

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ERIE

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JEANNIE-MARIE MCGUIRE, individually and suing in the right of  
MCGUIRE DEVELOPMENT COMPANY, LLC,  
MCG REAL ESTATE HOLDINGS, LLC,  
MCGUIRE ACQUISITIONS LLC,  
MCGUIRE CAPITAL LLC and  
SHAMROCK SEVEN ACP, LLC,

**VERIFIED COMPLAINT**

Index No.: \_\_\_\_\_

KATHLEEN MCGUIRE, individually and suing in the right of  
MCGUIRE DEVELOPMENT COMPANY, LLC,  
DELAWARE AVENUE INVESTORS, LLC,  
GENESEE STREET INVESTORS, LLC,  
MCG REAL ESTATE HOLDINGS, LLC,  
MCGUIRE ACQUISITIONS LLC,  
MCGUIRE CAPITAL LLC and  
SHAMROCK SEVEN ACP, LLC,

MICHAEL MCGUIRE, individually and suing in the right of  
MCGUIRE DEVELOPMENT COMPANY, LLC,  
DELAWARE AVENUE INVESTORS, LLC,  
GENESEE STREET INVESTORS, LLC,  
MCG REAL ESTATE HOLDINGS, LLC,  
MCGUIRE ACQUISITIONS LLC,  
MCGUIRE CAPITAL LLC and  
SHAMROCK SEVEN ACP, LLC,

Plaintiffs,

-VS-

F. JAMES MCGUIRE, individually and as General Manager of  
MCGUIRE DEVELOPMENT COMPANY, LLC,  
DELAWARE AVENUE INVESTORS, LLC,  
GENESEE STREET INVESTORS, LLC,  
MCG REAL ESTATE HOLDINGS, LLC,  
MCGUIRE ACQUISITIONS LLC,  
MCGUIRE CAPITAL LLC and  
SHAMROCK SEVEN ACP, LLC,

and

MCGUIRE DEVELOPMENT COMPANY, LLC,  
DELAWARE AVENUE INVESTORS, LLC,  
GENESEE STREET INVESTORS, LLC,  
MCG REAL ESTATE HOLDINGS, LLC,  
MCGUIRE ACQUISITIONS LLC,  
MCGUIRE CAPITAL LLC,  
MCGUIRE PV HOLDING L.P. and  
SHAMROCK SEVEN ACP, LLC,

Defendants.

Jeannie-Marie, Kathleen and Michael McGuire (collectively “JKM” or “Plaintiffs”), individually and suing in the right of McGuire Development Company, LLC, McGuire Acquisitions LLC, MCG Real Estate Holdings, LLC, Delaware Avenue Investors, LLC, Genesee Street Investors, LLC and Shamrock Seven ACP, LLC, by and through their attorneys, Underberg & Kessler LLP, complaining of Defendants allege as follows:

### **The Parties**

1. McGuire Development Company, LLC (“MDC”), McGuire Acquisitions LLC (“McGuire Acquisitions”), McGuire Capital, LLC, MCG Real Estate Holdings (“MCG Real Estate”), Delaware Avenue Investors, LLC (“Delaware Investors”), Genesee Street Investors, LLC (“Genesee Investors”), McGuire PV Holding, L.P. (“McGuire PV Holding”) and Shamrock Seven ACP, LLC (“Shamrock Seven”) (collectively the “Companies”) are New York limited liability companies. Each of the Companies has its principal place of business located at 455 Cayuga Road, Suite 100, Buffalo, New York.

2. MDC primarily provides real estate development and property management services and the Companies are real estate holding companies.

3. With respect to the Companies, MDC oversees all operations, supervises all employees, collects rent, pays vendors, administers development and maintenance projects, handles leases and risk management, and is responsible for depositing funds, negotiating employment contracts and all financial reporting.

4. At all relevant times herein, Plaintiff Jeannie-Marie McGuire (“Jeannie”) was and is a member of each of the Companies, with the exception of Genesee Investors and Delaware Investors. Jeannie is a resident of Montville, New Jersey.

5. At all relevant times herein, Plaintiff Kathleen McGuire (“Kathleen”) was and is a Member of each of the Companies. Kathleen is a resident of Catonsville, Maryland.

6. At all relevant times herein, Plaintiff Michael McGuire (“Michael”) was and is a Member of each of the Companies, and is a resident of Inver Grove Heights, Minnesota.

7. Upon information and belief, Defendant F. James McGuire (“Defendant”, “James” or “James McGuire”) is General Manager or Manager of each of the Companies, except McGuire PV Holding, and the CEO of The McGuire Group. MDC is the General Partner of McGuire PV Holding. The McGuire Group operates multiple health care businesses, including skilled nursing facilities.

8. Upon information and belief, James controls McGuire PV Holding through his role as General Manager of MDC, the managing General Partner of McGuire PV Holding.

### **Venue**

9. Venue in this County is proper pursuant to CPLR 503(c), based on the location of Defendants’ principal offices.

### **Factual Background**

#### The Companies.

10. In the 1990s, Frank McGuire was chairman and founder of many of the Companies, including those holding real estate interests. At that time, six (6) of Frank’s seven children – Jeannie, Kathleen, Michael, James, Jackie Gurney (“Jackie”) and Kelly McGuire (“Kelly”) (collectively the “Siblings”) – held membership interests in the real estate entities that their father formed.

11. MDC was formed in 2006. Funded using capital from the Companies in which the Siblings held equal interests, MDC provides property management, leasing and real estate development services for the other Companies and other entities.

12. McGuire Acquisitions, MCG Real Estate, Delaware Investors, Genesee Investors and Shamrock Seven are holdings companies; each serves as the sole member of subsidiary real estate entities in which the Siblings hold interests. The subsidiary real estate entities are referred to hereinafter as the "Property Entities." A list of the many Property Entities is annexed hereto as Exhibit A.

13. Included in the Companies and Property Entities' portfolios are multiple, one-of-a-kind properties originally developed or acquired by Plaintiffs' father.

14. Historically, meetings of the Members of the Companies and the Property Entities have been held annually in Buffalo, New York.

15. For a period of years, the Siblings were all members of MDC.

Equal, Pro Rata Distributions to the Siblings.

16. For the fifteen-year period ending in 2011, the Siblings held equal percentage interests in the Companies and in the Property Entities.

17. In that same period, the Companies and Property Entities made equal, pro rata distributions to each of the Siblings based upon their membership interests from time to time.

18. In or about 2006, James became General Manager or Manager of the Companies and several of the Property Entities.

Increase of James' interest in the Health Care entity by 5%.

19. In early Spring of 2011, a memorandum was circulated to the Siblings, and a discussion was had among Frank McGuire and the Siblings regarding James, who was then a senior

executive of The McGuire Group (the Health Care entity), receiving increased membership interests in the health care businesses and skilled nursing facilities. It was agreed among the Siblings that James' membership interests in the health care businesses and skilled nursing facilities would be increased by five (5%) percent.

20. Upon information and belief, the operating agreements for the health care businesses and skilled nursing facilities were amended to reflect the agreed-upon 5% increase in James' interest percentage.

21. No discussion took place among the Siblings about increasing James' interest percentage in MDC or in any of the other Companies beyond the 5% increase with respect to the health care businesses and skilled nursing facilities.

2011 Amendment of MDC Operating Agreement.

22. Upon information and belief, subsequent to the Spring 2011 agreement among the Siblings to increase James' interest in the health care businesses and skilled nursing facilities, the MDC Operating Agreement ("MDC OA") was amended.

23. JKM were provided an unsigned copy of the amended MDC OA. JKM subsequently requested an executed version of the MDC OA. Neither James nor MDC has provided JKM an executed version of the MDC OA despite these requests. A copy of the form of amended MDC OA provided to JKM is annexed hereto as Exhibit B.

24. Subsequent to the 2011 amendment of the MDC OA, Jeannie advised James that she did not want to participate in any new investments with James through MDC or through any of the Companies; however, Jeannie continues to hold Membership interests in each of the Companies, with the exception of Genesee Investors and Delaware Investors, and in the several Property Entities.

25. Prior to 2011, the Siblings all participated in and were equal owners in the real estate holding entities created by their father, Frank McGuire.

James' 2014 Request for the Siblings' Membership Interests in MDC.

26. The Siblings' father assumed a less active role in the Companies in the period between 2010 and 2014. During this time, James worked to expand the prominence of MDC, the entity he founded, in the Buffalo market and region.

27. In mid-August 2014, on or near his birthday, James asked his Siblings to give him all of their membership interests in MDC.

28. On several occasions, James explained that he did not intend to pay any consideration for his Siblings' membership interests in MDC.

29. The Siblings, including JKM, rejected James' August 2014 request.

MDC High Risk Investments, Fall 2014-present.

30. Starting in the Fall of 2014, James expressed an interest in new investment and development projects. This marked a change in the historical practices of the Companies, which involved investing in low-risk, real estate asset-based projects. James advocated participating in higher risk, larger development projects.

31. On several occasions starting in 2014-2015, JKM communicated to James that they had reservations about the potential exposure of higher risk development projects and they did not want to participate in the new investments or projects of the nature proposed by James through either MDC or any of the Companies.

Questionable Loans and Use of MDC as Pass-through to Fund Pilgrim Village Project.

32. Despite the communications by Jeannie, Kathleen and Michael that they did not want to participate in new development projects, James entered into a series of loan transactions

in the principal amount of \$6.0 million, which involved using MDC as a pass-through and lender in a development project referred to as Pilgrim Village (“Pilgrim Village”).

33. Pilgrim Village was conceptualized as a mixed-use development in Buffalo but, for a variety of reasons, the project was delayed and plagued with problems, including complications in HUD approval. Upon information and belief, the proposed project site is currently underdeveloped.

34. JKM did not want to participate personally or through MDC in the large, logistically complicated, risky and potentially costly Pilgrim Village project. JKM said as much to James in 2015.

35. In or about September 2014, James formed an entity known as McGuire Campus Square, LLC (“McGuire Campus Square”).

36. From late 2014 through July 2016, James caused McGuire Campus Square to complete a series of loan transactions totaling approximately \$6.0 million between MDC and McGuire Campus Square.

37. Upon information and belief, McGuire Campus Square is an entity controlled by James as its manager.

38. Upon information and belief, James and Kelly are members of the McGuire Campus Square entity. JKM currently hold no interests in McGuire Campus Square.

39. James did not inform or obtain prior consent from JKM for these conflicted transactions.

40. Upon information and belief, James caused MDC to use the funds borrowed from McGuire Campus Square to fund a loan of nearly \$6.0 million to an entity called Pilgrim Village Associates L.P. (“PV Associates”).

41. James arranged for MDC to pay his company, McGuire Campus Square, an interest rate approximately 2.0% higher than that of the interest MDC received from PV Associates. These questionable, James-authorized loans resulted in infusions of money from MDC -- an entity co-owned by JKM -- into James' high-risk Pilgrim Village project, advancing his personal and business interests with little or no benefit to JKM or MDC.

42. Within a few years, PV Associates defaulted on the approximately \$6.0 million in loans due to MDC.

Foreclosure and Transfer of Pilgrim Village Real Property to a James-controlled entity.

43. James retained counsel for MDC to commence a foreclosure against PV Associates.

44. Foreclosure counsel negotiated or arranged for MDC to receive the Pilgrim Village property or real property collateral via deed in lieu of foreclosure from PV Associates.

45. After MDC received the deed in lieu of foreclosure, James caused MDC to transfer title to the Pilgrim Village property to McGuire PV Holding.

46. JKM are not members of McGuire PV Holding.

47. Upon information and belief, McGuire PV Holding is an entity that was formed at the direction of James and is solely owned by and/or primarily-controlled by James.

48. JKM were not consulted about and did not approve the transfer of title to the Pilgrim Village property from MDC to the James-controlled McGuire PV Holding entity.

James' Attempt to Dilute Membership Interests of JKM

49. The 2011 MDC OA identifies the Members of MDC and respective membership interests of the Siblings in MDC. Specifically, the 2011 MDC OA states that James holds a 20.8333% membership interest and the other Siblings each hold 15.8334% interests. See Schedule A of Exhibit B.



50. In the latter part of 2017, Kelly transferred by assignment her interests in MDC to the Company for \$1.00. James did not inform JKM about the 2017 transfer of Kelly's membership interests.

51. Subsequent to the transfer of Kelly's interest in MDC, Kelly's interests were transferred or assigned on a pro-rata basis to the remaining Siblings, pursuant to the terms of the MDC OA.

52. On multiple occasions, including at annual meetings of MDC in 2018 and 2019, Kathleen specifically requested financial documentation for MDC. Complete information and reports that were requested at the annual meetings by Kathleen, a Member of MDC, were not provided.

53. Also, a formal demand was sent in January 2020 requesting many records of the Companies including any and all documentation substantiating and evidencing any basis to support changes in the Siblings'/Members' membership interests in MDC among other requests. A true and accurate copy of the January 2020 Demand for Books, Records and Accounting is annexed hereto as Exhibit C.

54. Although the MDC OA provides that the Members shall have full access to the books and records of MDC, only a handful of records (none responsive to the request for documentation to substantiate a change in MDC membership interests) were provided by the Company in response to the January 2020 Demand for a period of ten (10) weeks.

55. In late March 2020, James initiated an MDC capital call. Only after multiple communications by JKM objecting to any effort to dilute or further dilute JKM's ownership, did MDC's president produce a one-page document showing the reported MDC Members' Membership Interests.

56. According to the one-page record provided to JKM by MDC's president in early April 2020, the Company identified each of JKM to hold an 18.8118% membership interest in MDC as of Fall or Winter 2017 – this after the pro-rata transfer of Kelly's membership interest in MDC to the remaining Members of MDC.

57. However, in the same one-page report MDC provided to JKM in April 2020, JKM are shown as holding only a 9.9803% interest in MDC as of April 3, 2020.

58. The one-page April 3, 2020 Report states that MDC capital calls went unanswered in 2018 and 2019.

59. No documentation that supports the purported 2018 and 2019 "capital calls" exists.

60. Upon information and belief, James directed that JKM's membership interests be reduced even though no proper request for or notice of a capital call in 2018 or 2019 was given to JKM, as required under the MDC Operating Agreement.

61. On April 17, 2020, JKM sent a written demand notice to the MDC President and MDC Management Committee for immediate rescission and correction of the improper dilution of JKM's Membership Interests in MDC, among other requests for corrective action (the "April 17, 2020 Demand Notice"). A true and accurate copy of the April 17, 2020 Demand Notice is annexed hereto as **Exhibit D**.

62. Although JKM requested a response to the Demand Notice by on or before April 21, 2020, no substantive response has been provided by MDC's President or by MDC's Management Committee as of May 11, 2020.

JKM Offer of Low-Interest Member Loan During 2020 Financial Downturn.

63. On March 19, 2020, JKM were advised of a \$300,000 capital call for MDC via email from James. In the email, James described difficult times related to budget shortfall and anticipated revenue decline related to the disruption of COVID-19.

64. A copy of the March 19, 2020 capital call email was later sent to JKM via first-class mail.

65. In the March 19, 2020 communication, James issued a capital call and wrote he “would not intend to participate in the capital call unless everyone does” [emphasis supplied].

66. The March 19, 2020 communication refers to the required contribution of Plaintiffs in a parenthetical as follows: “JKM would each be approximately \$29,940”.

67. In late March, JKM pushed back on the capital call because the contribution requested from JKM suggested that their membership interests were reduced or diluted to less than 10% each. Given the critical timing, counsel for JKM, during a teleconference, offered a member-loan in lieu of a capital call until such time as the dilution question could be addressed, explained to JKM or resolved.

68. In that same late March telephone conversation, MDC’s President agreed to terms of a member-loan as an alternative, represented she would inquire about a possible line of credit for MDC and requested that a draft promissory note be prepared and circulated.

69. In early April 2020, a draft of the promissory note was circulated and the Parties discussed whether the loan should be for a 6-month or 18-month term. The Parties also discussed MDC taking an intercompany loan from one of the Companies -- in lieu of a member-loan. The Companies have a history of multiple inter-company loans. Upon information and belief, the Companies, as of November 2019, held combined cash reserves in excess of \$4.0 million.

70. In an email dated April 10, 2020, JKM requested a copy of a projected cash flow statement for MDC and advised JKM were willing to make a \$150,000 loan at 5% for 18 months with quarterly interest payments.

MDC Abruptly Rejects JKM's Member-Loan Offer

71. In the evening on April 10, 2020, MDC's President wrote to state the interest rate and loan term were "what we were hoping to hear from you" but rejected JKM's request for quarterly interest payments and request that MDC apply for a line of credit.

72. JKM satisfied all of MDC's concerns related to note interest, term and payment. Despite a request for explanation, no rationale was provided by MDC's President as to why MDC, which had revenues in excess of \$4.5 million in 2019, was unable to agree to quarterly interest-only payments of \$1,875.00 on a 5% promissory note.

73. On April 22, 2020, JKM advised the \$150,000 is being held in trust with respect to the proposed member-loan, that they would agree to drop their request for quarterly interest payments and that they had authorized the wiring of funds to MDC once the note was executed.

74. No response to the April 22, 2020 communication was received. Nor was the MDC cash flow statement or projected cash flow report ever provided to JKM.

Improper and/or Unauthorized Payment of \$400,000 in 2019 to James-controlled Entity

75. Upon information and belief, on February 27, 2019, James asked or directed MDC's Management Committee to make a payment of \$400,000 to McGuire Campus Square, an entity that is owned and controlled by James.

76. According to meeting minutes of the MDC Management Committee provided to JKM, two (2) members of the four-person Management Committee voted in favor of approving the \$400,000 payment in 2019, short of the majority required pursuant to the MDC OA.

77. Thereafter, MDC paid \$400,000 to McGuire Campus Square.

78. No notice was given to JKM about the payment of \$400,000 to the McGuire Campus Square entity prior to the Management Committee defective vote on such payment.

79. JKM were not consulted about and did not consent to said \$400,000 transfer.

80. In March 2020, more than a year after the payment to McGuire Campus Square, JKM learned for the first time about the 2019 transfer of \$400,000 -- to an entity owned and controlled by James.

\$500,000 Promissory Note Paying James Interest at an Objectionable Rate of Interest

81. In March 2020, JKM learned for the first time that in or about 2016, James arranged for MDC to sign a \$500,000 promissory note agreeing to pay James, individually, interest at a rate of 12.0% and to repay loan principal upon demand. A true and accurate copy of the 2016 Promissory note is annexed hereto as Exhibit E.

82. Upon information and belief, the 2016 loan that James made to MDC was almost immediately used to fund loans by MDC to PV Associates.

83. JKM were never told by James or MDC about James' intention to have MDC give a \$500,000 note in favor of James, individually, which note called for payments of interest at a rate of 12.0%. JKM never gave their consent to MDC paying interest to James at a rate of 12.0%.

84. In 2016, James negotiated an instrument to have PV Associates pay loan interest at a rate of 5.0% to MDC, while also arranging for MDC to agree to pay interest at a rate of 12.0% to James.

85. Upon information and belief, MDC repaid James the \$500,000 in principal as well as more than \$30,000 in interest, for James' individual benefit.

86. As set forth in detail above, PV Associates defaulted on the loans due to MDC.

87. In an April 3, 2020 email to counsel for JKM, MDC's President wrote that 12.0% is "an objectionable rate", and with respect to rates of interest paid by MDC, the "standard is 5%".

2020 Improper Attempt to Sell All Assets of MDC

88. On the afternoon of April 16, 2020, JKM were informed by email that MDC's Management Committee had voted earlier in the day to sell all or substantially all of MDC's assets to an entity to be formed with ownership involving certain trusts that benefit James' children and two employees/officers of MDC.

89. According to minutes of the April 16, 2020 MDC Management Committee meeting (the "April 16, 2020 Minutes"), the majority of ownership in the proposed new entity will be controlled by the irrevocable trusts of James' children and two MDC employees/officers.

90. JKM were never informed by MDC of James' intention to have MDC's Management Committee consider action to sell all or substantially all of MDC's assets to an entity to be controlled by the trusts of James' children and two MDC employees/officers.

91. According to the April 16, 2020 Minutes, only two (2) of the four-person Management Committee participated in the vote to approve the sale of all or substantially all of MDC's assets to an entity owned by two MDC employees/officers and the trusts benefitting James' children.

92. As set forth above, pursuant to the MDC OA a decision of the Management Committee requires approval by a majority of the Management Committee members.

James' Threat of Suit on April 16, 2020.

93. On or about April 16, 2020, JKM were informed that James as Manager and Member of McGuire Campus Square would no longer forbear on outstanding debt related to loans by McGuire Campus Square to MDC.

94. As set forth above, JKM were not provided notice of and did not have an opportunity to object to the loans taken by MDC from McGuire Campus Square, a James-controlled entity.

Transfers of \$13.0 million in Assets of the Companies into James' Side Projects

95. In 2017, JKM requested that James not use assets of the Companies to loan monies to projects or entities in which JKM do not hold an interest.

96. In 2018 and 2019, after a review of certain of the Companies' financial statements, it became clear to JKM and Plaintiffs that James initiated more than \$15.0 million in transfers or loans using cash from the Companies.

97. Upon information and belief, of the \$15.0 million in assets of the Companies, James directed or transferred approximately \$13.0 million for the benefit of projects controlled by James or entities in which James holds an ownership interest and JKM do not.

98. Specifically, during the period 2015 through early 2018, the Companies closed multiple transactions including but not limited to -- (a) a \$10.0 million sale of a hospital and surgery center in Naples, Florida in 2016; (b) a \$9.0 million sale of a commercial building in Falconer, New York in 2015 or 2016; (c) a \$4.0 million refinance of a commercial building on Michigan Avenue in Buffalo, New York in 2017; (d) a \$5.0 million sale of vacant land in Florida known as Airport Pulling Orange Blossom in 2016; (e) a \$1.0 million sale of 1100 Tamiami Drive in 2016 or 2017; and (f) the \$340,000 sale of 54 Ransier Drive in Buffalo in the Fall of 2015.

99. No distributions of cash were made to the Members of the Companies at or immediately after the closings of the above-listed six (6) transactions.

100. James did not inform JKM of the above-listed sales prior to closing the sales. Some of the sales were disclosed, after the fact, at annual meetings.

101. With respect to the sale of the Falconer Building, Kathleen learned of the closing of that transaction for the first time by reading about the sale in the news.

102. During the period in which multiple real estate assets of Delaware Investors were sold, it appears large transfers of cash were directed to MCG Real Estate, certain Property Entities of which MCG Real Estate is the sole member and other projects.

103. Throughout 2017 and 2018, Jeannie and Kathleen requested a summary of the sales, an accounting and documentation to support twelve (12) new loans that appear to have been funded by the Companies where the borrower entities appear to be entities controlled by James and/or the investments appear to be in side projects of James in which JKM and/or other Siblings are not participants.

104. No records were provided to Jeannie or Kathleen by James or by the Companies in response to the requests in 2017 and 2018.

105. In January 2020, a formal written demand was made by JKM for a copy of all promissory notes and loan documents that evidence or support the loans and/or transfers made subsequent to the above-listed sale transactions.

106. As of May 11, 2020, the Companies have produced no summary report of the loans nor copies of any promissory notes in response to the January 2020 demand.

Improper Compensation of James.

107. Section 7.4 of the MDC OA provides that “[e]xcept as otherwise agreed by the Members, the General Manager and members of the Management Committee shall serve without compensation from the Company.”

108. Upon information and belief, in late 2016, James paid himself \$106,656.89 from MDC as compensation.



109. Upon information and belief, James has directed other monies from MDC as compensation to himself prior to and subsequent to initiating the \$106,656.89 payment in 2016.

110. Despite demand, James has not repaid the more than \$106,656.89 to MDC.

111. In January 2020, a formal written demand notice was given by JKM to the Companies for materials that evidence any compensation paid by MDC to James.

112. As of April 2, 2020, after more than three (3) months, MDC has provided no substantive response or produced any records regarding compensation paid by MDC to James in response to the January 2020 demand.

Prior Demand and Futility of Further Demand.

113. As set forth above, Plaintiffs requested basic books and records of the Companies in January 2020 pursuant to Article VIII of the MDC OA. Despite repeated follow-up requests, the Companies have failed, after three (3) months to provide material responsive to the demand.

114. By letter dated April 17, 2020, Plaintiffs demanded (1) immediate restoration of JKM's membership interests in MDC to 18.8118% each, (2) conversion of all contributions made pursuant to improper capital calls into unsecured member loans, (3) the rescission of James' loan to MDC at a 12.0% interest rate and return of any funds paid in satisfaction of obligations related to that loan, (4) return of the improperly authorized and improper \$400,000 payment toward MDC's obligations under loans to McGuire Campus Square, (5) rescission of the transfer of Pilgrim Village from MDC to McGuire PV Holding, (6) nullification and rescission of any loan obligations between MDC and McGuire PV Holding, and (7) return of the \$106,656.89 to MDC.

115. On April 27, 2020, Plaintiffs received a letter responsive to the April 17, 2020 Demand. The response confirms that none of the corrective actions demanded by JKM have been undertaken by James or the Companies. Further demand is futile. James dominates and controls

MDC's Management Committee. The pattern alleged herein evidences that the Manager and Management Committee repeatedly place James' interests above those of the Companies and the other Siblings/Members.

116. MDC and the Management Committee have acted in concert with James to deny Plaintiffs any access to basic financial records, despite repeated requests and a formal demand for access to books, records and an accounting, to which the Members are entitled.

117. The MDC Management Committee has at least twice authorized payment on obligations owed to James or an outside entity for which James is Manager-Member.

118. James as General Manager has repeatedly ignored Plaintiffs' rights as Members.

119. Further demand is futile because the Manager and Management Committee members have competing interests in the matters giving rise to this action – including the challenged “sale” transaction. Further, the Manager and Management Committee clearly lack objectivity in determining whether to prosecute or continue Plaintiffs' action.

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

**Breach of Contract**

(Unauthorized Payment of \$400,000 to McGuire Campus Square in 2019)

120. Plaintiffs repeat and re-allege the allegations in the preceding paragraphs, as if fully set forth herein.

121. Pursuant to the MDC OA, any action undertaken by the MDC Management Committee requires that a majority of the Management Committee act or vote to effectuate action by the Company.

122. The transfer of \$400,000 by MDC to McGuire Campus Square in 2019 was not supported by an authorized vote of the majority of the Management Committee.

123. The attempt by James to effectuate action by MDC through its Management Committee without the required majority of the Management Committee participating or voting affirmatively to approve the \$400,000 payment is a breach of the procedural requirements set forth in the MDC Operating Agreement, constitutes an act of gross negligence, and/or represents or is conduct undertaken in bad faith.

124. As a result of James' conduct and/or breach, MDC has been damaged in the amount of \$400,000.

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

**Breach of Contract**

(Unauthorized Payment of \$106,659.89 in Compensation to James)

125. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

126. Section 7.4 of the MDC Operating Agreement prohibits compensation of any Member of MDC.

127. The 2016 transfer of \$106,659.89 or more to compensate James McGuire was not approved by the Members of MDC, is prohibited by the MDC OA, is a breach of Section 7.4 of the MDC Operating Agreement, constitutes an act of gross negligence, and represents an act taken in bad faith.

128. As a result of James' conduct and/or breach, MDC has been damaged in the amount of \$106,659.89, or an amount to be determined at trial.

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

**Breach of Fiduciary Duty**

(James put MDC into Conflicted Loan Transactions involving McGuire Campus Square)

129. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

130. As General Manager of MDC, James owed and continues to owe fiduciary duties to MDC, including the duty of loyalty, duty to act in good faith and duty to exercise reasonable care.

131. James arranged for MDC to participate in a series of loan transactions totaling approximately \$6.0 million, where the lender entity, McGuire Campus Square, is solely or primarily controlled by James.

132. The \$6.0 million in loans from an entity controlled by James were not disclosed to or approved by JKM prior to closing.

133. JKM communicated clearly to James that they did not want to participate in the Pilgrim Village project.

134. James' use of MDC as a pass-through entity was contrary to the express wishes of MDC Members.

135. James arranged to transfer monies through MDC to PV Associates for the Pilgrim Village project and negotiated terms so that PV Associates paid 5.0% interest to MDC and simultaneously arranged for MDC to sign promissory notes in favor of the James-controlled McGuire Campus Square entity at a higher rate of interest.

136. As a result of James' conduct, James breached fiduciary duties to MDC and the Siblings, committed acts of gross negligence or acted in bad faith for his personal gain and to the detriment of JKM and MDC.

137. Upon information and belief, James' breaches of fiduciary duties were intentional and deliberate.

138. JKM request judgment setting aside the approximately \$6.0 million in loans as improper or invalid and/or for an award of in an amount to be determined at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION****Breach of Fiduciary Duty**

(Improper Transfer of Pilgrim Village Property from MDC to McGuire PV Holding)

139. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

140. As General Manager of MDC, James owed and continues to owe fiduciary duties to MDC and its members.

141. After arranging for MDC to receive the Pilgrim Village real property after the default by PV Associates and in the foreclosure, James transferred title to the Pilgrim Village property from MDC to an entity that is controlled by or solely-owned by James.

142. JKM were informed of James' plan and objected to the transfer of this real estate asset to an entity solely-owned or controlled by James. Only later did JKM learn that James transferred the Pilgrim Village real estate asset to an entity he owns or controls.

143. The transfer of title effectively stripped MDC of any opportunity to develop the Pilgrim Village project and advances only the interests of James and/or McGuire PV Holding, an entity owned or controlled by James.

144. As a result of James' conduct, James breached fiduciary duties owed to MDC and its Members.

145. Upon information and belief, James' breach(es) of fiduciary duties were intentional and deliberate, constituted acts of gross negligence and were committed in bad faith.

146. JKM request judgment setting aside the transfer of the Pilgrim Village real property as improper or invalid and/or for an award of damages in an amount to be determined at trial.

**AS AND FOR A FIFTH CAUSE OF ACTION****Breach of Contract**

(James' Attributed Dilution of JKM's Membership Interests in MDC)

147. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

148. The MDC OA requires that any notice or demand be sent to Members via first class-mail.

149. In 2018 and in 2019, James or MDC failed to send any written notice of purported capital calls for MDC by first-class mail to Jeannie, Kathleen and Michael.

150. Despite the failure to give proper written notice to JKM, MDC has attributed payments by James and Jackie as though responsive to a capital call in 2018 and again in 2019, diluting JKM's interests in MDC to approximately 9.9% each as a result.

151. James' conduct in connection with same constitutes a breach of the controlling operating agreement, represent an act of gross negligence and has been committed in bad faith. JKM request an award of damages in an amount to be determined at trial.

**AS AND FOR A SIXTH CAUSE OF ACTION****Declaratory Judgment**

(Improper Dilution of JKM's Membership Interests in the Companies)

152. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

153. JKM request declaratory relief in the form of a judgment setting aside James' efforts to dilute JKM's membership interests in MDC and declaring the membership percentage interests of all the Members of MDC as of April 3, 2020 – including JKM's interests at 18.8118% each.

154. To the extent, after fact discovery, that a dispute or controversy arises regarding the membership interest percentages held by each of the Siblings-Members in all the Companies, JKM also respectfully request declaratory relief in the form of a judgment declaring the membership interests of all the members of the Companies as of April 3, 2020.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**Declaratory Judgment**  
(Improper 2016 12% Promissory Note Given by MDC to James)

155. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

156. The payment of interest by MDC to James at 12% interest in connection with the 2016 promissory note (the “2016 12% Promissory Note”) represents a conflicted transaction that was not submitted to nor approved by the Members of MDC.

157. James’ conduct in connection with the 2016 promissory notes constitutes breach of the fiduciary duty James owed to MDC.

158. JKM request declaratory relief in the form a judgment declaring the 2016 12% Promissory Note void or improper or, in the alternative, declaring the 2016 12% Promissory Note rescinded as a matter of law and further directing James to account for and repay any and all interest James received from MDC in connection with the 2016 12% Promissory Note.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
(Improper Payments to James at 12.0% Rate of Interest)

159. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

160. The payment of interest by MDC to James at a rate of 12% in connection with the 2016 12% Promissory Note was not approved by the Members of MDC.

161. As set forth in an April 3, 2020 email from the MDC President, the interest James arranged for MDC to pay to himself at 12.0% is an “objectionable rate.”

162. James’ conduct in connection with the 2016 12% Promissory Note constitutes willful misconduct, gross negligence, bad faith action or a breach of fiduciary duty owed by James to MDC.

163. JKM are entitled to and request an award of damages in an amount to be determined at trial.

164. Further, the Members suing in the right of the Company, are entitled to recover reasonable attorneys’ fees from Defendant.

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

**Breach of Fiduciary Duty**

(Attempted April 16, 2020 Sale of MDC’s Assets without Notice to Members)

165. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

166. The April 16, 2020 purported sale of all or substantially all of MDC’s assets to an entity to be formed was improper.

167. Given the conflicted nature of the transaction – namely that the sale disproportionately benefits the trusts of James children, JKM were entitled to but did not receive notice of the proposed transaction prior to a vote of the MDC Management Committee.

168. As a result of James’ conduct, James breached fiduciary duties owed to MDC and its Members, and committed acts of gross negligence in bad faith.

169. Upon information and belief, James’ breaches of fiduciary duties were intentional and deliberate.



170. JKM request a judgment setting aside the April 16, 2020 “vote” and/or declaring that the vote is void or a nullity due to the failure of James to inform the Members of the proposed asset sale transaction.

171. In addition, the Members suing in the right of the Company, are entitled to recover attorneys’ fees by virtue of the deliberate and wanton disregard by James of his fiduciary duties to MDC.

**AS AND FOR A TENTH CAUSE OF ACTION**  
**Breach of Contract**

(Attempted Vote on April 16, 2020 to Sell Without Majority of the Management Committee)

172. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

173. The April 16, 2020 attempted sale of all or substantially all of MDC’s assets to an entity to be formed was invalid.

174. The MDC OA requires that a majority of the Management Committee act or vote to effectuate a valid action on behalf of MDC.

175. No action was taken on April 16, 2020 by a majority of the Management Committee of MDC.

176. Any actions by James or MDC to effectuate a transfer of assets constitute a breach of the MDC Operating Agreement and represents gross negligence and an act taken in bad faith.

177. JKM seek damages in an amount to be determined at trial in connection with said breach.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION**  
**Declaratory Judgment**  
(Rescission of MDC Debt related to McGuire Campus Square)

178. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

179. On April 16, 2020, James threatened to commence an action related to outstanding debt owed by MDC to McGuire Campus Square.

180. The underlying debt instruments purporting to memorialize an obligation of MDC in favor of McGuire Campus Square are suspect and invalid.

181. McGuire Campus Square is an entity primarily controlled by James.

182. In 2016, James failed to give notice to or obtain approval from JKM to enter into conflicted transactions that disproportionally benefit James and none of the other Siblings-owners of MDC.

183. JKM sent a written demand notice to MDC directing that the Company immediately rescind and/or cancel the McGuire Campus Square loans. However, as of April 27, 2020, JKM were advised that this corrective action has not been undertaken by MDC.

184. JKM request relief in the form of a declaratory judgment setting aside and/or rescinding each and every one of the loan instruments between McGuire Campus Square and MDC that were not approved by or authorized by the MDC Members.

185. Separately, an order should issue directing James to account for any and all payments made by MDC to McGuire Campus Square since 2016 and further disgorge and immediately return those monies to MDC.

**AS AND FOR A TWELFTH CAUSE OF ACTION****Declaratory Judgment**

(James' Actions Constitute Bad Faith, Gross Negligence or Intentional Misconduct)

186. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

187. James' above-described actions have injured MDC, the corporate Defendants and their Members and directly benefitted James.

188. James' actions include mismanagement of MDC and misappropriation of MDC's assets – including but not limited to initiating a self-serving \$400,000.00 payment to McGuire Campus Square (a James-controlled entity) in 2019; making an unauthorized compensation payment in the amount of \$106,659.89; committing MDC to loans totaling \$6.0 million to McGuire Campus Square; transferring the Pilgrim Village real estate asset from MDC to McGuire PV Holding; committing MDC to a loan bearing 12.0% interest payable to James, individually; requesting and receiving payment on said 12.0% loan; and attempting to sell all or substantially all of MDC's assets to trusts benefitting James' children – and also the improper transfer of monies in a sum that, upon information and belief, exceeds \$13.0 million involving the corporate Defendants MDC, Delaware Investors, Genesee Investors, MCG Real Estate Holdings, McGuire Acquisitions and Shamrock Seven.

189. JKM request relief in the form of a declaratory judgment (A) setting aside and/or rescinding each and every one of these improper actions from which James personally gained to the detriment of Plaintiffs and (B) declaring that James' actions were undertaken in bad faith, constitute gross negligence relative to the duties James owed MDC, the Companies and their members, or constitute intentional misconduct by James with respect to the controlling operating agreements.

**AS AND FOR A THIRTEENTH CAUSE OF ACTION****Breach of Fiduciary Duty**

(Failure to Provide Records and Explain Use of Proceeds from Sale of Assets)

190. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

191. James' intentional and/or the Companies' repeated failure to provide records to Members requesting explanation as to why no distribution of sale proceeds were made following the approximately \$30.0 million in sale or refinancing transactions by the Companies is unreasonable and constitutes a breach of fiduciary duties

192. JKM request a judgment finding James breached fiduciary duties owed to the Members of the Companies.

193. In addition, the Members suing in the right of the Company, are entitled to recover attorneys' fees by virtue of the deliberate and wanton disregard by James of his fiduciary duties to MDC and the other Companies in a manner manifesting gross negligence and bad faith.

**AS AND FOR A FOURTEENTH CAUSE OF ACTION****Accounting**

(All of the Companies)

194. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

195. As a result of James' above-described conduct, each of the Companies is entitled to a full accounting from the General Manager of any and all transactions and agreements entered into by General Manager on behalf of each of the Companies involving any of the assets of the Companies.

196. In addition, upon the conclusion of the full Accounting, the Companies are entitled to a judgment compelling James to make restitution to each respective Company for any and all misappropriated, wasted and/or wrongfully transferred assets identified.

197. JKM request an order directing the Companies to turnover a complete set of their books and records to an Accounting firm to be identified by the Court for purposes of preparing a full written accounting of the Companies for the 10-year period ending December 31, 2019.

**AS AND FOR A FIFTEENTH CAUSE OF ACTION**  
**Breach of Duties of Good Faith and Fair Dealing**  
(All of the Companies)

198. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

199. As a party to the operating agreements of all the Companies, James owed and owes each of the Members of the Companies a duty of good faith and fair dealing implicit in the operating agreements, and specifically, with respect to the requirements set forth in Section 5.2 of the MDC, Delaware Avenue, MCG Real Estate Holdings and McGuire Acquisition operating agreements.

200. For the reasons described above, James intentionally and willfully breached this duty of good faith and fair dealing, acted in bad faith, and committed acts of gross negligence.

201. As a direct and proximate result of this breach, JKM, as Members of the Companies, have suffered and continue to suffer damages in an amount to be determined at trial.

**AS AND FOR A SIXTEENTH CAUSE OF ACTION**  
**Declaratory and Injunctive Relief**

202. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

203. JKM, as members of the Companies, are entitled to seek injunctive relief to prevent further actual or threatened breaches of the MDC Operating Agreement and, specifically, to enforce the terms and provisions of the Companies' operating agreements.

204. Plaintiffs are entitled to and request a judgment and order preliminarily and permanently enjoining, restraining and prohibiting James and all persons acting on behalf of James or at the direction of James, from selling all or substantially all of the assets of MDC or any of the Companies, and further enjoining and prohibiting James from taking actions to impair the rights of the Members of MDC and the other Companies, including but not limited to diluting any of the Siblings' Membership Interests, causing an action to be commenced against any of the Companies or filing a bankruptcy petition for any of the Companies.

**AS AND FOR AN SEVENTEENTH CAUSE OF ACTION**  
**Constructive Trust**

205. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 119, as if fully set forth herein.

206. As manager of the Companies, James was and is a fiduciary of the Companies and its owners. In addition, pursuant to the controlling operating agreements, James impliedly promised that all transfers and contemplated transfers of assets of the Companies would be made by or for the benefit of and on behalf of the Companies.

207. James has engaged in self-dealing without the consent of Plaintiffs and breached his express and implied promises and has, upon information and belief, unjustly enriched himself.

208. Accordingly, the Companies are entitled to the imposition of a constructive trust upon all assets identified by the full accounting as having been misappropriated, wasted, or wrongfully transferred by James as well as a judgment against James compelling James to make

restitution to each of the respective Companies for any and all assets subject to said constructive trust.

**WHEREFORE**, Plaintiffs herein respectfully request the following relief:

A. On their First Cause of Action, awarding damages of Defendant's breach of contract to MDC in the amount of \$400,000;

B. On their Second Cause of Action, awarding damages of Defendant's breach of contract to MDC in the amount of \$106,659.89, or an amount in excess of \$106,659.89 to be determined at trial;

C. On their Third Cause of Action, a judgment rescinding or setting aside the approximately \$6.0 million in loan transactions as void, improper or invalid and awarding damages for Defendant's breach of fiduciary duty in an amount to be determined at trial;

D. On their Fourth Cause of Action, a judgment rescinding or setting aside the transfer of the Pilgrim Village real property as void, improper or invalid and awarding damages for Defendant's breach of fiduciary duty in an amount to be determined at trial;

E. On their Fifth Cause of Action, a judgment awarding damages of Defendant's breach of contract in an amount to be determined at trial;

F. On their Sixth Cause of Action, a declaratory judgment declaring the membership interests of all the members of the Companies as of April 3, 2020;

G. On their Seventh Cause of Action, a declaratory judgment declaring the 2016 12% Promissory Note is void, improper or invalid or, in the alternative, declaring the 2016 12% Promissory Note rescinded and directing James to account for any and all interest James received from the Companies as of May 11, 2020 and awarding damages in favor of MDC for the amount to be determined;

H. On their Eighth Cause of Action, awarding damages of Defendant's breach of fiduciary duty related to the improper payments to James in an amount to be determined at trial;

I. On their Ninth Cause of Action, a declaratory judgment declaring the April 16, 2020 "vote" of the MDC Management Committee is void ab initio or a nullity, due to the failure of James to inform the Members of the proposed asset sale transaction;

J. On their Tenth Cause of Action, awarding damages of Defendant's breach of contract related to the April 16, 2020 "vote" to MDC in an amount to be determined at trial;

K. On their Eleventh Cause of Action, a declaratory judgment declaring each and every one of the loan instruments between McGuire Campus Square and MDC that were not approved by or authorized by the MDC Members void or improper or invalid and rescinding each as a matter of law and further directing James to account for and disgorge any and all payments received from MDC by McGuire Campus Square;

L. On their Twelfth Cause of Action, a declaratory judgment declaring that James' actions were undertaken in bad faith, constitute gross negligence relative to the duties James owed MDC, the Companies and their members, or constitute intentional misconduct by James;

M. On their Thirteenth Cause of Action, awarding damages of Defendant's breach of fiduciary duties in an amount to be determined at trial and also granting of attorneys' fees to JKM by virtue of the deliberate disregard by James' fiduciary duties;

N. On their Fourteenth Cause of Action, an order directing there be an accounting of all the Companies immediately undertaken of all the books and records of the Companies and that Defendant be directed to cooperate fully with the production of all bank, financial and loan transactions in order for there to be an accounting completed within the next ninety (90) days and appoint an Accounting firm to be identified by the Court for preparing the full written accounting



of the Companies for the 10-year period ended December 31, 2019 and based upon the accounting and the result, that the Companies be awarded damages for Defendant's breach of fiduciary duties, conversion and/or misappropriation of funds;

O. On their Fifteenth Cause of Action, awarding damages of Defendant's breach of duties of good faith and fair dealing in an amount to be determined at trial;

P. On their Sixteenth Cause of Action, granting a permanent injunction restraining and enjoining Defendant and its agents from (1) selling all or substantially all of the assets of MDC or any of the Companies, (2) transferring or converting assets for their personal use or personal gain, and (3) impairing any right of the Members of MDC and the other Companies by diluting membership interests, causing an action to be commenced against any of the Companies or filing a bankruptcy petition for any of the Companies;

Q. On their Seventeenth Cause of Action, imposing a constructive trust upon all assets identified by the full accounting as having been misappropriated, wasted or wrongfully transferred by James and granting a judgment against James for the amount based on the accounting in an amount in excess of \$500,000;

R. Trial by jury on all issues so triable;

S. Granting reimbursement of Plaintiffs' costs and expenses, including attorneys' fees, together with prejudgment interest; and

T. An award of all such other relief as this Court deems just, equitable and proper.

Respectfully submitted,

Dated: May 11, 2020  
Rochester, New York

UNDERBERG & KESSLER LLP



David M. Tang, Esq.  
Aaron M. Griffin, Esq.  
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300 Bausch & Lomb Place  
Rochester, New York 14604  
(585) 258-2800

## VERIFICATION

STATE OF NEW YORK     )  
                                       )  
 COUNTY OF MONROE    )     ss.:


DAVID M. TANG, being duly sworn, deposes and says that he is a partner with the law firm of Underberg & Kessler LLP, attorneys for Plaintiffs, Jeannie-Marie McGuire, Kathleen McGuire and Michael McGuire. He has read the foregoing Verified Complaint and knows its contents and that the same is true to his own knowledge except as to those matters which the Verified Complaint states and alleges upon information and belief, and, as to those matters, he believes the representations are true.

He makes this Verification pursuant to CPLR 3020(d)(3) because Plaintiffs are united in interest, pleading together, and acquainted with the facts, but none is within Monroe County where Deponent's office is.

The source of Deponent's knowledge and the grounds for his belief are correspondence and conversations with Plaintiffs.

  
 \_\_\_\_\_  
 David M. Tang

Sworn to before me this  
11 day of May 2020.

  
 \_\_\_\_\_  
 Notary Public

MARIA SOEFFING  
 NOTARY PUBLIC - STATE OF NEW YORK  
 NO. 01SO6168935  
 QUALIFIED IN MONROE COUNTY  
 MY COMMISSION EXPIRES JUNE 18, 2023