

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

CONNIE ABRAHAM and TERRY MILLER, as
Trustees of the CORINTHIAN DYNASTY TRUST,
derivatively for the Trust on behalf of 500 EIGHTH
AVENUE LIMITED LIABILITY COMPANY and 25
NORTH MOORE LLC; LARRY MILLER,
individually, and derivatively on behalf of WALSAM
130 MAD LLC, 25 NORTH MOORE OWNER LLC,
36 LLC, MILBER 219 MAMARONECK LLC, S&S
INVESTORS TWO LLC, 940 COLUMBUS LLC,
WALSAM 40 EAST 20 LLC, MILBER HOLDING
LLC, 22 ERICSSON OWNER LLC; SDMJD NEXT
GENERATION LLC, derivatively on behalf of 90
HUDSON LLC

Index No.

Plaintiffs,

--v--

DAVID BERLEY; WALTER & SAMUELS, INC.,

Defendants,

500 EIGHTH AVENUE LIMITED LIABILITY
COMPANY; WALSAM 130 MAD LLC; 25 NORTH
MOORE OWNER LLC; 36 LLC; MILBER 219
MAMARONECK LLC; S&S INVESTORS TWO
LLC; 940 COLUMBUS LLC; WALSAM 40 EAST 20
LLC, MILBER HOLDING LLC, 22 ERICSSON
OWNER LLC; 90 HUDSON LLC

Nominal Defendants

VERIFIED COMPLAINT

Plaintiffs Connie Abraham and Terry Miller (together, “Trust Plaintiffs”), as Trustees of the Corinthian Dynasty Trust (the “Trust”), derivatively for the Trust on behalf of 500 Eighth Avenue Limited Liability Company (“500 Eighth”) and 25 North Moore Owner LLC (“25 North Moore”), Plaintiff Larry Miller (“Plaintiff Miller”), individually, and derivatively on behalf of Walsam 130

Mad LLC (“130 Madison”), 25 North Moore, 36 LLC, Milber 219 Mamaroneck LLC (“219 Mamaroneck”), S&S Investors Two LLC (“S&S”), 940 Columbus LLC (“940 Columbus”), Walsam 40 East 20 LLC (“40 East 20”), Milber Holding LLC (“Milber”), 22 Ericsson Owner LLC (“Ericsson”), and Plaintiff SDMJD Next Generation LLC (“Plaintiff SDMJD”), derivatively on behalf of 90 Hudson LLC (“90 Hudson”), by and through their counsel, A.Y. Strauss LLC, allege for their Verified Complaint against defendants David Berley and Walter & Samuels, Inc. (“W&S”) as follows:

NATURE OF THE ACTION

1. In this action, Plaintiffs bring suit, derivatively on behalf of various New York limited liability companies listed as Nominal Defendants (altogether, the “Entities”), to recover damages from David Berley for his theft of corporate assets, other acts of self-dealing, and arbitrary mismanagement of the Entities. David Berley’s bad faith and capricious acts and omissions grossly devalued the Entities and the real property they hold, causing millions of dollars in economic damage.

2. Plaintiffs also seek recovery from W&S, David Berley’s management company, which played a direct role in, and benefitted from, David Berley’s theft, self-dealing, and mismanagement.

3. Plaintiffs, derivatively on behalf of on Entities, and Plaintiff Miller individually, further seek to enjoin David Berley from continuing unlawfully to manage the Entities unilaterally.

4. The Entities’ Operating Agreements apportion management of the Entities between David Berley, Plaintiff Miller, and other managers. The significant management rights afforded to Plaintiff Miller under the Operating Agreements induced Plaintiffs to invest in the Entities, and but for those management rights, Plaintiffs would not have made investments. However, David

Berley has unlawfully usurped control of the Entities, has made unilateral decisions for the Entities without consulting or advising Plaintiff Miller or the other managers, has concealed the Entities' books and records from Plaintiff Miller and the other managers, and has treated the Entities as his personal fiefdom.

5. Having assumed unlawful control of the Entities, David Berley, using W&S, caused the Entities to overpay commissions and management fees to W&S, diverted and embezzled funds from the Entities' corporate accounts, and engaged in other acts of self-dealing.

6. Apart from this self-dealing, David Berley made a series of arbitrary decisions for the Entities that no reasonably prudent manager would have made.

7. As a proximate result of Defendants' wrongdoing, the Entities have been fiscally devastated, and the investors in the Entities — which include Trust Plaintiffs, Plaintiff Miller, Plaintiff SDMJD, and many others — have seen the values of their holdings diminished to almost zero. The real property interests held by the Entities have lost millions of dollars in value. Much of this property is either in foreclosure or will soon be. The Entities are either insolvent or on the brink of insolvency, and face the risk of bankruptcy.

8. Plaintiffs are entitled, derivatively on behalf of the Entities, to recover a money judgment for Defendants' egregious misconduct, and the Court should enjoin David Berley from continuing to unilaterally manage the Entities.

THE PARTIES

9. Plaintiff Connie Abraham is a resident of the State of New York, County of Queens, and a trustee of the Corinthian Dynasty Trust, which was established under the laws of the State of New York.

10. Plaintiff Terry Miller is a resident of Seattle, Washington, and a trustee of the Corinthian Dynasty Trust.

11. Plaintiffs Connie Abraham and Terry Miller have authority to act for the Trust.

12. Plaintiff Larry Miller is a resident of the State of Florida.

13. Plaintiff SDMJD Next Generation LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

14. Upen information and belief, Defendant David Berley is a resident of the State of New York, County of New York.

15. Defendant Walter & Samuels Inc. is a corporation organized and existing under and pursuant to the laws of the State of New York, with its principal place of business located at 419 Park Avenue South, 15th Floor, New York, NY 10016.

16. Defendant David Berley is the owner and chairman of Walter & Samuels, Inc.

17. Nominal Defendant 500 Eighth Avenue Limited Liability Company is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

18. Nominal Defendant Walsam Mad 130 LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

19. Nominal Defendant 25 North Moore Owner LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

20. Nominal Defendant 36 LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

21. Nominal Defendant Milber 219 Mamaroneck LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

22. Nominal Defendant S&S Investors Two LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

23. Nominal Defendant 940 Columbus LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

24. Nominal Defendant Walsam 40 East 20 LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

25. Nominal Defendant Milber Holding LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

26. Nominal Defendant 22 Ericsson Owner LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

27. Nominal Defendant 90 Hudson LLC is a New York State limited liability company, with a primary place of business in the State of New York, County of New York.

28. The Court has jurisdiction over this action, and venue in Queens County is proper pursuant to CPLR 503 based on the residence of Connie Abraham.

FACTS

I. Ownership of the Entities

29. Trust Plaintiffs are trustees of the Trust. The Trust is a member of 500 Eighth and 25 North Moore.

30. Plaintiff Miller is a member of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, and Milber.

31. Ericsson is a wholly owned subsidiary of Milber.

32. Plaintiff SDMJD is a member of 90 Hudson.

33. David Berley is a member of each of the Entities, apart from Ericsson.

II. Management of the Entities

34. Pursuant to their Operating Agreements, at all relevant times, the managers of the Entities have been as follows (with non-parties in italics):

ENTITY:	MANAGERS:
500 Eighth	Larry Miller, David Berley
130 Madison	David Berley, <i>George Gellert</i>
25 North Moore	Larry Miller, David Berley
36 LLC	David Berley, <i>315 W 36 Member LLC</i>
219 Mamaroneck	Larry Miller, David Berley
S&S	Larry Miller, David Berley, <i>David Swersky</i>
940 Columbus	Larry Miller, David Berley, <i>Jason Tillis</i>
40 East 20	Larry Miller, David Berley
Milber	Larry Miller, David Berley, <i>David Swersky</i>
Ericsson	Milber (parent company)
90 Hudson	Larry Miller, David Berley

35. The Operating Agreements of 500 Eighth, 25 North Moore, 219 Mamaroneck, 940 Columbus, 40 East 20, and 90 Hudson each require Plaintiff Miller's consent for management decisions.

36. The Operating Agreements of S&S and Milber each requires the consent of two-thirds (2/3) of the managers for all management decisions.

37. As a manager and a member of each of the Entities except for Ericsson, and as the de facto manager of Ericsson based on his control of Milber, David Berley owes a fiduciary duty of care and a fiduciary duty of loyalty to the Entities and their members.

38. W&S is a real estate leasing, sale, and management agency operating in New York City and the surrounding area.

39. David Berley controls W&S' operations.

40. At David Berley's insistence, the Entities hired W&S as their exclusive property manager and leasing agent for their respective properties.

41. In its capacity as property manager and leasing agent for the Entities, W&S owes a fiduciary duty of care and a fiduciary duty of loyalty to the Entities.

42. In contravention of the Entities' Operating Agreements and his fiduciary duties, David Berley, utilizing W&S, has controlled the Entities' operations and acted for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

43. In numerous instances, David Berley has taken significant action for the Entities without even informing Plaintiff Miller or the other managers that he was doing so, as alleged in detail below.

III. Demand and Futility

44. At all relevant times, Trust Plaintiffs have been the sole trustees of the Trust.

45. At all relevant times, the Trust has continually held a membership interest in 500 Eighth and 25 North Moore.

46. At all relevant times, Plaintiff Miller has continually held a membership interest in 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, and Milber.

47. At all relevant times, Plaintiff SDMJD has continually held a membership interest in 90 Hudson.

48. Under the Operating Agreements of 500 Eighth, 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, 940 Columbus, 40 East 20, and 90 Hudson, any decision to commence litigation to assert the claims herein would require the consent of David Berley.

49. In this action, David Berley and his management company, W&S, are being sued for stealing from and mismanaging the Entities. As such, it would be futile to demand that the claims in this action be brought by 500 Eighth, 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, 940 Columbus, 40 East 20, or 90 Hudson against David Berley or W&S.

50. Even with respect to S&S and Milber, where 2/3 of the managers must consent to corporate action, and Ericsson, which is a subsidiary of Milber, demand is excused. The misconduct of David Berley outlined below regarding these entities – including the direct theft of the entities' funds and the use of entity funds to pay personal legal bills – was so egregious on its face that it could not have been the product of sound business judgment. *See Marx v. Akers*, 88 N.Y.2d 189, 200-201 (1996) (“Demand is excused because of futility when a complaint alleges with particularity that the challenged transaction was so egregious on its face that it could not have been the product of sound business judgment of the directors.”).

51. As such, Plaintiffs may proceed with their derivative claims.

IV. The Entities' Real Property

52. Apart from Milber, each of the Entities is a current or former owner of an interest in New York real property, as set forth in this chart:

ENTITY:	PROPERTY:
500 Eighth	500 Eighth Avenue, New York, New York 10018
130 Madison	130 Madison Avenue, New York, New York 10016
25 North Moore	Commercial Unit No. 1A and Storage Unit No. 24, 25 North Moore Street, New York, New York 10013
36 LLC	Floors 1-10, 315 West 36th Street, New York, New York 10018
219 Mamaroneck	219 Mamaroneck Avenue, Mamaroneck, New York 10543
S&S	Commercial Unit No. 1, 27 North Moore Street, New York, New York 10013
940 Columbus	940 Columbus Avenue, New York, New York 10025
40 East 20	Commercial Condominium Unit at 40 East 20th Street, New York, New York 10003
Ericsson	Commercial Unit No. 2 at 27 North Moore Street, New York, New York 10013
90 Hudson	Lease of first floor and a portion of the cellar of 90 Hudson Street, New York, New York 10013

V. Duties Imposed by the Entities' Operating Agreements

53. The Operating Agreements of 500 Eighth, 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and 90 Hudson each contain a provision requiring that acts of the managers be undertaken “in good faith and with that degree of care that an ordinarily prudent [p]erson in a like position would use under similar circumstances.” The Operating Agreement of 36 LLC likewise states that the managers’ actions shall “be prudent and appropriate for the proper management and supervision of the business of the Company and to carry out its obligations under this Agreement.”

54. Even with respect to Ericsson, whose Operating Agreement does not contain the provisions set forth above, David Berley and W&S' fiduciary duties require them to act in good faith and with the degree of care that an ordinary prudent person in a like position would act.

55. The Operating Agreements of 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and 90 Hudson also each contain a provision requiring that "[a]ny payment to [W&S] for services rendered to the Company . . . shall be an arm's length amount, at a rate not exceeding the rate customarily charged in the geographic area for similar services. Any other transaction between [W&S] and the Company shall be on terms no less favorable to the Company than an arm's length transaction between unrelated parties."

56. Even with respect to 500 Eighth, 36 LLC, and Ericsson, whose Operating Agreements do not contain the provision set forth above, David Berley and W&S' fiduciary duties prevent them from causing any of the Entities to pay excessive fees to W&S.

VI. The Overpayment of Commissions and Management Fees to W&S

57. The Entities have paid substantial commissions and management fees to W&S.

58. W&S maintains bank accounts in the names of, and for the benefit of, each of the Entities. These accounts, and all transfers to and from these accounts, are controlled by David Berley and W&S.

59. David Berley and W&S have authorized, made, and/or received commission payments and management fees from the Entities to W&S without obtaining consent from Plaintiff Miller or the other managers.

60. Upon information and belief, Berley and W&S have authorized, made, and/or received commission payments and management fees from the Entities that are excessive and beyond what W&S would receive in an arm's length transaction between unrelated parties.

61. For example, upon information and belief, W&S received excessive commissions on co-brokered leases, where an outside broker was retained to procure the lease, and one market-rate commission should have been paid and divided between the brokers.

62. This conduct was not approved by Plaintiff Miller or the other managers.

63. In undertaking this conduct, David Berley and W&S, acting in bad faith, improperly prioritized their personal interests over the interests of the Entities and their members and acted without due care, violating their contractual and/or fiduciary duties.

VII. The Theft of the Entities' Funds

64. Additionally, upon information and belief, David Berley and W&S directly misappropriated and embezzled the Entities' corporate funds, by diverting funds from the Entities' bank accounts to themselves.

65. In 2023, Plaintiff Miller commissioned a forensic accounting firm, Resolution Economics LLC ("Resolution"), to review 130 Madison's financial history.

66. Working off certain limited documentation provided by David Berley and W&S, Resolution prepared a draft report summarizing their findings (the "Resolution Report").

67. The Resolution Report contained several startling findings.

68. The Resolution Report detailed at least ten unexplained transfers of funds from 130 Madison's bank account into a W&S Citibank bank account, none of which had been recorded on 130 Madison's general ledger. These transactions totaled at least \$640,172.00.

69. The Resolution Report also noted numerous unexplained transfers from W&S' Citibank account into 130 Madison's account.

70. The Resolution Report further detailed a \$5 million personal loan taken out by David Berley from Deutsche Bank, which David Berley purported to have used to pay certain of 130 Madison's expenses.

71. The Resolution Report also revealed that David Berley caused 130 Madison to borrow \$3.09 million from Deutsche Bank. The terms of the Deutsche Bank loan agreement dictated that the loan proceeds be used to repay David Berley's personal loan with Deutsche Bank, the proceeds of which were ostensibly used to pay 130 Madison's expenses. However, bank records reviewed by Resolution indicated that the Deutsche Bank loan proceeds were instead wired to W&S.

72. The Resolution Report noted David Berley's and W&S' refusal to provide documents evidencing the ultimate use of David Berley's personal loan or the \$3.09 million loan to 130 Madison.

73. For example, Resolution requested proof that David Berley's \$5 million personal loan was used to pay for 130 Madison's expenses. This was never provided.

74. In a second example, Resolution requested proof that the \$3.09 million Deutsche Bank loan to 130 Madison was used to repay David Berley's personal loan, as required by the loan agreement. This too, was never provided.

75. Prior to receiving the Resolution Report, Plaintiff Miller was unaware of the unexplained transfers between 130 Madison and W&S, or David Berley's \$5 million personal loan supposedly used to pay 130 Madison's expenses, or the \$3.09 million loan incurred by 130 Madison, or the transfer of loan proceeds to W&S. These facts were concealed from Plaintiff Miller by David Berley.

76. Upon information and belief, the \$5 million personal loan incurred by David Berley was not used to pay 130 Madison's expenses, and the \$3.09 million loan to 130 Madison was misappropriated by David Berley and W&S.

77. Plaintiff Miller subsequently learned -- from a lawsuit filed in the Supreme Court of New York, County of New York against David Berley by Marc Berley, David Berley's son and a former vice-president of W&S -- that David Berley diverted at least \$1.2 million of the Entities' corporate funds to himself.

78. Upon information and belief, Marc Berley's allegation that David Berley stole at least \$1.2 million of the Entities' funds is accurate, and David Berley utilized W&S for this theft.

79. Additionally, upon information and belief, David Berley and W&S diverted other of the Entities' funds (including those of 36 LLC, Milber, Ericsson, and 90 Hudson) to pay David Berley's personal legal expenses.

80. This conduct was not approved by Plaintiff Miller or the other managers.

81. In undertaking the forgoing, David Berley and W&S, acting in bad faith, prioritized their personal interests over the interests of the Entities and their members and acted without due care, violating their contractual and/or fiduciary duties.

VII. Other Acts of Self-Dealing

82. David Berley and W&S engaged in numerous other acts of self-dealing at the expense of the Entities. This conduct was not approved by Plaintiff Miller or the other managers.

83. In one example, in 2021, without obtaining Plaintiff Miller's approval, David Berley caused 500 Eighth to unnecessarily enter into an agreement to pay for "air rights" over a different property, 516 Eighth Avenue, for at least \$18,000 per month. Plaintiff Miller objected to this transaction as being contrary to the interests of 500 Eighth. In response, David Berley admitted

to Plaintiff Miller that he was entering into this transaction to increase 516 Eighth Avenue's income so that 516 Eighth Avenue (a property with a different ownership than 500 Eighth) could obtain a mortgage.

84. This fraudulent arrangement, which remains in effect with payments of 500 Eighth's funds being made monthly at David Berley's direction through W&S, diverts more than \$200,000 annually from 500 Eighth.

85. In a second example, in or about 2018, without obtaining Plaintiff Miller's consent or even advising him, David Berley caused a low-interest mortgage loan held by Citibank at 500 Eighth to be replaced with a new, higher interest mortgage loan from Allegiant Capital Management. Upon information and belief, David Berley undertook this refinancing not to benefit 500 Eighth (which it did not do), but because W&S earned a brokerage commission of \$650,000 for placing the loan with Allegiant.

86. In a third example, at 25 North Moore Street, without advising or informing Plaintiff Miller, David Berley took over Bank of America's \$2.925 million mortgage against 25 North Moore. Since assuming that loan, David Berley has charged 25 North Moore, of which he is a member and manager, default interest at the rate of 12% annually. These payments are made at the direction of David Berley, utilizing W&S.

87. The Bank of America loan that David Berley took over could, and should, have been refinanced with a market lender at an interest rate far below 12%.

VIII. David Berley's Other Arbitrary Mismanagement of the Entities

88. David Berley, often in concert with W&S, is also guilty of a plethora of arbitrary acts and omissions constituting reckless mismanagement of the Entities. This conduct was not approved by Plaintiff Miller or the other managers.

89. No reasonably prudent manager or member would have undertaken these acts and omissions, which are detailed below, and these acts and omissions proximately damaged the Entities and their members.

90. Upon information and belief, these acts and omissions, which were undertaken rashly and without due consideration of the Entities' best interests, are the result of David Berley's cognitive decline. In the lawsuit Marc Berley filed against David Berley, Marc Berley details his father's cognitive decline and discusses some of the negative effects of that decline.

The Entities Generally

91. The Entities' funds are held in bank accounts overseen and controlled by David Berley and W&S. The income generated by the Entities and deposited in those accounts should be earning interest.

92. Upon information and belief, the Entities' funds, inexplicably, are not earning any interest. Due to inflation and Defendants' failure to deposit the funds in interest-bearing accounts, the nominal value of these funds has declined, damaging Plaintiffs and the Entities.

500 Eighth Avenue

93. David Berley repeatedly breached the Operating Agreement of 500 Eighth, and his fiduciary duties to 500 Eighth and its members, through his arbitrary acts of mismanagement.

94. The property at 500 Eighth Avenue is at less than 70% occupancy. Nonetheless, David Berley had consistently rejected creditworthy prospective tenants without cause.

95. In 2018, against the advice of Plaintiff Miller and David Berley's own staff, David Berley turned down a 40-year-old established non-profit called the "NY Society for Prevention of Cruelty to Children," for a lease totaling \$500,000 a year in rent and rent reserves at 500 Eighth Avenue, simply because David Berley had a "bad feeling" about the tenant. That space has remained vacant ever since, costing the building at least \$3 million in lost rent.

96. Also in 2018, David Berley inexplicably rejected a different tenant, now known as "Cute Gifts, Inc.," for a \$1 million yearly lease of space at 500 Eighth Avenue. Thereafter, the space lay vacant for six years. Recently, David Berley leased the same space to Cute Gifts, Inc., at the same rent. These actions cost 500 Eighth at least \$6 million of additional lost rent.

97. Without consulting Trust Plaintiffs or Plaintiff Miller, David Berley turned down settlement offers to resolve rent disputes with tenants at 500 Eighth Avenue. This resulted in one tenant, Pearl Spaces LLC, vacating the property. When Pearl Spaces LLC later returned to the property under a new lease, it was for less space at a lower rental rate, with six months free rent and \$100,000 in key money, costing the equity owners millions of dollars plus legal fees.

98. David Berley also forced out another tenant at 500 Eighth Avenue, Corinthian Communications, Inc., which was owned by Plaintiff Miller, instead of settling a rent dispute with it, but failed to replace said tenant with a substitute tenant, leaving the space vacant through today.

99. In 2018 through 2019, David Berley caused 500 Eighth to spend over \$1 million on building renovations. David Berley did not consult with Trust Plaintiffs or Plaintiff Miller nor obtain their consent for this major expense. Ultimately, the renovations were not successful in attracting significant new tenants. Upon information and belief, payment for these renovations was made through W&S.

100. David Berley further refused to provide required information to the property's mortgage lender, and concealed material facts about the property from the lender, causing the lender to place the loan in technical default and sweep all cash from the property, a prelude to foreclosure. As a consequence, it is highly unlikely that any lender will extend new financing to 500 Eighth in the future.

101. Without consulting Trust Plaintiffs or Plaintiff Miller, David Berley also improperly retained the law firm of Kudman Trachten Aloe Posner LLP – a firm that was representing David Berley *personally* on other matters – to represent 500 Eighth in connection with certain tenant disputes. In so doing, David Berley disregarded the conflict he created by hiring a firm that was representing his personal interests to simultaneously represent the corporate interests of 500 Eighth.

102. Most recently, without consulting Trust Plaintiffs or Plaintiff Miller, David Berley unilaterally negotiated a new lease with one of 500 Eighth's existing tenants, the New York City Board of Education, whose prior lease expired in 2023. That new lease requires 500 Eighth to install a new, \$1.5 million generator at the building, a huge expense that will substantially decrease the lease's value to 500 Eighth.

103. Also recently, without consulting Trust Plaintiffs or Plaintiff Miller, David Berley hired a broker, Robert Knakal, to market 500 Eighth for sale. In an email to Plaintiff Miller, W&S' chief operating officer, Peter Weiss, admitted that Mr. Kanel is an unsuitable broker for the property.

940 Columbus Avenue

104. David Berley repeatedly breached the Operating Agreement of 940 Columbus, and his fiduciary duties to 940 Coumbus and its members, through his arbitrary acts of mismanagement.

105. 940 Columbus is losing an estimated \$400,000 a year. Upon information and belief, the value of 940 Columbus Avenue has decreased at least \$2 million since 2023, even though 940 Columbus is a fully rented residential property.

106. Beginning in early 2023, Plaintiff Miller urged David Berley to list 940 Columbus Avenue, which was rapidly losing its market value, for sale. David Berley refused.

107. Finally, in 2024 – after the property’s value had fallen by millions of dollars – David Berley belatedly agreed to have 940 Columbus sell its property. That agreement came far too late to preserve the property’s value.

315 West 36th Street

108. David Berley repeatedly breached the Operating Agreement of 36 LLC, and his fiduciary duties to 36 LLC and its members, through his arbitrary acts of mismanagement.

109. Upon information and belief, David Berley has, without advising Plaintiff Miller and without justification, turned down prospective creditworthy tenants for leases at 315 West 36th Street.

110. Additionally, the mortgage loan encumbering the property is in default, yet David Berley still refuses to sell the property.

219 Mamaroneck Avenue

111. David Berley repeatedly breached the Operating Agreement to 219 Mamaroneck, and his fiduciary duties to 219 Mamaroneck and its members, through his arbitrary acts of mismanagement.

112. The property contains a freestanding building that was most recently occupied by a Wachovia Bank branch office.

113. The property is encumbered with a mortgage loan in the principal amount of \$4.72 million. That loan has fully matured and is in default, interest is being charged at a default rate, and the total arrears owed on the loan now exceed \$5.3 million. The loan is personally guaranteed by Plaintiff Miller and David Berley.

114. Prior to 2020, Plaintiff Miller repeatedly recommended to David Berley that 219 Mamaroneck pursue selling the building or finding alternative tenants.

115. However, David Berley unjustifiably refused to explore selling the building or seeking a new tenant. Instead, in 2020, David Berley advocated for a one-year lease extension with Wachovia Bank. That extension was executed, but expired in 2021.

116. On November 5, 2021, Plaintiff Miller received a letter from W&S stating that Wachovia would not be renewing its lease and that a firm has been hired to co-broker a deal with a new tenant.

117. Plaintiff Miller responded to the letter stating that he would also like to speak with the new brokerage firm and be involved in the decision-making process for filling the soon-to-be vacant building. Plaintiff Miller further stated that 219 Mamaroneck should explore selling the Property.

118. David Berley unjustifiably refused Plaintiff Miller's request to be involved in the management of 219 Mamaroneck or to speak with the co-broker, stating that W&S was solely in charge of managing the property.

119. In late 2021, Wachovia vacated the property, and since then, it has been vacant.

120. W&S and the brokerage firm, working under the direction of David Berley, failed to locate a replacement tenant for the property, and upon information and belief, did not begin exploring a sale of the property until Wachovia advised it was not renewing its lease in November 2021.

121. Upon information and belief, had the property been sold in 2020 or 2021, as urged by Plaintiff Miller, the proceeds of sale would have been sufficient to cover the mortgage loan.

122. In 2023, with the commercial real estate market in a tailspin, 219 Mamaroneck received a favorable purchase offer for the property for \$3.1 million. David Berley never told Plaintiff Miller about the offer, and unjustifiably ignored the favorable offer.

123. In 2024, with the real estate market further plummeting, David Berley finally agreed to have 219 Mamaroneck sell its property to a different prospective buyer. The sale price was only \$2.2 million, leaving an expected loan deficiency upon sale (after payment of closing costs) of approximately \$3.4 million, for which Plaintiff Miller and David Berley would be jointly responsible.

124. The closing of sale was scheduled for October 28, 2024. As a condition of sale, the buyer required that the entire mortgage held by Deutsche Bank be paid at closing.

125. In September 2024, David Berley agreed to contribute 50% of the deficiency sum, or approximately \$1.7 million, at closing, and Plaintiff Miller agreed to contribute the other 50% at closing.

126. On the morning of the closing date of October 28, 2024, David Berley abruptly reneged on his commitment to pay 50% of the deficiency, stating that he did not have the funds to do so.

127. As a consequence, the closing scheduled for October 28, 2024 was cancelled.

128. The closing was eventually rescheduled, and the sale closed on December 4, 2024, after David Berley finally tendered his 50% share of the deficiency. However, David Berley refused to pay the interest which had accrued on the loan after the cancelled October 28, 2024 closing, even though the closing was cancelled due to David Berley's failure to pay his share of the deficiency. To avoid another cancellation, Plaintiff Miller, under protest, paid more than his equitable share of accrued interest.

40 East 20th Street

129. David Berley repeatedly breached the Operating Agreement of 40 East 20, and his fiduciary duties to 40 East 20 and its members, through his arbitrary acts of mismanagement.

130. In 2021, David Berley unjustifiably turned down a favorable purchase offer of \$3.2 million for the property. David Berley did not even tell Plaintiff Miller about the offer.

131. Over the next three years, the building — which is set up to house a restaurant — was vacant.

132. The broker that David Berley hired to market the property for rental, Jeff Winick, has no experience marketing restaurants and is unqualified for the position.

133. Unsurprisingly, Winick was unable to find a suitable tenant.

134. In early 2024, David Berley belatedly agreed to sell the property to a new buyer for \$3.2 million, the same sum offered three years before. Because the property sat vacant for three

years, generating no income, David Berley's rejection of the earlier \$3.2 million offer deprived 40 East 20 of those same funds for three years.

135. Without consulting Plaintiff Miller, David Berley also improperly retained Kudman Trachten Aloe Posner LLP, which represented David Berley personally, to represent 40 East 20 on certain matters. In so doing, David Berley disregarded the conflict he created by hiring a firm that was representing his personal interests to simultaneously represent the corporate interests of 40 East 20.

IX. The Concealment of the Entities' Books and Records

136. To facilitate and conceal his wrongdoing and mismanagement, David Berley has unlawfully refused to provide Plaintiff Miller with copies of all of the Entities' books and records, despite Plaintiff Miller's repeated due demand therefore.

137. On January 12, 2022, Plaintiff Miller sent a demand letter to, inter alia, 500 Eighth, 25 North Moore, 36 LLC, S&S, 940 Columbus LLC, 219 Mamaroneck, Milber, and Ericsson, in which he requested that these entities immediately demand a full accounting from W&S of compensation received from the entities for its management and leasing services. Plaintiff Miller further demanded that the entities take appropriate action, including initiation of legal proceedings, if their investigation reveals compensation to W&S outside of the scope permitted the LLCs' operative agreements.

138. Plaintiff Miller has received no response to the demand letter.

139. Upon information and belief, David Berley caused the entities to ignore the demand letter, and further caused the entities not to perform any legitimate investigation or accounting in response to the demand letter.

140. Following the demand letter, Plaintiff Miller repeatedly followed up on various demands for the production of the Entities' books and records, including by written demand sent via email on October 22, 2024. Those demands still have not been satisfied.

141. Upon information and belief, David Berley caused the Entities to ignore Plaintiff Miller's subsequent demands.

142. David Berkley also caused certain of the Entities to issue various capital calls to Plaintiff Miller, but despite due demand, David Berley refused to allow the Entities to provide their books and records to Plaintiff Miller, even though Plaintiff Miller required those documents to evaluate the capital calls and ascertain the Entities' financial positions.

143. By curtailing the flow of financial information about the Entities to Plaintiff Miller and the other managers, David Berley and W&S were, for some period of time, able to conceal their theft, self-dealing, and mismanagement from Plaintiff Miller and the other managers.

144. David Berley has further breached the Operating Agreement by failing and refusing to provide annual financial reports to the Entities' members, including Trust Plaintiffs, Plaintiff Miller, and Plaintiff SDMJD.

145. David Berley also abruptly fired Block and Block, a highly qualified CPA firm which had served as the Entities' longtime accountants, to install other accountants who were personal friends of David Berley. David Berley had originally hired Block and Block to prepare tax returns and financial statements for the Entities, after Block and Block discovered errors in tax returns and financial statements prepared by the Entities' prior accountants. Then, abruptly on Feb 1, 2023, David Berley dismissed Block and Block.

146. Upon information and belief, David Berley fired Block and Block to prevent the disclosure of the Entities' financial information to Plaintiff.

147. On January 12, 2022, Plaintiff Miller commenced a hybrid special proceeding/plenary action against David Berley and certain of the Entities in the Supreme Court of New York County of New York, captioned *Larry Miller v. 22 Ericsson Owner LLC et al.* (Index No. 650203/2022) (the “NY County Proceeding”). In the NY County Proceeding, Plaintiff Miller seeks judicial dissolution of certain of the Entities.

148. The claims in the NY County Proceeding are direct, not derivative, claims; Plaintiff Miller is the only petitioner/plaintiff in the NY County Proceeding; Walsam 130 Mad LLC and 90 Hudson LLC are not parties to the NY County Proceeding; the Trust is a respondent/defendant, rather than a plaintiff, in the NY County Proceeding; and the claims in this action are different than the claims in the NY County Proceeding.

149. While the NY County Proceeding has been pending for nearly three years, David Berley and the other respondents/defendants therein have yet to produce paper discovery, let alone appear for depositions, in that case.

FIRST CAUSE OF ACTION

Breach of Contract, As Against David Berley

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

150. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

151. The Entities’ Operating Agreements bind David Berley in his capacity as a manager and member, and the Entities are in compliance with same.

152. The Operating Agreements of 500 Eighth, 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and 90 Hudson each contain a provision

requiring that acts of the managers be undertaken “in good faith and with that degree of care that an ordinarily prudent [p]erson in a like position would use under similar circumstances.”

153. The Operating Agreement of 36 LLC likewise states that the managers’ actions shall “be prudent and appropriate for the proper management and supervision of the business of the Company and to carry out its obligations under this Agreement.”

154. David Berley breached these provisions through his acts and omissions previously alleged, which include:

- i. Causing the Entities to make commission and management fee overpayments to W&S.
- ii. Causing the diversion and embezzlement of the Entities’ corporate funds, and/or, knowingly receiving those diverted and embezzled funds.
- iii. Causing 500 Eighth to unnecessarily pay for air rights to 518 Eighth Avenue.
- iv. Causing 500 Eighth to replace an existing mortgage with Citibank with a higher rate mortgage from Allegiant in order to earn a brokerage fee for W&S.
- v. Taking over the mortgage encumbering 25 North Moore Street and charging a 12% default interest rate to 25 North Moore, rather than obtaining a lower interest mortgage in the market.
- vi. Failing to maintain the Entities’ funds in interest bearing accounts.
- vii. Hiring an unsuitable broker to market 500 Eighth.
- viii. Rejecting market rate tenants for leases at various of the Entities.
- ix. Refusing to settle disputes with tenants at 500 Eighth.

- x. Making unauthorized seven figure property renovations.
- xi. Concealing information from the lender at 500 Eighth.
- xii. Approving the new lease with the Board of Education at 500 Eighth despite the \$1.5 million generator required under the lease.
- xiii. Hiring Kudman Trachten Aloe Posner LLP to represent 500 Eighth and 40 East 20.
- xiv. Refusing to timely list for sale the properties at various of the Entities.
- xv. Listing the property at 40 East 20th Street for lease with an unsuitable broker.
- xvi. Firing Block and Block as the Entities' accountants and installing his personal friends as accountants.

155. The Entities' Operating Agreements also each require that the consent of Plaintiff Miller or the other managers be obtained for managerial decisions.

156. David Berley breached these provisions through his acts and omissions previously alleged, including the acts and admissions set forth in Paragraph 154, which were undertaken without obtaining the required consent of Plaintiff Miller or the other managers.

157. The Operating Agreements of 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and 90 Hudson also each contain a provision requiring that "[a]ny payment to [W&S] for services rendered to the Company . . . shall be an arm's length amount, at a rate not exceeding the rate customarily charged in the geographic area for similar services. Any other transaction between [W&S] and the Company shall be on terms no less favorable to the Company than an arm's length transaction between unrelated parties."

158. In contravention of these agreements, David Berley caused 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and 90 Hudson to pay commissions and fees to W&S in sums exceeding the rates customarily charged in the relevant geographic area for similar services.

159. As a proximate result of David Berley's breach, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

160. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against David Berley in a sum to be determined but which is estimated to be not less than \$10 million, together with attorney's fees, interest, costs, and disbursements.

SECOND CAUSE OF ACTION

Breach Of Fiduciary Duty, As Against David Berley

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

161. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

162. As a manager and a member of the Entities, David Berley owes a fiduciary duty of duty of care and a fiduciary duty of loyalty to the Entities and the members of the Entities.

163. In bad faith and/or arbitrarily, David Berley breached his fiduciary duties to the Entities through his acts and omissions previously alleged, which include:

- i. Unliterally managing the Entities without obtaining the required consent of the other managers for corporate decisions.
- ii. Causing the Entities to make commission and management fee

overpayments to W&S.

- iii. Causing the diversion and embezzlement of the Entities' corporate funds, and/or, knowingly receiving those diverted and embezzled funds.
- iv. Causing 500 Eighth to unnecessarily pay for air rights to 518 Eighth Avenue.
- v. Causing 500 Eighth to replace an existing mortgage with Citibank with a higher rate mortgage from Allegiant in order to earn a brokerage fee for W&S.
- vi. Taking over the mortgage encumbering 25 North Moore Street and charging a 12% default interest rate to 25 North Moore, rather than obtaining a lower interest mortgage in the market.
- vii. Failing to maintain the Entities' funds in interest bearing accounts.
- viii. Hiring an unsuitable broker to market 500 Eighth.
- ix. Rejecting market rate tenants for leases at various of the Entities.
- x. Refusing to settle disputes with tenants at 500 Eighth.
- xi. Making unauthorized seven figure property renovations.
- xii. Concealing information from the lender at 500 Eighth.
- xiii. Approving the new lease with the Board of Education at 500 Eighth despite the \$1.5 million generator required under the lease.
- xiv. Refusing to timely list for sale the properties at various of the Entities.
- xv. Hiring Kudman Trachten Aloe Posner LLP to represent 500 Eighth and 40 East 20.
- xvi. Listing the property at 40 East 20th Street for lease with an unsuitable

Broker.

xvii. Firing Block and Block as the Entities' accountants and installing his personal friends as accountants.

164. As a proximate result of David Berley's breach, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

165. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against David Berley in a sum to be determined but which is estimated to be not less than \$10 million, together with attorney's fees, interest, costs, and disbursements.

THIRD CAUSE OF ACTION

Conversion, As Against David Berley

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

166. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

167. The corporate funds of the Entities comprised the specific, identifiable property of the Entities.

168. By causing the Entities to make improper commission and management fee payments, and by causing the Entities to make improper payments for air rights (at 500 Eighth), unauthorized renovations (at 500 Eighth Avenue), and default interest (at 25 North Moore) based upon agreements that were not approved by his co-managers, David Berley asserted unlawful domain and control over the Entities' funds, and/or, inferred with the Entities' ownership interest in those funds. This conduct was contrary to the Entities' ownership of the funds.

169. Additionally, by diverting and embezzling the Entities' funds or receiving same, David Berley asserted unlawful domain and control over the Entities' funds, and/or, inferred with the Entities' ownership interest in those funds. This conduct was contrary to the Entities' ownership of the funds.

170. As a proximate result of David Berley's conversion, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

171. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against David Berley in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

FOURTH CAUSE OF ACTION

Permanent Injunction, As Against David Berley

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

172. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

173. The Entities' Operating Agreements require that the consent of Plaintiff Miller or the other managers be obtained for managerial decisions.

174. In violation of the Operating Agreements, David Berley has usurped control of the Entities and made decisions for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

175. David Berley's actions have caused the Entities considerable harm, and have created an ongoing threat of irreparable harm to the Entities, by, among other things, placing the Entities at risk of insolvency and bankruptcy.

176. Plaintiffs, derivatively on behalf of the Entities, have no adequate remedy at law.

177. By reason of the real, immediate, and continuing threat to the Entities, Plaintiffs, derivatively on behalf of the Entities, are entitled an injunction enjoining and restraining David Berley from making decisions for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

FIFTH CAUSE OF ACTION
Permanent Injunction, As Against David Berley
(By Plaintiff Miller, Individually)

178. Plaintiff Miller repeats and realleges each of the allegations set forth above as if fully stated herein.

179. The Entities' Operating Agreements require that the consent of Plaintiff Miller or the other managers be obtained for managerial decisions.

180. In violation of the Operating Agreements, David Berley has usurped control of the Entities and made decisions for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

181. David Berley's actions have caused Plaintiff Miller considerable harm, and have created an ongoing threat of irreparable harm to Plaintiff Miller by, among other things, depriving him of his bargained-for management rights under the terms of the Operating Agreements.

182. Plaintiff Miller has no adequate remedy at law.

183. By reason of the real, immediate, and continuing threat to Plaintiff Miller, Plaintiff Miller is entitled an injunction enjoining and restraining David Berley from making decisions for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

SIXTH CAUSE OF ACTION

Breach Of Fiduciary Duty, As Against W&S

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

184. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

185. In its capacity as property manager and leasing agent for the Entities, W&S owes a fiduciary duty of care and a fiduciary duty of loyalty to the Entities.

186. In bad faith, W&S breached its fiduciary duties to the Entities through the acts and omissions previously alleged, which include:

- i. Causing the Entities to make improper commission and management fee payments, and/or, knowingly receiving those payments.
- ii. Diverting and embezzling the Entities' corporate funds, and/or, knowingly receiving the Entities' diverted and embezzled funds.
- iii. Causing payments to be made from 500 Eighth to 518 Eighth Avenue for air rights.
- iv. Causing interest to be paid to David Berley, at a 12% default interest rate, for 25 North Moore.
- v. Failing to maintain the Entities' funds in interest bearing accounts.
- vi. Causing payments to be made for unauthorized renovations at 500 Eighth.

187. As a proximate result of W&S' breach, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

188. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against W&S in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

SEVENTH CAUSE OF ACTION

Conversion, As Against W&S

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

189. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

190. The corporate funds of the Entities comprised the specific, identifiable property of the Entities.

191. By making and/or receiving improper commissions and management fee payments, and by causing the Entities to make improper payments for air rights (at 500 Eighth), unauthorized renovations (at 500 Eighth), and default interest (at 25 North Moore) based upon agreements that had not been approved by David Berley's co-managers, W&S asserted unlawful domain and control over the Entities' funds, and/or, inferred with the Entities' ownership interest in those funds. This conduct was contrary to the Entities' ownership of the funds

192. Additionally, by diverting and embezzling the Entities' funds or receiving same, W&S asserted unlawful domain and control over the Entities' funds, and/or, inferred with the

Entities' ownership interest in those funds. This conduct was contrary to the Entities' ownership of the funds.

193. As a proximate result of W&S' conversion, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

194. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against W&S in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

EIGHTH CAUSE OF ACTION

Aiding and Abetting Breach of Fiduciary Duty, As Against W&S

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

195. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

196. To the extent W&S is adjudged not directly liable for breach of fiduciary duty, it is nonetheless liable for aiding and abetting David Berley's breach of fiduciary duty. Among other things, W&S knowingly participated in, facilitated, and encouraged the wrongful acts of David Berley detailed above with respect to the improper commission and management fee payments, the misappropriation and embezzlement of the Entities' corporate funds, the air rights payments, payments for unauthorized renovations, the failure to deposit funds in interest-bearing accounts, and the payment of default interest at 25 North Moore.

197. W&S' misconduct in aiding and abetting David Berley's breach was intentional, and W&S knew that its own and David Berley's misconduct was wrongful and without justification.

198. As a proximate result of W&S' misconduct, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

199. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against W&S in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

NINTH CAUSE OF ACTION

Aiding and Abetting Conversion, As Against W&S

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

200. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

201. To the extent W&S is adjudged not directly liable for conversion, it is nonetheless liable for aiding and abetting David Berley's conversion. Among other things, W&S knowingly participated in, facilitated, and encouraged the wrongful acts of David Berley detailed above with respect to the improper commission and management fee payments, the misappropriation and embezzlement of the Entities' corporate funds, the air rights payments, payments for unauthorized renovations, and the payment of default interest at 25 North Moore.

202. W&S' misconduct in aiding and abetting David Berley's conversion was intentional, and W&S knew that its own misconduct and that of David Berley was wrongful and without justification.

203. As a proximate result of W&S' misconduct, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 36 LLC, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged.

204. Accordingly, Plaintiffs, in their derivative capacities, are entitled to recover judgment against W&S in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

TENTH CAUSE OF ACTION

Unjust Enrichment, As Against W&S

(By Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson)

205. Plaintiffs repeat and reallege each of the allegations set forth above as if fully stated herein.

206. To the extent that W&S is not liable to Plaintiffs under any tort theory, W&S is nonetheless liable in equity based on unjust enrichment.

207. W&S has been unjustly enriched by receiving and taking possession of overpayments, wrongful payments, and diverted and embezzled funds from the Entities.

208. W&S' enrichment has been at Plaintiff's expense and has damaged Plaintiffs.

209. Equity and good conscience demand that W&S compensate Plaintiffs for its improper enrichment.

210. Accordingly, Trust Plaintiffs, derivatively for the Trust on behalf of 500 Eighth and 25 North Moore, Plaintiff Miller, derivatively on behalf of 130 Madison, 25 North Moore, 219 Mamaroneck, S&S, 36 LLC, 940 Columbus, 40 East 20, Milber, and Ericsson, and Plaintiff SDMJD, derivatively on behalf of 90 Hudson, have been damaged. are entitled to recover judgment against W&S, in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

WHEREFORE, Plaintiffs respectfully requests that this Court enter final judgment in Plaintiffs' favor as follows:

(i) On the First, Second, and Third Causes of Action, awarding a money judgment in favor of Plaintiffs and against David Berley, in a sum to be determined but which is estimated to be not less than \$10 million, together with attorney's fees, interest, costs, and disbursements.

(ii) On the Fourth and Fifth Causes of Action, enjoining David Berley from making decisions for the Entities without obtaining the required consent of Plaintiff Miller or the other managers.

(iii) On the Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, awarding a money judgment in favor of Plaintiffs and against Walter & Samuels, Inc., in a sum to be determined but which is estimated to be not less than \$5 million, together with attorney's fees, interest, costs, and disbursements.

(iii) For such further and other relief as this Court deems just and proper.

Dated: December 23, 2024

Respectfully submitted,

A.Y. STRAUSS LLC

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Attorneys for Plaintiffs

VERIFICATION

Larry Miller, affirms the following to be true under the penalties of perjury, pursuant to Civil Practice Law and Rules (CPLR) 2106:

I am a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

I affirm this 23rd day of December, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



LARRY MILLER