filed herewith as Exhibit 23.

16 c. On February 21, 2019, I received an email from Ms. Hammett
17 that stated: “Because I work during most of the hours the law school library is open,
18 I committed to purchasing West Law [sic] access today. The cost is \$8,400.
19 Apparently I need to litigate, and this requires access to case law for citations.” I
20 responded the same day reserving all rights and remedies on behalf of SSP.. A true
21 and correct copy of an email chain with the two February 21, 2019 emails is
22 attached to the Notice of Lodgment filed herewith as Exhibit 13.

23 d. On February 28, 2019, I received an email from Ms. Hammett
24 that stated: “As no formal vote has been set by management . . . it appears that it is
25 futile for me to have the board file suit. Therefore, I will proceed with a derivative
26 action.” I responded the same day. A true and correct copy of an email chain with
27 the two February 28, 2019 emails is attached to the Notice of Lodgment filed
28 herewith as Exhibit 12.

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1 e. On March 2, 2019, I received an email from Ms. Hammett that
2 stated: "If your client will not agree to produce these documents and the board also
3 refuses to order her to provide them, I have no other choice but to litigate." A true
4 and correct copy of the March 2, 2019 email is attached to the Notice of Lodgment
5 filed herewith as Exhibit 14.

6 f. On March 9, 2019, I was cc'd on an email from Ms. Hammett to
7 her sisters, Diane and Linda, that stated, among other things: "Because Mary and
8 our counsel refused to organize a vote, (more evidence of foul play), I am asking
9 you to respond to this email with your vote: 1. Will you authorize SSP to hire
10 outside counsel to file a derivative action against Mary Sherman, Ellis Stern, Patrick
11 McGarrigle and their firms." Attached to the email was a draft of a Ms. Hammett's
12 complaint against Sherman, SSP, Ellis Stern and me. A true and correct copy of the
13 March 9, 2019 email and the attachment is attached to the Notice of Lodgment filed
14 herewith as Exhibit 15.

15 g. On March 12, 2019, I received an email from Ms. Hammett that
16 stated among other things: "I am sorry we could not settle this without formal
17 discovery." I responded the following day, March 13, 2019. Ms. Hammett replied
18 the same day and stated among other things, "It is obvious that you all are not going
19 to make a reasonable settlement offer that even approaches what I will get if I go to
20 a jury." A true and correct copy of an email chain with the March 12, 2019 and two
21 March 13, 2019 emails is attached to the Notice of Lodgment filed herewith as
22 Exhibit 16.

23 h. On March 13, 2019, I received another email from Ms. Hammett
24 that stated: "I just raised a poker hand \$100 at a 1/3 table after the flop. A four-
25 flusher reraised to \$370. I called him and won. There is an analogy in there. Diane,
26 your comments are probably libelous and malicious in the least. We'll be asking a
27 jury about that too in the same suit." A true and correct copy of the March 13, 2019
28 email is attached to the Notice of Lodgment filed herewith as Exhibit 17.

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i. On March 15, 2019, I received an email from Ms. Hammett which included the following statement: "In the documents sent by Mr. McGarrigle by Dropbox link, I found no member list maintained as per OA 3.1. Please send a copy of the list so I may file and serve the complaints and subpoenas timely." I responded the same day, again refuting Ms. Hammett's claims. Ms. Hammett reply to my response included the following statement: "I am trying to enjoy my vacation since I am filing the complaint in about a week, I will use the order that our fine legal system demands." A true and correct copy of a chain that includes the March 15, 2019 emails is attached to the Notice of Lodgment filed herewith as Exhibit 18.

j. On March 16, 2019, Ms. Hammett sent an email that began with the following statement: "I intend to send my complaint to an attorney service in California to file for me this coming week." A true and correct copy of the March 16, 2019 email is attached to the Notice of Lodgment filed herewith as Exhibit 19.

k. On March 17, 2019, Ms. Hammett sent an email which concluded with the following, "I did my best to resolve the issues without court intervention." I responded the same day with a detailed response that concluded with the following: "Please cease the threats of litigation as no good faith basis for the threats or any filing of litigation exists. [. . .] All of SSP's rights and remedies are reserved." A true and correct copy an email chain that includes the March 17, 2019 emails is attached to the Notice of Lodgment filed herewith as Exhibit 20.

l. On March 18, 2019, I received an email from Ms. Hammett which stated, "I know how Mary uses silence, thinking making an offer is 'negotiating against ourselves.' But on the outside chance she learned anything from her huge mistake in low-balling me back in June 2015, I am still open to serious settlement offers." A true and correct copy of an email chain that includes the March 18, 2019 email is attached to the Notice of Lodgment filed herewith as Exhibit 24.

m. On March 22, 2019, I received an email from Ms. Hammett which stated, "I am making another settlement offer before filing." Attached to the

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1 email was an unfinished draft of the complaint Ms. Hammett later filed in the instant
2 action. Ms. Hammett concluded the email with the following statement, "The least
3 amount I would settle for is \$208,400. I, like my dad, hate haggling. Don't bother
4 coming back with any less." A true and correct copy of the March 22, 2019 email
5 and corresponding attachment is attached to the Notice of Lodgment filed herewith
6 as Exhibit 25.

7 n. I received an email on April 15, 2019 from Ms. Hammett which
8 stated, "It is apparent the legal process is required so we will show up to mediation
9 as required by the ADR rule." I replied the same day. A true and correct copy of an
10 email chain that includes the April 15, 2019 emails is attached to the Notice of
11 Lodgment filed herewith as Exhibit 21.

12 o. On April 19, 2019, I received an email from Ms. Hammett that
13 stated, "My First Amended Complaint was ready to be filed today, but I am holding
14 off for another week to give you an opportunity to present evidence to me that will
15 make an addition of a cause of action against you unnecessary." I responded on
16 April 25, 2019. A true and correct copy of an email chain that includes the April 19,
17 2019 email and the April 25, 2019 email is attached to the Notice of Lodgment filed
18 herewith as Exhibit 22.

19 p. On May 4, 2019, I received an email from Ms. Hammett which
20 stated, "I am willing to accept the remainder of the SSP funds now, with the
21 remainder of our agreed upon settlement six months after Sandi's passing, if you
22 make an offer commensurate with your income, assets and future inheritance that is
23 about 1/4 of what a jury may find punitive damages to be." A true and correct copy
24 of the May 4, 2019 email is attached to the Notice of Lodgment filed herewith as
25 Exhibit 26.

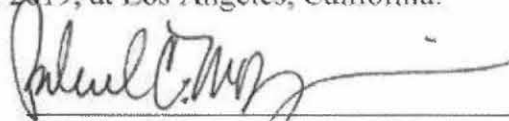
26 q. On May 19, 2019, Ms. Hammett sent an email which stated,
27 "Rather than spending the next ten years of my life involved in litigation, I propose
28 the following. It is as generous as my offer to sell my share of SSP to my sisters for

17. To that end, I consistently conveyed the following to Ms. Hammett: (1) SSP would accommodate an inspection of its records, (2) SSP would accommodate an inspection of the bank records, so long as she paid the production costs (for example, the bank's charges for check by check reproduction were not insignificant) and respected the confidentiality thereof, (3) her claims against SSP and its Manager were without merit, and (4) her claims against SSP's counsel (former and MKZ) were likewise without merit and could not be advanced for multiple reasons (and

provided her with legal authority) and continued to encourage her to seek independent legal counsel. The threat of litigation coupled with settlement demands and the exchange of informal discovery productions by SSP to Ms. Hammett had our office and SSP continuing on a litigation footing at all relevant times.

18. During all of my efforts on behalf of SSP and its manager from the time Mr. Early dismissed the 2018 Complaint, without prejudice, to the time Ms. Hammett filed this instant action, which efforts are set forth, in part, above, I honestly believed that Ms. Hammett was going to re-file a lawsuit against SSP and its Manager.

Executed on this 30th day of July, 2019, at Los Angeles, California.


PATRICK C. McGARRIGLE

18035403.1

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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-LL

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANTS PATRICK C.
McGARRIGLE, ESQ. AND
McGARRIGLE, KENNEY &
ZAMPIELLO'S (1) SPECIAL
MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND (2) MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

**[Cal. Code Civ. Proc. § 425.16; Fed.
R. Civ. Proc., R. 12(b)(6)]**

Judge: Hon. Janis Lynn Sammartino
Date: September 26, 2019
Time: 1:30 p.m.
Crtrm.: 4D

Pursuant to Federal Rule of Evidence 201, Defendants PATRICK C.
McGARRIGLE, ESQ. and McGARRIGLE, KENNEY & ZAMPIELLO, A
Professional Law Corporation (collectively "McGarrigle") hereby request that this
Court take judicial notice of the following documents in support of its Federal Rules
of Civil Procedure, Rule 12(b)(6) Motion to Dismiss Plaintiff's First Amended
Complaint and Special Motion to Strike Plaintiff's First Amended Complaint

pursuant to California Code Civil Procedure section 425.16:

I.

DOCUMENTS SUBJECT TO REQUEST FOR JUDICIAL NOTICE

1. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint filed by Plaintiff Laura Lynn Hammett on May 4, 2018, entitled *Laura Lynn v. Mary Sherman, et al.*, United States District Court, Central District of California, Case No. 2:18-cv-03757. It is appropriate for this Court to take judicial notice of the filing of the Complaint and the judicial admissions that Plaintiff made in the earlier filed lawsuit (*Hammett v. Sherman I*).

KLINEDINST PC

DATED: July 30, 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 &
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Exhibit "1"

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Laura Lynn

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAURA LYNN, an individual,	) Case No.:
)
Plaintiff,	) COMPLAINT FOR BREACH OF
	) FIDUCIARY DUTY, CONVERSION AND
vs.	) AN ACCOUNTING
)
MARY E. SHERMAN, an individual; and	) JURY TRIAL DEMAND
SILVER STRAND PLAZA, LLC, a California)
limited liability company,)
)
Defendants.)
)

Plaintiff Laura Lynn alleges as follows:

The Parties

1. Defendant Silver Strand Plaza, LLC ("SSP") is a California limited liability company whose principal asset was a multi-tenant shopping center in Imperial Beach, California. Defendant SSP's principal place of business is in Calabasas, California.
2. Defendant Mary E. Sherman is an individual residing in Los Angeles County, California, and is and was the Manager of Defendant SSP.

1 3. Plaintiff Laura Lynn is an individual residing in Arkansas, and was at all times
2 relevant herein a member of Defendant SSP, holding a 14.1571% interest therein.

3 **Jurisdiction, Venue and Jury Trial Demand**

4 4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, because this is a
5 civil action in which Plaintiff is a citizen of and residing in Arkansas and Defendants Sherman
6 and SSP are, respectively, a California citizen/resident and a California limited liability company
7 headquartered in California, and the amount in controversy exceeds \$75,000 exclusive of interest
8 and costs.

9 5. Venue is proper in the Central District of California pursuant to U.S.C. § 1391
10 because Defendant SSP is a limited liability company whose principal place of business is in the
11 Central District and because Defendant Sherman resides in the Central District.

12 6. Plaintiff hereby demands trial by jury (Rule 38, FRCP).

13 **General Allegations**

14 7. Since at least 2010, Plaintiff has had an interest of 14.1571% in SSP. Plaintiff
15 received distributions from SSP annually based on its net operating income.

16 8. By 2015, Plaintiff began to have concerns regarding the amounts of the
17 distributions, among other things, and requested that Defendant Sherman consider a purchase by
18 SSP of Plaintiff's interest.

19 9. Defendant Sherman responded through her attorney, Ellis Stern, with an offer on
20 June 15, 2015, of \$218,000 for Plaintiff's share of SSP. Plaintiff rejected the offer. Not long
21 thereafter, Defendant Sherman recommended selling the shopping center that was the sole asset
22 of SSP, and the members accepted that recommendation. In October 2016, only 16 months after
23 Defendant Sherman's offer to Plaintiff of \$218,000 for her interest in SSP, the shopping center
24 went into escrow at a purchase price that valued Plaintiff's interest at nearly \$1.5 million; as
25 detailed below, escrow closed and the shopping center was subsequently sold in January 2017.

26 10. As Manager of SSP, Defendant Sherman handled all aspects of the sale of the
27 shopping center; other than obtaining the approval of the other members of SSP to the sale
28 pursuant to SSP's Operating Agreement, Defendant Sherman controlled all aspects of marketing

1 and selling the property, as well as the distribution of the proceeds thereof to SSP's members,
2 including Plaintiff.

3 11. On December 20, 2016, Defendant Sherman informed Plaintiff and the other
4 members of SSP that the sale of the shopping center was set to close on January 10, 2017.

5 12. On January 1, 2017, Plaintiff e-mailed wire instructions to Defendant Sherman so
6 that she could receive her funds from the sale by wire transfer. Defendant Sherman confirmed
7 receipt of Plaintiff's e-mail that same day. In an e-mail on January 31, 2017, Defendant Sherman
8 denied having received wire instructions from Plaintiff.

9 13. The closing on the shopping center finally occurred on January 26, 2017. While
10 promising to disburse funds "as quickly as possible," Defendant Sherman took actions which
11 were intended to, and which did delay disbursement of funds to Plaintiff alone.

12 14. First, as noted previously, 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 instructions from
14 Plaintiff.

15 15. Second, Defendant Sherman delayed informing Plaintiff until January 31, 2017
16 that the state of California had denied Plaintiff a waiver from the requirement that, according to
17 Defendant Sherman, SSP "withhold 7% of all distributions to non-California residents."

18 16. Third, Defendant Sherman ultimately withheld 7% of Plaintiff's entire
19 distribution, rather than 7% of the amount in excess of her tax basis.

20 17. Fourth, in an e-mail on February 2, 2017, Defendant Sherman falsely asserted that
21 Plaintiff had "move[d] out of state without notifying SSP LLC until much later" and thereby "put
22 our LLC at risk," when in fact Plaintiff's 2015 K-1 (prepared by SSP's accountants) clearly
23 indicated that Plaintiff was an out of state resident.

24 18. Fifth, in that same February 2, 2017 e-mail, Defendant Sherman used the excuse
25 of the time spend communicating on the withhold issue as the reason she could not wire
26 Plaintiff's distribution to her, even though other members were being paid, and even though
27 Defendant Sherman's e-mail claiming that she "will not have time today to go to the bank" was
28 sent at 10:45 a.m. When Plaintiff responded only an hour later that Defendant Sherman had a

1 fiduciary obligation to wire the amount of her distribution less whatever amount Defendant
2 Sherman believed had to be withheld for California taxes, Defendant Sherman responded
3 through her attorney Ellis Stern and asserted for the first time that, in addition to California taxes,
4 Defendant Sherman was required to withhold the amount of a Child Support Division lien
5 against other property unrelated to SSP, and that determining the amount of the lien would
6 further delay payment to Plaintiff of her distribution. Defendant Sherman and her attorney had
7 been aware of the Child Support Division lien against other property for over a year, and had
8 never previously indicated that money would have to be withheld to pay that lien. With this
9 excuse, Defendant Sherman delayed wiring any of Plaintiff's distribution (even the amount that
10 was undisputed) until February 6, 2017.

11 19. However, in breach of her fiduciary duty to Plaintiff, Defendant Sherman
12 improperly withheld and converted \$50,000 from Plaintiff's distribution wired on February 6,
13 2017. The stated reason: the funds were held as a litigation fund that Defendant Sherman could
14 use if Plaintiff litigated to obtain the funds! Through her attorney, Defendant Sherman not only
15 defended this unlawful conversion and breach of fiduciary duty, he informed Plaintiff that the
16 funds would not be released until Plaintiff released any of her claims against Defendant Sherman
17 for breach of fiduciary duty: "Perhaps we can discuss a method to protect the Manager
18 [Defendant Sherman] in connection with release of the reserved funds. Otherwise, they will be
19 withheld to cover the litigation expense or for the period of time until the statute of limitations
20 has run its course."

21 20. Defendant Sherman's attorney reiterated this effort to extort a release from
22 Plaintiff in a second e-mail on February 9, 2017, in which he wrote: "The \$50,000.00 will be
23 released promptly upon your furnishing to me a signed General Release by your client, releasing
24 Mary Sherman from all claims in her capacity as Manager of the LLC." Plaintiff did not respond
25 to this blatant effort to extort a release from her. Realizing that she was only compounding her
26 breach of fiduciary duty, Defendant Sherman released the \$50,000 by wiring the funds to
27 Plaintiff on February 10, 2017. However, Defendant Sherman still withheld over \$100,000 in an
28

1 SSP account as a litigation fund so that she could fund the defense of her breach of fiduciary
2 duty at the expense of Plaintiff and the other members of SSP.

3 21. Plaintiff had had concerns about the sale of SSP even before Defendant
4 Sherman's mishandling of Plaintiff's distribution. In August 2016, Plaintiff informed Defendant
5 Sherman by e-mail that the numbers for SSP's net operating income (hereafter, "NOI") did not
6 look right. They were not only not corrected, but the NOI numbers subsequently used to solicit
7 offers for the SSP shopping center showed a NOI for 2016 that was significantly higher than the
8 NOI reported to Plaintiff on her 2016 K-1.

9 22. When Plaintiff pressed for an explanation for the difference in NOI after the sale,
10 Defendant Sherman's attorney Ellis Stern responded, in pertinent part, as follows: "The numbers
11 of the package were developed by the broker as part of his sales effort to maximize the sales
12 price of the property, since the sales price is proportional to the net operating income. Our
13 broker added back certain expenses to obtain a higher net operating income, and he reviewed
14 these add backs with the buyer."

15 23. When Plaintiff then asked for 1) evidence that would verify Mr. Stern's statement
16 and 2) a brief description of the "certain expenses" that were added back "to obtain a higher net
17 operating income," Mr. Stern forwarded an e-mail from Defendant Sherman in which she stated
18 that the buyer of the SSP property received the same financials that were used to prepare SSP tax
19 documents and that: "the Buyer bought the building based on these numbers (with certain add
20 backs, such as all management fees, earthquake insurance, and other costs that they deemed
21 irrelevant since they would not be paying those costs once they owned the building)." No further
22 explanation was provided.

23 24. When Plaintiff inquired further of Defendant Sherman, her attorney further
24 muddled the waters by responding that: "There apparently were certain non-recurring expenses
25 that formed the basis for the financial statements presented to the buyer, which, as [Defendant
26 Sherman] indicates, were fully identified and explained to the buyer." Stern's "explanation" of
27 Sherman's e-mail requires that yearly management fees and earthquake insurance are "non-
28 recurring expenses."

First Cause of Action for Breach of Fiduciary Duty

(Against Defendant Sherman)

25. Plaintiff incorporates by reference paragraphs 1 – 23 above as though fully set forth herein.

26. Defendant Sherman owed Plaintiff a fiduciary duty as a result of her position as Manager of SSP under an Operating Agreement that gave her “sole authority to manage [SSP]” and “to make any contracts [or] enter into any transactions...to conduct or further [SSP’s] business.”

27. As outlined above, Defendant Sherman breached that duty to Plaintiff by creating ever-changing reasons to delay disbursement to Plaintiff of 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 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 (while at the same time withholding over \$100,000 from all members in a separate defense fund), and demanding a general release as a condition to release of those funds, as described in Paragraphs 11 through 19, above.

28. Plaintiff is informed and believes and thereon alleges that Defendant Sherman has breached her fiduciary duty to Plaintiff by misstating the net operating income of SSP as described in Paragraphs 20 through 23, above.

29. Finally, Plaintiff is informed and believes and thereon alleges that Defendant Sherman has breached her fiduciary duty to Plaintiff by causing SSP to make loans interest-free or at below market interest to Defendant Sherman and/or to trusts in which she or her spouse have an interest.

30. As a proximate result of Defendant Sherman’s wrongful conduct as alleged herein, Plaintiff has sustained damages in an amount in excess of \$75,000, exclusive of attorney’s fees and costs.

1 31. Furthermore, in doing the acts described in Paragraphs 11 through 19, above,
2 Defendant Sherman acted intentionally, oppressively, and maliciously toward Plaintiff in
3 conscious disregard of Plaintiff's rights and of Defendant Sherman's fiduciary obligations,
4 thereby entitling Plaintiff to an award of punitive damages.

5 Wherefore, Plaintiff prays for relief as is hereinafter set forth.

6 **Second Cause of Action for Conversion**

7 **(Against Defendant Sherman)**

8 32. Plaintiff incorporates by reference paragraphs 1 – 19 hereof as though set forth in
9 full here.

10 33. Defendant Sherman's actions, as described in Paragraphs 11 through 19 above, in
11 refusing to disburse any funds to Plaintiff even though over \$1 million was undisputedly owed
12 above any tax obligations or liens, withholding and converting \$50,000 of Plaintiff's distribution
13 to use as Defendant Sherman's defense fund in the event Plaintiff sued Defendant Sherman to
14 obtain that \$50,000, and demanding a general release as a condition to release of those funds,
15 constituted conversion of a specific, segregated sum of money.

16 34. As a proximate result of Defendant Sherman's wrongful conduct as alleged herein,
17 Plaintiff sustained damages in an amount to be proven at trial.

18 35. Furthermore, in doing the acts described in Paragraphs 11 through 19, above,
19 Defendant Sherman acted intentionally, oppressively, and maliciously toward Plaintiff in
20 conscious disregard of Plaintiff's rights and of Defendant Sherman's fiduciary obligations,
21 thereby entitling Plaintiff to an award of punitive damages.

22 Wherefore, Plaintiff prays for relief as is hereinafter set forth.

23 **Third Cause of Action for an Accounting**

24 **(Against all Defendants)**

25 36. Plaintiff realleges and incorporates herein by reference the allegations in
26 paragraphs 1 through 34 above as though fully set forth herein.

27 37. At all relevant times herein, Defendant Sherman owed Plaintiff and other
28 members of SSP a fiduciary duty as Manager of SSP.

38. Based on the conduct of Defendant Sherman and her agents as described in Paragraphs 20 through 23 above, an accounting of SSP records is necessary for the period from 2014 to the present to establish if net operating income of SSP was understated in those years prior to the sale of the shopping center, and to determine what amounts were improperly withheld from Plaintiff and other members of SSP as a result of such understatement.

39. Accordingly, Plaintiff is entitled to and does hereby seek an accounting to determine what amounts are owed to her and other members of SSP.

Wherefore, Plaintiff prays for relief as follows:

On the First and Second Causes of Action against Defendant Sherman:

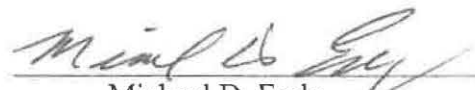
1. For general damages in an amount in excess of \$75,000, exclusive of interest and costs;
2. For punitive damages;
3. For costs; and
4. For such other relief as the Court deems appropriate.

On the Third Cause of Action against all Defendants:

1. For an accounting of the finances of SSP for the years 2014 to the present;
2. For costs; and
3. For such other relief as the Court deems appropriate.

DATED: May 3, 2018

KLEIN, HOCKEL, IEZZA & PATEL P.C.


Michael D. Early
Attorneys for Plaintiff Laura Lynn