

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

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A&F HAMILTON HEIGHTS CLUSTER, INC.,  
derivatively on behalf of HAMILTON HEIGHTS  
CLUSTER ASSOCIATES, L.P., and JAMES FENDT,  
derivatively on behalf of A&F HAMILTON HEIGHTS  
CLUSTER, INC., PLEASANT AVENUE ASSOCIATES,  
L.P., FAM PLEASANT AVENUE LLC, AFF-PSA  
BRONX 9-D, INC. and TAF ALEXANDER AVE., INC.,

Index No.: 653038/2014

**Verified Second Amended  
Complaint**

Plaintiffs,

-against-

URBAN GREEN MANAGEMENT, INC. and  
ERIC ANDERSON,

Defendants.

and

HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P.,  
A&F HAMILTON HEIGHTS CLUSTER, INC.,  
PLEASANT AVENUE ASSOCIATES, L.P., FAM  
PLEASANT AVENUE LLC, AFF-PSA BRONX 9-D,  
INC., and TAF ALEXANDER AVE., INC.,

Nominal Defendants.

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URBAN GREEN MANAGEMENT, INC., and ERIC  
ANDERSON, derivatively on behalf of AFF-PSA BRONX  
9-D, INC., and FAM PLEASANT AVENUE LLC,

Third-Party Plaintiffs,

-against-

JAMES FENDT, ALEX ABREU, and YASMIN  
ROSADO,

Third-Party Defendants,

and

AFF-PSA BRONX 9-D, INC., and FAM PLEASANT AVENUE LLC,

Nominal Third-Party Defendants.

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WHGA HAMILTON HEIGHTS CLUSTER, INC., and  
WEST HARLEM HEIGHTS CLUSTER, INC.,

Intervenor-Plaintiffs,

-against-

HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P.,  
A&F HAMILTON HEIGHTS CLUSTER, INC., A&F  
EQUITIES, LLC; and A&F HHC EQUITIES, LLC,

Intervenor-Defendants.

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Plaintiffs A&F HAMILTON HEIGHTS CLUSTER, INC., derivatively on behalf of HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P., and JAMES FENDT, derivatively on behalf of A&F HAMILTON HEIGHTS CLUSTER, INC., PLEASANT AVENUE ASSOCIATES, L.P., FAM PLEASANT AVENUE LLC, AFF-PSA BRONX 9-D INC., and TAF ALEXANDER AVE. INC., by and through their attorneys, THE TENDY LAW OFFICE, LLC, as and for a Second Amended Complaint, respectfully allege, upon information and belief, as follows:

**PARTIES**

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1. Plaintiff James Fendt is a resident of Bayside, New York. Fendt is, and was at all times material and relevant to this action, a shareholder of Nominal Defendants A&F HAMILTON HEIGHTS CLUSTER, INC., AFF-PSA BRONX 9-D INC., and TAF ALEXANDER AVE. INC.; a limited partner of Nominal Defendant PLEASANT AVENUE ASSOCIATES, L.P., and a member of Nominal Defendant FAM PLEASANT AVENUE LLC.

2. Plaintiff and Nominal Defendant A&F HAMILTON HEIGHTS CLUSTER, INC. (“GP-2”) is a New York domestic Corporation with offices at **211-212 28th Avenue, Bayside, NY 11360**. GP-2 is a General Partner of Nominal Defendant HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P. (“HHC”).

3. Defendant ERIC ANDERSON (“Defendant Anderson”), at all times material and relevant to this action, was and is a resident of the State of New York, and was or is either a General Partner, Managing Member and/or Corporate Officer for each Nominal Defendant entity.

4. Upon information and belief, defendant URBAN GREEN MANAGEMENT, LLC (“Urban Green”), is a New York domestic Limited Liability Company with offices in New York County at 340 Pleasant Ave., New York, NY 10035.

5. Nominal Defendant HHC is a New York domestic Limited Partnership with offices at **211-212 28th Avenue, Bayside, NY 11360**. HHC owns five buildings located in New York County at: 115 Hamilton Place (Block 2074/Lot 30), New York, NY; 504 West 142<sup>nd</sup> Street (Block 2073/Lot 43), New York, NY; 505 West 142<sup>nd</sup> Street (Block 2074/Lot 25, New York, NY; 529-531 West 145th Street (Block 2077/Lot 13-12), New York, NY; 542 West 140<sup>th</sup> Street (Block 2071/Lot 56), New York, NY. These buildings contain 8 commercial and 86 residential units. The buildings were purchased on or about October 1, 1999 and were renovated in 2004. The rental revenue from these five buildings was \$1,038,986 in 2013.

6. Nominal Defendant PLEASANT AVENUE ASSOCIATES L.P. (“PAA”) is a New York domestic Limited Partnership with offices at **211-212 28th Avenue, Bayside, NY 11360**. PAA owns two five-story buildings located in New York County at 328 Pleasant Avenue (Block 1716/Lot 49), New York, NY and 340 Pleasant Avenue (Block 1815/Lot 1), New York,

NY, which contain 2 commercial and 10 residential units. These buildings were purchased on or about November 6, 1995 and were renovated in 1996. The rental revenue from these two buildings was \$179,563 in 2013.

7. Nominal Defendant FAM PLEASANT AVENUE LLC (“FAM”) is a New York domestic Limited Liability Company with offices at **211-212 28th Avenue, Bayside, NY 11360**. FAM owns one building located in New York County at 354 Pleasant Avenue (Block 1815/Lot 49), New York, NY, which contains 2 commercial and 8 residential units. This building was purchased on or about June 1, 2000 and renovated in 2001. The rental revenue from this building was \$141,555 in 2013.

8. Nominal Defendant AFF-PSA BRONX 9-D INC. (“AFF-PSA”) is a New York domestic business corporation with offices at **211-212 28th Avenue, Bayside, NY 11360**. AFF-PSA owns four five-story buildings located in Bronx County at 1429 Prospect Avenue (Block 2962/Lot 30), Bronx NY, 1431 Prospect Avenue (Block 2937/Lot 62), Bronx, NY. 1451 Prospect Avenue (Block 2937/Lot 45), Bronx, NY and 672 Crotona Park South (Block 2936/Lot 20), Bronx, NY. These buildings contain 3 commercial and 54 residential units. These buildings were purchased on or about March 1, 1992 and renovated in 1993. The rental revenue from these buildings was \$661,333 in 2013.

9. Nominal Defendant TAF ALEXANDER AVE. INC. (“TAF”) is a New York domestic Corporation with offices at 211-212 28th Avenue, Bayside, NY 11360. TAF owns one five-story building located in Bronx County at 309 Alexander Avenue (Block 2315/Lot 16), Bronx, NY, which contains 11 residential units. This building was purchased on or about July 17, 1997 and renovated in 1998. The rental revenue from this building was \$103,825 in 2013.

#### **JURISDICTION & VENUE**

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10. The jurisdiction of this Court is invoked under the statutory and common law of New York State, as a substantial portion of the actions complained of herein occurred within or originated in the State of New York, County of New York, Defendant Anderson lives, works and regularly transacts business in the State of New York, County of New York; and defendant Urban Green is a New York domestic Limited Liability Company and is in fact doing business in the State of New York, County of New York. The amount in controversy exceeds \$75,000.

11. The venue is proper as Plaintiffs and all defendants, at all times relevant, were and are physically present in and/or were conducting and continue to conduct business in the Borough of Manhattan, City of New York, County of New York; a substantial portion of the actions alleged herein occurred or originated in the Borough of Manhattan, City of New York, County of New York; and all the defendants reside in and/or regularly transact business in the State of New York, County of New York, sufficient to convey personal jurisdiction and proper venue.

## **FACTUAL BACKGROUND**

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12. Nominal Defendants HHC, PAA, FAM, AFF-PSA, and TAF (the “Companies”) collectively own thirteen mixed-use commercial and residential properties located in Manhattan and the Bronx and described in paragraphs 5-9 above (hereinafter the “Properties”).

13. From 2005 until September 15, 2014, the Properties were managed by Urban Green.

14. Urban Green is controlled by Anderson, who was also a Managing Partner of HHC and PAA, a Managing Member of FAM and a corporate officer of AFF-PSA and TAF.

15. The Management Agent arrangement between Urban Green and the Companies was never formalized in a written contract and was subject to termination at any time and for any reason or no reason.

16. Throughout the time the Properties were managed by Urban Green, the financial reports showed consistent losses across all properties, notwithstanding substantial rental revenues.

17. In or about 2008, Urban Green stopped using an outside independent accounting firm. As a result, there was less transparency into the books and records and Urban Green and Anderson provided very little or no substantive information about the Companies to the other shareholders, members and partners. Urban Green also prepared the Companies’ tax returns on its own, rather than employing an independent accounting firm, a practice that contradicts best practices in the industry and represents a conflict of interest.

18. Plaintiff James Fendt, Anderson’s business partner, made many requests for additional information and explanations each year at tax time. His requests were met with reassurances but little or no substantive information.

19. On or about May 2, 2014, Fendt was informed by Ramon Alex Abreu and Yasmin Rosado, both former employees of Urban Green, that they had information that Defendant Anderson was diverting significant funds from the management agent fees paid by the Companies to Urban Green for his own personal use and for unrelated real estate development and restaurant management projects.

20. Specifically, Rosado and Abreu told Fendt that (i) Urban Green had been charging management fees of approximately twelve percent (12%) per year for years, which is approximately four times higher than the typical management fee according to all industry standards; (ii) a significant portion of those fees had been used for purposes unrelated to the management of the Properties; (iii) there were two employees (Soledad Ursua and Andrea Coles) on the Urban Green payroll who were being paid out of the Companies' management fees but who were not working for or on behalf of the Companies; and (iv) that when Abreu and Rosado were employed by Urban Green they were directed by Anderson to devote a majority of their time to working on his personal matters, development projects and restaurant management projects, none of which were related to management of the Properties.

21. Rosado and Abreu also informed Fendt that Urban Green has been occupying office space located in one of the PAA-owned buildings at 501 East 118 Street, New York, NY 10035 without paying any rent and that Apartment 3B in the same building was used by Defendant Anderson personally, also without any rent being paid. This arrangement was never authorized by PAA.

22. On September 10, 2014, James Fendt, Michael Nikolai, James Huang, Colleen Bonniclewis and Linda Schwartz, who are members or shareholders, respectively, of HHC's limited partner, FAM and AFF-PSA, signed resolutions authorizing Fendt to remove Urban

Green as Management Agent for HHC, FAM and AFF-PSA and to replace Urban Green with Safeguard Realty Management, Inc. (“Safeguard”), an independent and highly regarded property management firm. Acting pursuant to the authority conferred by those resolutions, and the authority vested in him as a 50% owner of PAA and TAF, Mr. Fendt instructed that all the Companies’ files, books, records and banking accounts be immediately removed from Urban Green’s possession and transferred to Safeguard.

23. Citrin Cooperman, an accounting firm, was then engaged to conduct a forensic review of the books and records. The findings of the forensic review to date indicate that between 2005 and 2014, Anderson diverted more than \$1.4 million in Company funds from the Companies for his personal use. The forensic review is still ongoing.

24. Defendant Anderson was notified of the change in management agent on September 12, 2014 in his capacity as principal of Urban Green and again in his capacity as the Companies’ shareholder/partner/member on September 19, 2014.

25. On Friday, September 26, 2014 Fendt learned that Defendant Anderson had instructed the superintendents to deliver notices to tenants instructing them not to remit rent payments to the new management company and to continue to send funds to Urban Green, notwithstanding the fact that its services have been terminated.

26. On September 29, 2014, Abreu informed Fendt that as a result of a directive from Defendant Anderson, Superintendent Roman Arcentales had refused to work with Safeguard and distributed notices to the tenants of his building to continue to send rent payments to Urban Green.



27. Upon information and belief, on September 30, 2014, Defendant Anderson visited all of the properties owned by HHC and attempted to convince tenants to continue paying rent to Urban Green.

28. As of October 6, 2014, Safeguard still had not received the majority of the rent payments due for the month of October for all buildings, with the exception of HHC, thereby putting the buildings in serious financial peril and unable to pay their mortgages and other operating expenses. At least two rent checks due to the PAA entity for the month of October, in the amounts of \$1,141.14 and \$2,808, were diverted by Defendant Anderson after they were submitted directly to him. Further, Safeguard did not receive monthly subsidy checks issued by the New York City Department of Social Services. For HHC, this amounted to approximately \$2,500 per month. Safeguard also did not receive the monthly Section 8 Housing Assistance checks issued by the New York City Housing Authority. For HHC this amounts to approximately \$1,800 per month. Upon information and belief, Urban Green diverted these public assistance checks and did not provide them to Safeguard.

29. On October 6, 2014, the Companies moved by order to show cause seeking a preliminary injunction and temporary restraining order to prevent the Defendants from contacting or attempting to contact tenants, employees or contractors of the Companies, diverting or attempting to divert rental payments and exercising any control over the properties as management agent or over the Companies. Defendants failed to appear and the temporary restraining order was granted on default.

30. On October 15, 2014 the Court held oral argument on the Companies' motion for a preliminary injunction. Defendants neither submitted opposing papers nor appeared for oral argument. In an Order dated October 20, 2014, the Court found that a cause of action appears to

exist in favor of the Companies and against the Defendants and that the Companies were entitled to a preliminary injunction to prevent further injury to the Companies.

31. On October 28, 2014, Defendants appeared in this action through their counsel, Smith Gambrell & Russell, LLP. Present counsel for Defendants appeared in this action on February 4, 2015.

32. In December of 2014, it came to Safeguard's attention that Urban Green had failed to pay water bills for the Properties going back at least ten (10) years to 2005. As of the date of filing of this Second Amended Complaint, the amount due to the New York City Department of Environmental Protection ("DEP") exceeded \$382,000. The interest payments on this obligation are approximately \$10,000 per month. Interest and late payment penalties on the outstanding balance continue to accrue at an annual compounded rate of nine percent (9%) per month. DEP has informed counsel for Plaintiff Fendt that it will not forgive the interest payments on the unpaid bills without a court order finding that the payment arrears were the result of malfeasance and mismanagement by Urban Green and/or Anderson.

33. Because Defendant Anderson has a fiduciary obligation to assist the Companies in reducing this debt, the parties initially agreed to refer the water bill issue to a Special Referee to determine whether the payment arrears were the result of malfeasance or mismanagement by Urban Green, but the reference to a Special Referee was vacated by Order dated May 12, 2015 and the water bill remain as a crushing liability for the Companies.

34. On April 30, 2015, the Defendants moved to dismiss the First Amended Complaint for lack of legal capacity to sue, to appoint a receiver, to compel the Plaintiffs in that action to refund any fees paid to their counsel and to enjoin the Plaintiffs from entering into any contracts to sell or encumber the properties.

35. In a Decision and Order dated July 8, 2015, the Court granted the Defendants' motion to dismiss for lack of capacity and appointed a receiver. Mr. Fendt was granted leave to amend the complaint to assert the derivative claims set forth herein.

36. In the same Decision and Order dated July 8, 2015, WHGA Hamilton Heights Cluster, Inc. ("GP-1") and West Harlem Heights Cluster, Inc. ("New GP-1") and were permitted to intervene in this action and were granted leave to file a complaint seeking a declaratory judgment that the First Amended and Restated Partnership Agreement is not effective. To date, no such complaint has been filed by GP1 or New GP-1.

37. Anderson's conduct – his self-dealing, his diversion of funds, his failure to attend to the water bills and other obligations of the Companies and his failure to maintain the Companies books and records, as detailed herein – ran contrary to the interests of the Companies, and was so egregious on its face that it could not have been the product of his sound business judgment.

#### **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

38. Plaintiffs bring this action derivatively in the right, and for the benefit of, each of the Companies as a direct result of the breaches of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent conveyance, conversion, fraud and unjust enrichment alleged herein. The Companies are named as nominal defendants solely in a derivative capacity.

39. Plaintiffs will adequately and fairly represent the interests of the Companies and their respective shareholders, members and partners in enforcing and prosecuting their rights.

#### ***HHC***

40. A&F Hamilton Heights Cluster, Inc. ("GP-2") is one of two General Partners of HHC.

41. On July 8, 2015, the Court granted leave to GP-2 to bring a derivative claim on behalf of HHC.

42. The Court further authorized Fendt to assert the derivative claim “after making demand upon the board of directors of GP-2 or alleging demand futility.” For the reasons set forth below, pre-suit demand would be futile.

43. Fendt owns 50% of GP-2’s shares and was a shareholder of GP-2 at all times relevant to Defendants’ wrongful course of conduct alleged herein. Anderson owns the remaining 50% of GP-2’s shares.

44. Fendt and Defendant Anderson serve as GP-2’s sole directors. Accordingly, suit could not be authorized without Defendant Anderson’s consent.

45. Pre-suit demand on GP-2 would be a futile and useless action with respect to Defendant Anderson for the following reasons:

- a. Defendant Anderson faces a substantial likelihood of being held liable for breaching his fiduciary duties of loyalty and good faith as alleged herein, and is therefore incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.
- b. Defendant Anderson knew of and directly benefited from the wrongdoing complained of herein, thereby rendering demand futile.
- c. Defendant Anderson’s conduct complained of herein could not have been the product of good faith business judgment, and cannot be protected by the business judgment rule.

46. Accordingly, making a pre-suit demand on the Board of GP-2, the General Partner of HHCA, would be futile.

***PAA***

47. On July 8, 2015, the Court granted leave to Fendt to bring a derivative claim on behalf of PAA.

48. Fendt is limited partner of PAA and was a limited partner of PAA at all times relevant to Defendants' wrongful course of conduct alleged herein.

49. The General Partner of PAA is AF&F Community Builders, Inc. ("Community Builders"). For the reasons set forth below, pre-suit demand on Community Builders would be futile, because Community Builders would likely refuse to bring suit against Defendants.

50. Fendt owns 50% of the shares of Community Builders. Defendant Anderson owns the remaining 50% of Community Builders' shares.

51. Fendt and Anderson serve as Community Builders' sole directors. Accordingly, suit could not be authorized without defendant Anderson's consent.

52. Pre-suit demand on Community Builders would be a futile and useless action with respect to Defendant Anderson for the following reasons:

- a. Defendant Anderson faces a substantial likelihood of being held liable for breaching his fiduciary duties of loyalty and good faith as alleged herein, and is therefore incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.
- b. Defendant Anderson knew of and directly benefited from the wrongdoing complained of herein thereby rendering demand futile.
- c. Defendant Anderson's conduct complained of herein could not have been the product of good faith business judgment, and cannot be protected by the business judgment rule.

53. Accordingly, making a pre-suit demand on the Board of Community Builders, PAA's General Partner, would be futile.

***FAM***

54. Fendt is a member of FAM and was a member of FAM at all times relevant to Defendants' wrongful course of conduct alleged herein.

55. Fendt owns 45.5% of the membership interests in FAM. The other members are: defendant Anderson, who owns 38%; Michael Nikolai, who owns 10%; Colleen Bonniclewis, who owns 4%; and James Huang, who owns 2.5%.

56. Fendt and Anderson served as sole Managing Members of FAM. Accordingly, suit could not be authorized without Defendant Anderson's consent.

57. Pre-suit demand would be a futile and useless action with respect to Defendant Anderson for the following reasons:

- a. Defendant Anderson faces a substantial likelihood of being held liable for breaching his fiduciary duties of loyalty and good faith as alleged herein, and is therefore incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.
- b. Defendant Anderson knew of and directly benefited from the wrongdoing complained of herein thereby rendering demand futile.
- c. Defendant Anderson's conduct complained of herein could not have been the product of good faith business judgment, and cannot be protected by the business judgment rule.

***AFF-PSA***

58. On July 8, 2015, the Court granted leave to Fendt to bring a derivative claim on behalf of AFF-PSA.

59. Fendt owns 45% shares of AFF-PSA and was a shareholder of AFF-PSA at all times relevant to Defendants' wrongful course of conduct alleged herein.

60. Fendt and Anderson serve as AFF-PSA's sole directors.<sup>1</sup> Accordingly, suit could not be authorized without Defendant Anderson's consent.

61. Pre-suit demand would be a futile and useless action with respect to defendant Anderson for the following reasons:

- a. Defendant Anderson faces a substantial likelihood of being held liable for breaching his fiduciary duties of loyalty and good faith as alleged herein, and is therefore incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.
- b. Defendant Anderson knew of and directly benefited from the wrongdoing complained of herein thereby rendering demand futile.
- c. Defendant Anderson's conduct complained of herein could not have been the product of good faith business judgment, and cannot be protected by the business judgment rule.

62. Accordingly, making a pre-suit demand on the Board of AFF-PSA would be futile.

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<sup>1</sup> Until December 31, 2003, Robert Marrow was a Director of AFF-PSA. He resigned his position pursuant to a resolution of the directors and shareholders dated December 31, 2003. A few months later, on April 1, 2004, Mr. Marrow transferred his ownership interests in AFF-PSA to Fendt and Anderson in exchange for their interests and the interest of John Fendt in an entity called MAF Pleasant Avenue Inc. The exchange of ownership is memorialized in a Memorandum of Understanding dated April 1, 2004 and in the signed checks that accompanied the transaction. Notwithstanding the foregoing, in June of this year, Mr. Marrow held himself out as a current director and joined with Mr. Anderson to call a meeting of the directors in an effort to sell the properties while the preliminary injunction was in place.

***TAF***

63. On July 8, 2015, the Court granted leave to Fendt to bring a derivative claim on behalf of TAF.

64. Fendt owns 50% of the shares of TAF and was a shareholder of TAF at all times relevant to Defendants' wrongful course of conduct alleged herein.

65. Defendant Anderson owns the remaining 50% of TAF's shares.

66. Fendt and Anderson serve as TAF's sole directors. Accordingly, suit could not be authorized without defendant Anderson's consent.

67. Pre-suit demand would be a futile and useless action with respect to defendant Anderson for the following reasons:

- a. Defendant Anderson faces a substantial likelihood of being held liable for breaching his fiduciary duties of loyalty and good faith as alleged herein, and is therefore incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.
  - b. Defendant Anderson knew of and directly benefited from the wrongdoing complained of herein, thereby rendering demand futile.
  - c. Defendant Anderson's conduct complained of herein could not have been the product of good faith business judgment, and cannot be protected by the business judgment rule.
68. Accordingly, making a pre-suit demand on the Board of TAF would be futile.



**AS AND FOR A FIRST CAUSE OF ACTION**

**Breach of Fiduciary Duty  
Against Anderson**

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69. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

70. Defendant Anderson, as General Partner, Managing Member and Corporate Officer, owed or owes fiduciary duties to the Companies and to their partners, members and shareholders, including duties of care and loyalty.

71. Defendant Anderson breached these fiduciary duties by self-dealing, wasting and mismanaging the Companies' assets, in particular by charging excessive management fees, carrying employees on the books who did not work for the Companies, directing Urban Green employees to devote most of their time to Defendant Anderson's own matters, matters that had nothing to do with managing the Properties, and making unauthorized use of office and residential space without paying rent.

72. Defendant Anderson's self-interested acts, practices and courses of conduct as alleged herein were so egregious on their face that they could not have been products of sound business judgment.

73. Defendant Anderson's breaches of fiduciary duties caused injury and damages to the Companies in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION**

**Aiding and Abetting Breach of Fiduciary Duty  
Against Urban Green**

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74. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

75. Defendant Anderson, as General Partner, Managing Member and corporate officer of the Companies, owed or owes fiduciary duties to the Companies and to their partners, members and shareholders, including duties of care and loyalty.

76. Defendant Anderson breached these fiduciary duties by, *inter alia*, charging excessive management fees, carrying employees on the books who did not work for the Companies and directing Urban Green employees to devote most of their time to Defendant Anderson's own matters, matters that had nothing to do with managing the Companies' properties, and making unauthorized use of office and residential space without paying rent and without authorization.

77. Urban Green aided and abetted Defendant Anderson's breach of fiduciary duties by knowingly rendering substantial assistance in orchestrating the self-dealing, waste, and mismanagement of assets.

78. Urban Green's role in aiding and abetting Defendant Anderson's breaches of fiduciary duties damaged the Companies in an amount to be determined at trial.

**AS AND FOR A THIRD CAUSE OF ACTION**

**Fraudulent Conveyance under the Common Law  
and Business Corporation Law §720**

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79. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

80. Defendant Anderson used the Companies' corporate/partnership funds for his own personal benefit and otherwise wasted corporate/partnership assets by, *inter alia*, charging excessive management fees, carrying employees on the books who did not work for the Companies, directing Urban Green employees to devote most of their time to Defendant

Anderson's own matters having nothing to do with managing the Companies' properties, and making unauthorized use of office and residential space without paying rent.

81. The Companies are entitled to a return of misappropriated funds, and/or the benefits derived by Defendants therefrom.

## **AS AND FOR A FOURTH CAUSE OF ACTION**

### **Conversion**

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82. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

83. As of September 15, 2014, the Companies had changed management agents and bank accounts for the properties and had ownership, possession or control over all rent receivables before their conversion by Defendants.

84. Defendants exercised an unauthorized dominion over the rent receivables to the detriment and exclusion of the rights of the Companies, and otherwise acted in a manner incompatible with the Companies' right to receive those funds.

85. Defendants' conversion of the rent receivables damaged the Companies in an amount to be determined at trial.

86. Defendants' conversion of the rent receivables was accomplished by malice or reckless or willful disregard of the Companies' rights and therefore the Companies are entitled to an award of punitive damages.

## AS AND FOR A FIFTH CAUSE OF ACTION

### Fraud

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87. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

88. Defendant Urban Green acted in concert with Defendant Anderson and/or as the alter ego of Defendant Anderson as the fraudulent conveyee of excessive management fees that were then surreptitiously diverted and used to pay for Anderson's unrelated business ventures. Anderson then covered up his fraudulent acts through material misrepresentations and omissions in the books and records of each entity.

89. The Companies reasonably relied on these material misrepresentations to the detriment of themselves and their shareholders/members in continuing to pay management fees to Urban Green.

90. The Companies are entitled to a return of misappropriated funds, and/or the benefits derived by Defendants therefrom.

91. Defendants' misrepresentations and omissions were willful, wanton and malicious, particularly in light of Defendants' fiduciary obligations to the Companies, and therefore the Companies are entitled to an award of punitive damages.

## AS AND FOR A SIXTH CAUSE OF ACTION

### Unjust Enrichment

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92. Plaintiffs repeat and allege each and every allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

93. Defendant Anderson received a benefit by, *inter alia*, charging the Companies' excessive property management fees through Urban Green, carrying employees on the books that

did not work for the Companies, directing Urban Green employees to devote most of their time to Defendant Anderson's own matters having nothing to do with managing the Companies' properties and making unauthorized use of office and residential space without paying rent.

94. Defendant Anderson received this benefit at the Companies' expense and the Companies have not been compensated for the loss or the value he obtained.

95. Equity and good conscience require Defendant Anderson to make restitution to the Companies to the full extent he has been unjustly enriched by his wrongful conduct.

**WHEREFORE**, Plaintiffs request judgment in its favor and against the Defendants as follows:

1. Directing Defendants to account for all benefits monetary and otherwise realized by Defendants in connection with the wrongdoings alleged herein and to return all of the diverted funds to the Companies;
2. Finding that Urban Green's failure to pay the amounts due to the DEP as alleged in paragraph 32 were the result of malfeasance and mismanagement by Defendants.
3. Awarding damages to the Companies and against Defendants jointly and severally in an amount to be determined at trial, with interest, for direct losses and punitive damages;
4. Awarding to Plaintiffs attorneys' fees for Defendants' intentional and willful conduct, in particular but not limited to Defendants' fraudulent conduct, together with the costs and disbursements of this proceeding; and
5. Awarding such other different and further relief as to this Court may seem just and proper.

Dated: August 28, 2015  
New York, New York

TENDY LAW OFFICE, LLP  
*Attorneys for Plaintiffs*  
45 Broadway, Suite 3150  
New York, NY 10006

By: S/  
Katherine J. Daniels, Esq.  
*Of Counsel*  
(212) 447-4700  
kdaniels@tendylaw.com

**VERIFICATION**

KATHERINE J. DANIELS, an attorney duly licensed to practice law before the Courts of the State of New York, affirms the truth of the following under penalties of perjury:

I am the attorney for the plaintiffs in the above-entitled action. I have read the foregoing First Amended Complaint and know the contents thereof, and upon information and belief, having made an inquiry reasonable under the circumstances, believe the matters alleged therein to be true, and that the contentions therein are not frivolous, as that term is defined in 22 NYCRR 130.

The source of my information and grounds of my belief are communications, papers, reports and investigations contained in the file maintained by my office.

The reason why this verification is signed by me and not by plaintiffs is that plaintiffs do not reside in the county where my offices are located.

Dated: New York, New York  
August 28, 2015

S/  
Katherine J. Daniels