

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

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MARIA OTTO as an individual and on behalf of
BAYONNE BROADWAY PARTNERS, LP; BAYRIDGE
ASSOCIATES, LP; BELLMORE SUNRISE REALTY
ASSOCIATES, LP; COURTESY BRENTWOOD
ASSOCIATES, LLC; ELMONT REALTY ASSOCIATES,
LP; HICKSVILLE ASSOCIATES; HOMEPORT
ASSOCIATES; KINGS HIGHWAY MIDWOOD, LLC;
LEVITTOWN EAST MEADOW ASSOCIATES, LP;
MASSAPEQUA MALL ASSOCIATES; MASPETH
GRAND ASSOCIATES, LP; MERRICK MASS REALTY
ASSOCIATES, LP; PARKCHESTER RB ASSOCIATES,
LP; AND RB WHITE PLAINS ASSOCIATES, LLC,

Plaintiff,

-against-

JONATHAN OTTO; METROCENTERS LLC;
METROCAPITAL HOLDINGS, LLC; METROCAPITAL
LLC; METRO ASSETS TRUST; BAYBROAD, INC.;
RIDGEBAY, INC.; BELLMORE SUNRISE REALTY
CORP.; COURTESY BRENTWOOD, INC.; ELMONT
REALTY, INC.; HICKSVILLE ASSOCIATES, INC.;
HOMEPORT ASSOCIATES, INC.; LEVITTOWN EAST
MEADOW CORP.; MASPETH GRAND REALTY
CORP.; MASSAPEQUA MALL ASSOCIATES, INC.;
MERRICK MASS REALTY CORP.; AND
PARKCHESTER RB CORP.,

Defendants.

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Index No. 108886/2010

**SECOND AMENDED
COMPLAINT**

Jury Trial Demanded

Plaintiff Maria Otto ("Maria" or "Plaintiff"), as an individual and derivatively on behalf of: Bayonne Broadway Partners, LP; Bayridge Associates, LP; Bellmore Sunrise Realty Associates, LP; Courtesy Brentwood Associates; Elmont Realty Associates, LP; Hicksville Associates LP; Homeport Associates LP; Kings Highway Midwood, LLC; Levittown East Meadow Associates; Massapequa Mall Associates; Maspeth Grand Associates, LP; Merrick

Mass Realty Associates, LP; Parkchester RB Associates, LLC; and RB White Plains Associates, LLC (collectively, the “Real Estate Entities”) – all of which, upon information and belief, have been dissolved →by and through her counsel, Blank Rome LLP, for her Second Amended Complaint against defendants: Jonathan Otto (“Jonathan”); MetroCenters LLC (“MetroCenters”), MetroCapital Holdings, LLC (“MetroCapital Holdings”), MetroCapital LLC (“MetroCapital”) and Metro Assets Trust (“Metro Assets Trust” and collectively with MetroCenters, MetroCapital Holdings and MetroCapital, the “Metro Defendants”); Baybread, Inc., Ridgebay, Inc., Bellmore Sunrise Realty Corp., Courtesy Brentwood, Inc., Elmont Realty, Inc., Hicksville Associates, Inc., Homeport Associates, Inc., Levittown East Meadow Corp., Maspeth Grand Realty Corp., Massapequa Mall Associates, Inc., Merrick Mass Realty Corp., and Parkchester RB Corp. (the “GP Entities” and collectively with Jonathan and the Metro Defendants, the “Defendants”), alleges as follows:

INTRODUCTION

1. This action involves claims of breach of fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment and for an accounting relating to the Real Estate Entities, in which Maria, her late husband Richard Otto (“Richard”), and his son from a prior marriage, Jonathan, held ownership interests. The Real Estate Entities owned certain real estate that was leased primarily to Rock Bottom Stores, Inc. (“Rock Bottom”), an Otto related company, and were managed and controlled by Jonathan.

2. Although each of the Real Estate Entities were formally controlled by Jonathan directly as a managing member or by a managing member or general partner entity (the “GP Entities”), for each of which Jonathan was the president, director and owner of the controlling interest, and managed by separate managing agents (one or more of the Metro Defendants), Jonathan actually controlled all of these entities. As set forth below, Jonathan abused his control

and authorized improper distributions and other payments by the Real Estate Entities and the Metro Defendants, thereby benefiting himself at the expense of the plaintiffs.

3. The Metro Defendants were purportedly paid management fees to manage the leases, maintain the books and records, and regularly distribute the net income earned and the proceeds of the sales of the properties to the owners of the Real Estate Entities.

4. However, as set forth more fully herein, upon information and belief, Jonathan and the Metro Defendants: did not properly manage the Real Estate Entities, maintain the books and records, or distribute the income earned. They refused to provide to Maria and Richard's estate (the "Estate") proper information, charged unreasonable management fees, wrongfully converted monies and real estate interests belonging to Maria and the Estate, and sold certain real estate held by the Real Estate Entities for less than fair market value and refused to properly distribute the sales proceeds to Maria and the Estate.

5. At this stage, as Jonathan himself has acknowledged, Defendants owe Maria no less than \$800,000, but are refusing to distribute these monies unless she agrees to grant a general release of all possible claims against Jonathan, the Metro Defendants, the Real Estate Entities, the GP Entities, the executors of the Estate and others. Plaintiff refuses to do so without a proper accounting and full compensatory damages. In this action, Plaintiff seeks compensatory damages in an amount to be determined at trial, but no less than \$2,000,000, as well as a full accounting with respect to all of the Real Estate Entities in which Plaintiff had an interest.

PARTIES

Plaintiffs

6. Maria Otto is an individual who resides at 21 East 66th Street, Ninth Floor, New York, New York 10022.

7. Upon information and belief, Bayonne Broadway Partners, LP was a Delaware limited partnership qualified to do business in New Jersey, which had a principal place of business located at 509-519 Broadway, Bayonne, New Jersey, and was dissolved at some point in or before March 2008.

8. Upon information and belief, Bayridge Associates, LP was a Delaware limited partnership qualified to do business in New York, which had a principal place of business located at 436 86th Street, Bayridge, Brooklyn, New York, and was dissolved at some point in or before March 2008.

9. Upon information and belief, Bellmore Sunrise Realty Associates, LP was a Delaware limited partnership qualified to do business in New York, which had a principal place of business located at 2410-2418 Merrick Road, Bellmore, New York, and was dissolved at some point in or before March 2008.

10. Upon information and belief, Courtesy Brentwood Associates was a New York limited partnership, which had a principal place of business located at 50 Emjay Boulevard, Brentwood, New York, and was dissolved at time point in or around 2008.

11. Upon information and belief, Elmont Realty Associates, LP was a Delaware limited partnership qualified to do business in New York, which had a principal place of business located at 1445 Hempstead Turnpike, Elmont, New York, and was dissolved at some point in or before March 2008.

12. Upon information and belief, Hicksville Associates LP was a Delaware limited partnership qualified to do business in New York, which had a principal place of business located at 265 North Broadway, Hicksville, New York, and was dissolved at some point in or before March 2008.

13. Upon information and belief, Homeport Associates LP was a New York limited partnership, which had a principal place of business located at 2265/2231 Ralph Avenue, Brooklyn, New York, and was dissolved at some point in or before March 2008.

14. Upon information and belief, Kings Highway Midwood, LLC was a New York limited liability corporation, which had a principal place of business located at 1401-1407 Kings Highway, Brooklyn, New York, and was dissolved at some point in or before March 2008.

15. Upon information and belief, Levittown East Meadow Associates was a Delaware limited partnership, qualified to do business in New York, which had a principal place of business at 2575 Hempstead Turnpike, East Meadow, New York, and was dissolved at some point in or around 2008 or 2009.

16. Upon information and belief, Massapequa Mall Associates was a New York limited partnership, which had a principal place of business located at Jerusalem Avenue, Massapequa, New York, and was dissolved at some point in or before March 2008.

17. Upon information and belief, Maspeth Grand Associates, LP was a Delaware limited partnership qualified to do business in New York, which had a principal place of business located at 66-48/66-56 Grand Avenue, Maspeth, New York, and was dissolved at some point in or before March 2008.

18. Upon information and belief, Merrick Mass Realty Associates, L.P. was a Delaware limited partnership, qualified to do business in New York, which had a principal place of business at 5601 Merrick Road, Massapequa, New York, and was dissolved at some point in 2008 or 2009.

19. Upon information and belief, Parkchester RB Associates, LLC was a Delaware limited liability corporation qualified to do business in New York, which had a principal place of

business located at 1888 Westchester Avenue, Parkchester, New York, and was dissolved at some point in or before March 2008.

20. Upon information and belief, RB White Plains Associates, LLC was a New York limited liability corporation, which had a principal place of business located at 10-12 Quarropas Street White Plains, New York, and was dissolved at some point in or before March 2008.

Defendants

21. Upon information and belief, Jonathan Otto is an individual who resides at 8 Lagomar Road, Palm Beach, Florida 33480. Upon information and belief, Jonathan Otto was the general partner or the majority owner of the general partner entity of each Real Estate Entity.

22. Upon information and belief, MetroCenters LLC is a New York limited liability corporation with its principal place of business located at 2417 Jericho Turnpike, Suite 325, Garden City Park, New York 11040. Upon information and belief, Jonathan is an owner and officer of MetroCenters.

23. Upon information and belief, MetroCapital Holdings, LLC is a New York limited liability company with its principal place of business located at 39-11 Main Street, Flushing, Queens, New York 11354. It also has an address at 340 Royal Poinciana Way, Suite 317, Mail Box No. 304, Palm Beach, Florida, 33480. Upon information and belief, Jonathan is an owner and officer of MetroCapital Holdings.

24. Upon information and belief, MetroCapital, LLC is a New York limited liability company with its principal place of business located at 39-11 Main Street, Flushing, Queens, New York 11354. Upon information and belief, Jonathan is an owner and officer of MetroCapital.

25. Upon information and belief, Metro Asset Trust is a trust created and controlled by Jonathan and/or one or more of the Metro Defendants.

26. Upon information and belief, Baybroad, Inc. was a Delaware Corporation that was dissolved on or about July 9, 2008.

27. Upon information and belief, Ridgebay, Inc. was a New York Corporation that was dissolved on or about August 7, 2008.

28. Upon information and belief, Bellmore Sunrise Realty Corp. was a New York corporation that was dissolved on or about May 14, 2008.

29. Upon information and belief, Courtesy Brentwood, Inc. was a New York corporation that was dissolved on or about August 7, 2008.

30. Upon information and belief, Hicksville Associates, Inc. was a New York corporation that was dissolved on or about October 1, 2008.

31. Upon information and belief, Homeport Associates, Inc. was a New York corporation that was dissolved on or about May 14, 2008.

32. Upon information and belief, Levittown East Meadow Corp. was a New York corporation that was dissolved on or about October 28, 2009.

33. Upon information and belief, Maspeth Grand Realty Corp. was a New York corporation that was dissolved on or about May 14, 2008.

34. Upon information and belief, Massapequa Mall Associates, Inc. was a New York corporation that was dissolved on or about August 7, 2008.

35. Upon information and belief, Merrick Mass Realty Corp. was a New York corporation that was dissolved on or about January 28, 2009.

36. Upon information and belief, Parkchester RB Corp. was a Delaware corporation qualified to do business in New York, that was dissolved on or about December 21, 2007 and which filed termination of its qualification in New York on or about April 29, 2008.

FACTS

37. Maria's husband, Richard, was a successful businessman. In 1998, just a year before his death, Richard sold the company he owned, Rock Bottom, to Duane Reade for tens of millions of dollars.

38. At the time of his death, Richard and Maria also held significant real estate interests in several limited partnerships and limited liability companies (among which included the Real Estate Entities), along with Richard's son from a prior marriage, defendant Jonathan. During the course of their marriage, Richard had agreed to give Maria ten percent ownership of all of the real estate entities he acquired during their marriage. The real estate held by the various entities was leased primarily to Rock Bottom through which it operated its stores. Pursuant to the sale of Rock Bottom to Duane Reade, many of the leases were transferred to Duane Reade.

39. Twelve of the fourteen Real Estate Entities were purportedly controlled by general partner or managing member entities (the GP Entities). Upon information and belief: Baybroad, Inc. was the general partner of Bayonne Broadway Partners, LP; Ridgebay, Inc. was the general partner of Bayridge Associates, LP; Bellmore Sunrise Realty Corp. was the general partner of Bellmore Sunrise Realty Associates, LP; Courtesy Brentwood, Inc. was the general partner of Courtesy Brentwood Associates LLC; Elmont Realty, Inc. was the general partner of Elmont Realty Associates, LP; Hicksville Associates, Inc. was the general partner of Hicksville Associates; Homeport Associates, Inc. was the general partner of Homeport Associates LP; Levittown East Meadow Corp. was the general partner of Levittown East Meadow Associates, LP; Maspeth Grand Realty Corp. was the general partner of Maspeth Grand Associates, LP;

Massapequa Mall Associates, Inc. was the general partner of Massapequa Mall Associates; Merrick Mass Realty Corp. was the general partner of Merrick Mass Realty Associates, LP; and Parkchester RB Corp. was the general partner of Parkchester RB Associates, LP.

40. The Real Estate Entities were purportedly managed by one or more of the Metro Defendants, to which the Real Estate Entities paid management fees. However, upon information and belief, Jonathan had sole control of the Metro Defendants – to the extent that Jonathan and the Metro Defendants were essentially one and the same – thus, Jonathan managed and controlled the Real Estate Entities.

41. In his will, Richard named Maria the primary beneficiary of his Estate, and divided the remainder of the Estate among three of his six children and his step-daughter. Notably, Richard excluded Jonathan (his eldest son) from the will. At the time of Richard's death, he and Jonathan were not on good terms and were barely speaking.

42. Notwithstanding the estrangement, Jonathan claims that just before his death, Richard executed a transfer agreement (the "Transfer Agreement") granting him control over at least thirteen of the Real Estate Entities in which the Otto family owned all the equity.

43. Specifically, the Transfer Agreement purports to transfer, from Richard to Jonathan, controlling interest in the twelve GP Entities, as well as controlling interest in RB White Plains Associates, LLC. Accordingly, at all times relevant to the facts alleged in this Second Amended Complaint, Jonathan was the majority shareholder of each of the GP Entities (the Estate owned the remaining outstanding stock for each of the GP Entities), and Jonathan served as the managing member of RB White Plains Associates, LLC. Upon information and belief, Jonathan also served as the managing member of Kings Highway Midwood LLC. Thus, upon information and belief, Jonathan was able to control the affairs of the Real Estate Entities.

44. The Real Estate Entities held real estate worth millions of dollars. In exchange for this ownership interest and control, Jonathan paid Richard a mere \$10,000. Jonathan deposited an unendorsed check for this amount into an account for Richard the very day before Richard died.

The Transfer Agreement

45. The transfer document is a letter from Jonathan to Richard dated: "As of September 15, 1998 (revised 1/5/99)." The letter states that Richard and Jonathan agreed that Richard would transfer control of all of the real estate partnerships and limited liability companies in which their family owned all of the equity, identifying at least twelve such entities in an exhibit to the letter. Upon information and belief, Jonathan prepared the exhibit to the letter.

46. The letter also provided that Richard agreed to sell to Jonathan sufficient stock in the entity that served as the general partner, managing member or members of each of the identified Real Estate Entities so that Jonathan would own 67% and Richard would own 33% of the outstanding stock of each of the New York corporations and, with respect to the family's Delaware corporations, Jonathan would own 51% and Richard would own 49% of the outstanding stock. The letter further provided that Richard would also transfer control of RB White Plains Associates, LLC and two additional real estate companies to Jonathan, appointing Jonathan – in his individual capacity – as managing member of each.

47. The letter further provided that the Real Estate Entities would pay Jonathan's company, MetroCenters (or any other affiliate of Jonathan's) a management service fee of three percent of gross rents generated by the property held by each of the Real Estate Entities.

48. After Richard died on August 18, 1999, Maria stopped receiving her usual income distributions from certain entities.

The Real Estate Sales

49. Upon information and belief, beginning in 1999, Defendants began to sell the real estate held by the Real Estate Entities in which the Estate, Maria and Jonathan held interests. In April and August of 1999, Jonathan sold the real estate held by two of these entities: Merrick Mass Realty Associates, L.P. and Levittown East Meadow Associates, L.P.

50. Despite the fact that Maria had a 10% ownership interest in Levittown East Meadow Associates, L.P., Defendants refused to distribute any sales proceeds to Maria. Upon information and belief, Jonathan chose to allocate the sales price in such a way as to glom the majority of the sales proceeds and deny Maria and the Estate their proper share.

51. Upon information and belief, in 2004, Jonathan sold eight properties held by Real Estate Entities that were subject to the Transfer Agreement, and two additional properties that were not subject to the Transfer Agreement, in which Jonathan, Maria and the Estate held interests through the Real Estate Entities.

52. Upon information and belief, in 2005, Jonathan sold two more properties, including the most valuable of them all, which was owned by Brentwood Distribution Co. ("Brentwood"). Brentwood was a partnership owned 50% by William Mack and entities with which he was associated, and 50% by Courtesy Brentwood Associates, LLC, in which Maria owned a 16.417% interest.

53. Upon information and belief, in all, Jonathan sold no less than fourteen properties held by the Real Estate Entities in which Maria held at least a 10% interest, for less than fair market value.

54. Upon information and belief, the following chart describes the properties Defendants' sold, the sale dates, the purchase prices and Maria's percent interest in the related Real Estate Entity:

	<u>Property</u>	<u>Sale Date</u>	<u>Approx. Purchase Price</u>	<u>Maria's % Interest</u>
1.	Merrick Mass Realty Associates, LP 5601 Merrick Road Massapequa, New York	4/16/99	\$3.625M	10%
2.	Levittown East Meadow Associates, LP Levittown Arena 2575 Hempstead Turnpike East Meadow, New York	8/12/99	\$3.2M	10%
3.	Kings Highway Midwood LLC 1401-1407 Kings Highway Brooklyn, New York	10/14/04	\$9.05M	10%
4.	Bayridge Associates, LP 436 86th Street Bayridge, Brooklyn, New York	10/21/04	\$8.5M	10%
5.	Bellmore Sunrise Realty Associates, LP 2410-2418 Merrick Road Bellmore, New York	10/21/04	\$4.175M	10%
6.	Elmont Realty Associates, LP 1445 Hempstead Turnpike Elmont, New York	10/21/04	\$9.95M	10%
7.	Hicksville Associates 265 North Broadway Hicksville, New York	10/21/04	\$11.7M	10%
8.	Homeport Associates LP 2265/2231 Ralph Avenue Brooklyn, New York	10/21/04	\$14.6	10%
9.	Maspeth Grand Associates, LP 66-48/66-56 Grand Avenue Maspeth, New York	10/21/04	\$6.175M	10%
10.	Massapequa Mall Associates Jerusalem Avenue Massapequa, New York	10/21/04	\$6.22M	10%
11.	Parkchester RB Associates LP 1888 Westchester Avenue Parkchester, New York	10/21/04	\$4.5M	10%

12.	RB White Plains Associates LLC 100 Mamaroneck Avenue 10-12 Quarropas Street Mamaroneck, New York	10/21/04	\$5.86M	10%
13.	Brentwood Distribution Co. 50 Emjay Boulevard Brentwood, New York	12/13/05	\$26.75M	16.417% ¹
14.	Bayonne Broadway Partners, LP 509-519 Broadway Bayonne, New Jersey	12/23/05	\$4.7M	10%

55. Pursuant to the Transfer Agreement, as consideration for the transfer of control in at least twelve of the Real Estate Entities and the related GP Entities, Jonathan agreed not to sell any of the underlying real property held by those Real Estate Entities “unless the sale price is equal to or greater than ten (10) times the Net Operating Income . . . for 1997 or the year preceding the sale, whichever is greater.” The Net Operating Income is defined in the Transfer Agreement as income before depreciation, amortization and interest payments, minus a management fee, based on a percentage of the income from each property.

56. In 2005, pursuant to the “Plan of Action” approved by the Executors of the Estate, Gettry Marcus Stern & Lehrer, CPA, P.C. conducted a limited investigative analysis of the sales of fifteen of the properties sold by Jonathan (the “Gettry Report”). However, the Gettry Report did not analyze all of the documents related to the sales of the two properties sold in 1999 (which were held by Merrick Mass Realty Associates and Levittown East Meadow Associates), and it did not address at all the sale of the most valuable property (held by Brentwood Distribution Co.).

57. The Gettry Report analysis of the fees collected on certain of the properties between 1999 and 2004 found an overpayment of management fees to Jonathan of \$498,041.

¹ As noted, Maria owned 16.417% of Courtesy Brentwood Associates, LLC, which owned a 50% interest in Brentwood Distribution Co.

58. The Gettry Report also concluded that in 2003 and 2004 MetroCenters had improperly collected \$9,350 based on reimbursements for certain improvements to the property controlled by Kings Highway Midwood Associates, LLC ("Kings Hwy") and that in 2004, MetroCenters was overpaid an additional \$5,000 because it did not adjust the management fee for a \$100,000 lease termination expense incurred by the same property. Additionally, another of Jonathan's companies – Bestburger – was a sub-tenant of one of the properties.

59. Above all, the Gettry Report indicated that Jonathan had not properly distributed all of the proceeds of the sales of those properties. It concluded that Jonathan had taken at least \$556,395 that he was not entitled to, of which at least \$146,978 was owing to Maria.

60. Notably, the Gettry Report indicated that with respect to every Real Estate Entity it examined, except two, the capital account balances were disproportionate to the partners' ownership interest percentage.

61. The Gettry Report did not review the books and records of the entities prior to 1999.

62. The Gettry Report also did not review a short-term loan, which, upon information and belief, MetroCenters made to Parkchester RB Associates, LLC on or about April 11, 2001, in the principal amount of \$1,615,000. The loan was to be repaid on August 1, 2001. The loan was evidenced by a note executed by Jonathan, on behalf of Parkchester RB Corp. as the managing member of Parkchester RB Associates, LLC.

63. To date, Defendants owe Maria and the Estate hundreds of thousands of dollars, if not millions of dollars. Jonathan and the Metro Defendants continue to refuse to distribute these monies and are using the improperly withheld funds as leverage against Maria to force her to sign a general release in Defendants' favor.

August 2006 Settlement Agreement

64. Upon information and belief, in August 2006, the Estate (by the Executor Jed Isaacs, who was Jonathan's business accountant), over Maria's objection, entered into a settlement agreement (the "2006 Settlement Agreement") with and between the Real Estate Entities (including Courtesy Brentwood Associates), and holders of interests in those entities, including Jonathan, the GP Entities he purportedly controlled and MetroCenters. The 2006 Settlement Agreement provided, in effect, that, in exchange for Jonathan paying to the Estate certain funds that the Gettry Report determined Jonathan had improperly collected as management fees, the parties would waive all possible claims related to all of the Real Estate Entities controlled by Jonathan.

65. The 2006 Settlement Agreement, however, does not contemplate Jonathan reimbursing the full amounts due as determined by the Gettry Report. In particular, Exhibit B to the 2006 Settlement Agreement, entitled "Analysis of Over Distribution of Sales Proceeds to John Otto Calculation of Settlement Interest," indicates that Jonathan overdistributed to himself \$556,396 of the sales proceeds. The 2006 Settlement Agreement, however, only provided that Jonathan would reimburse the Estate the \$6,367 in interest on that overpayment, and not the full \$556,396.

66. Maria and her daughter, Karina de Brabant ("Karina") both refused to sign the 2006 Settlement Agreement.

Demands Issue to the Real Estate Entities

67. On May 25, 2007, Maria sent demand letters to Parkchester RB Associates, LLC and Courtesy Brentwood Associates, and sent copies of each letter to MetroCenters' address in West Palm Beach, Florida and to certain entities believed to be related to each, including Parkchester RB Corp., Brentwood Distribution Co. and Courtesy Brentwood, Inc. In the letters,

Maria demanded that (i) Parkchester RB Associates LLC institute civil actions against Jonathan, the Executors of the Estate, Parkchester RB Corp., and all other complicit entities or persons; and (ii) Brentwood Distribution Co. institute civil actions against Jonathan, the Executors of the Estate, and Brentwood Distribution Co., Courtesy Brentwood Associates, Courtesy Brentwood, Inc., M-Brentwood Company, LLC, Mack Brentwood Comp., The Mack Company, Courtesy Brentwood Associates Limited Partnership, and all other complicit entities or persons. Maria demanded that the entities assert various claims, including, among others, breach of fiduciary duty, loss and waste of corporate assets, self-dealing, self-interest, and mismanagement, arising out of the sale of the properties held by the two Real Estate Entities for less than fair market value.

68. By letters dated June 8, 2007, Jonathan, purportedly in his capacity as president of Courtesy Brentwood, Inc. and Parkchester RB Corp., respectively, advised Maria, in relevant part, that he believed the real estate was sold for fair market value and that both of the Real Estate Entities had “reached an agreement” with “the holders of more than 50% of the aggregate interests” in each of the companies (i.e., Jonathan and the Estate, which was controlled by Jonathan’s business accountant) “in connection with the winding up of the affairs” of each company. According to Jonathan, those agreements included general releases of the managing member of each entity and “certain of [the] affiliates” of each company. Therefore, Jonathan refused to initiate actions on behalf of the Real Estate Entities in response to Maria’s demands.

69. On October 15, 2007, Maria sent additional demand letters to Bayridge Associates, LP; Bellmore Sunrise Realty Associates, LP; Elmont Realty Associates, LP; Hicksville Associates LP; Homeport Associates LP; Kings Highway Midwood, LLC; Maspeth Grand Associates, LP; and RB White Plains Associates, LLC. Maria sent copies of each of these letters to Jonathan, Jonathan’s attorney, Bruce Bennett, Esq., and to MetroCenters’ West Palm Beach, Florida address. In each of the letters, Maria demanded copies of the contracts of sale for the real estate held by each of the Real Estate Entities and any leases in effect at the time of the

sales. Maria also demanded that if any of the property held by the Real Estate Entities was sold for inadequate value or constituted a fraudulent conveyance, that the Real Estate Entities file complaints against Jonathan, the respective Real Estate Entities and all other complicit entities or persons asserting various claims, including, among others, breach of fiduciary duty, loss and waste of corporate assets, self-dealing, self-interest, and mismanagement, arising out of the sale of the properties held by the Real Estate Entities.

70. Maria did not receive responses to any of the October 2007 demand letters.

71. By letter dated October 25, 2007, from Jonathan – in his individual capacity – to Maria, Jonathan attempted to force Maria to sign the 2006 Settlement Agreement by withholding her distributions from the Real Estate Entities. In this letter, Jonathan claimed that, pursuant to section 4(c) of the 2006 Settlement Agreement, the agreement was effective as of September 20, 2007, despite Maria and Karina’s refusal to sign. He stated “I determined that a sufficient number of Limited Partners and Members had become Participating Limited Partners and Members by executing” the August 20, 2006 Settlement Agreement.” However, despite Jonathan’s allegation that the 2006 Settlement Agreement had been effectuated, he also stated that, due to claims asserted by Maria against certain of the real estate companies, he needed to maintain reserves to pay any potential costs. He stated that he would release Maria’s distributions only upon her execution of the 2006 Settlement Agreement and her countersigning the letter and agreeing to reimburse any overpayment upon demand.

72. In the October 25, 2007 letter Jonathan asserted that he would not distribute the following amounts to Maria from following Real Estate Entities:

Bayonne Broadway Partners, LP	\$11,632.83
Bayridge Associates, LP	\$28,207.95
Bellmore Sunrise Realty Associates, LP	\$16,519.78

Courtesy Brentwood Associates	\$459,477.02
Elmont Realty Associates, LP	\$37,184.26
Hicksville Associates	\$45,446.07
Homeport Associates	\$55,811.30
Kings Highway Midwood, LLC	\$33,922.49
Massapequa Mall Associates	\$29,941.87
Maspeth Grand Associates, LP	\$18,395.52
Parkchester RB Associates, LLC	\$25,651.00
RB White Plains Associates, LLC	\$19,951.63
<u>Total</u>	<u>\$782,141.72</u>

73. As of October 2007, by his own admission, Jonathan made the decision to withhold nearly \$800,000 of Maria's money.

74. By separate letters sent on behalf of Bayonne Broadway Partners, LP; Bayridge Associates, LP; Bellmore Sunrise Realty Associates, LP; Courtesy Brentwood Associates; Elmont Realty Associates, LP; Hicksville Associates LP; Homeport Associates LP; Kings Highway Midwood, LLC; Massapequa Mall Associates; Maspeth Grand Associates, LP; Parkchester RB Associates, LLC; and RB White Plains Associates, LLC – each dated March 17, 2008 – MetroCenters advised Maria that each of those Real Estate Entities had been dissolved.

75. Upon information and belief, on or about January 14, 2008, MetroCenters entered into a trust agreement with Jonathan, as the managing member of RB White Plains Associates, LLC, pursuant to which MetroCenters became the trustee of all of the cash on hand of RB White Plains Associates, LLC, as of January 14, 2008. The trust agreement authorized MetroCenters, as the trustee, to, among other things, “administer the Trust Account and satisfy any liabilities and obligations of the Company [RB White Plains Associates, LLC], or of the Managing

Member [Jonathan], in its sole discretion.” In other words, it appeared that the trust agreement granted Jonathan – as the owner and managing member of MetroCenters – to use the funds that had been held by RB White Plains Associates, LLC to pay any of Jonathan’s liabilities or obligations. Notably, the trust agreement was signed by Jonathan on behalf of MetroCenters and by Jonathan on behalf of RB White Plains Associates, LLC.

76. Upon information and belief, Jonathan created similar trusts to manage the remaining funds of each of the Real Estate Entities, which have purportedly all been dissolved. Upon information and belief, Jonathan granted control of each of those trusts to one or more of the Metro Defendants, all of which are controlled by Jonathan.

77. On February 17, 2010, MetroCenters sent Maria a letter indicating that it held no less than \$815,104.07 of her share of the proceeds of the Real Estate Entities.

78. To date, Defendants have not distributed any of these amounts to Maria and continue to refuse to account for income and sales proceeds from various real estate entities in which she and the Estate owned interests.

79. Finally, Defendants have failed to account for other monies owing to Maria and the Estate including, but not limited to, distributions owing to them on account of other entities that Jonathan has managed for them through MetroCenters, MetroCapital Holdings and/or MetroCapital and in which they still possess interests, including Herricks Mineola, LLC and Merrick Seaman Associates, LLC.

FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
AGAINST ALL DEFENDANTS
(Derivative Claim)

80. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

81. Because Jonathan took an active role in the control of each of the GP Entities and the Real Estate Entities, Jonathan owed – and continues to owe – duties of loyalty and good faith to the Real Estate Entities and to the other interest holders, including Maria and the Estate.

82. As agents to the various real estate limited partnerships and limited liability companies, the Metro Defendants also owed – and continue to owe – duties of loyalty and good faith to the Real Estate Entities and to the other interest holders, including Maria and the Estate.

83. As the controlling entities of each of the Real Estate Entities, the GP Entities also owed duties of loyalty and good faith to the Real Estate Entities and to the other interest holders, including Maria and the Estate.

84. Defendants breached their duties by (i) selling the properties owned by the Real Estate Entities for less than fair market value; (ii) engaging in self-dealing by overpaying management fees to themselves; (iii) refusing to make proper income distributions to Maria and the Estate; (iv) converting to themselves certain income and property interests belonging to Maria and the Estate; and (v) refusing to make certain distributions without Maria first executing a general release all of claims against Defendants.

85. Due to Defendants' wrongful conduct and fiduciary breaches, Maria has lost hundreds of thousands, if not millions, of dollars in income from the sales of the real estate held by the Real Estate Entities at purchase prices far less than fair market value. Maria is also entitled to at least \$815,104.07 in unpaid distributions. In addition, Defendants have failed to properly distribute monies owing to Maria and the Estate in relation to other entities in which

Maria and the Estate have interests, and which Jonathan, through the other Defendants, has and continues to manage, including but not limited to, Herricks Mineola LLC and Merrick Seamans Associates LLC.

86. Maria seeks full compensatory damages from Defendants, including reasonable interest on all wrongfully withheld monies.

87. Maria also seeks an order of this Court disgorging all profits, benefits and other compensation obtained by Defendants from their wrongful conduct and fiduciary breaches.

SECOND CAUSE OF ACTION
UNJUST ENRICHMENT AGAINST ALL DEFENDANTS
(Individual and Derivative Claim)

88. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

89. Upon information and belief, Defendants sold certain properties in which Maria and the Estate had an interest, through the Real Estate Entities, and Defendants were required to distribute proper sales proceeds to Maria and the Estate. Defendants have not done this.

90. Furthermore, prior to the sale of the real estate held by the Real Estate Entities, Defendants did not make proper income distributions to Maria and the Estate. Defendants have wrongfully retained funds that should have been distributed to Maria and the Estate by, among other things, charging unreasonable management fees and improperly collecting reimbursements.

91. In October 2007 and February 2010, Jonathan in his individual capacity and on behalf of MetroCenters, respectively, sent letters to Maria, stating that he was withholding significant sums from her, and would not provide it to her unless she signed the 2006 Settlement

Agreement providing general releases to Jonathan, the GP Entities, MetroCenters and others, of all liabilities related to the Real Estate Entities.

92. In addition, Defendants have refused to distribute properly monies owing to Maria and the Estate from other real estate entities in which they have interests, including but not limited to, Herricks Mineola LLC and Merrick Seamans Association LLC.

93. Maria has refused to succumb to Defendants' threats and has not signed the 2006 Settlement Agreement. Defendants continue to improperly withhold the amounts due to Maria.

94. Defendants have been unjustly enriched by the sale proceeds and improperly withheld income from the real estate entities in which Maria and the Estate owned interest and the amounts Defendants took in overpayment of management fees and improper reimbursements.

95. Additionally, Jonathan has been unjustly enriched by using the money due to Maria as leverage to obtain a general release for himself as an individual.

96. Thus, Defendants have been enriched at Plaintiff's expense. It is against equity and good conscience to permit Defendants to retain the property and distributions owing to Plaintiff.

97. Maria seeks full compensatory damages, as well as reasonable interest on such monies to date.

THIRD CAUSE OF ACTION
AIDING AND ABETTING AGAINST JONATHAN
(Derivative Claim)

98. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

99. By making the decision to dissolve the Real Estate Entities and the GP Entities in 2007, 2008 and 2009, and by making the decision in October 2007 (and again in February 2010) to withhold funds that were due to Maria from the Real Estate Entities, Jonathan aided and abetted the Metro Defendants' and the GP Entities' breaches of their duties of loyalty and good faith to the Real Estate Entities and to the other interest holders, including Maria and the Estate.

100. The Metro Defendants and the GP Entities' breached their fiduciary duties by (i) selling the properties owned by the Real Estate Entities for less than fair market value; (ii) engaging in self-dealing by overpaying management fees to themselves; (iii) refusing to make proper income distributions to Maria and the Estate; (iv) converting to themselves certain income and property interests belonging to Maria and the Estate; and (v) refusing to make certain distributions without Maria first executing a general release all of claims against Defendants.

101. Jonathan intentionally withheld the money that was due to Maria in an improper attempt to extort a general release from her on behalf of himself, the Real Estate Entities, the GP Entities and the Metro Defendants. Jonathan also intentionally dissolved the Real Estate Entities and the GP Entities in a further attempt to shield the GP Entities, the Metro Defendants and himself from any liability to Maria, the Real Estate Entities and the Estate.

102. Due to Jonathan's intentional and improper conduct – which he engaged in a willful attempt to assist the Metro Defendants and the GP Entities in breaching their duties of loyalty and good faith to the Real Estate Entities and to the other interest holders, including Maria and the Estate – Maria has lost hundreds of thousands, if not millions, of dollars in income

from the sales of the real estate held by the Real Estate Entities at purchase prices far less than fair market value. Maria is also entitled to at least \$815,104.07 in unpaid distributions. In addition, Defendants have failed to properly distribute monies owing to Maria and the Estate in relation to other entities in which Maria and the Estate have interests, and which Jonathan, through the other Defendants, has and continues to manage, including but not limited to, Herricks Mineola LLC and Merrick Seamans Associates LLC.

FOURTH CAUSE OF ACTION
ACCOUNTING AGAINST THE METRO DEFENDANTS

103. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

104. As agents to the various real estate limited partnerships and limited liability companies, Defendants owe a duty to act in the best interests of the interest holders, including Maria and the Estate.

105. Defendants received income and sales proceeds with respect to the Real Estate Entities and were required to properly account for, and distribute, the proceeds to the owners of the entities, including Maria and the Estate. To date, Defendants have not properly accounted for the income and proceeds from the management and sales of the property held by these entities.

106. Furthermore, it appears Defendants have wrongfully retained funds and property interests that belong to Maria and the Estate.

107. Based upon the Gettry Report alone there is reason to question the capital accounts of the Real Estate Entities that were not consistent with the percentage ownership held by Maria and the Estate, as well as the management fees and sales proceeds Jonathan took for himself at the expense of Maria and the Estate.

108. Defendants have refused Plaintiff's demands for proper information.

109. An accounting of the profits, losses, expenses, and revenues of Defendants' management of all real estate entities in which Maria and the Estate own (or owned) an interest, for the period 1997 to the present, is only just and proper. Without an accounting, Maria cannot determine the amount of profit she is due by law and contract.

110. Defendants will not be harmed nor prejudiced by an accounting, but great harm and prejudice will accrue to Maria if a proper accounting is not provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Maria Otto, individually and on behalf of the Real Estate Entities, prays for relief and judgment, as follows:

A. Awarding compensatory damages in an amount to be determined at trial, but no less than \$2,000,000;

B. Awarding punitive damages with respect to all counts;

C. Awarding the reasonable costs and expenses incurred in this action, including attorneys' fees, expert fees and other costs and disbursements;

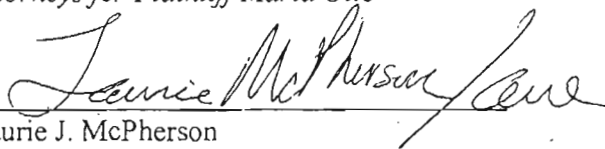
D. Ordering Defendants to account for their management of all real estate entities in which Maria and the Estate own (or owned) an interest from 1997 to the present; and

E. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 20, 2011

BLANK ROME LLP
Attorneys for Plaintiff Maria Otto

By: _____


Laurie J. McPherson
Shawnda M. Grady
Andrew T. Hambelton
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 885-5000