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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

JD BROTHERS LLC, a California Limited Liability Company; WEI "WENDY" HUANG, an individual; and WEI "WENDY" HUANG as TRUSTEE of the GUO/HUANG FAMILY TRUST, a California trust,

Plaintiffs,

LIBERTY ASSET MANAGEMENT CORPORATION;
BENJAMIN KIRK aka BENNY KO aka TZU PING KO;
LUCY GAO aka XIANG XIN GAO;
SUNSHINE VALLEY, LLC;
HK GRACE BUILDING LLC,
and DOES 1-20,

Defendants.

Case No. 3:15-cv-01373-VC

THIRD AMENDED COMPLAINT FOR:

- 1. VIOLATION OF SECTION 12(a)(1) OF THE SECURITIES ACT OF 1933**
- 2. VIOLATIONS OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934, RULE 10b-5 AND 15 U.S.C. § 77o**
- 3. VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**
- 4. FRAUD AND AIDING AND ABETTING AND CONSPIRACY**
- 5. NEGLIGENT MISREPRESENTATION**
- 6. BREACH OF FIDUCIARY DUTY AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**
- 7. BREACH OF CONTRACT**
- 8. ACCOUNTING**
- 9. FRAUDULENT TRANSFER**

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. This case involves a massive fraudulent real estate investment scheme involving multiple victims over multiple years. The scheme was masterminded by defendants Benjamin Kirk (“Kirk”) and Lucy Gao (“Gao”), each who played a key role, to convince unsuspecting investors to invest in different types of investments—notes, limited liability company, loans, and distressed portfolio investments. They used a series of entities they controlled to create the illusion that the investments were legitimate while in fact Kirk and Gao used the monies for their own benefit through a series of fraudulent and unlawful transactions. Kirk was the front man making false representations to investors while Gao exercised control over the finances, setting up of, creating and structuring most of the limited liability companies or other entities which allowed the monies to be transferred and misappropriated, and the transfer of properties, which allowed the scheme to flourish.

2. This case involves three victims, Wei “Wendy” Huang (“Huang”), J.D. Brothers LLC (“JD Brothers”), and the Guo/Huang Family Trust, but Plaintiffs’ counsel’s investigation has uncovered many more victims who were deceived by Kirk and Gao in similar patterns and representations through Kirk’s and Gao’s enterprise, evidencing a pattern of fraudulent conduct through the same enterprise. Kirk and Gao worked through many different companies which they controlled, including defendant Liberty Asset Management Corporation (“Liberty”) (which is now in bankruptcy, and therefore, Plaintiffs are not currently proceeding against Liberty unless or until the stay is lifted) with Kirk as Chief Executive Officer and Gao as the Chief Financial Officer, and defendants HK Grace Building LLC (“HK Grace”) and Sunshine Valley, LLC (“Sunshine Valley”), as well as many other limited liability companies and corporations set up to defraud multiple investors, using the same *modus operandi*.

3. In November of 2009, Huang first met Kirk, who gained her trust. Over the next five years, Kirk convinced Huang and entities related to Huang to invest in a series of ongoing investments, for which Plaintiffs have received none of their initial investments back or any return on investment as of the date of this Second Amended Complaint.

4. **Montgomery Property:** As described in more detail herein, this investment was

1 through a note and deed of trust to purchase property located at 722 Montgomery St., San
 2 Francisco, California (“Montgomery Property”). Plaintiff Huang made this investment through a
 3 wire transfer. The note and deed of trust state that this investment is not a security. While this
 4 characterization is not controlling, under Ninth Circuit law, the investment is not a security
 5 because Huang did not contribute risk capital subject to the entrepreneurial or managerial efforts
 6 of others. *Danner v. Himmelfarb*, 858 F.2d 515 (9th Cir. 1988).

7 5. As set forth herein in more detail, Kirk made false representations to Huang in
 8 person in the end of November 2009 at 480 San Antonio Rd, Mountain View, CA that the money
 9 she invested would be used to purchase the Montgomery Street property. That representation
 10 was false and Kirk never intended that Huang purchase the property but instead Liberty
 11 purchased it. On August 2010 by telephone, Kirk falsely told Huang that the Montgomery
 12 property could not be purchased.

13 6. **O’Farrell Property:** As described in more detail, herein Kirk induced plaintiff
 14 JD Brothers, a limited liability company of which Huang is the power of attorney, to purchase
 15 70% of 165 O’Farrell St., San Francisco, California (“O’Farrell Property”) for \$4,760,000. JD
 16 Brothers made the investment by a wire transfer. The note and deed of trust state that the
 17 investment is not a security and, while not controlling, they are not a security based upon Ninth
 18 Circuit law.

19 7. Kirk made false representations to Huang by telephone in August 2010 that the
 20 purchase price for the property was \$6,800,000. That representation was false because the actual
 21 sales price was \$6,000,000, \$800,000 less than the price Kirk represented and the sole purchaser
 22 was Kirk under the name of Benny Ko. JD Brothers never had an interest in the property despite
 23 Kirk’s representation to the contrary.

24 8. **Geary Property:** As described in more detail herein, from spring through fall of
 25 2011 Kirk induced JD Brothers to invest \$ 7,846,000 in a limited liability company, HK Grace
 26 Building LLC, which was to invest in a commercial piece of property, 166 Geary St., San
 27 Francisco, California (“Geary Property”). JD Brothers and Sunshine Valley, LLC were to be the
 28 members of HK Grace Building, LLC. JD Brothers was a passive, minority investor with no

control. Sunshine Valley, LLC was the Operating Manager. JD Brothers' profit was to come from the profits from the sale of the Geary Property and from rents of the commercial business at the property. JD Brothers contributed risk capital subject to the entrepreneurial and/or managerial efforts of others. Accordingly, this investment is a security. *Burnett v. Rowzee*, 2007 U.S. Dist. LEXIS 74275, 2007 WL 2809769 (C.D. Cal. Sept. 26, 2007) (finding investment in limited company investment to be a security); *see SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946); *Hocking v. Dubois*, 885 F.2d 1449 (9th Cir. 1989) (en banc).

9. Although Kirk represented that he owned Sunshine Valley, Gao also represented she has been an owner of Sunshine Valley. Yet, as Kirk stated under oath, he and Gao agreed to the creation of entities like HK Grace, with the understanding that Gao did not really own the investment. Gao, despite the requirement that JD Brothers approve any sale, sold the property for \$60 million without JD Brothers' knowledge or consent and in violation of the amended operating agreement of HK Grace.

10. **Kirks' Loans from the Guo/Huang Family Trust:** As described in more detail herein, on April 21, 2011, the Guo/Huang Family Trust, of which Huang is a trustee, loaned \$2,000,000 to Kirk based upon his false promise to Huang on April 2011 in Burlingame that he would repay the money within three months. This money was wired to Kirk through Liberty, who was to use it to buy a portion of the Geary property for Sunshine Valley, LLC. Sunshine Valley, LLC which Kirk controlled, took a majority interest in HK Grace Building. Based on additional false representations of repayment by Kirk, the loan was extended on July 21, 2011 and June 21, 2012. This loan is not a security.

11. Distressed Property Portfolio Investments: As described in more detail herein, in March 2010 at 544 San Antonio Rd., Mountain View, CA, Kirk promoted to Huang an investment in Distressed Property Portfolio investments. On March 22, 2010, JD Brothers invested \$3 million for a 20% return on a distressed property portfolio investment contract. On July 21, 2013, after Kirk defaulted on the original investment contract, JD Brothers signed another distressed property portfolio investment contract extending the term of the original investment contract, based upon Kirk's false representation that he would make the \$3 million

1 payment on the original investment contract, plus an additional \$360,000 in subsequent interest
 2 payments on the second investment contract. These investments are securities. *Perkumpulan*
 3 *Investor Crisis Ctr. Dressel - WBG v. Wong*, 2014 U.S. Dist. LEXIS 33797, Fed. Sec. L. Rep.
 4 (CCH) P97,857 (W.D. Wash. Mar. 14, 2014) (dismissing RICO claim because portfolio
 5 investment was security).

6 12. Kirk and Gao did not use Plaintiffs' money for the intended purposes, but instead
 7 used the monies for an improper purpose for their own benefit to continue their enterprise of
 8 unlawful activity. They unlawfully converted Plaintiffs' money from its intended purpose and
 9 improperly laundered it through different companies and used it for their own benefit and
 10 purposes to the injury of Plaintiffs. They continue to operate and induce investors to invest in
 11 different investments, as more fully described herein.

12 13. None of the money invested by Plaintiffs have been returned. In total, Plaintiffs
 13 have invested more than \$13 million.

14 II. JURISDICTION AND VENUE

15 14. Plaintiffs bring this action for damages under Section 12 of the Securities Act of
 16 1933, 15 U.S.C. § 77l, Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b),
 17 and Rule 10b-5 promulgated thereunder, under the Racketeer Influenced and Corrupt
 18 Organizations Act, 18 U.S.C. §§ 1961, et. seq., and under California state law.

19 15. This Court has subject matter jurisdiction over Plaintiffs' claims arising under the
 20 laws of the United States pursuant to 28 U.S.C. § 1331.

21 16. This Court has supplemental jurisdiction over the state law claims for relief herein
 22 under 28 U.S.C. § 1367(a) because the state law claims are so related to the claims in the action
 23 within such original jurisdiction that they form part of the same case or controversy.

24 17. Venue is proper in this district because a substantial part of the events or
 25 omissions giving rise to the claims occurred within this district.

26 18. Intradistrict venue is proper in the San Francisco Division pursuant to Local Rule
 27 3-2(c) because the events giving rise to the causes of action in this Complaint occurred in San
 28 Francisco.

III. THE PARTIES

A. PLAINTIFFS

19. Plaintiff JD Brothers LLC (“JD Brothers”) is a limited liability company organized and operating under the laws of the state of California. JD Brothers is owned by Jimmy Guo and Derek Guo, and is operated by Wendy Huang, who is power of attorney for JD Brothers.

20. Plaintiff Wei “Wendy” Huang (“Huang”), a citizen of the County of San Mateo, California, is the operator and power of attorney for JD Brothers LLC and was also an individual investor.

21. Plaintiff Huang as Trustee of the Guo/Huang Family Trust is Trustee of a trust organized under the laws of the State of California.

B. DEFENDANTS

1. Individual Defendants

a) Benny Ko/Benjamin Kirk

22. Defendant Benny Tzu Ping Ko, aka Benjamin Kirk (“Kirk”) is a citizen of California. He uses many aliases including, but not limited to: Benjamin J. Kirk, Benn Ko, Benn T. Ko, Benny J. Kirk, Benny Kirk, Benny P Ko, Benny Ping Ko, Benny T Ko, Benny T P Ko, Benny TP Ko, T Ko Benny, Tzu Liu, Tzu P Ko, Tzu Ping Ko, Tzuping P Ko, and Tzuping Ping Ko. Kirk owned, controlled and managed Liberty, and served as its Chief Executive Officer. He intentionally made numerous misrepresentations to Plaintiffs and omitted material facts. He unlawfully obtained real properties, usurping investments that belonged to Plaintiffs as part of a series of fraudulent schemes. He is the front man for the RICO enterprise operated by Kirk and Lucy Gao.

23. At all times mentioned herein, Kirk owned, managed and controlled a number of other companies in which he transferred money received from JD Brothers, Huang and the trust, including but not limited to, the following:

- San Francisco 722 Montgomery LLC, a limited liability company to which Liberty transferred the Montgomery property despite Kirk telling Huang that

Liberty had been unable to obtain the property.

- Pacific View Investments LLC, formerly known as Pacific View Reo Management LLC, a limited liability company which Kirk used to buy the O’Farrell property just days after inducing JD Brothers to invest in its purchase and JD Brothers wired \$2.26 million for the property.
- San Francisco O’Farrell Project LLC, a limited liability company, to which Pacific View Reo transferred the O’Farrell property, and which owned the property at the time that Liberty and Kirk induced JD Brothers to invest in “purchasing” the property.
- Sunshine Valley LLC, a Defendant in this action.
- Sun Valley Management LLC, a limited liability company organized and operating under the laws of the state of California, which was filed on the same day that Liberty and Kirk induced JD Brothers to buy the Geary property as “joint tenants.” This was the name listed on the HK Grace Operating Agreement as a “mistake” instead of Sunshine Valley LLC, but in fact is a real entity owned and operated by affiliates of Kirk.
- HK Grace Building LLC, a Defendant in this action.

b) Lucy Gao

24. Defendant Lucy Gao (“Gao”), is a citizen of California. She is the mastermind behind the RICO enterprise run by Kirk and Lucy Gao. She uses many aliases including but not limited to: Fei L Gao, Gao Fei, Gao X Xiangxin, Gao Xiangxin, Lucy Gao, Lucy C She, Lucy F Gao, Lucy G Gao, Lucy Gao Seh, Lucy G Seh, Lucy X Gao, Lucy Xiang Xin Gao, Lucy Xiangxin Gao, Xiangxin Lucy Gao, Xiangxin X Gao, and Xiangxin Xin Gao.

25. Gao was a behind the scenes mastermind critical to conducting the fraudulent enterprise. Gao ostensibly-owned, controlled and managed Liberty, and served as its Chief Financial Officer. In a declaration filed in *UN Plaza LLC v. UN Plaza Associates, LP*, CGC-12-521738 (San Francisco Sup. Ct.), Gao stated she is Liberty’s “Manager.” Kirk testified in the Liberty bankruptcy proceeding that it “was just Lucy and me running these operation,” and that

1 Gao was Kirk's "partner." Gao told Huang that she and Kirk were perfect business partners and
2 that Kirk would not be a success without her. Gao was a necessary participant in the fraud,
3 including being in charge of the financial transactions, controlling all of the investors' money in
4 and out of Liberty's bank accounts, and was the main person who diverted and converted
5 investor money to her own use, as well as transferring real estate out of investors' control.

6 26. According to testimony by Kirk, Gao set up all the special purpose entities and
7 Liberty was merely a front for taking in the investor's money. Once Liberty received the
8 investor's money, Gao would form a special purpose entity to hold the real estate or other
9 investments; she often put herself as the owner of the entities. Kirk also testified that Gao
10 handled all the finances including paying bills, transferring monies, and signing checks. Further,
11 Gao was in charge of all financial transactions until January or February 2016. As stated in a
12 May 25, 2016 declaration filed in the Bankruptcy Court by Kirk:

13 "5. The Debtor is a real estate management company. Since its inception, the
14 debtor's mission was to seek out real estate opportunities, invest in such opportunities,
15 and manage them.

16 6. Even prior to the creation of the Debtor, I maintained a personal and
17 professional relationship with Lucy Gao ("Ms Gao"), including a child between us. In
18 the ordinary course of business, the Debtor would identify real estate projects to acquire,
19 the Debtor would fund the acquisition of such properties partly with funds provided by
20 investor creditors, and a special-purpose entity would be formed to hold and operate the
21 properties. Ms. Gao was responsible for the creation of the entities and structured many
22 of them with herself as the entity's sole member for tax and financing reasons.
23 Notwithstanding the foregoing, it was always understood that the properties, which were
24 acquired with the Debtor's funds, were held for the benefit of the Debtor and not as gifts
25 for Ms. Gao.

26 7. Approximately two (2) years ago, my relationship with Ms. Gao came to an
27 end. I learned that Ms. Gao has been using her position as the sole member of certain of
28 the special purpose entities, to sell the real estate holdings and divert funds to herself and
to the exclusion of the Debtor and its creditors. Since funds were not being remitted to
the Debtor to pay its obligations to creditors, the Debtor's creditors commenced litigation
against the Debtor, Ms. Gao, me, among others. The Debtor currently lacks sufficient
funds to pay its creditors or to defend itself from a growing number of lawsuits."

27 27. Gao admits she has check signing authority over Liberty's bank accounts. The
28 money for Plaintiffs' investments were wired to Liberty's bank account at Mega Bank, San
Gabriel and in at least one instance Liberty wired money to the Trust from this account.

1 28. Gao has filed declarations in court, which are directly at odds with representations
2 made to investors. Gao diverted monies of Plaintiffs and other investors to her own use.
3 Without her knowing participation, the fraudulent scheme could not have occurred.

4 29. Gao also admits in an examination in the Crystal Waterfalls LLC bankruptcy that
5 she borrowed money using the property owned by 554 San Antonio Road, LLC as collateral.
6 Liberty had offices at 554 San Antonio Road, Mountain View, California. Gao also testified that
7 she owned property at 26390 Anacapa Drive, Los Altos, California, but did not buy the property.

8 Q: So you do have an interest in that property?

9 A: Yes, now it's under my name. I just get what I should get back.

10 Q: So when you said you didn't have an interest in it - -

11 A: I didn't buy it, but it should be belonging to me. That's how I get back.

12 ...

13 Q: What do you mean you didn't buy it?

14 A: That money belong to the company money. I just get property back.

15 Public documents show that in 2013-2016, there were transfers of the property between Sonia
16 Chiou, Washe LLC (a Kirk LLC), Liberty, and Gao.

17 c) **Relationship between Kirk and Gao**

18 30. At all relevant times, Kirk and Gao have had a close business and personal
19 relationship, including having a child together. According to Kirk's sworn declaration in the
20 Liberty bankruptcy filed April 1, 2016, he and Gao worked together through Liberty to identify
21 and manage real estate opportunities. Kirk would identify real estate projects to acquire, Liberty
22 would fund the acquisition and a special-purpose entity would be formed to own and operate the
23 properties. Gao was responsible for the creation of the entities and structured many of them with
24 Gao as the sole member, even though she was not using her money to acquire the property. Kirk
25 testified in the Liberty bankruptcy proceeding that it "was just Lucy and me running these
26 operation," and that Gao was Kirk's "partner." Gao told Huang that she and Kirk were the
27 perfect business partners and that Kirk would not be successful without her. Gao also said that
28 her business would not have been as big without Kirk.

31. The relationship between Kirk and Gao soured in 2013, Kirk has testified, because Gao learned that Kirk was having a personal relationship with Sonia Chiou.

2. Entity Defendants

a) Liberty Asset Management Corporation

32. Liberty Asset Management Corporation (“Liberty”) is a California Corporation with the address 3218 E Holt Ave., West Covina, and the California Secretary of State corporate filing of Liberty provides that the active Liberty has the address 3218 E Holt Ave, West Covina, California, was incorporated on March 5, 2012, and Benjamin Kirk is the president.¹ The registered agent was Paracorp Inc., but it resigned on August 14, 2015.

33. There have been two Liberty Asset Management Corporations, according to the California Secretary of State corporate filings. One is dissolved and the other is active. However, both are affiliated/operated/managed/owned by the same people—the president is Kirk, aka Ko, and Gao has an active and controlling involvement in the corporation. She is an ostensible owner. While the two corporations use different addresses, these two addresses link the Defendants to the other affiliated entities. The dissolved Liberty was incorporated on March 16, 2007. The newer, active Liberty was only incorporated on March 5, 2012—days before HK Grace Building LLC obtained the Geary property. Plaintiffs are informed and believe and therefore allege that the active Liberty is the successor to the dissolved Liberty and has taken over all of its assets, obligations and property.

34. The California Secretary of State corporate filing of the Cancelled Liberty, that was active during the relevant time, provides that the address was 1142 S Diamond Bar Blvd. Ste. 795, Diamond Bar, California; the incorporation date was March 16, 2007; the registered agent was Paracorp Inc. but it resigned on March 22, 2012; historical registered agents: Paracorp Inc., Vanessa Lavendera, Michelle Medina, Benjamin Kirk, Benjamin Kirk, Kenny K Chyan; officers: Benjamin Kirk, president. While the address listed for the corporation is not the West

¹ Liberty filed a voluntary petition for bankruptcy and the case against it is therefore currently stayed. During the pendency of the bankruptcy, Plaintiffs are taking no action against Liberty and only name them in this complaint in case the bankruptcy is dismissed. On April 25, 2016, Kirk provided testimony under oath pursuant to a Bankruptcy Rule 341 hearing.

1 Covina address, Lavendera, Medina, and Kirk all list 3218 E Holt Avenue, West Covina,
 2 California as their individual addresses. Liberty also had an office in Mountain View but the two
 3 offices worked together and were one company. Both Gao and Kirk agree that Kirk is CEO of
 4 Liberty and in bankruptcy filings, it is the Southern California office that is the address for
 5 Liberty, and the bankruptcy lists JD Brothers as a creditor of the estate. Liberty used Mega Bank
 6 in San Gabriel, California, 14 miles from its West Covina office, as the bank for many of the
 7 transactions alleged herein.

8 35. Kirk and Gao controlled Liberty and used it for their own financial advantage.

9 **b) HK Grace Building LLC**

10 36. Defendant HK Grace Building LLC (“HK Grace”) is a limited liability company
 11 organized and operating under the laws of the state of California. According to the operating
 12 agreement, JD Brothers holds a 44.4% membership interest and Sunshine Valley, LLC, a
 13 company owned and controlled by Kirk and Gao, owns the remainder. HK Grace held the title
 14 to the Geary property and Gao and perhaps Kirk sold it in 2014 without JD Brothers’ knowledge
 15 or consent. However, in corporate filings, the only people listed are Gao and Hanna Cosman, an
 16 employee of Kirk and Gao.

17 **c) Sunshine Valley LLC**

18 37. Defendant Sunshine Valley LLC (“Sunshine Valley”) is a limited liability
 19 company organized and operating under the laws of the state of California, owned and operated
 20 by Defendant Kirk. Defendants set up Sunshine Valley to induce JD Brothers to invest money in
 21 a real estate purchase transaction controlled by Liberty. Sunshine Valley owned 55.6% of HK
 22 Grace (using \$2 million borrowed from the Guo/Huang Family Trust which still has not been
 23 returned), which held the third property, and then sold it without the knowledge or consent of JD
 24 Brothers, per the terms of the amended operating agreement.

25 38. Sunshine Valley is also improperly referred to as “Sun Valley Management,
 26 LLC” which refers to Sunshine Valley.

27 **3. Doe Defendants**

28 39. The true names and capacities of the defendants named herein as Does 1 through

20, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs who therefore sue such defendants by fictitious names under California Code of Civil Procedure § 474. Plaintiffs are informed and believe that Doe Defendants are California residents, or individuals over whom this Court nevertheless has jurisdiction. Plaintiffs will amend this Complaint to show such true names and capacities when they are ascertained. Plaintiffs are also informed and believe, and based on such information and belief, allege that defendants sued as Does 1 through 20, and each of them, are liable in whole or in part for the wrongful acts alleged herein.

C. ALTER EGO ALLEGATIONS

40. At all relevant times, as alleged more fully herein, each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants.

41. At all times relevant hereto, Defendant Liberty was the alter ego of Defendants Kirk and Gao, and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between Defendants such that any separateness between them has ceased to exist in that Defendants Kirk, Gao, and Liberty completely controlled, dominated, managed, and operated the other Defendants to suit their convenience. Kirk and Gao did not observe corporate formalities in owning and operating Liberty.

42. Specifically, at all times relevant hereto, Defendants Kirk and Gao (1) owned all the stock, controlled the board of directors, business and affairs of Liberty and all of its affiliates, and were the sole and exclusive owners of all of the business and assets of the corporate entities; (2) commingled the funds and assets of the corporate entities, and diverted corporate funds and assets for their own personal use; (3) disregarded legal formalities and failed to maintain arm's length relationships among the corporate entities; (4) inadequately capitalized Liberty; (5) used the same office or business location and employed the same employees and/or attorney for all the corporate entities; (6) held themselves out as personally liable for the debts of the corporate

1 entities; (7) used the corporate entities as a mere shell, instrumentality or conduit for their
 2 individual business; (8) used the corporate entities to procure labor, services or merchandise for
 3 another person or entities; (9) manipulated the assets and liabilities between the corporate entities
 4 so as to concentrate the assets in one and the liabilities in another; (10) used corporate entities to
 5 conceal their ownership, management and financial interests and/or personal business activities;
 6 and/or (11) used the corporate entities to shield against personal obligations, and in particular the
 7 obligations as alleged in this Complaint.

8 43. At all times relevant thereto, Defendant Liberty was not only influenced and
 9 governed by Defendants Kirk and Gao, but that there was such a unity of interest and ownership
 10 that the individuality, or separateness, of Kirk and Gao and Liberty has ceased, and that the facts
 11 are such that an adherence to the fiction of the separate existence of these entities would, under
 12 the particular circumstances, sanction a fraud or promote injustice.

13 44. Plaintiffs are informed and believe that at all relevant times mentioned herein, the
 14 acts of the business entities involved were performed by an employee, agent, officer, servant
 15 and/or representative of Liberty, Kirk, or Gao.

16 **D. CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

17 45. Defendants are individually sued as participants and as aiders and abettors in the
 18 improper acts, plans, schemes, and transactions that are the subject of this Complaint.

19 46. In committing the wrongful acts alleged herein, the Defendants have pursued, or
 20 joined in the pursuit of, a common course of conduct, and have acted in concert with and
 21 conspired with one another in furtherance of the improper acts, plans, schemes, and transactions
 22 that are the subject of this Complaint.

23 47. Each of the Defendants aided and abetted and rendered substantial assistance in
 24 the wrongs complained of herein. In taking such actions to substantially assist the commission
 25 of the wrongdoing complained of herein, each Defendant acted with knowledge of the primary
 26 wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of
 27 his, her or its overall contribution to and furtherance of the wrongdoing.

28

E. UNNAMED PARTICIPANTS

48. Numerous individuals and entities participated actively during the course of and in furtherance of the wrongdoing described herein. The individuals and entities acted in concert by joint ventures and by acting as agents for principals, to advance the objectives of the scheme and to provide the scheme to benefit Defendants and themselves to the detriment of Plaintiffs.

IV. FACTUAL ALLEGATIONS

A. THE SCHEME TO DEFRAUD

49. Kirk and Gao devised and implemented a fraudulent scheme to induce investors, mostly people of Asian descent, to invest in various types of real estate investments. The scheme has lasted for over six years, continues to operate and involve multiple individual and entity victims. Kirk and Gao have kept their scheme secret, but a review of lawsuits filed against them and their controlled companies, and bankruptcy filings and examinations under oath demonstrate a pattern of deceit through a web of interconnected companies forming an enterprise, which has allowed Kirk and Gao to misappropriate monies for their own benefit to the injury of the investors who trusted them.

50. Kirk and Gao primarily worked through Liberty although they also used dozens of other business entities through which to launder money illegally obtained from investors.

51. Liberty has been in business since at least 2007 with offices in Mountain View and West Covina, California. Kirk worked at both the Northern California office and Southern California Office while Gao worked at the Southern California office. Kirk and Gao communicated by telephone, email and U.S. mail, between themselves and with their investors. They obtained investors through different sources and offered different investments related to distressed real property, and fraudulently obtained the majority of their investor funds via wire transfer.

52. The total number of victims are currently unknown, but include at least the following: ELSV LLC, David Tsang, Lana and Elaine Tsang, Jennifer Lee, Jin Hun Huang, Allia Holmes LLC, Vivian Peng, Valley One Investments, LLC, Shunlian “Shawn” Wang, Shao Fang Huang, Anson Well International, Ltd., PA One, LLC, Frank Lee, Christopher D. Lee, YCJS

1 2012 LLC, Richbest Holding LLC, and AHA 2012 LLC. All of these individuals or entities
2 have filed lawsuits or are members of entities that have filed lawsuits that have been financially
3 injured by Kirk and Gao alleging schemes similar to the scheme alleged herein. Kirk and Gao,
4 through an enterprise used the mails and wire transfers to accomplish the fraudulent scheme.
5 They illegally obtained money, which they then laundered through their companies and for their
6 own benefit.

7 53. This same pattern is demonstrated through the bankruptcy of *In re Gold River*
8 *Valley, LLC* pending in the United States Bankruptcy Court for the Central District of California,
9 Los Angeles Division, Case No. 15-10691. In early 2015, Gold River Valley, LLC filed a single
10 asset real estate bankruptcy. Initially Kirk (referred to as his other alias, Benny Ko) filed
11 documents under penalty of perjury regarding the ownership of the debtor. He claimed that it
12 was solely owned by Sunshine Valley, LLC, the same Sunshine Valley, LLC involved in this
13 case. The Liberty bankruptcy also demonstrates the same scheme. In Liberty bankruptcy filings,
14 Kirk admits to agreements with Gao to obtain investors, and put the money in different entities,
15 generally in Gao's name. While Kirk does not admit to committing a fraud, there is no
16 legitimate reason for this scheme except to comingle money and use it for purposes contrary to
17 representations made to investors. According to Kirk, Gao has sold properties, such as 166
18 Geary, and unlawfully and without permission diverted funds to herself.

19 54. Through declarations, filed under penalty of perjury, Lana Tsang and Elaine
20 Tsang demonstrated that they owned a 40% interest in Gold Valley, LLC and that they were
21 induced to invest over \$3 million, through wire transactions, in a property. In or about June
22 2010, Kirk promised the Tsangs that their investment would be used to purchase, renovate,
23 manage, and sell a 12-unit condominium project. They attach to their declarations the operating
24 agreement for Gold River Valley, LLC that showed their 40% ownership and 60% ownership of
25 Kirk's Sunshine Valley and the manager being North American Asset Management Corporation.

26 55. However, as the Tsangs' Motion to Appoint Chapter 11 Trustee and supporting
27 documentation demonstrates, Gao represented to a lender that Gao was Gold River Valley,
28 LLC's sole member. Gao signed a promissory note dated as of September 16, 2011, which she

1 executed as managing member. The Tsangs discovered the existence of the loan when the lender
2 filed a complaint for judicial foreclosure and the appointment of a receiver, which motion was
3 granted and a receiver appointed. They also discovered, and filed in the bankruptcy action, an
4 operating agreement for Gold River Valley, LLC that shows that Gao is its sole member and
5 managing member.

6 56. Gao has filed a declaration in the bankruptcy case dated October 30, 2015 that she
7 formed Gold River Valley, LLC, the Operating Agreement dated June 6, 2011 stating that she
8 owned 100% of the LLC, she is the sole member and appointed herself to be manager, and since
9 the formation of the LLC, no additional members have been admitted or other persons appointed
10 as a manager. Gao and Kirk used the same structure for HK Grace and the Geary property.
11 While Gao claims to be the only member of HK Grace, in fact, JD Brothers is a member of that
12 LLC and JD Brothers' monies was used to purchase the 166 Geary property.

13 57. The above victims who all filed lawsuits against Kirk, Gao, and Liberty allege the
14 similar patterns of fraudulent conduct which Plaintiffs allege. These patterns of fraudulent
15 conduct are as follows:

16 58. Liberty or an agent acting of behalf of Liberty were introduced to the investor
17 through a third party contact, either a real estate broker, a financial advisor, a bank, or an open
18 house.

19 59. Liberty represented itself to the investor as being skilled in the acquisition and
20 sale of distressed real estate for profit. The representations were dependent on the sophistication
21 of the investor and included, but was not limited to the following:

- 22 a) Liberty or its agents represented to investors they would receive a return
23 on their investment by purchasing notes from Liberty for a distressed property.
- 24 b) Liberty or its agents obtained a loan for investment in real estate.
- 25 c) Liberty or its agent represented to investors they would receive a return on
26 their investment by purchasing a minority interest in a limited liability company,
27 which Liberty would then use to buy the distressed real property.
- 28

d) Liberty or its agent represented to investors they would receive a return on their investment by investing in a distressed real estate “tape” (i.e. multiple distressed real estate properties at once).

60. Based upon the above representations, investors wired money to Liberty or an affiliate of Liberty (for the benefit of Liberty, which was later usurped by Kirk and Gao), thinking that their money would be used for the purpose represented by Liberty or one of its authorized agents. The representations made to each investor about how their money would be used was false.

61. In connection with a \$12 million investment, when asked at the Liberty bankruptcy proceeding, “So where did the money go?” Kirk responded: “Money was used in many different operation already.” When asked: “Do you get permission from my client to allocate the funds? . . . it was designated for the purchase of this piece of property only,” Kirk responded: “No. We don’t have your client’s approval but we don’t need to get anyone’s approval on use these acquisition.”

62. In connection with a \$2 million investment, when asked, “And where is the money now?”, Kirk testified he did not know because Lucy Gao controlled the finances:

Q. So you don’t keep track of the money that the clients gave to you? . . .

A. For our structure, I mainly focus on the front and sales. And then it was Lucy, she handled the funds in back office. Our structure was like that. So some of these, I didn’t involve these -- with this allocation on these funds.

Q. Do you have to give any approval or sign on in any transfer of funds? Or anybody can transfer funds from your company?

A. Not anybody. It’s Lucy or me. . . .

Q. So it’s either you or Lucy who had transferred the funds out?

A. Yes. . . .

Q. And do you remember whether you had transferred the funds out?

A. Oh, I didn’t transfer any funds.

Q. So all of the funds were transferred by Lucy?

A. Yeah, transferred to -- to do whatever things needed.

1 **Q. Okay. Thank you. Then let me ask just a few more questions. Regarding Lucy**
 2 **Gao, when do you notice that Lucy Gao had been -- was transferring money**
 3 **out to her personal account?**

4 **A. Last year.**

5 63. The end result of each investment was the same - Kirk and Gao misappropriated
 6 the investors' money.

7 64. The Defendants' method used to appropriate the investors' money and the
 8 investments through notes and deeds of trust and loans shows a pattern of unlawful activity
 9 inflicted upon multiple investors, as follows:

- 10 a) Liberty or its agents promoted the investment to a prospective investor.
- 11 b) Liberty or its agents persuade the prospective investor to invest.
- 12 c) Later, Liberty's agents represented to the investor that either the property
 13 could not be purchase or acquired or if the property was acquired, it was in the
 14 process of being sold. This representation was false, however, through
 15 Defendants' sale of the real property without the investor's consent, re-financing
 16 of the real property to take out all the equity in the real property without the
 17 investor's consent, or outright transfer of the real property via fraudulent transfer.
- 18 d) The investment was never returned to the investor.
- 19 e) Kirk and Gao and their related companies were part of the fraud.

20 65. In less complex frauds, the wired money to Liberty would simply be diverted to
 21 other victim investors who came before, along with paying commissions to Liberty's agents, and,
 22 to Liberty, Kirk, and Gao. This is the classic "Ponzi Scheme" whereby later investors' funds are
 23 used to pay off earlier investors – which further illustrates the "pattern" of ongoing fraudulent
 24 activity.

25 66. Moreover, Kirk and Gao did not execute the above strategy without each others
 26 knowing involvement. Court records show that when one of Liberty's limited liability
 27 companies file for bankruptcy, Kirk and Gao dispute its ownership, only to attempt to "settle"
 28 the dispute and transfer equity to third parties further diverting money away from their legitimate
 creditors. *See In re Atherton Financial Building*, Bankruptcy Case No. 2:14-bk-27223-TD, and

1 *Lucy Gao vs. Atherton Financial Building, LLC*, Adversary Proceeding No. 2:15-bk-01024-TD,
2 filed in the United States Bankruptcy Court for the Central District of California, Los Angeles
3 Division.

4 67. Combined with their acts and omissions towards Plaintiffs, Kirk's and Gao's
5 actions, through the common purpose of their enterprise have engaged in a pattern of
6 racketeering activity over many years with many victims.

7 68. Defendants never registered any investments as securities.

8 69. Defendants settled some of the lawsuits against them. However, in late 2014,
9 according to testimony by Kirk, Gao decided that she did not want to return any money to
10 investors. Kirk disagreed and for the next 1-1/2 years, Gao refused to return the investors'
11 monies, which caused Kirk to file for bankruptcy protection on behalf of Liberty.

12 **B. PLAINTIFFS' FIRST INVESTMENT: 722 MONGOMERY STREET, SAN**
13 **FRANCISCO**

14 **1. The Inducement of Plaintiffs Into The Scheme: Misrepresentation and**
15 **Manipulation**

16 70. Huang is unsophisticated in investing and used a financial advisor for advice.
17 Sometime between September and October 2009, the advisor told Huang about a potential
18 investment.

19 71. On November 19, 2009, the advisor drove Huang to see the Montgomery
20 property, where they met with a representative of Liberty, Sonia Chiou ("Chiou"). Based upon
21 the representations made to her, and with her financial advisor's encouragement, Huang agreed
22 to sign a letter of intent to purchase a non-performing mortgage loan (NPN) note on the property.
23 Chiou prepared the letter of intent, which stated that the purchase price was "\$2.5 million (equal
24 to 1/3 of the total value of NPN)" and e-mailed it to Huang on November 23, 2009.

25 72. On or around November 24, 2009, the advisor drove Huang to Liberty's office at
26 480 San Antonio Rd., Mountain View where Huang met Benny Kirk for the first time.

27 73. Kirk represented that Liberty was involved in the business of buying and selling
28 real estate, as well as debts secured against real estate. Starting during the "great recession" in
California, Liberty began to buy and sell distressed real estate and promissory notes secured

1 against distressed real estate.

2 74. In this regard, Liberty, primarily through Kirk but also through other employees,
3 held itself out to investors, including Huang, as an expert in the business of buying and selling
4 distressed real estate and promissory notes secured against distressed real estate, and induced
5 investors, including Plaintiffs, to give money to Liberty to assist in the acquisition of distressed
6 real estate and promissory notes secured against deeds of trust on distressed real estate.

7 75. Liberty appeared to Huang to be a successful business. There was nothing to
8 indicate that Liberty was not what it purported to be and that Kirk and Chiou were not
9 trustworthy.

10 76. With regards to the Montgomery property, Kirk told Huang it was a rare
11 opportunity to obtain this type of historical property. Kirk represented that it was a good deal
12 that most people had no chance of obtaining, but he said that they could obtain it because they
13 have good relationship with the bank.

14 77. Kirk answered all of Huang's questions and based upon these representations, and
15 at her advisor's encouragement, Huang signed the documents on November 24, 2009. Huang
16 signed the Letter of Intent and Chiou signed on behalf of Liberty. (Exhibit 1). Huang also
17 signed a purchase agreement ("Montgomery Purchase Agreement"), which indicated that Huang
18 would deposit \$2.5 million to purchase a note secured against a deed of trust recorded in first
19 position against 722-728 Montgomery Street, San Francisco, California. (Exhibit 2). This
20 agreement is signed by Huang and by Chiou, on behalf of Liberty.

21 78. On or about November 27, 2009, acting under the obligations contained in the
22 sale agreement, Huang wired \$1 million to Liberty and/or an escrow account for Liberty. On
23 December 4, 2009, Huang wired another \$1.5 million to Liberty and/or an escrow account for
24 Liberty. The total transfers as of December 2009 were therefore \$2.5 million, as agreed upon in
25 the Montgomery Purchase Agreement. Huang wired the monies to Liberty.

26 **2. The Actual Property Transactions for the Montgomery Property**
27 **Were Different Than Represented to Huang**

28 79. In early August 2010, Kirk told Huang by telephone on several occasions that

1 Liberty was not able to obtain the Montgomery property, specifically that the attorney was still
2 “fighting” in court and they had not obtained the property yet. On August 16, 2010, Huang and
3 Liberty signed a cancellation agreement (“Montgomery Cancellation Agreement”), cancelling
4 Huang’s \$2.5 million investment and providing it would be returned to her within two business
5 days, while in fact, it was not returned until December 13, 2010. (Exhibit 3). This agreement is
6 signed by Huang and Chiou as the Asset Manager on behalf of Liberty.

7 80. The representation by Kirk was false. According to public records, the
8 Montgomery property was bought at foreclosure by Liberty on June 28, 2010, meaning that
9 Liberty already owned 722 Montgomery St. for over a month when Kirk made this
10 representation to Huang.

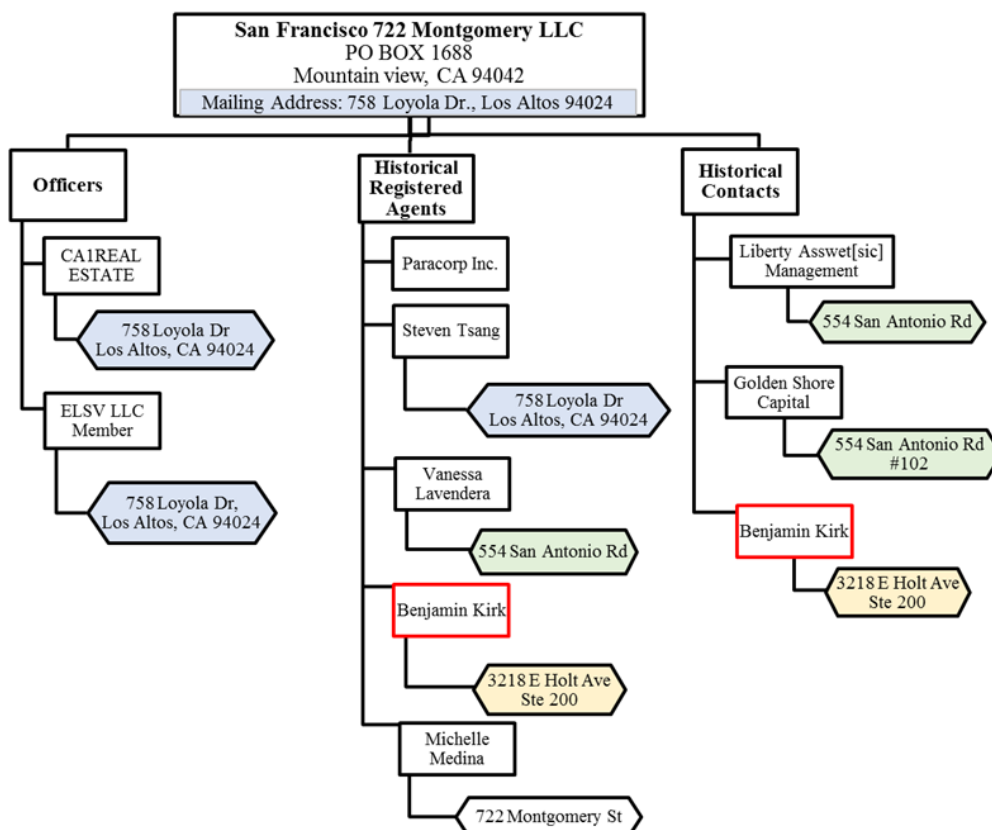
11 81. According to public records, the assessment record for 722 Montgomery St. with
12 Estimated Roll Certification Date July 1, 2010, which lists Liberty as the owner of the
13 Montgomery property, indicates that the total assessed value was \$1,494,917. This is \$1 million
14 less than the price Kirk told Huang the property would cost, and \$1 million less than Huang
15 invested.

16 82. According to public records, Liberty transferred the Montgomery property to San
17 Francisco 722 Montgomery LLC as a purchase-money mortgage, on November 18, 2010, with a
18 recording date of December 28, 2010. This transfer was signed by Vanessa Lavendera on behalf
19 of Liberty. Lucy G. Seh was the notary. Gao’s married name was Lucy Seh and the handwriting
20 looks to be the same as Gao’s handwriting. (Exhibit 4).

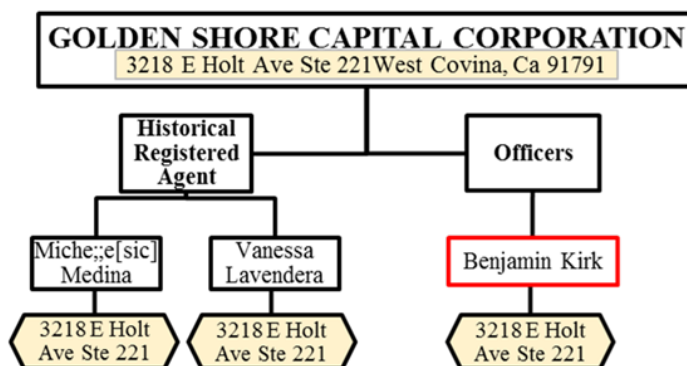
21 83. The California Secretary of State corporate filing of San Francisco 722
22 Montgomery LLC provides that the business address is PO Box 1688, Mountain View,
23 California, and that the mailing address is 758 Loyola Drive, Los Altos, California. Registered
24 agents: Ca1Real Estate, ELSV LLC; historical registered agents: Paracorp Inc., Steven Tsang,
25 Vanessa Lavendera, Benjamin Kirk, Michelle Medina; historical contacts: Liberty Asswet[sic]
26 Management, Golden Shore Capital, Benjamin Kirk.

27
28

[Figure 1 — San Francisco 722 Montgomery LLC]



[Figure 2 — Golden Shore Capital Corporation]



84. Finally, according to public records, the deed record dated September 26, 2014 indicates a Lis Pendens action for the Montgomery property, with Benny Ko as the buyer. Thus, Kirk, aka Benny Ko, improperly misappropriated this investment for himself based upon his misrepresentations and the substantial assistance of the other Defendants.

C. **PLAINTIFFS' SECOND INVESTMENT: 165 O'FARRELL STREET**

1. **Kirk Induces JD Brothers to Invest More Money Based on More False Statements, Showing a Continuing Pattern of Fraud on Plaintiffs**

85. In August 2010, Kirk told Huang about another potential investment, the O'Farrell property by telephone on numerous occasions. Kirk told Huang that the top floor of this building had caught on fire, and while the structure remained, everything else needed to be rebuilt. The sale price was \$6,800,000, much higher than the Montgomery property investment, so Huang, through JD Brothers, agreed to purchase 70% of ownership at \$4,760,000.

86. On August 16, 2010, two separate documents were executed which allowed Liberty to 1) refund the \$2.5 million to Huang and 2) simultaneously have the \$2.5 million reinvested in another one of Liberty's real estate distressed asset purchases through JD Brothers. The first was the Montgomery Cancellation Agreement. (Exhibit 3).

87. The second agreement was an agreement that JD Brothers would purchase a 70% interest in the O'Farrell property, a commercial building, for \$4.76 million ("O'Farrell Purchase Agreement"). (Exhibit 5). The O'Farrell Purchase Agreement is signed by Jimmy Guo on behalf of JD Brothers, and Chiou as the Asset Manager on behalf of Liberty.

88. Huang asked Kirk to refund the \$2,500,000 to her personal account and that JD Brothers would wire the money back, but Kirk rushed Huang to transfer the money first.

89. On August 17, 2010, acting under the obligations contained in the O'Farrell Purchase Agreement, Huang wired \$1.26 million to Liberty and/or an escrow account for Liberty. On August 20, 2010, JD Brothers wired another \$1 million to Liberty and/or an escrow account for Liberty. Liberty received these payments on August 19th and 24th respectively. This wire transfer was sent by the West Covina office of Liberty. The bank which wired the money was Mega Bank, San Gabriel, #xxxxxxx870.

90. Four months later, on December 13, 2010, Liberty finally returned the \$2.5 million from the Montgomery property investment to Huang. JD Brothers then reinvested the \$2.5 million the next day, December 14, 2010, by wiring \$2.5 million to Liberty and/or an escrow account for Liberty. This money also went to the Liberty account at Mega Bank, San

1 Gabriel. The total transfers as of December 2010 were therefore \$1.26 million, plus \$1 million,
 2 plus \$2.5 million, or a total of \$4.76 million, as agreed upon in the O'Farrell Purchase
 3 Agreement.

4 91. One month later, Kirk told Huang that the O'Farrell property was "still in
 5 process" and that it would be better to make another investment. Accordingly, on January 26,
 6 2011, Liberty and JD Brothers executed another cancelling agreement to cancel the purchase of
 7 the O'Farrell property ("O'Farrell Cancellation Agreement"). (Exhibit 6). The O'Farrell
 8 Cancellation Agreement is signed by Huang on behalf of JD Brothers, and Chiou as the Asset
 9 Manager on behalf of Liberty. Just like the previous Montgomery Cancellation Agreement, the
 10 O'Farrell Cancellation Agreement again had a provision that the \$4.76 million would be returned
 11 to Plaintiff within two business days.

12 92. JD Brothers' \$4.76 million was not returned in two days. In fact, it was not
 13 returned at all, but instead credited to the next purchase, a month later.

14 **2. The Actual Property Transactions for the O'Farrell Property Were**
 15 **Different Than Represented to Huang**

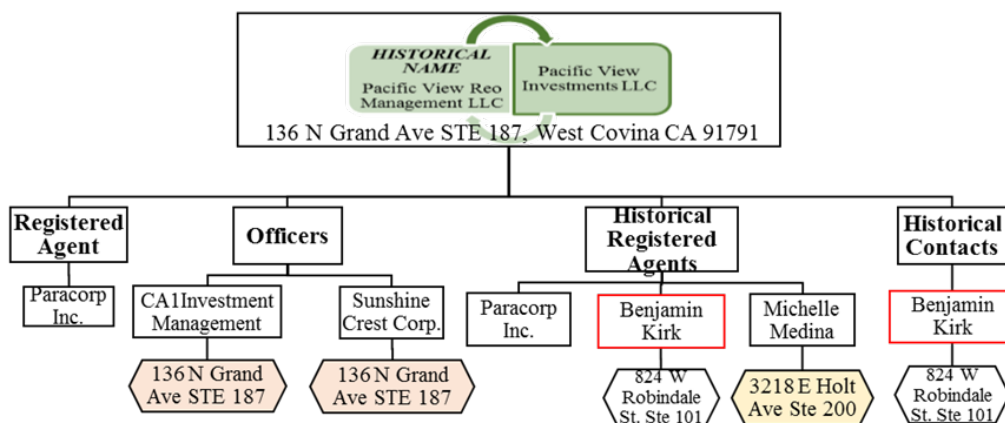
16 93. According to public records, Pacific View Reo Management LLC bought the
 17 O'Farrell property on August 26, 2010. Pacific View Reo Management LLC was the historical
 18 name of Pacific View Investments LLC, a cancelled LLC. Public records also show that the
 19 deed record lists the "buyer" Pacific View Reo Management LLC, with the address 3218 E Holt
 20 Avenue, West Covina, California — the same exact address as Liberty's main office. The
 21 California Secretary of State corporate filing of Pacific View Investments LLC provides that the
 22 business address is 136 N Grand Ave, Ste. 187, West Covina, California. Registered agents:
 23 Paracorp Inc.; historical registered agents: Paracorp Inc., Benjamin Kirk, Michelle Medina;
 24 officers: CA1Investment Management, Sunshine Crest Corporation; historical contacts:
 25 Benjamin Kirk.

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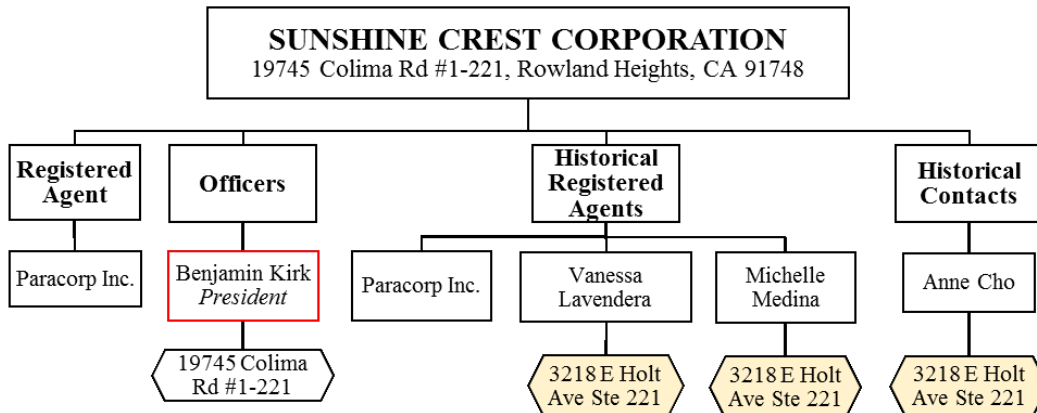
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[Figure 3 — Pacific View Reo Management LLC]



[Figure 4 — Sunshine Crest Corporation]

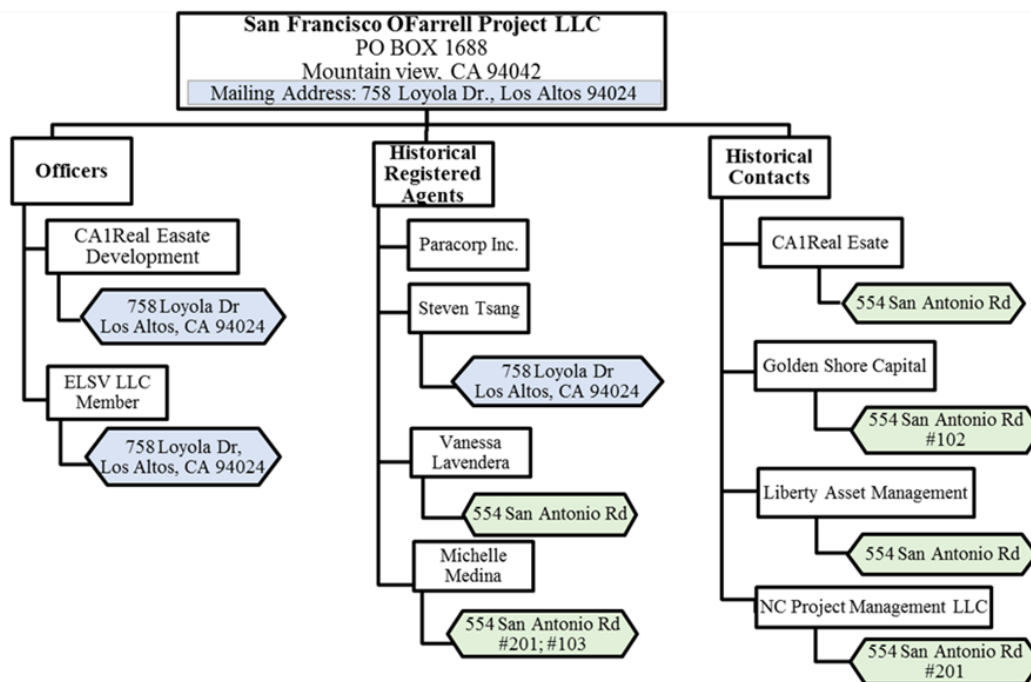


94. According to public records, the assessment record for the O'Farrell property with a recording date of September 23, 2010, (sale date August 26, 2010), indicates that the total assessed value was \$6,270,739, with a sale price of \$6,000,000. This is \$800,000 less than the price Kirk told Huang the property cost.

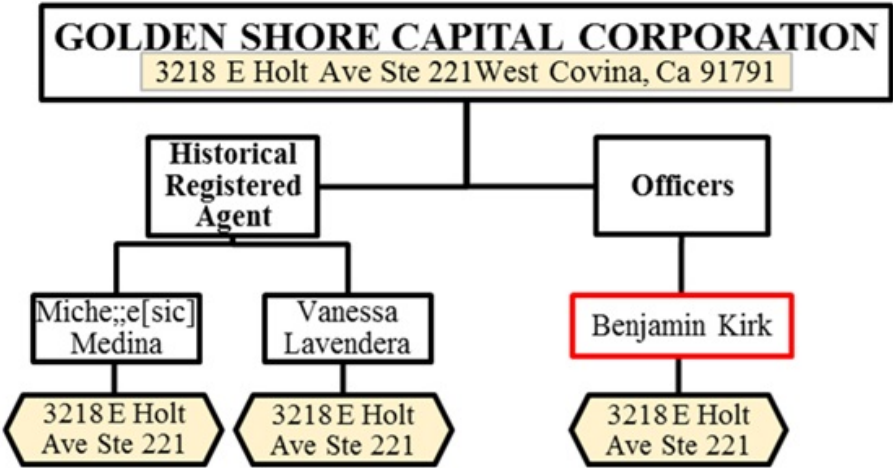
95. According to public records, there was a mortgage loan of \$4,800,000 on the O'Farrell property—a number just above the \$4,760,000 JD Brothers invested. According to public records, Pacific View Reo Management LLC transferred the O'Farrell property on November 18, 2010, with a recording date of December 28, 2010 to San Francisco O'Farrell Project LLC, as a purchase-money mortgage, the exact same dates and type of transfers as the Montgomery property. Additionally, the deed record listing this transfer/sale states that the address of the "buyer," San Francisco O'Farrell Project LLC, is 3218 E Holt Ave 212, West

Covina, California—the same address used by Pacific View Reo Management LLC, and the same address as Liberty’s main office. The California Secretary of State corporate filing of San Francisco O’Farrell Project LLC however, provides that the business address is PO Box 1688, Mountain View, California, and that the mailing address is 758 Loyola Drive, Los Altos, California, the same address as San Francisco 722 Montgomery LLC. Officers: CA1Real Estate, ELSV LLC; historical registered agents: Paracorp Inc., Steven Tsang, Vanessa Lavendera, Michelle Medina; historical contacts: Liberty Asset Management, Golden Shore Capital, CA1Real Estate, NC Project Management LLC. The grant deed from Pacific View REO Management, LLC to San Francisco O’Farrell Project, LLC is signed by Benjamin Kirk with Lucy Seh (Gao) as notary public. (Exhibit 7).

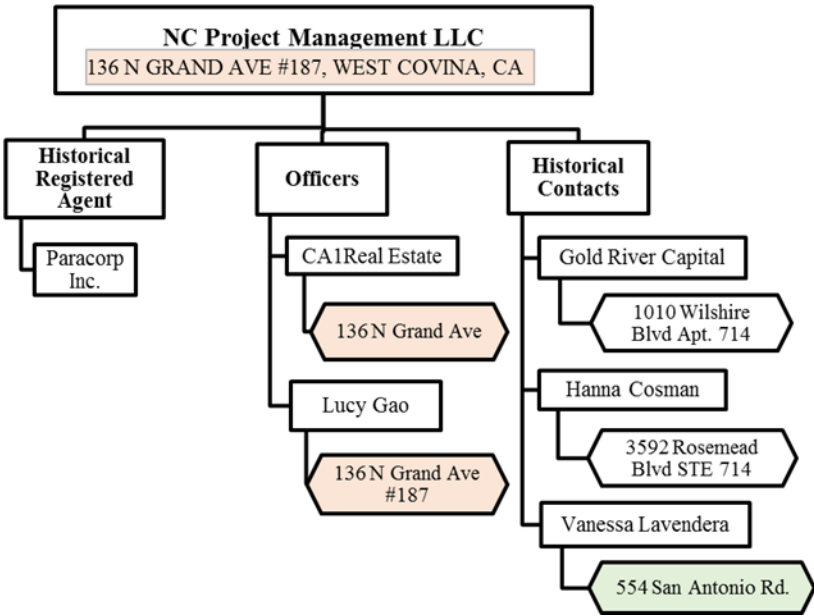
[Figure 5— San Francisco O’Farrell Project LLC]



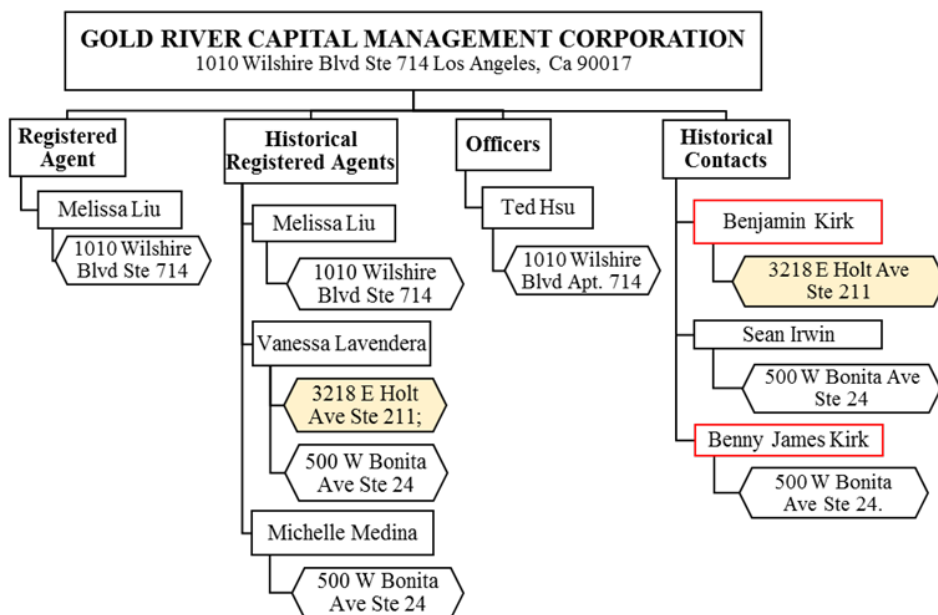
[Figure 6 -- Golden Shore Capital Corporation]



[Figure 7 — NC Project management LLC]



[Figure 8 — Gold River Capital Management Corporation]



96. Finally, according to public records, just like the Montgomery property, the deed record dated September 26, 2014, indicates a Lis Pendens action for the O'Farrell property, with Benny Ko as the buyer. Again Kirk, aka Benny Ko, misappropriated an investment that belonged to JD Brothers because of his false representations and the substantial assistance of the other Defendants.

97. According to public records, the assessment record for the O'Farrell property, with Estimated Roll Certification Date June 1, 2014, indicates that the total assessed value was \$6,270,739.

D. PLAINTIFFS' THIRD INVESTMENT: 166 GEARY STREET

1. JD Brothers Invests in Another Property Through Further False Statements

98. In the fall of 2010/early 2011, Chiou, representing Liberty, took Huang to view the Geary property. Kirk told Huang he wanted to buy the building for himself but did not have enough money. Kirk then said he wanted to co-own the property with Huang.

99. Just like the two documents executed on August 16, 2010, the Montgomery Cancellation Agreement and the O'Farrell Purchase Agreement, which 1) cancelled the purchase

1 of one property, and 2) simultaneously reinvested in another, two similar documents were also
2 executed on January 26, 2011. The first was the O'Farrell Cancellation Agreement cancelling
3 the purchase of the O'Farrell property. (Exhibit 6).

4 100. The second agreement was that JD Brothers and Sunshine Valley would jointly
5 purchase the Geary property ("Geary Purchase Agreement"). (Exhibit 8). The Geary Purchase
6 Agreement is signed by Chiou as Asset Manager for Liberty as the "Seller," and Huang on
7 behalf of JD Brothers and Kirk on behalf of Sunshine Valley as the "Purchasers."

8 101. The Geary property is a 48,600 square foot, sixteen-story commercial building
9 near San Francisco's busy Union Square shopping district and generated rents paid by the
10 building's tenants. Kirk told Huang the purchase price would be \$36 million, with each putting
11 in 50% by cash and/or assumption of liabilities. According to the Geary Purchase Agreement,
12 JD Brothers and Sunshine Valley would each own 50% of the Geary property. This would
13 become the largest and most expensive real estate distressed asset that Liberty induced JD
14 Brothers to invest in yet.

15 102. Huang told Kirk that JD Brothers could not invest more than \$8 million. Kirk
16 proposed that Sunshine Valley, his LLC, had \$8 million as well, and that Liberty would obtain a
17 loan from the bank for the rest. Gao obtained the loan.

18 103. According to the California Secretary of State corporate filing, the business
19 address of Sunshine Valley LLC, the co-owner of the Geary property, is 3218 E Holt Avenue,
20 West Covina, California—the same address as Liberty's main office, and the same address used
21 by both Pacific View Reo Management LLC and San Francisco O'Farrell Project LLC. The
22 registered agent is Paracorp Inc., and the officers are Benjamin Kirk and CalReal Estate.
23 Michelle Medina is listed a historical registered agent, and Hanna Cosman and Golden Shore
24 Capital as historical contacts.

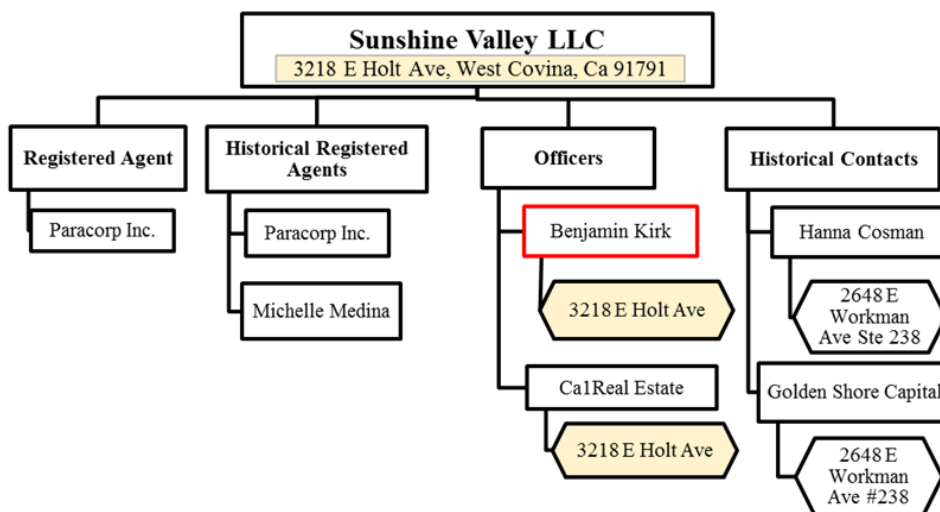
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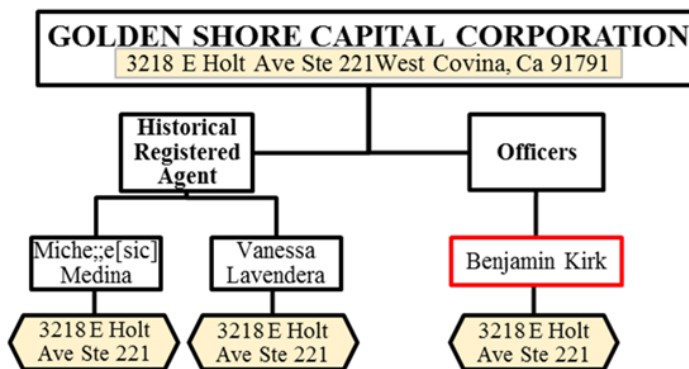
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[Figure 9 — Sunshine Valley LLC]



[Figure 10 – Golden Shore Capital Corporation]



104. Kirk rushed Huang to transfer the money. On February 1, 2011, acting under the obligations contained in the Geary Purchase Agreement, JD Brothers transferred \$1 million to Liberty and/or an escrow account for Liberty. This money was wired to Liberty's account at Mega Bank, San Gabriel. On May 3, 2011, JD Brothers transferred another \$2.086 million to Liberty and/or an escrow account for Liberty. The money was wired to Mega Bank in San Gabriel, #xxxxxxx870; Liberty's account. Huang requested that Liberty credit the \$4.76 million from the O'Farrell Cancellation Agreement which had not been refunded yet, to be credited to the Geary Purchase Agreement. Liberty agreed and credited JD Brothers' \$4.76 million towards the purchase of the Geary property. JD Brothers' total investment with Liberty was therefore \$1 million, plus \$2.086 million, plus \$4.76 million, or a total of \$7.846 million.

105. Liberty then credited JD Brothers an additional \$154,000.00 as the profit from the O'Farrell property towards the purchase of the Geary property. This brought JD Brothers' total investment with Liberty up to \$8 million.

106. In reliance on Liberty's and its agents' representations, JD Brothers had now invested \$8 million for this investment.

2. Simultaneously, Kirk Induced a Separate Loan from the Guo/Huang Family Trust for Himself

107. During this time that JD Brothers was transferring the money for the Geary property to Liberty, Kirk simultaneously sought out to borrow \$2 million from Huang/JD Brothers. Kirk told Huang that he would have the money in a couple of months and promised that if Huang/JD Brothers could lend him \$2 million, he would pay it back within three months.

108. Based on these false representations, the Guo/Huang Family Trust, of which Huang is trustee, lent \$2 million dollars to Kirk, who in return signed a promissory note on April 21, 2011 that the \$2 million was due in full within three months of signing, or July 21, 2011, at a yearly interest rate of 4% on the unpaid balance, with payments in monthly interest only installments, consisting of \$6,666.66 per installment on the first day of each month until the principal is paid in full ("Guo/Huang Family Trust Promissory Note"). (Exhibit 9). The promissory note is signed by Benny Kirk with a Certificate of Acknowledgment signed and sealed by Chiou, however not as an employee of Liberty, but as a Notary Public.

109. Per the agreement, the Guo/Huang Family Trust wired \$2 million into Mega Bank, Vista Escrow Services on April 21, 2011 for the purpose of Kirk purchasing the Geary property.

E. HK GRACE BUILDING LLC: A JOINT VENTURE

110. After JD Brothers' \$8 million was transferred to Liberty, and the Guo/Family Trust wired \$2 million to Mega Bank, Vista Escrow, Kirk subsequently told Huang it would be easier to set up a new LLC to buy the Geary property. The process would be: 1) Liberty would buy Geary from the seller, 2) then the new LLC would buy the property from Liberty.

111. Sunshine Valley and JD Brothers together formed the new entity, HK Grace

1 Building LLC (“HK Grace”) to hold the Geary property, the “H” in HK standing for Wendy
 2 Huang, and the “K” for Benny Ko/Kirk. Huang and Kirk set up HK Grace on November 21,
 3 2011 verbally agreeing to the terms of their joint venture/LLC. This verbal agreement
 4 disregarded the original terms of the Geary Purchase Agreement by which JD Brothers and
 5 Sunshine Valley would each own 50% of the property. Instead, the newly formed LLC would
 6 now hold the Geary property. JD Brothers would only hold a 44.4% membership interest for \$8
 7 million, while Sunshine Valley would hold a 55.6% membership interest because it would be
 8 using the \$2 million loan, and therefore contributing \$10 million. JD Brothers agreed, unaware
 9 that Liberty, Kirk, and Gao would later use this newly formed LLC and Sunshine Valley’s
 10 majority ownership to both sell 166 Geary Street, and then divert the profits without JD
 11 Brothers’ knowledge.

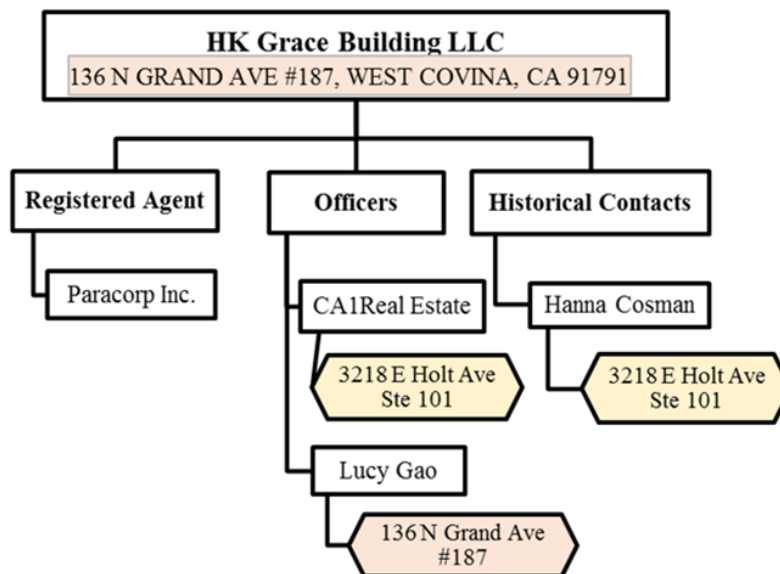
12 112. The California Secretary of State corporate filing of HK Grace Building LLC
 13 provides that the business address is 136 N Grand Ave, West Covina, California (the same
 14 address used by Pacific View Investments LLC), and HK Grace’s Tax Return provides that the
 15 business address is 3218 E Holt Avenue — the same address as Liberty’s main office, and the
 16 same address used by Pacific View Reo Management LLC, San Francisco O’Farrell Project
 17 LLC, and Sunshine Valley. The registered agent was Paracorp Inc., but it resigned on September
 18 3, 2015; the officers are CalReal Estate and Lucy Gao, and there is only one historical contact
 19 listed, Hanna Cosman. There is no mention of JD Brothers or Sunshine Valley. There is no
 20 mention of JD Brothers or Sunshine Valley. The filing date was November 21, 2011.

21 113. On August 6, 2012, five months after March 19, 2012, the date HK Grace had
 22 obtained the Geary property, JD Brothers, Kirk, and Vanessa Lavendera, who was the manager
 23 of many of the LLC affiliates of Liberty, signed the operating agreement for HK Grace (“HK
 24 Grace Operating Agreement”). (Exhibit 10). This was the first written agreement that
 25 represented in writing that JD Brothers owned a 44.4% membership interest in HK Grace.

26 114. The HK Grace Operating Agreement matched the verbal agreement from
 27 November 21, 2011 — JD Brothers owned 44.4% membership interest in HK Grace purchased
 28 for \$8 million, and Sunshine Valley would own 55.6% purchased for \$10 million, \$2 million

more than Kirk had initially said he could invest. The membership interest amounts are on “Schedule A” of the HK Grace Building Operating Agreement.

[Figure 11 — HK Grace Building LLC]



115. As per the agreement between Kirk and Gao, Gao also signed an Operating Agreement for HK Grace with Gao as the sole member. Gao, however, did not use her money to purchase 166 Geary; instead JD Brothers’ money was used.

116. Following HK Grace’s purchase of the Geary property, Defendants Liberty, Kirk and Gao operated HK Grace. As far as Huang and JD Brothers knew, the Defendants were operating the company competently and hoping to make a profit. Kirk assured her that JD Brothers was an owner and that she would be receiving the K-1 showing her ownership interest.

117. Based upon the structure of this investment, it was a security. JD Brothers was a passive, minority investor with no control. Sunshine Valley, LLC was the Operating Manager. JD Brothers’ profit was to come from the profits of the rents of the commercial business at the property. JD Brothers contributed risk capital subject to the entrepreneurial and/or managerial efforts of others.

118. In mid-2013 when JD Brothers wanted to prepare its 2012 tax return, Huang spoke to Mary Chow, Liberty’s accountant. Chow told Huang that HK Grace had some profit in

1 2012 but that Liberty made it look like a loss in the paperwork to avoid paying taxes. JD
2 Brothers never received any distribution of profits, even though the rents generated substantial
3 income, greater than the liabilities.

4 119. Plaintiffs have acquired the 2012, 2013 and 2014 tax returns of HK Grace from
5 the Internal Revenue Service. Each of these returns shows that HK Grace's address is 3218 E.
6 Holt Avenue, Ste. 101, West Covina, California, the same address as Liberty. Each of the
7 returns show that HK Grace is owned by Sunshine Valley (55.6%) and JD Brothers (44.4%).
8 However, in contrast to the 2012 and 2013 returns, which correctly reflect JD Brothers' share of
9 profit, loss, and capital at 44.4%, the 2014 tax return improperly changed the profit and loss
10 percentage to 0% percent. *See* Exhibit 11 at JTB000087. The 2014 return also shows that the
11 Geary property was sold. *Id.* at JTB000079. A transcript provided for the tax period
12 December 31, 2014 shows HK Grace at the E. Holt address with Gao as the member, thus
13 showing that Gao had knowledge of the original tax returns.

14 120. In October 2013, to obtain information, Huang spoke by telephone with Gao.
15 Most of the call was about the personal relationship between Kirk and Sonia Chiou, but they also
16 discussed JD Brothers' investment in 166 Geary. The conversation began with Huang
17 introducing herself as Wendy from JD Brothers and Lucy acknowledging her. Huang thanked
18 Gao for helping to obtain the loan which Kirk had told her was not easy to get. Gao replied that
19 it was okay; that since Kirk and Huang could not get it, she did. Huang asked about the loan
20 amount, which Kirk had told her was about \$18 million. Gao said the loan was about that
21 amount. Gao told Huang that in the future, if Huang wanted to know anything about 166 Geary
22 to ask her because she knew everything. Huang then asked who owned Sunshine Valley and
23 specifically whether Kirk was the sole owner. Gao responded, "eh, it's kind of ours." These
24 statements demonstrate Gao's knowledge and involvement in JD Brothers' investment in 166
25 Geary, and Gao's participation in the transaction. Gao's statements also demonstrate the
26 disregard of the separateness or corporate entities owned and/or controlled by Kirk and Gao.

27 121. During the discussion regarding the Kirk/Chiou personal relationship, Gao said
28 that she had been unaware of the relationship. Huang asked her how she could be unaware since

1 Gao is the CFO, Chiou is her employee, and Kirk, Gao and Chiou meet often. Gao replied that
2 she was too busy on business and family things and never thought about it. Gao then said that
3 although she and Kirk were not married, they had been living together for a few years and have a
4 child. She said that she and Kirk are perfect business partners. Kirk would not be a success
5 without her and she would not have done as well. Gao also said that she and Kirk had to be
6 together and that Kirk would not have a future if Kirk stayed with Chiou.

7 122. Upon hearing this, Huang then called Kirk, and asked him again who owned
8 Sunshine Valley. Kirk told her that he, Benny Kirk, was the sole owner of Sunshine Valley and
9 that that had never changed. Although confused, Huang did not suspect any problems—she just
10 wanted to try to understand these complicated deals.

11 123. Huang requested HK Grace’s Statement of Information and on October 31, 2013,
12 Lavendera sent it to her. The Statement of Information listed only Lucy Gao as a manager,
13 contrary to the operating agreement between JD Brothers and Sunshine Valley but consistent
14 with the scheme agreed to by Kirk and Gao.

15 124. Kirk told Huang that it was easier for Gao to get the loan. Huang, wanted the
16 documents to be accurate and, therefore, told Kirk that she wanted to amend the HK Grace
17 Operating Agreement ASAP. Kirk told her “No Problem. You can amend whatever you want.
18 Send me the copy and I’ll sign it.” Huang wrote and sent Kirk an amendment, which
19 emphasized that to sell the Geary property would require consent of 100% of the membership
20 interests (“HK Grace Amended Operating Agreement”). (Exhibit 12). Kirk, on behalf of
21 Sunshine Valley, signed the amendment on January 16, 2014 and had it notarized on the same
22 day by Helena Cosman. Lavendera mailed the signed and notarized HK Grace Amended
23 Operating Agreement to Huang. Huang, on behalf of JD Brothers, signed on the amendment and
24 had it notarized on January 21, 2014.

25 125. Whether intentional by Defendants in order to confuse or not, the original
26 agreement had a signature line for “Sun Valley Management LLC” and then the amendment was
27 “Sunshine Valley Management LLC”. Neither of these are Sunshine Valley LLC— the name
28 that was supposedly the LLC which would co-own the property as told to Huang. Sun Valley

1 Management LLC, however, is a cancelled but real LLC. According to the California Secretary
 2 of State, the corporate filing for Sun Valley Management LLC provides that the business address
 3 is 2648 E Workman Ave Ste 238, West Covina, California—the same address used by the
 4 people acting as agents or officers in some of the other affiliated LLCs including Sunshine
 5 Valley. The registered agent again was Paracorp Inc.; and the officers were Ca1Real Estate and
 6 Hanna Cosman. The filing date was November 18, 2011, just three days before the filing of HK
 7 Grace Building LLC. Sunshine Valley Management LLC was the name written by Huang on the
 8 HK Grace Amended Operating Agreement while referencing the original operating agreement
 9 because she had thought Kirk had simply made a typo on the original by writing Sun instead of
 10 Sunshine. Kirk gave confusing information about Sunshine Valley to Huang, reviewed all the
 11 relevant documents, and failed to make any corrections to the documents and to say that they
 12 were incorrect. The intent of the documents was for Sunshine Valley LLC to be the entity.

13 126. The intent of the HK Grace Amended Operating Agreement was to amend the
 14 original agreement with the original parties and any difference in names is a mistake, easily
 15 corrected, rather than an intent of the parties to refer to different companies.

16 127. Kirk continued to represent to Huang that the Geary property was in the process
 17 of being sold and that it would close shortly, but the parties were still negotiating. Huang had no
 18 reason to disbelieve Kirk at this point and continued to rely on Kirk and Gao to act in her
 19 [Huang] and JD Brothers' best interests.

20 **F. HUANG DISCOVERS THE GEARY PROPERTY HAS BEEN SOLD**
 21 **WITHOUT JD BROTHERS' KNOWLEDGE OR CONSENT**

22 128. In early 2015, Huang discovered that the Geary property had been sold on
 23 October 31, 2014, with recording date November 18, 2014, for \$60 million, despite the HK
 24 Grace Amended Operating Agreement, which required the knowledge and consent of JD
 25 Brothers.

26 129. According to the grant deed recording the sale, the Geary property was sold to:
 27 166 Geary Street Retail LLC: undivided 71.66% tenancy in common interest; AA 166 Geary,
 28 LLC: undivided 8.5% tenancy in common interest; Cresta 166 Geary, LLC: undivided 3.12%

1 tenancy in common interest; and TRG 166 Geary, LLC: undivided 16.72% tenancy in common.

2 130. The grant deed for the Geary property is signed by Defendant Gao, purportedly as
3 HK Grace Building LLC's managing member. As far as Huang knew, Gao was the manager of
4 HK Grace, but was never a member of HK Grace Building, LLC. Neither the August 6, 2012
5 Operating Agreement, nor the January 21, 2014 Amendment to Operating Agreement allowed
6 Gao to intentionally and unilaterally sell the Geary property without JD Brothers' consent.

7 131. On February 3, 2015, Huang met with Kirk and asked him again about the status
8 of the Geary property and whether it had been sold. Kirk told Huang that the Geary property
9 was still in the process of marketing and being sold. Huang again asked for the amount of the
10 loan for the Geary property, and Kirk again lied and said \$20 million. When Huang asked to see
11 the 2014 quarterly Profit and Loss Statements, Kirk said that they were not yet ready. Kirk again
12 represented that he would return all of the money owed to JD Brothers, including the profit and
13 interest, and not a penny less.

14 132. Kirk also told Huang that it was Gao who did not want to return the money, so he
15 told Huang to contact her directly and gave Huang Gao's phone number since she controlled the
16 money. This statement is consistent with Kirk's testimony and sworn declarations in the Liberty
17 bankruptcy proceeding that Gao did not want to return investors' monies. Kirk also testified that
18 the proceeds from the sale were transferred to Lucy Gao's personal bank account.

19 133. In early February 2015, Huang called Gao and left a voicemail. Huang also sent
20 Gao text messages. Additionally, Huang called Liberty's front desk and asked to leave a note for
21 Gao. Gao never answered any of the calls, texts, or messages. After several days, Huang found
22 out that Gao had blocked her phone number.

23 134. According to Kirk's testimony, when Gao found out about the personal
24 relationship between him and Sonia Chiou, Gao thought that Huang and Chiou were working
25 together. Therefore, Gao sold 166 Geary and transferred all the assets to her own personal
26 account. This sale, however, was part of the scheme to divert monies improperly to Gao.

27
28

G. JD BROTHERS HAS NOT RECEIVED ANY MONEY FROM ITS INVESTMENT IN THE GEARY PROPERTY

135. Since the time it first invested in the Geary Property, JD Brothers has not received any money from its initial investment of \$8 million, the profits from the sale of the property of approximately \$10 million to JD Brothers, or rents for two years of approximately \$500,000. Defendants Kirk, Gao and Liberty have failed to account for the investment, the gain on the sale profits, or rent from the Geary property. JD Brothers is informed and believes and on that basis alleges that the Defendants have misappropriated the profits from the sale of the property and the rents received during the time they owned it, all to the injury of JD Brothers. According to a declaration filed April 1, 2016 in the Liberty bankruptcy, Gao sold 166 Geary, which had been acquired with Liberty's funds, and diverted the sale proceeds for her benefit. Kirk affirms that Gao did the same thing with two other properties.

136. Gao has admitted in discovery responses, served after the Court denied her motion to dismiss the securities fraud claims, that she sold 166 Geary and did not give any of the proceeds to JD Brothers. The Grant Deed transferring ownership of 166 Geary Street from HK Grace to 166 Geary Street Retail, LLC is attached hereto as Exhibit 13. The Grant Deed is dated October 31, 2104 and signed by Lucy Gao as Managing Member of HK Grace.

H. THE \$2 MILLION PERSONAL LOAN HAS NOT BEEN REPAID

137. Kirk did not pay back the \$2 million in full by the end of the three months July 21, 2011, as agreed upon in the Guo/Huang Promissory Note. (Exhibit 9).

138. Therefore, an agent of the Guo/Huang Family Trust then called Kirk and they both agreed to change the yearly interest rate to 5% instead of the previously agreed 4%. Kirk signed this amendment to the promissory note on June 21, 2012 and had it notarized by Chiou. (Exhibit 14).

139. On December 30, 2012, Liberty wired \$166,666.67, the interest from April 21, 2011, to December 21, 2012 to the Guo/Huang Family Trust.

140. When the time to repay the money became due, Kirk asked for another extension and appeared to have the resources to pay back the money. Therefore, the Guo/Huang Family

1 Trust agreed to another extension and raised the interest rate to 8%. Kirk signed this second
2 amendment on July 21, 2013 and had it notarized by Chiou. (Exhibit 15). This second
3 amendment is the operative agreement.

4 141. To date, Kirk has not paid any interest since December 21, 2012, or returned any
5 of the principal \$2 million.

6 **I. JD BROTHERS' PORTFOLIO INVESTMENT**

7 142. In addition to the investments in specific real property, Kirk began to ask Huang
8 to invest money in the Distressed Property Portfolio soon after Huang had signed the
9 Montgomery Secured Note Purchase Agreement, her first investment with Liberty. Based upon
10 the structure of this investment, it was a security. JD Brothers was a passive, minority investor
11 with no control. JD Brothers contributed risk capital subject to the entrepreneurial and/or
12 managerial efforts of others.

13 143. Kirk convinced Huang to invest \$3 million to purchase ten distressed properties.
14 Kirk represented that he could easily sell each of the ten distressed properties within three to four
15 months, averaging at least three sales per year. Kirk further represented that with 20% interest
16 profit on each distressed property, JD Brothers could make 60% interest profit on its money per
17 year.

18 144. Kirk further induced JD Brothers, through Huang, to invest by assuring that the
19 investment in the portfolio would be completely transparent and that she could view all the
20 actions regarding the distressed properties such as evictions, repairs, listings, and sales online, on
21 a daily basis. That transparency did not occur.

22 145. On March 22, 2010, Liberty and JD Brothers signed a distressed property
23 portfolio agreement ("2010 Distressed Property Portfolio Investment Agreement"), which
24 provided that JD Brothers investment would be put in "a common fund for distressed real estate-
25 related portfolio." (Exhibit 16). Jimmy Guo signed on behalf of JD Brothers and Chiou signed
26 as the Asset Manager on behalf of Liberty. The agreement also provided for a 20% return on
27 investment over a two-year period, subject to certain conditions.

28 146. On March 25, 2010, JD Brothers wired \$3 million to Liberty to purchase ten

1 distressed properties, with the expectation of receiving a 20% profit over two years pursuant to
 2 the terms of the per the 2010 Distressed Property Portfolio Investment Agreement. This \$3
 3 million was separate and apart from the \$8 million invested into the real estate distressed asset
 4 purchases.

5 147. On July 21, 2013, Liberty instead induced JD Brothers to sign a second portfolio
 6 investment agreement which guaranteed a 5% net return on JD Brothers' now \$3.6 million dollar
 7 investment, which amount included the accrued interest ("2013 Distressed Property Portfolio
 8 Investment Agreement"). (Exhibit 17). Huang signed this agreement on behalf of JD Brothers
 9 and Chiou signed as asset manager on behalf of Liberty. This would be another \$360,000 in
 10 interest for the second round portfolio from March 25, 2012 to March 25, 2014.

11 148. The 2013 Distressed Property Portfolio Investment Agreement provided that
 12 Liberty guarantees an "ANNUAL 5% net return of the entire portfolio. The LAMC will be
 13 responsible for the difference, if the net return is below 5%."

14 149. Liberty still has not met its payment date of March 25, 2014. To date, Liberty has
 15 not returned the \$3.96 million (\$3 million, plus \$600,000, plus \$360,000), despite multiple
 16 demands from JD Brothers. In fact, Kirk's representations on behalf of himself and Liberty were
 17 false.

18 **J. LIBERTY FILES FOR BANKURPTCY**

19 150. On March 21, 2016, Liberty filed for bankruptcy in the United States Bankruptcy
 20 Court, Central District of California, Los Angeles Division, Case No. 2:16-bk-13575-TD.

21 151. Kirk alleged in the bankruptcy action that Gao would not let him have access to
 22 documents.

23 152. On April 4, 2016, a private investigator filed a declaration in support of an
 24 emergency motion for the turnover of property of the estate and books and records relating to
 25 property of the estate filed by the attorneys for Chapter 11 Debtor and Debtor-in-Possession.
 26 The private investigator declared under penalty of perjury that she had been conducting
 27 surveillance at 3218 E. Holt Avenue, East Covina, California. One of Liberty's offices was at
 28 this address and Gao testified in the Crystal Waterfalls LLC bankruptcy that she owns this

1 building. On April 1, 2016, the private investigators observed numerous individuals removing
2 boxes form the property and placing them in a vehicle.

3 153. On April 2, 2016, she observed a document shredding company truck at the
4 property. Below are some of the pictures attached to the declaration:



18 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

19 154. Plaintiffs did not know and could not have known in the exercise of reasonable
20 diligence of their potential claims against any of the Defendants any sooner than February 2015
21 when Huang learned of the sale of the Geary property. Plaintiffs did not have sufficient
22 knowledge or sophistication in real estate matters and were reasonable in trusting the
23 representations of Defendants regarding the facts. Plaintiffs were knowingly misled by
24 Defendants, who owed them fiduciary duties. Defendants kept their conspiracy secret and
25 intentionally created confusing and misleading business structures and an absence of paper
26 documentation. Plaintiffs did not know about the breach of contracts until investigation by their
27 lawyers when the true facts were discovered regarding the ownership of the properties. As a
28 result of the fiduciary duties owed to Plaintiffs, the continuing relationship between Plaintiffs

1 and Defendants, the reasonable trust Plaintiffs placed in Defendants and Defendants'
2 concealment, all applicable statute of limitations were tolled.

3 **VI. CLAIMS**

4 **FIRST CLAIM**

5 **VIOLATION OF SECTION 12(a)(1) OF THE SECURITIES ACT OF 1933** 6 **(Against Liberty, Kirk, and Gao by Plaintiff JD Brothers)**

7 155. JD Brothers hereby incorporates by reference each of the paragraphs set forth
8 above as though fully set forth hereinafter.

9 156. The HK Grace/Geary Property Investment and the Distressed Property Portfolio
10 Investments are securities under the federal securities laws because the Plaintiff JD Brothers was
11 a passive, minority investor in the investments who contributed capital risk subject to the
12 entrepreneurial and/or managerial efforts of others. *See Holden v. Hagopian*, 978 F.2d 1115 (9th
13 Cir. 1992); *Koch v. Hankins*, 928 F.2d 1471 (9th Cir. 1991); *Hocking v. Dubois*, 885 F.2d 1449
14 (9th Cir. 1989); *Reeves v. Teuscher*, 881 F.2d 1495 (1989).

15 157. Defendant Liberty violated Section 12(a)(1) of the Securities Act, 15 U.S.C. §
16 77l(a)(1) in causing JD Brothers to purchase the investments on or after March 6, 2010.
17 Defendants Kirk and Gao are liable as controlling persons of Liberty pursuant to 15 U.S.C. §
18 77o, section 20 of the Exchange Act.

19 158. Said Defendants are liable for violation of Section 12(a)(1) of the Securities Act
20 because Liberty sold or offered to sell these investments in the absence of a registration
21 statement by use of the mails or facilities of interstate commerce in connection with the sale or
22 offer, which caused damage to J.D. Brothers.

23 159. As a remedy for these violations, JD Brothers is entitled to rescission plus interest
24 or damages.

25 WHEREFORE, JD Brothers pray for relief as set forth below.
26
27
28

SECOND CLAIM

**VIOLATIONS OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934,
RULE 10b-5 AND 15 U.S.C. § 77o
(Against All Defendants by Plaintiffs JD Brothers)**

160. JD Brothers and Huang hereby incorporate by reference each of the paragraphs set forth above as though fully set forth hereinafter.

161. As set forth above, the HK Grace/Geary Property Investment and the Distressed Property Portfolio Investments are securities under the federal securities laws, Defendant Kirk on behalf of himself, Liberty, Sunshine Valley and HK Grace, acting individually and/or in concert with others, by use of the means or instrumentalities of interstate commerce and/or the United States mail, violated section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 in that they:

- a) employed devices, schemes and artifices to defraud;
- b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Huang and JD Brothers in connection with Huang selling the interest in Montgomery, JD Brothers to buying and selling the investment in O'Farrell and JD Brothers purchasing the investment in Geary.

162. As alleged above in more detail, these false statements include:

- a) On or around fall of 2009 and early 2010, Kirk falsely representing to Huang and JD Brothers that he could sell ten distressed properties contained in a distressed property portfolio investment within three to four months and JD Brothers would reap 60% interest profit on its investment each year. In fact, Plaintiffs did not receive a return on this investment;
- b) On July 21, 2013, Kirk falsely representing to Plaintiffs a guaranteed 5% net return on JD Brothers' \$3.6 million investment in its Distressed Property

Portfolio Investment and its accrued interest. In fact, Plaintiffs did not receive a return on this investment;

c) During December 2010 and January 2011, Kirk falsely representing to Huang and JD Brothers that HK Grace would be a LLC between Sunshine Valley and JD Brothers several times in person at 544 San Antonio and Burlingame and over the telephone. The true facts were that neither JD Brothers nor Sunshine Valley were mentioned in the corporate filings or information of HK Grace;

d) Kirk failing to disclose to Huang and JD Brothers that Gao would be involved in HK Grace and in fact she was the only manager listed;

e) HK Grace, Kirk and Gao falsely representing compliance with the HK Grace Amended Operating Agreement. While in actuality, they chose to ignore the agreement and sold the Geary property without Plaintiffs' consent;

f) HK Grace, Kirk, and Gao failing to inform Huang and JD Brothers that the Geary property had been sold on November 18, 2014;

g) Kirk falsely telling Huang the amount of the loan for the Geary property. Kirk made this representations many times starting in early summer of 2013 and continuing through February of 2015. The statement was made in person at 544 San Antonio and over the phone;

163. Each of the Defendants had actual knowledge of the misrepresentations and omissions of material facts or acted with deliberate disregard for the truth. The knowledge can be inferred by the timing of the transfer of the property to themselves in relationship to the representations made to JD Brothers through Huang and the recurring nature of the fraudulent statements and the true facts, not only in this case, but with other investors as evidenced by the allegations made in different lawsuits filed against some of these Defendants and the verified documents filed in court. The pattern and practice of said Defendants' scheme was not accidental, but intentional.

164. Kirk and Gao because of their positions of control and authority and their disregard of the corporate entity were able to and did, directly or indirectly, control the content of

1 the statements of Liberty. Defendants Kirk and Gao are, therefore, liable as controlling persons
2 of Liberty pursuant to 15 U.S.C. § 77o, section 20 of the Exchange Act.

3 165. As a result of the misrepresentations and omissions, JD Brothers purchased these
4 investment securities and caused losses to JD Brothers.

5 166. As a proximate result of the wrongful conduct of these Defendants, JD Brothers
6 has suffered damages, in that in reliance on these misrepresentations and omissions, in that it
7 purchased these investment securities without receiving the promised properties, which
8 properties were actually purchased by Liberty and/or its related entities. JD Brothers would not
9 have purchased the investment securities had it known the true facts.

10 167. JD Brothers reasonably relied upon the fraudulent conduct, misrepresentations,
11 and omissions of these Defendants and was damaged as a direct and proximate result of these
12 misrepresentations.

13 WHEREFORE, JD Brothers prays for relief as set forth below.

14 **THIRD CLAIM**

15 **VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT 16 ORGANIZATIONS ACT (Against All Defendants by All Plaintiffs)**

17 168. Plaintiffs hereby incorporate by reference each of the paragraphs set forth above
18 as though fully set forth hereinafter.

19 **RICO Enterprise**

20 169. Defendants are persons under the RICO statute who working together and with
21 persons unknown to Plaintiffs have willfully, knowingly, and intentionally conducted and are
22 continuing to conduct an illegal enterprise (“the Enterprise”). The illegal enterprise includes
23 individuals, limited liability companies, and corporations. The Enterprise knew that its activities
24 were fraudulent and designed to obtain money for the benefit of those people engaged in the
25 wrongful acts. The Defendants knew that the money and property that they obtained from
26 Plaintiffs and other investors were derived from wrongful activity. This Enterprise has existed
27 for years, and at least from 2009 through the present.

28 170. The common purpose of the enterprise of Defendants is to make illegal profits

1 through a fraudulent scheme of inducing investors to invest money in different real estate
 2 vehicles by promising false returns, diverting money through the investment for personal gain,
 3 and never returning the principal invested. They are engaging in interstate or foreign commerce,
 4 and/or the activities of them affect interstate or foreign commerce. These interstate and foreign
 5 activities include using wires transfers of national and international banks and money.

6 171. The Defendants' arrangement described herein constitutes an ongoing
 7 organization, with an ascertainable structure and purpose beyond the predicate acts and the
 8 conspiracy to commit such acts, by which the Defendants function as a continuing unit
 9 comprised of the Defendants.

10 **Unlawful Conduct and Pattern of Racketeering Activity**

11 172. Each of the Defendants conducted or participated in the conduct of the
 12 Enterprise's affairs through a pattern of racketeering activity consisting of, inter alia, more than
 13 two acts of mail fraud, wire fraud, money laundering, and/or monetary transactions in property
 14 derived from unlawful activity. As part of this pattern, by using the mails, private interstate
 15 carriers, emails, and interstate wire communications, said Defendants, through their Enterprise,
 16 sold to Plaintiffs and many others these fraudulent investments or loans. The Defendants
 17 employed the Postal Service and/or private or commercial interstate carriers. They may have
 18 transferred monies to a place outside of the United States for the improper purpose of concealing
 19 their wrongful acts.

20 173. The Enterprise functioned as a continuing unit and had a decision-making
 21 structure by which they formulated and decided how to promote, implement and conceal the
 22 fraudulent real estate schemes.

23 174. The Defendants' conduct as set forth herein and to a substantial extent confirmed
 24 by Kirk in sworn testimony and declarations submitted in the Liberty bankruptcy, was in concert
 25 with each of the other Defendant's conduct, and planned and arranged with and known by each
 26 of the other Defendants pursuant to the Defendants' common scheme to engage in fraudulent real
 27 estate transactions.

28 175. The Defendants' conduct of the Enterprise and their pattern of racketeering

activity were not limited to the acts involving Plaintiffs but included acts directed towards many other investors as well, including other criminal schemes consisting of loans, distressed asset purchases, investments in real estate, and money laundering. This conduct started by at least 2009 and has continued to the present. Kirk, Gao and/or their authorized agents made misrepresentations to other investors, oversold investments in properties so that they had sold more than 100% investment in the property, failed to properly record investors' interests comingle money, created entities to hide the scheme, transferred investors' monies to entities they controlled without adequate consideration, and improperly took money belonging to other investors for their own improper gain.

176. The Defendants acted and engaged in numerous predicate acts by lying, misrepresenting, and utilizing the collective resources of investors to purchase, gain profits from, and pay others and themselves. The Defendants' conduct violated 18 U.S.C. §§ 1962(c) and 1962(d). These predicate acts include the following:

- a) To induce Huang to invest money in their fraudulent scheme, Liberty emailed to Huang a letter of intent for the Montgomery Property and, as a result and in reliance of the fraudulent statements, Huang wired monies to Liberty for the purchase of the property. After the use of the wires by Defendants to fraudulently obtain the monies by fraud, an illegal act, Defendants then transferred the money for their own benefit to other accounts. These acts are predicate acts of wire fraud, 18 U.S.C. § 1343, and money laundering, 18 U.S.C. § 1987, which are related to one another and to the enterprise. The wire communications and money laundering were part of the scheme. In addition, Defendants promoted unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(A).
- b) JD Brothers invested in the O'Farrell property by wire as a result and in reliance of Defendants' fraudulent statements. After the use of the wire by Defendants to unlawfully obtain the monies by fraud, Defendants then transferred the money for their own benefit to other accounts. These acts are predicate acts of wire fraud, 18 U.S.C. § 1343, and money laundering, 18 U.S.C. § 1987, which are

1 related to one another and to the enterprise. The wire communication, wire
2 transfer, and money laundering were part of the scheme. In addition, Defendants
3 promoted unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(A).

4 c) In 2011, the Guo/Huang Trust wired money to Kirk who was to use it to
5 purchase the Geary property. Kirk obtained these money in a fraudulent manner
6 and then transferred the money for the benefit of Defendants. These acts are
7 predicate acts of wire fraud, 18 U.S.C. § 1343, and money laundering, 18 U.S.C.
8 § 1987, which are related to one another and to the enterprise. The wire
9 communications and money laundering were part of the scheme. In addition,
10 Defendants promoted unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(A).

11 d) Since November 2009, Liberty and its agents have emailed Huang and
12 Kirk spoke with her regularly on the telephone about the investments. These are
13 all acts of wire fraud, which are related to one another and to their enterprise.
14 These wire communications were part of the scheme

15 e) Defendants also used the wires to obtain money fraudulently from other
16 investors for notes and deeds of trusts, and loans. Defendants, knowing that the
17 money was obtained by fraudulent purposes, transferred the monies for their own
18 benefit. These acts are predicate acts of wire fraud, 18 U.S.C. § 1343, and money
19 laundering, 18 U.S.C. § 1987, which are related to one another and to the
20 enterprise. The wire communications and money laundering were part of the
21 scheme. In addition, Defendants promoted unlawful activity in violation of 18
22 U.S.C. § 1956(a)(1)(A).

23 177. Were it not for the Defendants' unlawful conduct in promoting, facilitating,
24 misrepresenting and concealing the actual purposes behind the schemes, Plaintiffs would not
25 have made the investments and/or loans or done business with Defendants.

26 178. As part of the scheme, in order to induce Plaintiffs to invest millions of dollars in
27 investments and loans, the Defendants, or their authorized agents, made numerous knowingly
28 false affirmative representations and intentional omissions of material fact to Plaintiffs, including

1 but not limited to:

- 2 a) Kirk falsely representing to Huang in August 2010 that Liberty was not
3 able to obtain the Montgomery property causing Huang to sign a cancellation
4 agreement when in fact Liberty had purchased the Montgomery property on
5 June 28, 2010 and Gao assisted in transferring the property to an entity owned
6 and/or controlled by Kirk and Gao;
- 7 b) Kirk requesting that Huang put in \$2.5 million for the Montgomery
8 property when in fact he bought it at \$1,494,917.
- 9 c) Kirk representing to Huang in August 2010 that Liberty would be
10 returning Huang's \$2.5 million investment within two business days when in fact
11 it was not returned until December 13, 2010; and the money was being used for
12 improper purposes;
- 13 d) Kirk telling Huang that the sales price for the O'Farrell property was
14 \$6,800,000 while in fact it was \$6,000,000;
- 15 e) On or about the fall of 2010, Kirk representing to Huang that the
16 O'Farrell property was "still in process" and that it would be better to make
17 another investment when in fact the property was purchased by Pacific View Reo
18 Management LLC, an entity owned and controlled by Kirk, Kirk's affiliates, and
19 others; on August 26, 2010, the property was then transferred to San Francisco
20 O'Farrell Project LLC, with the knowing assistance of Gao, another entity
21 controlled by Kirk's affiliates, and then transferred to Kirk;
- 22 f) On April 21, 2011, Kirk falsely representing that he would return the \$2
23 million he borrowed within three months of signing the Guo/Huang Family Trust
24 Promissory Note, while to date he has not returned any of the principal \$2 million.
- 25 g) On July 21, 2013, Kirk falsely represented that he would repay the \$2
26 million he borrowed with interest, while to date he has not paid back any interest
27 since December 21, 2012 or returned any of the principal \$2 million.

28 179. The above affirmative representations, or material and intentional omissions of

1 fact, made by Defendants, were false when made and said Defendants knew them to be false
2 when made with the intention that Plaintiffs rely upon them in entering into the investments
3 and/or loans so that Defendants could obtain millions of dollars from the transactions and induce
4 Plaintiffs to enter into the transactions.

5 **Continuity and Relatedness of the Pattern of Racketeering**

6 180. Each of the aforementioned repeated acts by Defendants and those acting on their
7 behalf were continuous, involved multiple victims in Northern California, Southern California,
8 and possibly China, and the Enterprise's activities have spanned more than a five year period.

9 181. These repeated acts of racketeering by Defendants pose a specific threat of
10 repetition expanding indefinitely into the future as Defendants continue to continue to engage in
11 this fraudulent scheme, thereby posing a substantial risk of harm to the property interests of
12 others.

13 **RICO Injury**

14 182. As a direct and proximate result of the foregoing conduct by Defendants, as set
15 forth herein, Plaintiffs have been damaged in the amount of the millions of dollars invested in
16 Defendants' scheme. There was a direct relationship between the injury suffered by Plaintiffs
17 (the loss of their money) and the wrongdoing by Defendants (the fraudulent scheme to induce
18 Plaintiffs to invest in different real estate investments).

19 183. The damages the Plaintiffs have sustained and will continue to sustain are an
20 amount to be determined at trial. Plaintiffs, other investors, and the public are threatened with
21 loss and injury and/or irreparable harm due to Defendants' violation of the RICO laws. As a
22 proximate cause of the foregoing, Plaintiffs have been injured in the manner described above,
23 with the amount to be according to proof, said amount to be trebled and awarded against
24 Defendants jointly and severally, plus attorney's fees and costs.

25 WHEREFORE, Plaintiffs pray for relief as set forth below.
26
27
28

FOURTH CLAIM

**FRAUD AND AIDING AND ABETTING AND CONSPIRACY
(Against All Defendants by All Plaintiffs)**

184. Plaintiffs hereby incorporate by reference each of the paragraphs set forth above as though fully set forth hereinafter.

185. Defendant Kirk, as the agent of Liberty, made material representations and omissions to Huang individually and as the agent for JD Brothers and trustee of the Guo/Huang Family Trust, which were false and misleading, including but not limited to those representations and omissions including:

a) Kirk falsely representing to Huang in August 2010 that Liberty was not able to obtain the Montgomery property causing Huang to sign a cancellation agreement when in fact Liberty had purchased the Montgomery property on June 28, 2010;

b) Kirk requesting that Huang put in \$2.5 million for the Montgomery property when in fact he bought it at \$1,494,917.

c) Kirk representing to Huang in August 2010 that Liberty would be returning Huang's \$2.5 million investment within two business days when in fact it was not returned until December 13, 2010; and the money was being used for improper purposes;

d) Kirk telling Huang that the sales price for the O'Farrell property was \$6,800,000 while in fact it was \$6,000,000;

e) On or about the fall of 2010, Kirk representing to Huang that the O'Farrell property was "still in process" and that it would be better to make another investment when in fact the property was purchased by Pacific View Reo Management LLC, an entity owned and controlled by Kirk, Kirk's affiliates, and others; on August 26, 2010, the property was then transferred to San Francisco O'Farrell Project LLC, another entity controlled by Kirk's affiliates, and then transferred to Kirk;

1 f) On April 21, 2011, Kirk falsely representing that he would return the \$2
2 million he borrowed within three months of signing the Guo/Huang Family Trust
3 Promissory Note, while to date he has not returned any of the principal \$2 million.

4 g) On July 21, 2013, Kirk falsely represented that he would repay the \$2
5 million he borrowed with interest, while to date he has not paid back any interest
6 since December 21, 2012 or returned any of the principal \$2 million.

7 h) On or around fall of 2009 and early 2010, Kirk falsely represented to
8 Huang and JD Brothers that he could sell ten distressed properties contained in a
9 distressed property portfolio investment within three to four months and would
10 reap 60% interest profit on its investment each year. In fact, Plaintiffs did not see
11 a return on this investment.

12 i) On July 21, 2013, Kirk falsely represented to Plaintiffs a guaranteed 5%
13 net return on JD Brothers' \$3.6 million investment in its Distressed Property
14 Portfolio Investment and its accrued interest. In fact, Plaintiffs did not see a
15 return on this investment.

16 j) During December 2010 and January 2011, Kirk falsely representing to
17 Huang and JD Brothers that HK Grace would be a LLC between Sunshine Valley
18 and JD Brothers several times in person at 544 San Antonio and Burlingame and
19 over the telephone. The true facts were that neither JD Brothers nor Sunshine
20 Valley were mentioned in the corporate filings or information;

21 k) Kirk failing to disclose to Huang and JD Brothers that Gao would be
22 involved in HK Grace and in fact she was the only manager listed;

23 l) HK Grace, Kirk and Gao falsely representing compliance with the HK
24 Grace Amended Operating Agreement. While in actuality, they chose to ignore
25 the agreement and sold the Geary property without Plaintiffs' consent.

26 m) HK Grace, Kirk, and Gao failing to inform Huang and JD Brothers that
27 the Geary property had been sold on November 18, 2014;
28

1 n) Kirk falsely telling Huang the amount of the loan for the Geary property.
2 Kirk made this representations many times starting in early summer of 2013 and
3 continuing through February of 2015. The statement was made in person at 544
4 San Antonio and over the phone.

5 186. When Kirk, individually and on behalf of Liberty, HK Grace and Sunshine Valley
6 made the representations and falsifications, failed to disclose, and suppressed information he had
7 a duty to disclose, as set forth herein, Kirk had knowledge of the falsity of his statements and
8 representations and knew he was failing to disclose material facts which he had a duty to
9 disclose.

10 187. Kirk made the misrepresentations and omitted the material facts with the intent to
11 defraud Plaintiffs. Kirk intended that Plaintiffs rely on his representations

12 188. At the time these misrepresentations were made and the material facts not
13 disclosed, and at the time that the actions herein alleged were taken, Plaintiffs were ignorant of
14 the true facts. If they had known the true facts, they would not have acted as they did.

15 189. Plaintiffs reasonably relied on these representations in acting as they did, and their
16 reliance was justified because the Defendants concealed the true facts. Had Plaintiffs known the
17 true facts, they would not have made the investments. Kirk's representations were a substantial,
18 factor in causing harm to Plaintiffs.

19 190. Defendants Gao, HK Grace and Sunshine Valley, through their agents and
20 employs, had actual knowledge that a fraud was occurring, or at minimum, willfully ignored
21 signs of the fraud. Notwithstanding the knowledge of this improper and unlawful conduct, these
22 Defendants engaged in conduct which rendered substantial assistance to, encouraged, and/or
23 aided and abetted the fraud. Gao controlled the finances, created entitles into which investors'
24 money was improperly transferred, and moved the money around so that Liberty appeared to be
25 a viable company and helped to transfer the real estate. HK Grace and Sunshine Valley, through
26 their agents and employs, acted as conduits and helped to transfer the real estate. Without their
27 knowing substantial assistance, the fraud could not have occurred.

28 191. With knowledge of the unlawful purpose of the fraud, Defendants, and each of

1 them, entered into an agreement to accomplish the aforesaid scheme, and by their actions took
2 steps to further that scheme.

3 192. As a direct and proximate result of the wrongful conduct of the Defendants, and
4 each of them, Plaintiffs have suffered substantial economic loss and other general and specific
5 damages, all in an amount to be determined according to proof at the time of trial.

6 193. The aforementioned acts of Defendants, and each of them, were done maliciously,
7 oppressively, and fraudulently, and Plaintiffs are entitled to punitive and exemplary damages in
8 an amount be shown according to proof at trial.

9 WHEREFORE, Plaintiffs pray for relief as set forth below.

10 **FIFTH CLAIM**

11 **NEGLIGENT MISREPRESENTATION** 12 **(Against Defendants Liberty and Kirk by All Plaintiffs)**

13 194. Plaintiffs hereby incorporate by reference each of the paragraphs set forth above
14 as though fully set forth hereinafter.

15 195. In making the representations and doing the acts alleged above, Defendant Kirk,
16 individually and on behalf of Liberty, acted without any reasonable grounds for believing the
17 representations were true, and intended by said representations to induce Plaintiffs' reliance.

18 196. Defendants Kirk and Liberty acted with an awareness of their wrongdoing and
19 realized that their conduct would result in the accomplishments of the wrongful conduct,
20 wrongful goals, and wrongdoing.

21 197. Plaintiffs reasonably relied on the representations and were harmed as set forth
22 above. This reliance was a substantial factor in causing Plaintiffs' harm.

23 WHEREFORE, Plaintiffs pray for relief as set forth below.

24 **SIXTH CLAIM**

25 **BREACH OF FIDUCIARY DUTY AND AIDING AND ABETTING** 26 **BREACH OF FIDUCIARY DUTY** **(Against All Defendants by Plaintiffs JD Brothers and Huang)**

27 198. JD Brothers and Huang hereby incorporate by reference each of the paragraphs
28 set forth above as though fully set forth hereinafter.

1 199. By reason of their relationship with JD Brothers and Huang, Defendants Liberty,
2 HK Grace and Sunshine Valley owed fiduciary duties of the highest good faith, undivided
3 loyalty, reasonable care, integrity, and fair dealing to JD Brothers and Huang. By reason of their
4 positions and control of Liberty, HK Grace and/or Sunshine Valley, Kirk and Gao also owed
5 fiduciary duties of the highest good faith, undivided loyalty, reasonable care, integrity, and fair
6 dealing to JD Brothers and Huang.

7 200. They were required to act in furtherance of the best interest of the business
8 entities and their members; operate the business entities to benefit the business entities and their
9 members and not the personal interests of the individuals who operated the company; refrain
10 from abusing their positions for control, power, prestige, and profit; not favor their own interests
11 at the expense of the investors; truthfully, promptly, and accurately report on the status of the
12 properties and their operation and finances.

13 201. These Defendants did the acts alleged herein to gain an advantage over JD
14 Brothers and Huang and to benefit themselves to the detriment of JD Brothers and Huang by
15 misleading JD Brothers and Huang, to their prejudice.

16 202. Liberty and Sunshine breached their fiduciary duties, through Kirk and other
17 agents, by making misrepresentations and omissions, concealing true facts, failing to disclose
18 material information, and acting in their own interest to the detriment of JD Brothers and Huang.

19 203. Kirk breached his fiduciary duties of care, loyalty, and good faith, by making
20 misrepresentations and omissions, concealing true facts, failing to disclose material information,
21 and acting in his own interest to the detriment of JD Brothers and Huang.

22 204. Gao breached her fiduciary duties of care, loyalty, and good faith by failing to
23 properly account for the investments, diverting funds from one company to another, and
24 participating in the fraudulent transfer of real estate.

25 205. As set forth above, Defendants Gao, HK Grace and Sunshine Valley had actual
26 knowledge that Kirk was engaged in fraudulent conduct and breached his fiduciary duties.
27 Notwithstanding their knowledge of the improper and unlawful conduct, the Defendants engaged
28 in conduct, herein described, which rendered substantial assistance to, encouraged and/or aided

2 206. As a result of the conduct of the Defendants, and each of them, JD Brothers and
3 Huang have suffered substantial economic loss and other general and specific damages all in an
4 amount to be determined according to proof at the time of trial.

207. The aforementioned acts of Defendants, and each of them, were done maliciously,
oppressively, and fraudulently, and Plaintiff is entitled to punitive and exemplary damages in an
amount be shown according to proof at trial.

8 WHEREFORE, JD Brothers and Huang pray for relief as set forth below.

BREACH OF CONTRACT
(Against Defendants Liberty, HK Grace, and Kirk by All Plaintiffs)

208. JD Brothers and Huang hereby incorporate by reference each of the paragraphs
set forth above as though fully set forth hereinafter.

209. As set forth above, Plaintiffs entered into the following agreements, copies of
these agreements are attached as exhibits to this Complaint:

- 16 a) The Montgomery property agreements between Huang and Liberty;
17 b) The O’Farrell property agreements between JD Brothers and Liberty;
18 c) The Geary Purchase Agreement between JD Brothers, Sunshine Valley,
19 and Liberty;
20 d) JD Brothers and Sunshine Valley’s Operating Agreement for HK Grace,
21 including the Amended Operating Agreement;
22 e) The loan agreements between the Guo/Huang Family Trust and Kirk,
23 which have all been consolidated into the second amendment signed on July 21,
24 2013;
25 f) The Distressed Property Portfolio Investment Agreements between JD
26 Brothers and Liberty.

27 210. Plaintiffs have performed all conditions, covenants, and promises required to be
28 performed on their part in accordance with their relevant agreements or are excused from

1 performance.

2 211. Defendants Liberty, HK Grace, and Kirk have breached the contracts by: failing
3 to falsely stating that the Montgomery and O'Farrell property contracts could not be performed;
4 selling the Geary property without the required authorization of JD Brothers and
5 misappropriating the monies from the sale; and/or failing to pay the monies owed under the loan
6 and the distressed property portfolio investments.

7 212. As a proximate result of Defendants' breach of the agreement, Plaintiffs have
8 been damaged as set forth above.

9 WHEREFORE, Plaintiffs pray for relief as set forth below.

10 **EIGHTH CLAIM**

11 **ACCOUNTING**

12 **(Against Defendant HK Grace by Plaintiff JD Brothers)**

13 213. JD Brothers hereby incorporates by reference each of the paragraphs set forth
14 above as though fully set forth hereinafter

15 214. Defendant HK Grace has a duty to properly report and account for profits and
16 losses of the LLC.

17 215. HK Grace has exclusive control over and access to the information related to the
18 financial condition of the LLC, including all financial documents.

19 216. As alleged above, HK Grace has refused and refuses to provide financial
20 information to Plaintiff JD Brothers.

21 217. HK Grace has failed to provide access to the books it keeps and how it has
22 determined revenues, profits and losses of the LLC. Accordingly, it is necessary and appropriate
23 for this Court to order an accounting of the books and records of the LLC to determine revenues,
24 profits, and/or losses.

25 218. Accordingly, Plaintiff JD Brothers demands an accounting regarding the
26 revenues, profits and losses of HK Grace.

27 WHEREFORE, JD Brothers pray for relief as set forth below.

28

NINTH CLAIM

**FRAUDULENT TRANSFER
(Cal. Civil Code § 3439.04)
(Against All Defendants by All Plaintiffs)**

219. Plaintiffs hereby incorporate by reference each of the paragraphs set forth above as though fully set forth hereinafter.

220. Based upon public records, the monies that Liberty and Sunshine received from Plaintiffs have been diverted to other uses and properties by Defendants, and each of them, working together to hide these transfers from Plaintiffs. The transfers were between and among insiders with the help of third parties. The transfers were not disclosed to Plaintiffs. The transfers were meant to be concealed and difficult to untangle.

221. The Defendants, at all times herein, knowing participated in the transfer of assets with the specific intent to prevent Plaintiffs to collect monies rightfully belonging to them.

222. These actions were taken by Defendants to keep assets away from Plaintiffs and other creditors of Defendants and allow Defendants to use the monies for their own benefit and with actual intent to hinder, delay or defraud Plaintiffs.

223. The transfers were made without the transferors receiving a reasonably equivalent value in exchange for the transfers of property.

224. These transfers were made when the transferor intended to incur, believed and/or reasonably should have believed that the transferors would or had incurred debts beyond the transferors' ability to pay as the debts became due. As a result of the transfer, Plaintiffs are entitled to temporary restraining order and/or injunction to prohibit Defendants from transferring, selling, conveying assigning or otherwise disposing of any of the property transferred. Further, the judgment should be declared a lien on the properties transferred and the properties be transferred back to Plaintiffs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

VII. PRAYER FOR RELIEF

1. Compensatory and general damages according to proof;
2. Special damages according to proof;

3. Treble damages;
4. Prejudgment interest at the maximum legal rate;
5. Punitive and exemplary damages according to proof;
6. Rescission;
7. Writ of attachment;
8. A temporary restraining order and/or injunction on the fraudulently transferred properties to prohibit Defendants from transferring, selling, conveying, assigning or otherwise disposing of the property;
9. The judgment include a lien on the properties fraudulently transferred and the properties be transferred back to Plaintiffs;
10. Disclosure of assets of fraudulent transferee;
11. Attorneys' fees to the extent allowed by law
12. Costs of the proceedings herein;
13. All such other and further relief as the Court deems just and proper.

Dated: June 2, 2016

/s/ Nancy L. Fineman

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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: June 2, 2016

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ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman