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11 **IN THE SUPERIOR COURT OF CALIFORNIA**

12 **ORANGE COUNTY**

13 RICHARD CARLSON as beneficiary of GREIT
LIQUIDATING TRUST, a Maryland trust on
14 behalf of himself and all others similarly situated;

15 Plaintiffs,

16 v.

17 GARY H. HUNT, an individual; W. BRAND
INLOW, an individual; EDWARD A. JOHNSON,
an individual; D. FLEET WALLACE, an
18 individual; GARY WESCOMBE, an individual;
ETIENNE LOCOH, an individual; TODD A.
19 MIKLES, an individual; STEVEN M. KRIES, an
individual; TOM RINI, an individual; THE
20 AMERICAN RECOVERY PROPERTY TRUST,
INC., a Maryland corporation; AMERICAN
21 RECOVERY PROPERTY, OP, LP, a Delaware
limited partnership; AMERICAN RECOVERY
22 PROPERTY ADVISORS, LLC, a limited liability
company; DAYMARK PROPERTIES REALTY,
23 INC., a California corporation; NNN REALTY
INVESTORS, LLC, a Virginia limited liability
24 company; SOVEREIGN CAPITAL
MANAGEMENT GROUP, INC., a California
25 corporation; SGR SUTTER SQUARE, LLC, a
limited liability company; NW CONGRESS
26 CENTER OWNER LLC, a limited liability
company,

27 //

28 (Caption continues on next page)

Case No. _ 30-2018-00982195-CU-MC-CXC

Assigned for All Purposes to the
Honorable Judge Randall J. Sherman
Dept. —CX-105

**CLASS ACTION COMPLAINT
FOR:**

- 1. BREACH OF FIDUCIARY DUTY**
- 2. FRAUDULENT TRANSFER**

JURY TRIAL DEMANDED

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1 GCL, LLC, a Delaware limited liability company;
2 GCL MANAGER, LLC, a Delaware limited
3 liability company; and Does 1-50,
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Defendants.

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CLASS ACTION [PROPOSED] COMPLAINT

Plaintiffs, on behalf of himself/herself/itself/themselves and all others similarly situated, complain and allege as follows.

I.

NATURE OF ACTION

1. This complaint is on behalf of a putative class of 13,858 “Beneficiaries” who invested an average of \$31,561 per person between July 22, 2002 through December 31, 2004 to acquire 43,865,000 shares of G REIT, Inc. common stock at a price of \$10.00 per share pursuant to a registration statement on Form S-11/A under the Securities Act resulting in the corporation’s receipt of gross proceeds of \$437,315,000. The Beneficiaries as members of the class are now holders of “Beneficial Interests” in the GREIT LIQUIDATING TRUST (“TRUST”).

2. Plaintiffs allege that the TRUSTEE Defendants, including its Chairman WESCOMBE, as defined below, exercised his/their powers individually and collectively, and among other things, breached fiduciary duties, acted in bad faith and not in the best interests of the Beneficiaries causing loss, injury and damage. While Plaintiffs dispute that other than ordinary standards of care apply to the conduct of the TRUSTEE Defendants described herein, he/they are nevertheless also liable for their grossly negligent actions, grossly negligent failure to act, their fraud and/or willful misconduct as described herein.

3. Plaintiffs allege the defendants named herein have committed and then concealed serial breaches of fiduciary duty, or aided and abetted such wrongful conduct directed against the TRUST and Beneficiaries, including without limitation, concealed the material cause of loan defaults against the TRUST’s Congress Center Property, described below, and facilitated the use of TRUST property to indirectly fund a self-interested and adverse to Beneficiaries, purchase of TRUST properties at losses well in excess of the jurisdictional limits of this court subject to proof at the time of trial.

4. Plaintiffs did not discover the misconduct described herein until December 2017 after they engaged counsel to investigate why a purported \$12,000,000 promissory note had not been paid at which time it was learned the information provided by the TRUSTEE Defendants

1 and certified by WESCOMBE had misrepresented the true facts, misled the Beneficiaries and
2 concealed the misconduct described herein.

3 5. Plaintiffs allege that there are 43,865,000 “Units” of the TRUST outstanding, held
4 collectively by the 13,858 Beneficiaries and that the defendants will allege that no more than
5 \$12,000,000 or \$.27 less expenses is due to the Beneficiaries on each of the Units based upon the
6 false, deficient and self-serving accounting. However, Plaintiffs allege subject to proof at the
7 time of trial, that the amounts due to the Beneficiaries, excluding punitive and exemplary
8 damages that may be awarded, is \$100,000,000 collectively, \$2.27 per Unit, or 8.44 times more
9 than is presently reflected to be due by the TRUST’s accounting provided on its website.

10 6. As a result of defendants' wrongful acts and/or the aiding and abetting thereof,
11 Plaintiffs are entitled to damages according to proof at the time of trial.

12 II.

13 JURISDICTION AND VENUE

14 7. This Court has subject matter jurisdiction pursuant to California Constitution
15 Article VI, § 5 and personal jurisdiction over Defendants in accordance with Code of Civil
16 Procedure, § 410.10 on the grounds that many of the defendants reside, do business in and that a
17 substantial portion of the actions and events giving rise to this complaint occurred in Orange
18 County, California and continues to the present.

19 8. Venue is proper before this Court insofar as a substantial part of the actions giving
20 rise to the claims alleged herein occurred in Orange County, California.

21 III.

22 THE PARTIES

23 A. The Plaintiffs

24 9. Plaintiff RICHARD CARLSON (“CARLSON”) is an individual and resident of
25 the State of California and a “Beneficiary” holding “Units” of the GREIT LIQUIDATING
26 TRUST (“TRUST”), a Maryland trust, organized on January 22, 2008, as a liquidating trust
27 pursuant to a plan of liquidation of G REIT, Inc. approved by the shareholders in February 2006,
28 which had been a corporation organized on December 18, 2001 under the laws of the

1 Commonwealth of Virginia and reincorporated on September 27, 2004 in the State of Maryland,
2 and qualified and elected to be taxed as a real estate investment trust, or "REIT", under the
3 Internal Revenue Code of 1986, as amended.

4 10. References herein to "Plaintiffs" shall include CARLSON unless otherwise
5 mentioned, individually and in a representative capacity on behalf of the proposed Class of
6 Beneficiaries of the TRUST.

7 **B. Defendants**

8 11. Defendant GARY H. HUNT ("HUNT") an individual served as a member of G
9 REIT Inc.'s board of directors and on January 22, 2008 was appointed as one of the initial
10 trustees of TRUST and for times relevant to this complaint remained a trustee.

11 12. Defendant W. BRAND INLOW ("INLOW") an individual served as a member of
12 G REIT Inc.'s board of directors and on January 22, 2008 was appointed as one of the initial
13 trustees of TRUST and for times relevant to this complaint remained a trustee.

14 13. Defendant EDWARD A. JOHNSON ("JOHNSON") an individual served as a
15 member of G REIT Inc.'s board of directors and on January 22, 2008 was appointed as one of the
16 initial trustees of TRUST and for times relevant to this complaint remained a trustee.

17 14. Defendant D. FLEET WALLACE ("WALLACE") an individual served as a
18 member of G REIT Inc.'s board of directors and on January 22, 2008 was appointed as one of the
19 initial trustees of TRUST and for times relevant to this complaint remained a trustee.

20 15. Defendant GARY WESCOMBE ("WESCOMBE") an individual served as a
21 member of G REIT Inc.'s board of directors and on January 22, 2008 was appointed as one of the
22 initial trustees of TRUST, Chairman of the trustees of TRUST and for times relevant to this
23 complaint remained a trustee and the Chairman.

24 16. Defendants HUNT, INLOW, JOHNSON, WALLACE, WESCOMBE and Does
25 1-10 shall be referred to herein jointly and severally as the "TRUSTEE Defendants".

26 17. Plaintiffs are informed and believe, and on that basis allege, that at all times
27 herein relevant, TRUSTEE Defendants, and each of them, knowingly and willfully conspired,
28 joined and participated with each other in the conduct herein alleged in furtherance of a

1 conspiracy between and among TRUSTEE Defendants to enrich themselves at Plaintiffs' and the
2 Class' expense, and that each such defendant is therefore liable with each other defendant for the
3 conduct herein alleged, for the damages suffered by Plaintiffs and the Class and for the relief
4 being sought herein.

5 18. Does 1-10 are individuals and business entities, form unknown, who would be
6 included in the joint and several references to the TRUSTEE Defendants, who, at the time of the
7 events described herein, were and are responsible for acts and omissions related to Plaintiffs and
8 the Class as alleged herein and, as such, should be included in this complaint as if named and
9 included as such. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of such defendants are unknown to Plaintiffs who therefore sue said defendants by
11 such fictitious names. Plaintiffs will amend this complaint to allege the true names and
12 capacities of said defendants when the same are ascertained.

13 19. Defendant ETIENNE LOCOH ("LOCOH") is an individual who for all times
14 relevant, was a control person, principal, director and officer of DPR, NNNRI, ARPT, ARP-OP,
15 ARPA and NWCCO as described below.

16 20. Defendant TODD A. MIKLES ("MIKLES") is an individual who for all times
17 relevant, was a control person, principal, director and officer of DPR, NNNRI, ARPT, ARP-OP,
18 ARPA, NWCCO, SCMG and SGR as described below.

19 21. Defendant STEVEN M. KRIES ("KRIES") is an individual who for all times
20 relevant, was a Director and Executive Vice President of ARPT described below.

21 22. Defendant TOM RINI ("RINI") is an individual who for all times relevant, was a
22 Director of ARPT described below.

23 23. Defendant THE AMERICAN RECOVERY PROPERTY TRUST, INC.
24 ("ARPT") is a Maryland corporation, also organized as a REIT, which was in turn is owned by
25 entities owned and controlled by LOCOH who for all times relevant served as Chairman of its
26 Board and MIKLES who for all times relevant served as its Director, President and Chief
27 Executive Officer. ARPT is an affiliate of ARP-OP and ARPA.

28 //

1 24. Defendant AMERICAN RECOVERY PROPERTY, OP, LP (“ARP-OP”) is a
2 Delaware limited partnership wholly owned by ARPT, the general partner of which is an affiliate
3 of ARPT. ARP-OP is an affiliate of ARPT and ARPA.

4 25. Defendant AMERICAN RECOVERY PROPERTY ADVISORS, LLC (“ARPA”) is a limited liability company organized and controlled for times relevant by LOCOH and
5 MIKLES to serve as the advisor to ARPT. ARPA is an affiliate of ARP-OP and ARPT.
6

7 26. Defendant DAYMARK PROPERTIES REALTY, INC. f.k.a. Triple Net Property
8 Realty, Inc. (“DPR”) is a California corporation organized July 6, 1998 as Entity Number:
9 C2113477, California Bureau of Real Estate (“BRE”) corporate license number 01304179 since
10 March 8, 2001. MIKLES, on and after August 2011, for times relevant was the BRE designated
11 officer of DPR and as such responsible for supervision of its operations and personnel.

12 27. Defendant NNN REALTY INVESTORS, LLC (“NNNRI”) formerly known as
13 Grubb & Ellis Realty Investors, LLC, was a Virginia limited liability company organized on
14 April 27, 1998 and authorized to do business in California as of May 8, 1998. NNNRI was for
15 all times relevant simultaneously the formal “Advisor” to the TRUST and “Manager” of non-
16 party NNN Congress Center, LLC (“NNNCC”). NNNCC was a 28% co-tenant in common with
17 TRUST’s wholly owned subsidiary GREIT Congress Center, LLC, also managed by NNNRI,
18 which owned 30% of the Congress Center Property as described below. NNNRI was thereby the
19 advisor and fiduciary for the majority in interest of the tenant in common ownership of the
20 Congress Center Property, the asset and property manager of which was simultaneously DPR.

21 28. Defendant SOVEREIGN CAPITAL MANAGEMENT GROUP, INC. (“SCMG”) is a California corporation organized September 20, 2010 as Entity Number C3318067, with a
22 BRE real estate broker Corporate License Identification No.: 01896668, issued April 13, 2011 the
23 Designated Officer of which is MIKLES, Officer License Identification No.: 01221665. SCMG
24 informally succeeded NNNRI as Advisor to the TRUST in 2013 and has continued to act in such
25 role and because it and NNNRI for times relevant were under common control of MIKLES
26 knowingly ratified the wrongful acts of NNNRI.
27

28 //

1 29. Defendant SGR SUTTER SQUARE, LLC (“SGR”) is a limited liability company
2 and for all times relevant was owned and controlled by MIKLES, LOCOH and ARPT.

3 30. Defendants ARPT, ARP-OP, ARPA, NNNRI, DPR, SCMG, NWCCO, SGR and
4 Does 11-30 may be referred to herein jointly and severally as the “Entity Defendants” which, on
5 and after January 1, 2012 for all times relevant to this complaint, were under the common control
6 of LOCOH, MIKLES, KRIES and RINI. Plaintiffs are informed and believe, and on that basis
7 allege, that at all times herein mentioned LOCOH, MIKLES, KRIES and RINI and the Entity
8 Defendants, and each of them, were and remain the alter-egos of each other; that they did
9 dominate, influence and control each other; that there existed a unity of ownership between them;
10 that the individuality and separateness of each entity was and remained non-existent; that each
11 such entity was and remained a mere shell and naked framework which the other defendants used
12 to conduct their business affairs; that each such entity was inadequately capitalized; and that an
13 injustice and fraud upon Plaintiffs will result if the theoretical separateness of the defendant
14 entities is not disregarded and each such defendant held liable for all relief being sought herein.

15 31. Plaintiffs are informed and believe, and on that basis allege, that at all times
16 herein mentioned, Entity Defendants, and each of them, knowingly and willfully conspired,
17 joined and participated with each other in the conduct herein alleged in furtherance of a
18 conspiracy between and among LOCOH, MIKLES, KRIES and RINI and the Entity Defendants
19 to enrich themselves at Plaintiffs’ expense, and that each such defendant is therefore liable with
20 each other defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and
21 for the relief being sought herein.

22 32. Defendant NW CONGRESS CENTER OWNER LLC (“NWCCO”) is a limited
23 liability company described in various news releases in mid 2012 as a joint venture between
24 ARPT and non-party Northwood Investors a company founded in 2006 by former Blackstone
25 Real Estate Advisors President and CEO John Kukral, as described below.

26 33. Defendants NWCCO and Does 31-40 may be referred to herein jointly and
27 severally as the “NWCCO Defendants”. Plaintiffs are informed and believe, and on that basis
28 allege, that at all times herein mentioned the NWCCO Defendants, and each of them, were and

1 remain the alter-egos of each other; that they did dominate, influence and control each other; that
2 there existed a unity of ownership between them; that the individuality and separateness of each
3 entity was and remained non-existent; that each such entity was and remained a mere shell and
4 naked framework which the other defendants used to conduct their business affairs; that each
5 such entity was inadequately capitalized; and that an injustice and fraud upon Plaintiffs will
6 result if the theoretical separateness of the defendant entities is not disregarded and each such
7 defendant held liable for all relief being sought herein.

8 34. Plaintiffs are informed and believe, and on that basis allege, that at all times
9 herein mentioned, NWCCO Defendants, and each of them, knowingly and willfully conspired,
10 joined and participated with each other in the conduct herein alleged in furtherance of a
11 conspiracy between and among NWCCO Defendants to enrich themselves at Plaintiffs' expense,
12 and that each such defendant is therefore liable with each other defendant for the conduct herein
13 alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

14 35. Defendant GCL, LLC ("GCL") is a Delaware limited liability company organized
15 May 13, 2014 as File Number 5533084 and registered in the State of California on July 24, 2014
16 as File Number 201421010021. At all relevant times MIKLES was directly, or indirectly
17 through an entity under his control to be identified in discovery and added as a Doe Defendant,
18 an agent of GCL with full authority to bind it and direct corporate affairs.

19 36. Defendant GCL MANAGER, LLC ("GCL-M") is a Delaware limited liability
20 company organized June 12, 2014 as File Number 5550686 and which, based upon information
21 and belief, as manager of GCL. At all relevant times MIKLES was directly, or indirectly through
22 an entity under his control to be identified in discovery and added as a Doe Defendant, an agent
23 of GCL with full authority to bind it and direct corporate affairs.

24 37. Defendants GCL and GCL-M shall be collectively referred to as GCL unless
25 otherwise mentioned.

26 38. Defendants GCL, GCL-M and Does 41-50 may be referred to herein jointly and
27 severally as the "GCL Defendants". Plaintiffs are informed and believe, and on that basis allege,
28 that at all times herein mentioned the GCL Defendants, and each of them, were and remain the

1 alter-egos of each other and MIKLES; that he/it/they did dominate, influence and control each
2 other; that there existed a unity of ownership between them; that the individuality and
3 separateness of each entity was and remained non-existent; that each such entity was and
4 remained a mere shell and naked framework which the other defendants used to conduct their
5 business affairs; that each such entity was inadequately capitalized; and that an injustice and
6 fraud upon Plaintiffs will result if the theoretical separateness of the defendant entities is not
7 disregarded and each such defendant held liable for all relief being sought herein.

8 39. Plaintiffs are informed and believe, and on that basis allege, that at all times
9 herein mentioned, GCL Defendants, and each of them, knowingly and willfully conspired, joined
10 and participated with MIKLES and each other in the conduct herein alleged in furtherance of a
11 conspiracy between and among MIKLES and GCL Defendants to enrich themselves at Plaintiffs'
12 expense, and that each such defendant is therefore liable with each other defendant for the
13 conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought
14 herein.

15 **C. The Doe Defendants**

16 40. The Doe Defendants named herein as Does 1-50, inclusive, and each of them, are
17 unknown to Plaintiffs, who therefore sue such defendants by fictitious names pursuant to Code of
18 Civil Procedure § 474. Plaintiffs are informed and believe, and thereon allege, that each
19 fictitiously named Doe defendant is in some manner, means or degree responsible for the events
20 and happenings herein alleged. Plaintiffs will amend this complaint, as necessary, to set forth the
21 true names and capacities of the fictitiously designated Doe defendants when ascertained.

22 41. In the event future discovery establishes that one or more lawyers or law firms
23 conspired with and/or aided or abetted the defendants and therefore should be named in the place
24 of any of the foregoing Doe Defendants, then to the extent applicable, if at all, Plaintiffs will
25 comply with his/her/its/their obligations under California Civil Code § 1714.10 by bringing a
26 motion seeking advance Court approval for any such substitution and will, in the context of such
27 motion, present evidence establishing a reasonable probability that he/she/it/they will prevail on
28 the merits of its claims against such lawyers and/or law firms.

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IV.

CLASS ACTION ALLEGATIONS

42. This action is brought pursuant to and may be properly maintained and certified as a class action pursuant to, in general, Code of Civil Procedure section 382 and (as made applicable to state courts by *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 453) Federal Rules of Civil Procedure, Rule 23(a)(1)-(4); (b) Rule 23(b)(3) as to the plaintiff class.

43. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the foregoing provisions of the Code of Civil Procedure section 382 and the Federal Rules of Civil Procedure.

44. Plaintiffs bring this action on behalf of themselves and a class of similarly situated TRUST Beneficiaries, persons defined as:

All persons who as of January 1, 2012 owned Beneficial Interests in GREIT LIQUIDATING TRUST (the "Class").

45. Based upon information and belief, the class members number in excess of Thirteen Thousand Eight Hundred Fifty Six (13,856) persons who are citizens of the United States, including in excess of Two Thousand (2,000) persons from the State of California and, as such, are sufficiently numerous and geographically dispersed throughout the country that joinder of all class members is impracticable. Said persons each invested an average of \$31,561 in G REIT, Inc. stock which in turn became, at the time of liquidation, the basis for the Beneficial Interests, the Units, described herein, and in many instances are elderly and without sufficient funds to protect their interests, and require representation in this action so that their rights and interests in the TRUST will be protected. Said Beneficiaries are so numerous and diversely situate as to make it wholly impracticable, if not impossible, to bring them all before the Court in this action. The object of this action is the adjudication of claims and rights which do or may affect specific property and transactions involved in this action, to wit, the corpus and income of the TRUST, and a community of interest exists between Plaintiffs and the members of the Class described herein as to questions of law and fact involved, in that the principal object of this action is to secure an accounting of the affairs of the TRUST and to recover for and on behalf of

1 the TRUST damages including without limitation money, property and interests which have been
2 wrongfully diverted therefrom. The Beneficial Interests of the Beneficiaries as members of the
3 class are in some instances small, could not be vindicated without resort to repeated litigation
4 with respect to the same issues, and their representation herein is necessary to prevent a failure to
5 do justice, as more particularly hereinafter appears. The interests of the members of the Class and
6 Plaintiffs as Beneficiaries are identical except for the quantum of their Beneficial Interest in the
7 TRUST, and the named Plaintiffs herein will fairly insure adequate representation and protection
8 on behalf of all of such Beneficiaries. Accordingly, it is necessary to maintain this action as a
9 class action on behalf of the Beneficiaries of the TRUST.

10 46. Plaintiffs and the Class, as Beneficiaries of an express trust, share a common
11 interest in the fidelity of the trustees thereof and the proper accounting for and distribution of
12 trust income and corpus due to the Beneficiaries as well as damages for the breaches of duty and
13 aiding and abetting thereof as identified herein.

14 47. Excluded from the foregoing Class are the officers, directors, partners, members
15 and employees of defendants and its/his/their legal representatives, heirs, successors, and assigns,
16 of such defendants.

17 48. There are questions of law or fact common to the class, including, but not limited
18 to, the following:

- 19 a. Whether the defendants breached fiduciary duties and/or conspired with others to
20 breach such duties;
- 21 b. Whether the defendants breached fiduciary duties and/or aided and abetted others
22 to breach such duties;
- 23 c. Whether the defendants misrepresented material facts in publishing
24 communications regarding TRUST transactions and certifying reports thereon;
- 25 d. Whether the defendants misrepresented material facts in failing to timely and
26 accurately publish communications regarding TRUST transactions;
- 27 e. Whether the defendants must disgorge and return the profits derived from the use
28 and taking of the TRUST's properties and opportunities;

- 1 f. Whether the defendants must disgorge and return the income and profits derived
2 from the ownership and operation of the Western Place Property from 2012
3 through and including its 2014 sale as well as all fees charged for the 2012 and
4 2014 dispositions thereof;
- 5 g. Whether the defendants must disgorge and return the income and profits derived
6 from the ownership and operation of the Congress Center Property from 2012
7 through and including its 2015 sale as well as all fees charged for the 2012 and
8 2015 dispositions thereof;
- 9 h. Whether the defendants must disgorge and return the income and profits derived
10 from the ownership and operation of the Sutter Square Property from 2012
11 through and including its 2016 sale as well as all fees charged for the 2012 and
12 2016 dispositions thereof;
- 13 i. Whether the defendants must disgorge and return the income, fees and profits
14 derived from the use of the \$12,000,000 of Western Place Property equity
15 obtained via the ARPT stock purchase and sale in 2012.
- 16 j. Whether the defendants must disgorge and return the income, fees and profits
17 derived from the \$12,000,000 ARPT promissory note delivered in exchange for
18 the put option in 2014;
- 19 k. Whether Plaintiffs and members of the class are entitled to compensatory damages
20 and the amount thereof; and
- 21 l. Whether Plaintiffs and members of the class are entitled to punitive and/or
22 exemplary damages and the amount thereof.
- 23 49. Plaintiffs are members of the Class and their claims are typical of the claims of
24 other class members.
- 25 50. Plaintiffs will fairly and adequately protect the interests of the Class. There is no
26 conflict of interest between Plaintiffs and other members of the Class. Plaintiffs are represented
27 by counsel experienced in class actions, trust and company governance, fiduciary duties and
28 obligations, real estate and securities law.

1 58. On December 19, 2005, the board of directors of G REIT, Inc. approved a plan of
2 liquidation which was thereafter also approved by the stockholders of G REIT, Inc. at the Special
3 Meeting of Stockholders held on February 27, 2006. At the time of adoption, the G REIT plan of
4 liquidation contemplated the management and sale of all of G REIT, Inc.'s remaining assets, the
5 payment of its liabilities, the winding up of operations and the dissolution of G REIT, Inc.

6 59. The TRUST was organized on January 22, 2008, as a liquidating trust pursuant to
7 the foregoing plan of liquidation of G REIT, Inc. On January 28, 2008, G REIT, and pursuant to
8 the plan of liquidation, transferred its then remaining assets and liabilities to the TRUSTEE
9 Defendants namely HUNT, INLOW, JOHNSON and WALLACE as trustees of TRUST
10 including WESCOMBE as a trustee, who also served as Chairman of TRUST. Upon the transfer
11 of the assets and liabilities of each stockholder of G REIT, Inc. as of January 22, 2008, the
12 Record Date, automatically became Beneficiaries of the TRUST and the holder of one "Unit" of
13 Beneficial Interest, for each share of G REIT, Inc. common stock then currently held of record by
14 such stockholder. As trustees of TRUST, TRUSTEE Defendants, HUNT, INLOW, JOHNSON,
15 WALLACE and WESCOMBE owed fiduciary duties to Plaintiffs. The TRUST Units were not
16 and as a condition of the liquidating plan, are prohibited from being reflected in certificate form
17 in that said Units are not tradeable.

18 60. The stated purpose of the TRUST was to wind up the affairs of G REIT by
19 liquidating the remaining assets, distributing the proceeds from the liquidation of the remaining
20 assets to the Plaintiffs and the Class.

21 61. The TRUST was to end or terminate upon a date certain for distribution of all the
22 remaining "Trust Assets" unless the TRUSTEE Defendants obtained a "no-action assurance"
23 from the Securities and Exchange Commission ("SEC").

24 62. On August 5, 2010 TRUST obtained a "no-action assurance" letter from the SEC
25 which expressly provided:

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28 //

1 ...the Liquidating Trust will terminate upon the earlier of the distribution
2 of all of its assets in accordance with the terms of the Liquidating Trust
3 Agreement or January 28, 2014 (provided that if the Liquidating Trust's
4 existence is extended beyond such date, the Liquidating Trust
5 will request and receive additional no-action assurance from the Division
6 prior to such extension)...

7 63. A 2010 announcement from TRUSTEE Defendants also confirmed "Our
8 existence will terminate upon the earlier to occur of (I) the distribution of all of our remaining
9 assets in accordance with the terms of the Liquidating Trust Agreement, or (ii) January 28,
10 2014."

11 64. Plaintiffs allege that TRUSTEE Defendants breached his/their fiduciary duties by
12 continuing to manage the TRUST on and after January 28, 2014, without the power and authority
13 to do so, when the TRUST had not liquidated and distributed all of its assets, because the
14 TRUST's term was not further extended on or before that date by an SEC "no-action" letter and
15 as such the TRUST by its terms terminated on January 28, 2014 and with it the TRUSTEE
16 Defendants' power to act.

17 65. As a matter of background, Grubb & Ellis Company ("Grubb & Ellis") was, by
18 the mid-1980s, the third largest commercial real estate firm in the United States. On December
19 10, 2007 (approximately five years *after* G REIT, Inc. was formed and its stock subscribed, and
20 almost two years *after* its liquidation plan was approved but *only two months before* transfer of
21 its assets to TRUST), Grubb & Ellis merged with NNN Realty Advisors, Inc. (the parent
22 company of Triple Net Properties, LLC, the predecessor of Defendant NNNRI, the
23 sponsor/promoter of G REIT, Inc.), succeeding to the management rights to its 1031 Tenant in
24 Common ("TIC") DPR managed portfolio of commercial and apartment properties and the
25 NNNRI advisory contracts to various entities including the TRUST.

26 66. As further background, from its founding in 1998, Triple Net Properties, LLC
27 (which was later controlled by Triple Net Properties, Inc. to merge with Grub & Ellis), the
28 predecessor of NNNRI, had sponsored more than 150 TIC programs and a substantial number of
other securities offerings including G REIT, Inc. As sponsor, it acquired, syndicated and
managed commercial properties for TIC ownership and various Real Estate Investment Trust

1 offerings including G REIT, Inc. Triple Net Properties, LLC fulfilled that role for G REIT, Inc.
2 and then the TRUST through its asset and property manager DPR for all of its properties
3 including the Congress Center Property, 30% of the ownership of which was held by TRUST
4 through sole ownership of its subsidiary GREIT Congress Center, LLC.

5 67. Post merger in 2011, Grubb & Ellis created Daymark Realty Advisors, Inc.
6 (“Daymark”) as a wholly owned subsidiary which in turn owned the various Triple Net named
7 affiliated companies including DPR, the asset and property manger to the TIC portfolio of
8 commercial real estate, as well as the remaining three assets held then by TRUST and its various
9 advisory contracts through NNNRI. As a result, the Daymark entities including DPR and NNNRI
10 continued to serve as asset and property manager as well as Advisor, respectively to TRUST.

11 68. Upon information and belief in 2011 as Grubb & Ellis sought a purchaser for
12 Daymark it knew and disclosed to MIKLES and LOCOH that Daymark as well as NNNRI was
13 insolvent and that a material capital contribution to NNNRI exceeding \$10,000,000 would be
14 required to avoid material defaults in various lending and advisory agreements.

15 69. In August, 2011, Grubb & Ellis sold its entire interest in Daymark to LOCOH and
16 MIKLES, the “Daymark Acquisition”, and therein they assumed control of the entire Daymark
17 portfolio of TIC properties, the asset and property manager of which was DPR, and the numerous
18 advisory contracts with NNNRI, including all those it had acquired in the 2007 merger with NNN
19 Realty Advisors, Inc.

20 70. In February, 2012, Grubb & Ellis filed for bankruptcy and is no longer a going
21 concern.

22 71. Subsequent to August 2011, and for all time relevant herein, LOCOH, MIKLES
23 and his/its/their affiliates through Daymark had complete control over NNNRI the Advisor to
24 TRUST and DPR the asset and property manager of all three of the then remaining TRUST real
25 estate assets.

26 72. Importantly, the Grubb & Ellis August 2011 sale to LOCOH and MIKLES
27 resulted in a change in control of 100% of the stock and membership interests of Daymark and
28 therein its subsidiaries, including NNNRI and DPR.

1 73. Upon information and belief MIKLES and LOCOH post Daymark Acquisition
2 failed and refused to adequately capitalize Daymark and in particular NNNRI and DPR and
3 instead devised a plan and scheme to strip the remaining assets from Daymark, NNNRI and
4 DPR, and transfer the same to his/its/their various affiliates including ARPT, ARP-OP, ARPA
5 and SCMG. At the time MIKLES and LOCOH undertook this effort he/it/they had actual
6 knowledge that NNNRI had guaranteed numerous bank loans including the loan which was
7 secured by the Congress Center Property yet engaged in transactions adverse to TRUST
8 including by (1) refusing to infuse not less than \$10,000,000 of capital into NNNRI such that it
9 had the requisite net worth to comply with the terms of its numerous loan guaranties including
10 the Congress Center Property loan, and (2) transferred valuable contracts and receivables of
11 NNNRI and DPR to SCMG leaving NNNRI even more insolvent than at the time he/it/they
12 closed the Daymark purchase.

13 74. Post closing of the Daymark Acquisition MIKLES and LOCOH were the control
14 members of NNNRI, DPR and SCMG and, through NNNRI, Advisor to TRUST and through
15 DPR Manager of the Congress Center Property as well as the other two properties then held free
16 and clear by TRUST.

17 75. Upon information and belief, MIKLES and LOCOH effectively controlled all of
18 the corporate/company officers of each of NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG.
19 Plaintiffs are informed and believe, and on that basis allege, that post closing of the Daymark
20 Acquisition MIKLES and LOCOH used NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG as
21 mere alter egos, instrumentalities, agencies, conduits or adjuncts post August of 2011 as follows:

- 22 a. MIKLES and LOCOH did not maintain nor recognize corporate formalities for
23 NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG such that, for example he/they
24 moved millions in purported accounts receivable from NNNRI and DPR,
25 rendering those entities insolvent, to SCMG for a payment of only \$100,000, as
26 well as money between companies as he/they alone decided without meetings or
27 documentation prior to the actions taken, with the overall plan and scheme to strip
28 NNNRI and DPR of its/their assets sending them to ARPT, ARP-OP, ARPA and

- 1 SCMG without adequate consideration.
- 2 b. For all times relevant, post August 2011 NNNRI and DPR were insolvent as their
- 3 debts exceeded their assets and it/they were unable to pay their debts as those
- 4 debts came due.
- 5 c. To conceal NNNRI's and DPR's insolvency MIKLES and LOCOH funded their
- 6 cash flow obligations from his/their own account and/or accounts of other entities
- 7 under his/their control, while selectively disregarding some debts including
- 8 NNNRI's guaranties.
- 9 d. MIKLES, LOCOH, NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG shared
- 10 legal counsel, internal accountants and personnel.
- 11 e. MIKLES, LOCOH, NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG shared
- 12 offices, furniture and equipment.
- 13 f. At all relevant times MIKLES and LOCOH controlled the day-to-day activities
- 14 and affairs of NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG, in reality
- 15 operating as a single integrated enterprise.
- 16 g. MIKLES, LOCOH, NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG failed to
- 17 maintain arms-length relationships.
- 18 h. The records and financials of MIKLES, LOCOH, NNNRI, DPR, ARPT, ARP-OP,
- 19 ARPA and SCMG were not kept segregated, were handled by the very same
- 20 accounting staff under total control of MIKLES and LOCOH, did not observe any
- 21 accounting formalities in maintaining or closing books for each separate company,
- 22 left books open and prepared books long after the transactions were completed in
- 23 order to facilitate the overall appearance of separate entities which MIKLES,
- 24 LOCOH, NNNRI, DPR, ARPT, ARP-OP, ARPA and SCMG knew to be false
- 25 and misleading.

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1 76. In order to avoid injustice or inequity NNNRI, DPR, ARPT, ARP-OP, ARPA and
2 SCMG should be treated as alter egos of MIKLES and LOCOH and found liable for each other's
3 acts and omissions as if they were the acts and omissions of each other, and all allegations
4 concerning one should be deemed to include like allegations against the others.

5 77. At the time of the LOCOH and MIKLES acquisition of Daymark and as of the
6 end of 2011, the TRUST had three remaining assets all managed by DPR as asset and property
7 manager and as to which NNNRI simultaneously served as TRUST Advisor, specifically:

- 8 a. A 30% TIC interest in the “Congress Center Property” owned by TRUST
9 subsidiary, GREIT Congress Center, LLC, a 525,000 square foot Class A office
10 building located in Chicago, IL, which had been acquired January 9, 2003 for a
11 proportionate share (30%) of the purchase price of \$40,832,000 by a cash
12 investment of \$12,069,000 and debt of \$28,763,000. The Congress Center
13 Property was acquired at an overall purchase price from an unrelated seller for
14 \$136,108,000 with related purchase money debt of \$95,950,000.
- 15 b. 100% of the Western Place I & II Property (the “Western Place Property”) owned
16 by TRUST subsidiary, GREIT Western Place, L.P., a 431,000 square foot Class
17 A office building located in Fort Worth, TX, which had been acquired July 23,
18 2004 for a total purchase price of \$33,500,000. Prior to 2012 all debt had been
19 retired.
- 20 c. 100% of Sutter Square Galleria (the “Sutter Square Property”) owned by TRUST
21 subsidiary GREIT Sutter Square, L.P., a 61,036 square foot mixed use building on
22 2.48 acres, acquired on October 28, 2003 subject to a ground lease expiring 2030
23 with a 10 year option for a purchase price of \$8,240,000. Prior to 2012 all debt
24 had been retired.

25 78. In August 2011 NNNRI was simultaneously serving as Advisor to the TRUST
26 while also serving as the Manager of the remaining in excess of 100 acquisition entities that had
27 been formed to acquire each of the TIC syndicated properties commonly referred to as “TICS 0”,
28 including NNN Congress Center, LLC (“NNNCC”) which in turn owned 28.5% of the Congress

1 Center Property and was managed by NNNRI- thereby NNNRI controlled 58.5% of the Congress
2 Center Property ownership. Also, recall the Congress Center Property was managed by DPR on
3 behalf of all TIC owners including TRUST's subsidiary GREIT Congress Center LLC and
4 NNNCC.

5 79. In addition to its Advisor role to TRUST and its manager role to the TICS 0 that
6 in turn owned fractional interests in many of the syndicated properties, NNNRI had guaranteed
7 the acquisition related indebtedness including the Congress Center Property debt with a covenant
8 that NNNRI was to have and maintain a minimum net worth of \$10,000,000.

9 80. Upon information and belief prior to the change in control resulting from the
10 LOCOH and MIKLES Daymark acquisition in August 2011, the Congress Center Property was
11 able to pay its operating expenses and service its loan without difficulty. The property was not
12 distressed in any way. Recall the other two TRUST properties, the Western Place and Sutter
13 Property, were at that time debt free.

14 81. Upon information and belief not later than December 2011 the lenders to the
15 numerous DPR managed TIC properties including the Congress Center Property notified
16 NNNRI, DPR, LOCOH, MIKLES and the TRUSTEE Defendants that as a result of the change in
17 control of the Daymark LOCOH and MIKLES upon the Daymark Acquisition, the parent of
18 NNNRI and DPR, a default was pronounced regarding the Congress Center Property loan, the
19 balance of which was then \$88,000,000, a 1% transfer fee of \$880,000 was imposed, a 4%
20 default interest rate was declared increasing the rate to approximately 10%, and the loan
21 guarantor NNNRI's net worth had fallen below \$10,000,000 requiring a new guarantor and as a
22 result of said cumulative defaults and others, the loan was accelerated, all due and owing
23 including more than \$2,000,000 as a defeasance fee.

24 82. Upon information and belief, as a result of the foregoing defaults, the Congress
25 Center Property could no longer service the NNNRI guaranteed debt given the acceleration,
26 default interest rate, fees due and defeasance fee and as a result the property was thereupon
27 considered distressed, thereby adversely and materially adversely affecting its market value.

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1 83. TRUSTEE Defendants in breach of their duties of care and loyalty, did not
2 disclose to Plaintiffs nor the Class that as a result of the LOCOH and MIKLES acquisition of
3 Daymark the Congress Center Property was now at risk of loss, had incurred millions in default
4 and defeasance fees and charges, default interest had been levied, the property was distressed,
5 under threat of foreclosure with acceleration of the balance due on the \$88,000,000 loan (plus all
6 imposed default fees/charges and defeasance due) and that the cause of the defaults was the
7 LOCOH and MIKLES ‘change in control’ of the parent of the asset and property manager DPR
8 and the manager of the tenant in common owners including NNNCC and GREIT Congress
9 Center, LLC which simultaneously acting as Advisor to TRUST and DPR which was the asset
10 and property manager for TRUST. As such TRUSTEE Defendants concealed that the cause of
11 the Congress Center Property distress was in fact the actions of LOCOH and MIKLES who in
12 turn controlled NNNRI and DPR the Advisor and managers to TRUST.

13 84. Based upon information and belief, in April 2012 with a closing date of May 16,
14 2012 TRUSTEE Defendants entered in to a conspiracy with LOCOH, MIKLES, KRIES, RINI,
15 ARPT, ARP-OP, ARPA, SCMG, NNNRI, DPR and Does 11-30 whereby the TRUST agreed to
16 sell the Western Place Property for a below market price of \$32,000,000 to the LOCOH and
17 MIKLES controlled ARPT payable \$20,000,000 in cash and the issuance of 1,200,000 shares of
18 non-voting common stock purportedly valued at \$10.00 per share with a “put option” that
19 required ARPT to purchase the shares for \$12,000,000 cash if the ARPT shares were not
20 registered for sale on a national exchange within two years of closing (the “Western Place
21 Agreement”). In closing the purchase of the Western Place Property ARPT, ARP-OP, ARPA and
22 SCMG had actual knowledge it/they were acquiring the same at substantially less than its market
23 value and were issuing 1,200,000 shares of non-voting ARPT stock to TRUST that was valued,
24 given its non-control and non-voting rights, at substantially less than \$10.00 per share, the value
25 of which is to be determined at the time of trial.

26 85. In breach of their duties of care, good faith and loyalty, at no time did TRUSTEE
27 Defendants inform Plaintiffs or the Class that he/they had entered into a secret agreement with
28 LOCOH, MIKLES, KRIES, RINI, ARPT, ARP-OP, ARPA, SCMG, NNNRI, DPR and Does 11-

1 30, that the Western Place Agreement, the very first agreement from the then effectively
2 insolvent ARPT, would give sole control of the TRUST's minimum \$12,000,000 of equity in
3 ARPT to LOCOH, MIKLES, KRIES, RINI, ARPT, ARPA and Does 11-30 to use as ARPT's
4 newly minted equity so it could sign as a replacement guarantor with a \$10,000,000 net worth for
5 the insolvent NNNRI on the Congress Center Property loan guarantee, restructure the debt and
6 cause NWCCO to purchase the now distressed Congress Center Property, including TRUST's
7 30% interest at a deep discount price of \$95,000,000, a \$41,100,000 loss from the *nine years*
8 *earlier* original 2003 purchase price, while under threat of foreclosure as a result of the above
9 described lender declared defaults and loan acceleration caused by LOCOH and MIKLES
10 acquisition of Daymark. Indeed, the material facts of the cause of the distress to the Congress
11 Center Property were concealed from the Beneficiaries. At the very same time, the TRUSTEE
12 Defendants agreed to sell its 30% Congress Center TIC interest at a substantial loss to NWCCO
13 without any chance of ownership in NWCCO.

14 86. Upon information and belief, on October 23, 2012 the TRUSTEE Defendants, as
15 step in the secret plan and scheme described above, formally agreed to sell TRUST's 30% share
16 of the Congress Center Property for \$95,000,000 to NWCCO, at a loss of \$41,100,000
17 (compared to the original purchase price of \$136,100,000 in 2003). The TRUST received a mere
18 \$1,765,863 for its 30% TIC interest resulting in a *loss* of \$10,303,137 (Equity from 2003
19 \$12,069,000-\$1,765,863). The TRUSTEE Defendants concealed that his/their agreement with
20 LOCOH, MIKLES, KRIES, RINI, ARPT, ARP-OP, ARPA, SCMG, NNNRI, DPR and Does 11-
21 30 to sell to NWCCO was a step in the transaction that commenced with the Western Place
22 Property sale which created \$12,000,000 plus of ARPT equity in order to disadvantage the
23 TRUST with the sale and purchase of Congress Center Property using the TRUST's very own
24 equity to allow ARPT and NWCCO to take advantage of its breach of duty in causing the loan
25 defaults and concealing their misconduct.

26 87. At the time of closing the Congress Center Property sale the TRUSTEE
27 Defendants did not disclose the secret components of the Western Place Agreement, a below
28 market price for the property coupled with the \$12,000,000 ARPT stock, to facilitate the

1 premature and wrongful distressed sale of the Congress Center Property at a loss, in order to
2 conceal that the loan defaults were the result of the LOCOH and MIKLES acquisition of
3 Daymark and change in control of NNNRI and DPR as well as the insolvency of NNNRI as loan
4 guarantor. Nor did the TRUSTEE Defendants commence any action against LOCOH, MIKLES
5 and his/their affiliates including NNNRI its Advisor, and Manager of GREIT Congress Center,
6 LLC and DPR its asset and property manager, to remedy the wrong which resulted from the self-
7 serving use of the Western Place Property to force the sale of the Congress Center Property, as
8 well as related fees and costs including those imposed by the lender.

9 88. Three years later in 2015 NWCCO controlled by LOCOH, MIKLES, ARPT and
10 Does 11-40 sold the Congress Center Property for \$135,000,000 and upon information and belief
11 realized a profit of \$40,000,000 in addition to substantial operating profits and fees during the
12 three year period the property was held.

13 89. Also in October of 2012 the TRUSTEE Defendants, as a step in the secret plan
14 and scheme described above, formally agreed to sell the TRUST's 100% interest in the Sutter
15 Square Property to MIKLES and SCMG controlled SGR for \$2,500,000, a loss measured against
16 its \$8,240,000 original purchase of \$5,740,000.

17 90. Four years later in September 2016 MIKLES and SCMG controlled SGR sold the
18 Sutter Square Property to a private investor, Rakesh D. Dhir for \$7,900,000 and a profit of
19 \$5,400,000.

20 91. Plaintiffs allege that had they been properly advised while holding the
21 unencumbered Sutter Square Property in 2012 they would have held the property for a sale at the
22 original purchase price rather than incurring a loss and allowing MIKLES, SCMG, SGR and
23 Does 11-30 to reap a profit of \$5,400,000.

24 92. Plaintiffs allege that the TRUSTEE Defendants owed following fiduciary duties
25 and obligations to the Beneficiaries, including without limitation the following:

26 a. To put the interests of the Beneficiaries ahead of his/its/their own interest.

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28 //

- 1 b. To not use his/their control over TRUST property to benefit himself/themselves
- 2 and their affiliates including the LOCOH, MIKLES, NNNRI, DPR, ARPT and
- 3 SCMG at the expense of Beneficiaries.
- 4 c. To take all reasonable steps to maximize the value of TRUST assets and
- 5 opportunities.
- 6 d. To ensure that Beneficiaries would receive the greatest possible return on
- 7 his/her/their Beneficial Interests.
- 8 e. To, among other things, not use their positions as trustees to benefit themselves
- 9 and other TRUST insiders including LOCOH, MIKLES, NNNRI, DPR, ARPT
- 10 and SCMG at the expense of the TRUST.
- 11 f. To establish and ensure through sufficient processes, governance and internal
- 12 controls that the TRUST's financial reporting was full, complete and accurate and
- 13 that conflicts of interest were fully and properly evaluated and resolved in strict
- 14 favor of the TRUST.
- 15 g. To act in the best interests of the TRUST.
- 16 93. Plaintiffs allege that the TRUSTEE Defendants, HUNT, INLOW, JOHNSON,
- 17 WALLACE, WESCOMBE and Does 1-10 breached his/their duties of loyalty, care and good
- 18 faith and fair dealing to the Beneficiaries in that he/they in the face of a clear conflict of interest,
- 19 acting in bad faith, preferred the interests of LOCOH, MIKLES, NNNRI, DPR, ARPT, SCMG
- 20 and his/its/their affiliates, over the Beneficiaries, including without limitation, as follows:
- 21 a. By failing to promptly and fully inform the Beneficiaries of the loan default
- 22 against the Congress Center Property immediately in December 2011.
- 23 b. By failing to promptly and fully inform the Beneficiaries that the cause of the
- 24 Congress Center loan default was the LOCOH and MIKLES acquisition of
- 25 Daymark and thereby the change of control of NNNRI and DPR.
- 26 c. By concealing that NNNRI no longer had the requisite \$10,000,000 net worth,
- 27 which would be a loan covenant default on the Congress Center Property loan.
- 28 //

- 1 d. Following the change in control of NNNRI and DPR concealed the insolvency of
2 NNNRI that distressed the Congress Center Property and require prompt
3 restructuring to avoid a large \$12,000,000 loss.
- 4 e. By failing to promptly terminate NNNRI as TRUST Advisor due to the conflict of
5 interest that it was insolvent and such insolvency was one of the several causes of
6 the Congress Center loan default.
- 7 f. By failing to promptly engage a new and independent TRUST Advisor to evaluate
8 all options with regard to the remaining three assets.
- 9 g. By failing to promptly terminate NNNRI as Manager of GREIT Congress Center,
10 LLC due to the conflict of interest and loan default resulting from the change in
11 control of the manager without lender approval.
- 12 h. By failing to promptly engage a new and independent Manager of GREIT
13 Congress Center, LLC to evaluate all options with regard to the Congress Center
14 Property.
- 15 i. By failing to promptly terminate DPR as asset and property manager in December
16 2011 as a result of the conflict of interest and loan default resulting from the
17 change in control of the manager without lender approval.
- 18 j. By failing to promptly engage a new and independent asset and property manager
19 effective as of January 1, 2012 to address and cure the Congress Center Property
20 loan default and assess options with regard to the Western Place and Sutter
21 Properties as well.
- 22 k. By failing to engage an investment banker and real estate finance expert as of
23 early January 2012 to make restructuring recommendations in order to protect the
24 Congress Center Property from foreclosure and the sale to fiduciaries LOCOH,
25 MIKLES, ARPT, SCMG and affiliates who also were known to be simultaneously
26 breaching fiduciary duties to the Beneficiaries as described herein.
- 27 l. By failing to suspend all dealings with LOCOH, MIKLES, NNNRI and DPR
28 pending completion of an independent investigation into the TRUST's options

1 regarding its three remaining assets and conflicts of interest and the change in
2 control default notices and insolvency notice.

3 m. By entering into and closing the below market Western Place Property transaction
4 above described which wrongly risked not less than \$12 million of TRUST's
5 equity therein to prefer the interests of LOCOH, MIKLES, ARPT, SCMG and
6 affiliates over the Beneficiaries.

7 n. By entering into and closing the sale of the 30% interest in the Congress Center
8 Property transaction above described resulting in a locked in \$10,303,137 loss
9 when superior viable non-conflicted options to save the investment and avoid the
10 loss were available.

11 o. By entering into and closing the conflicted Sutter Property transaction above
12 described resulting in a locked in loss of \$5,740,000 when the same should have
13 been retained.

14 p. Later in January of 2014 exchanging the 1,200,000 shares of ARPT non-voting
15 common stock for a promissory note of \$12,000,000 which stock purchase
16 transaction never should have been initiated in the first instance for the reasons
17 described herein.

18 94. Plaintiffs allege that as a result of the misconduct described herein the TRUSTEE
19 Defendants breached fiduciary duties, acted in bad faith, in a grossly negligent manner,
20 fraudulently and in willful breach of trust.

21 95. The TRUSTEE Defendants' foregoing misconduct was not, and could not have
22 been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly
23 benefit the TRUSTEE Defendants in the above described self-serving transactions with
24 LOCOH, MIKLES, ARPT, SCMG and affiliates at the expense and loss of the TRUST and
25 Beneficiaries. Upon information and belief the TRUSTEE Defendants continued to accrue fees
26 as trustees of TRUST.

27 96. Plaintiffs allege that for all relevant times LOCOH and MIKLES acting as agents
28 of NNNRI serving TRUST as Advisor, and Manger to GREIT Congress Center, LLC, owed

1 fiduciary duties to Plaintiffs. For all relevant times DPR, as asset and property manager of the
2 Congress Center Property, Western Place Property and Sutter Square Property, owed fiduciary
3 duties to Plaintiffs, ARPT as stock issuer owed fiduciary duties to TRUST as its shareholder
4 which had provided in substance the sole consideration received to fund 100% of its equity, and
5 the ARPT Board of Directors, including KRIES and RINI, owed fiduciary duties to TRUST as
6 the ARPT shareholder which had provided in substance the sole consideration received to fund
7 100% of its equity, owed the following fiduciary duties and obligations to the Beneficiaries.
8 LOCOH, MIKLES, NNNRI, DPR, ARPT, KRIES and RINI owed fiduciary duties to plaintiffs
9 including without limitation, the following:

- 10 a. To put the interests of the Beneficiaries ahead of his/its/their own interest.
- 11 b. To fully and completely disclose all conflicts of interest in writing and secure a
12 written acknowledgment from the TRUSTEE Defendants only after full, complete
13 and fair, written disclosure to the Beneficiaries.
- 14 c. To not use his/its/their NNNRI Advisor and Manager and DPR asset and property
15 manager role to TRUST to benefit himself/itself/themselves and their affiliates
16 including the LOCOH, MIKLES, NNNRI, DPR, ARPT, SCMG and NWCCO at
17 the expense of the Beneficiaries.
- 18 d. To take all reasonable steps to maximize the value of TRUST assets and
19 opportunities.
- 20 e. To ensure that Beneficiaries would receive the greatest possible return on
21 his/her/their Beneficial Interests.
- 22 f. To, among other things, not use their positions as Advisor/Manager and asset and
23 property manager to TRUST to benefit himself/itself/themselves and affiliates at
24 the expense of the TRUST.
- 25 g. To act in the best interests of the TRUST.

26 97. Plaintiffs allege that the LOCOH, MIKLES, NNNRI as TRUST Advisor and
27 Manager, DPR as asset and property manager, ARPT as stock issuer, and the ARPT board
28 including KRIES and RINI breached his/its/their fiduciary duties and obligations to the

1 Beneficiaries in that he/it/they in the face of a clear conflict of interest, acting in bad faith,
2 engaged in self-dealing to enrich themselves at the expense of and loss to the TRUST, including
3 without limitation, as follows:

- 4 a. By concealing the fact that the LOCOH and MIKLES' acquisition of Daymark
5 and thereby change of control of the Manager of GREIT Congress Center, LLC
6 and DPR as asset and property manager of the Congress Center Property without
7 lender approval was a default that LOCOH, MIKLES, NNNRI and DPR were
8 duty bound to themselves cure at their sole cost and expense.
- 9 b. By concealing that LOCOH and MIKLES had acquired Daymark without
10 properly capitalizing NNNRI so that it would have the requisite \$10,000,000 net
11 worth and that any default noticed as a result LOCOH, MIKLES, NNNRI and
12 DPR were duty bound to themselves cure at their sole cost and expense.
- 13 c. By failing to recommend the engagement of a non-conflicted independent Advisor
14 to Trust, Manager to GREIT Congress Center, LLC and asset and property
15 manager to the Congress Center Property to promptly restructure the same to
16 avoid the large \$10,303,137 loss.
- 17 d. To promptly and fully inform the Beneficiaries that the cause of the Congress
18 Center loan default was the LOCOH and MIKLES' acquisition of Daymark and
19 the defaults were the responsibility of LOCOH, MIKLES, NNNRI and DPR.
- 20 e. To advise TRUST, as a non-conflicted Advisor, Manager and asset and property
21 manager were required by applicable standards of care in 2012, based upon
22 market rates and standards for such transactions, that TRUST should use its free
23 and clear Western Place Property equity taking a loan of \$12,000,000 (34% of
24 \$35,000,000 value) and recapitalize the Congress Center Property either pro-rata,
25 or with a priority mezzanine equity position, to avoid the \$10,303,137 loss and
26 receive a preferred return at the market rate of 15% pre annum on its capital
27 contribution and a 25% carried interest at disposition (the "Recap Terms").

28 //

- 1 f. To not issue the 1,200,000 shares of non-voting ARPT stock as part consideration
2 for the Western Place Agreement because it and its affiliates NNNRI and DPR,
3 were fiduciaries to the TRUST and Beneficiaries, the transaction was an
4 undisclosed conflict in that the defaults on the Congress Center loan were the fault
5 of LOCOH, MIKLES, NNNRI and DPR, the transaction was materially adverse to
6 TRUST and preferred options, including the Recap Terms were available. Indeed
7 rather than risk \$12,000,000 in non-voting ARPT common stock allowing ARPT,
8 LOCOH, MIKLES and NWCCO to profit using the ARPT stock equity, TRUST
9 should itself offer and pursue the Recap Terms as well as promptly sue LOCOH
10 and MIKLES for all damages including without limitation those assessed by the
11 lender regarding the default charges, interest and defeasance.
- 12 g. To recommend the sale of the Congress Center Property at a loss of \$10,303,137
13 when preferred terms were available to completely avoid the loss in non-
14 conflicted transactions and recover from LOCOH and MIKLES all damages
15 including without limitation, those assessed by the lender regarding the default
16 charges, interest and defeasance.
- 17 h. To recommend the sale of the Western Place Property when preferred options
18 were available to avoid the loss of the Congress Center mezzanine equity Recap
19 Terms in non-conflicted transactions.
- 20 i. To recommend the sale of the Sutter Property when preferred options were
21 available to avoid the loss in non-conflicted transactions.
- 22 j. Failed to terminate NNNRI's role as advisor to TRUST.
- 23 k. Failed to terminate NNNRI as Manager of GREIT Congress Center, LLC.
- 24 l. Failed to terminate DPR's role as asset and property manager to TRUST.
- 25 m. Failed to sue LOCOH, MIKLES, NNNRI, DPR and affiliates for all damages
26 including without limitation, those assessed by the lender regarding the Congress
27 Center Property loan default charges, interest and defeasance.

28 //

1 98. LOCOH, MIKLES, NNNRI as TRUST Advisor and Manager, DPR as asset and
2 property manager, ARPT as stock issuer, and the ARPT Board of Directors including KRIES and
3 RINI's foregoing misconduct was not, and could not have been, an exercise of good faith
4 business judgment. Rather, it was intended to, and did, unduly benefit LOCOH, MIKLES and
5 NNNRI as TRUST Advisor and Manager, DPR as asset and property manager, ARPT as stock
6 issuer, and the ARPT board including KRIES and RINI and his/its/their affiliates at the expense
7 and loss of the TRUST and Beneficiaries.

8 99. In the alternative, the TRUSTEE Defendants, HUNT, INLOW, JOHNSON,
9 WALLACE, WESCOMBE and Does 1-10, also aided and abetted the breach of fiduciary duties
10 of Defendants LOCOH, MIKLES, NNNRI as TRUST Advisor and Manager, DPR as asset and
11 property manager, ARPT as stock issuer, and the ARPT Board of Directors including LOCOH,
12 MIKLES, KRIES, RINI, and Does 11-30, when with actual knowledge that NNNRI and DPR
13 had a fiduciary duty to disclose that its/their affiliates LOCOH, MIKLES, and affiliates as a
14 result of the LOCOH and MIKLES acquisition of Daymark and thereby the change in control of
15 NNNRI and DPR and the insolvency of NNNRI, had been the cause of the lender noticed default
16 on the Congress Center Property loan, and while failing to inform Plaintiffs and the Class of such
17 facts, proceeded with closing self serving and conflicted transactions between the TRUST and
18 ARPT, NWCCO and SGR involving the sales of Western Place, Congress Center and Sutter
19 Properties, causing substantial losses as described herein and subject to proof at the time of trial.
20 TRUSTEE Defendants profited from such aiding and abetting misconduct by the continuing
21 accrual of unwarranted fees and costs reimbursements.

22 100. In the alternative, defendants LOCOH, MIKLES, NNNRI as TRUST Advisor and
23 Manger, DPR as asset and property manager, ARPT as stock issuer, and the ARPT board
24 including LOCOH, MIKLES, KRIES, RINI, and Does 11-30, also aided and abetted the breach
25 of fiduciary duties of the TRUSTEE Defendants, HUNT, INLOW, JOHNSON, WALLACE,
26 WESCOMBE and Does 1-10, when with actual knowledge that TRUSTEE Defendants had a
27 fiduciary duty to disclose to Plaintiffs and the Class that the LOCOH and MIKLES acquisition of
28 Daymark and thereby the related change in control of DPR and NNNRI and the insolvency of

1 NNNRI had been the cause of the lender noticed default on the Congress Center Property loan
2 while they proceeded with closing self serving and conflicted transactions between the TRUST
3 and ARPT, NWCCO and SGR involving the sales of the Western Place, Congress Center and
4 Sutter Properties, causing substantial losses as described herein and subject to proof at the time
5 of trial.

6 101. Defendants ARP-OP, ARPA, SCMG, NWCCO and Does 11-40 aided and abetted
7 the breach of fiduciary duties of the TRUSTEE Defendants, HUNT, INLOW, JOHNSON,
8 WALLACE, WESCOMBE and Does 1-10, when with actual knowledge that TRUSTEE
9 Defendants had a fiduciary duty to disclose to Plaintiffs and the Class that the LOCOH and
10 MIKLES acquisition of Daymark and thereby the related change in control of DPR and NNNRI
11 and the insolvency of NNNRI had been the cause of the lender noticed default on the Congress
12 Center Property loan while they proceeded with closing self serving and conflicted transactions
13 between the TRUST and ARPT, NWCCO and SGR involving the sales of the Western Place,
14 Congress Center and Sutter Properties, causing substantial losses as described herein and subject
15 to proof at the time of trial.

16 102. Defendants ARP-OP, ARPA, SCMG, NWCCO and Does 11-40 also aided and
17 abetted the breach of fiduciary duties of the Defendants LOCOH, MIKLES, NNNRI as TRUST
18 Advisor and Manager, DPR as asset and property manager, ARPT as stock issuer, and the ARPT
19 Board of Directors including LOCOH, MIKLES, KRIES, RINI, and Does 11-30, when with
20 actual knowledge that NNNRI and DPR had a fiduciary duty to disclose that its/their affiliates
21 that the LOCOH and MIKLES acquisition of Daymark and thereby the related change in control
22 of DPR and NNNRI and the insolvency of NNNRI had been the cause of the lender noticed
23 default on the Congress Center Property loan while they proceeded with closing self serving and
24 conflicted transactions between the TRUST and ARPT, NWCCO and SGR involving the sales of
25 the Western Place, Congress Center and Sutter Properties, causing substantial losses as described
26 herein and subject to proof at the time of trial.

27 103. Defendants LOCOH and MIKLES are each directly liable as alter ego of NNNRI,
28 DPR, ARPT, ARP-OP, ARPA, SGR and Does 11-30. Alternatively, LOCOH and MIKLES are

1 vicariously liable for NNNRI, DPR, ARPT, ARP-OP, ARPA, SGR and Does 11-30's breaches
2 acting in the capacity of NNNRI as Advisor and Manager to TRUST, DPR as asset and property
3 manager to TRUST for its three properties, ARPT for issuance of the \$12,000,000 of stock,
4 ARP-OP for holding title to the Western Place Property, ARPA as advisor to ARPT for issuance
5 of the stock and Does 11-30 as agents participating in NNNRI, DPR, ARPT, ARP-OP, ARPA,
6 SGR and Does 11-30's wrongful conduct and their individual failure to disclose and self serving
7 negotiations/transactions with TRUST described herein with knowledge that his/its/their acts
8 were wrongful in their nature. Further, LOCOH and MIKLES aided and abetted and conspired
9 with NNNRI, DPR, ARPT, ARP-OP, ARPA, SGR and Does 11-30 or vicariously liable for
10 NNNRI, DPR, ARPT, ARP-OP, ARPA, SGR and Does 11-30 knowing that there had been no
11 disclosure of the reason for the Congress Center Property loan defaults and that the subsequent
12 self-serving transactions, were at terms unfavorable to Plaintiffs and the class in breach of
13 NNNRI, DPR, ARPT, ARPA and Does 11-30's fiduciary duties to Plaintiffs and the Class.

14 104. Plaintiffs allege upon information and belief that their damages, subject to proof
15 at the time of trial, are approximately \$100,000,000 as follows:

- 16 a. Profits and fees to be disgorged from NWCCC, LOCOH, MIKLES, ARPT,
17 ARPA and Does 11-40 on the Congress Center Property of \$40,000,000 plus net
18 operating income for the period October 2012 through October 2015 or an
19 estimated \$8,000,000 per year for an additional \$24,000,000, Default Loan Fees,
20 Defeasance and other costs at the Congress Center Sale of \$2,000,000, a
21 Disposition Fee charged of an estimated \$1,000,000 and a total disgorged profits
22 and fees of \$67,000,000 as of October 2015 plus pre-judgment interest.
- 23 b. Profits and fees to be disgorged by MIKLES, SCMG, SGR and Does 21-40 on the
24 Sutter Square Property of \$5,400,000 plus net operating income of \$1,080,000 per
25 year for four years October 2012 through October 2016 and the Disposition Fee of
26 \$75,000 for a combined \$4,395,000 and a total disgorged profits and fees of
27 \$9,795,000 plus pre-judgment interest.

28 //

1 c. Damages from LOCOH, MIKLES, ARPT, SCMG and Does 21-40 for the below
2 market sale, to be determined at time of trial, as well as profits that would have
3 been realized from the retention of Western Place Property for the period May
4 2012 through current the end of 2017 of \$2,400,000 per year for five and one half
5 years for a total \$13,200,000, the additional profit that would be realized on a
6 disposition today of \$8,000,000 (\$40,000,000 market value less \$32,000,000 sales
7 price in 2012), the 2012 Disposition Fee of \$1,152,000 plus pre-judgment interest
8 for a combined total of \$22,352,000.

9 105. Because the conduct of the all defendants and Does 1-40 was oppressive,
10 malicious, and/or fraudulent, Plaintiffs and the Class are also entitled to punitive and exemplary
11 damages from each of such Defendants in an amount to be proved at time of trial.

12 ***DELAYED DISCOVERY AND ESTOPPEL AGAINST DEFENDANTS TO ASSERT***
13 ***STATUTE OF LIMITATIONS DEFENSES***

14 106. As above described the material facts regarding the LOCOH and MIKLES
15 acquisition of Daymark causing the Congress Center loan default and the true purpose of the
16 Western Place sale with the 1,200,000 non-voting share component was concealed from
17 Plaintiffs and the Class by the TRUSTEE Defendants, LOCOH, MIKLES, NNNRI and DPR.

18 107. Plaintiffs and all Beneficiaries reposed trust and confidence in TRUSTEE
19 Defendants, NNNRI as TRUST Advisor and as Manager to GREIT Congress Center, LLC and
20 DPR as asset and property manager to the three TRUST properties, to discharge their fiduciary
21 duties for the benefit of Plaintiffs and the Class.

22 108. Not until an investigation was conducted on behalf of Plaintiffs in December 2017
23 did they discover the relationship of the LOCOH and MIKLES acquisition of Daymark, the
24 Western Place Property sale, the 1,200,000 ARPT share issuance and the related Congress Center
25 and Sutter Properties sales.

26 109. Plaintiffs and the Class reposed trust and confidence in the TRUSTEE
27 Defendants, NNNRI and DPR to tell the complete truth and disclose all material facts about the
28 TRUSTEE Defendants, NNNRI and DPR's actions purportedly on behalf of the Beneficiaries

1 including facts related to the true reason for the Congress Center Property Loan default and the
2 purpose of the Western Place Property transaction involving the 1,200,000 ARPT non-voting
3 common shares for the \$12,000,000 component of the purchase price consideration.

4 110. Further, Plaintiffs and the Class relied upon TRUSTEE Defendants' statements
5 published concerning the reasons for and actions on behalf of the TRUST concerning the TRUST
6 properties which as above described concealed material facts.

7 111. Plaintiffs and the Class thus reasonably relied on the TRUSTEE Defendants,
8 NNNRI and DPR separately as his/her/its/their fiduciaries, to act in their best interests and refrain
9 from misleading, defrauding or otherwise intentionally or negligently injuring Plaintiffs and the
10 Class.

11 112. The true facts remained unknown to Plaintiffs and the Class until December 2017
12 when Plaintiffs' counsel investigated the \$12,000,000 promissory note which remained
13 outstanding. In fact the www.greitinvestors.com website provides as of March 23, 2018:

14 **UPDATE FOR ALL G REIT INVESTORS**

15 All G REIT investors should have recently received a distribution check
16 representing the first of three (3) distribution payments to be delivered in
17 relation to the final liquidation and winding up of G REIT. To address
18 anticipated questions and in order to provide important information to
19 investors, please see below:

20 **While we had expected to be in a position to issue a distribution by**
21 **September 31, 2017, that date has necessarily been delayed.**

22 **Since, GREIT'S last remaining asset is a single promissory note in the**
23 **principal amount of \$12,000,000, distributions depend on payments**
24 **received toward the balance due on the Note. An extension on the**
25 **Note has caused this delay in providing investors with a distribution.**

26 **A final distribution will be issued once the full amount due on the**
27 **Note is collected. At this time, the final distribution date is**
28 **undetermined.**

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We will continue to update the GREIT website with information as it becomes available.

Q: What assets does G REIT still own?

A: A single promissory note (the "Note") in the principal amount of \$12,000,000.

...

Q: What is the current per Unit value?

A: \$0.23

Q: How was the current Unit value determined?

A: The value of the Note, less estimated expenses, divided by total outstanding Units.

Q: Why did the value of Units drop from \$0.26 to \$0.23?

A: We have been able to more accurately calculate the total expenses that will be incurred in relation to final liquidation and dissolution of the G REIT

113. The Plaintiffs and Class were never aware of any facts that made him/her/it/them suspicious of the veracity of TRUSTEE Defendants' actions on behalf of the Beneficiaries, and did not discover the breaches of fiduciary duty and aiding and abetting thereof until December 2017.

114. Plaintiffs allege that they were unaware of the true facts regarding the reasons for Congress Center Property loan default and related Western Place Property sale transaction's purpose until December of 2017 and could not with reasonable due diligence have learned of the same earlier because they did not have the benefit of the independent research and investigation which their lawyers conducted through multiple third party sources until the previously concealed true facts were disclosed. As such the statute of limitations concerning this cause of action was tolled until December of 2017.

115. Further, TRUSTEE Defendants did not disclose as they were required to do the true facts regarding the reasons for the Congress Center Property loan default and related

1 Western Place Property sale transaction's purpose nor the interrelatedness of the Sutter Property
2 sale thereby concealing the same from Plaintiffs and the Class.

3 ***THE NEED FOR A CONSTRUCTIVE TRUST***

4 116. All Defendants and Does 1-40 would be unjustly enriched if allowed to keep the
5 assets, capital and profits derived from the wrongful conduct described herein and Plaintiffs and
6 the Class, subject to proof at trial, are therefore entitled to a determination and judgment that
7 Defendants and Does 1-40 hold such converted assets, capital and profits, as constructive trustees
8 for the benefit of Plaintiffs and the Class.

9 ***THE NEED FOR AN ACCOUNTING***

10 117. Plaintiffs and the Class do not know the exact amount owing to him/her/it/them as
11 a result of Defendants and Does 1-40's misconduct above described. An accounting is therefore
12 necessary to determine this amount and his requested hereby.

13 **SECOND CAUSE OF ACTION**

14 **FRAUDULENT TRANSFER**

15 **Against MIKLES, GCL and Does 41-50**

16 118. Plaintiffs repeat and incorporate herein by reference the allegations in the
17 preceding paragraphs of this Complaint as if set forth fully herein.

18 119. This cause of action is asserted by Plaintiffs individually and in their capacity as
19 representative of the Class against MIKLES, GCL and Does 25 and 41-50.

20 120. At all times relevant, Plaintiffs claim against MIKLES and GCL arises from their
21 participation in breach of fiduciary duties owed to Plaintiffs as alleged above.

22 121. Recall at paragraph 93.p. above that in January of 2014 TRUST exchanged the
23 1,200,000 shares of ARPT non-voting common stock which had been acquired for \$12,000,000
24 of the Western Place Property consideration for a promissory note due by ARPT in the amount of
25 \$12,000,000 due in 2017 which as described at Paragraphs 108-109 and 112 above remains
26 unpaid.

27 122. Plaintiffs allege upon information and belief that in January 2014 MIKLES did
28 not use funds he had readily available on behalf of ARPT to repurchase the 1,200,000 shares of

1 ARPT stock pursuant to the agreed upon TRUST held put option for \$12,000,000, and instead
2 pursued another of his self-serving transactions described herein as the “Philadelphia
3 Transaction” which concerned his exploitation of TIC investors in the restructuring of a
4 1,000,000 square foot office tower in Philadelphia, Pennsylvania (the “Philadelphia Property”).
5 MIKLES intended to take control of the TIC ownership so that he could force a sale of the
6 building and reap \$23,000,000 in excessive and unwarranted fees and costs he had charged the
7 investors.

8 123. In order to accomplish the Philadelphia Transaction MIKLES had to negotiate a
9 buy out of dissenting TIC owners including nine individuals who owned a combined 20.125% of
10 the ownership equity for a combined \$4,143,087 which he paid in April 2014. As a result not less
11 than \$4,143,087 of the funds that were required to be paid back to the TRUST on the
12 \$12,000,000 ARPT TRUST held put option was used by MIKLES instead to acquire ownership
13 in the Philadelphia Property.

14 124. Plaintiffs allege the Philadelphia Transaction building sale closed on April 21,
15 2015 and as a result MIKLES and his affiliates, upon information and belief, received a payment
16 of \$5,500,000 on his April 2014 purchase of the 20.125% from the nine owners and \$23,000,000
17 in fees, commissions and profits that he would not have received had he not been able to
18 purchase the TIC interests of those same nine owners.

19 125. Upon information and belief, notwithstanding that MIKLES now had not less than
20 \$28,500,000 he still did not repay the \$12,000,000 note to TRUST and instead in a virtually
21 simultaneous transaction in April 2015, MIKLES used \$18,000,000 of the \$28,500,000 he,
22 received from the Philadelphia Transaction to fund GCL in which MIKLES acting as its agent,
23 taking control of 1,700 acres of valuable San Diego County California land from bankrupt
24 developer Gregory Canyon Ltd.

25 126. A November 2016 news article described MIKLES takeover of GCL and its then
26 activity as follows:

- 27 a. “[GCL]... **sold roughly 700 acres of the 1,700 acre site to the Pala tribe for \$13**
28 **million,** effectively killing the landfill plan. The agreement includes a pledge that

1 the tribe won't oppose residential and commercial development on the rest of the
2 property." describing [MIKLES], as a principal of GCL. *Underline and bold*
3 *emphasis added.*

4 b. [This left MIKLES with a net investment of only \$5,000,000 for control of the
5 remaining 1,000 acres.]

6 c. "Work on the landfill permits ground to a halt after MIKLES took over in 2014
7 when the landfill developer struggled to find financing and fell into bankruptcy.
8 Last year [post April 21, 2015], a new company — Sovereign Capital —
9 assumed control of the company, paying off its \$200 million debt and buying
10 the 1,770-acre property for \$18 million at a foreclosure hearing. The
11 company was then renamed GCL LLC." *Underline and bold emphasis added.*

12 d. "Mikles, the company's principal, said the deal with the Pala tribe developed over
13 the past several months (September to November 2016) as he and an
14 archaeologist starting meeting with Gaughen on behalf of the Pala tribe." "I really
15 didn't have all the knowledge," Mikles said. "I could totally see what she was
16 saying with all the historic and cultural stuff."

17 e. "Meanwhile, GCL also started exploring other development opportunities,
18 recognizing the region is in desperate need of more housing. We'd like to do a
19 commercial and residential development," on some of the land, Mikles said.
20 "The tribe would like to see that too. They are excited about that." Such a
21 housing and commercial development would require rezoning and an
22 amendment to the county's General Plan — "no small feat," Mikles
23 acknowledged." *Underline and bold emphasis added.*

24 127. Plaintiffs allege, upon information and belief, that the funds of not less than
25 \$5,500,000 derived from the acquisition of the 20.125% TIC interests is traceable first into the
26 Philadelphia Transaction and then to the Philadelphia Transaction which garnered \$28,500,000
27 and then in a pre-arranged funding of \$18,000,000 of that amount was rolled over as another co-
28 investment into GCL. That co-investment within the April 2015 to November 2016 time period

1 resulted in a \$13,000,000 payment for 700 of the 1,700 acres, which funds are to be traced
2 subject to proof at the time of trial to other investments to which TRUST is entitled on tracing
3 and disgorgement remedies.

4 128. MIKLES used Doe 25 to take the funds of not less than \$5,500,000, derived from
5 purchase of the 20.125% ownership interests in the Philadelphia Property, without consideration
6 of reasonably equivalent value and with the knowledge of Plaintiffs' right to payment on the
7 \$12,000,000 note owed to TRUST and therein Plaintiffs as alleged in the First Cause of Action.
8 The transfer of not less than \$5,500,000 from MIKLES to GCL and Doe 25 was an indirect
9 transfer by MIKLES done for the benefit of MIKLES to accomplish the purpose of preserving
10 MIKLES' control of the funds and using his bare legal title over the funds to shield MIKLES
11 from his creditors. With said knowledge, GCL and Doe 25's receipt of funds from the
12 Philadelphia Transaction was not in good faith. Thus, Plaintiffs have a right of payment against
13 MIKLES, GCL and Doe 25 to the extent of funds he/she/it/they received from the Philadelphia
14 Transaction.

15 129. At the direction of MIKLES, Doe 25 participated by contributing its \$5,500,000
16 which was transferred as part of the \$18,000,000 to GCL. The transfer of \$18,000,000 was made
17 without return to Doe 25 of anything of reasonably equivalent value and with the knowledge of
18 Plaintiffs' right to payment from ARPT, MIKLES and Doe 25 which arises from NNNRI, DPR
19 and MIKLES' breach of fiduciary duties owed to Plaintiffs as alleged in the First Cause of
20 Action. The \$18,000,000 transfer from MIKLES and Doe 25 to GCL was an indirect transfer by
21 MIKLES done for the benefit of MIKLES to accomplish the purpose of preserving MIKLES'
22 control of the TRUST's funds and using GCL's bare legal title over the funds to shield MIKLES
23 from his creditors.

24 130. On information and belief, MIKLES and Doe 25's transfer of \$5,500,000 as part
25 of the \$18,000,000 funding to GCL was made with the specific intent of hindering, delaying and
26 defrauding creditors of TRUST, including Plaintiffs. The circumstances surrounding Doe 25's
27 transfer of \$5,500,000 as part of the \$18,000,000 to GCL that illustrate Does 25's intent include,
28 but are not limited to, (1) the transfer was made to an insider as GCL is an affiliate entity under

1 the common control of MIKLES; (2) Doe 25 retains control over the transferred funds through its
2 agent MIKLES; (3) in exchange for the transfer, Doe 25 did not receive consideration of
3 reasonably equivalent value; (4) the \$5,500,000 as part of the \$18,000,000 transfer from Doe 25
4 to GCL was made after the above breach of fiduciary occurred; (5) the \$5,500,000 as part of the
5 \$18,000,000 transfer was made without disclosure to Plaintiffs; and (6) the \$5,500,000 as part of
6 the \$18,000,000 transfer made Doe 25 insolvent.

7 131. At the time of the \$5,500,000 as part of the \$18,000,000 transfer, Plaintiffs had a
8 claim against Doe 25 and MIKLES.

9 132. The purpose of Doe 25's transfer to GCL was to place the monies received from
10 ARPT due to TRUST, which Plaintiffs had right of payment against, beyond the reach of its
11 creditors including Plaintiffs.

12 133. As a result of the \$5,500,000 as part of the \$18,000,000 transfer from Doe 25 to
13 GCL, Doe 25 became insolvent.

14 134. Plaintiffs have been harmed by the \$5,500,000 as part of the \$18,000,000 transfer
15 being unable to recover its claim for breach of fiduciary duty against NNNRI, DPR, MIKLES
16 and Doe 25 due to the fraudulent transfer from ARPT to Doe 25 and subsequent fraudulent
17 transfer of \$5,500,000 as part of the \$18,000,000 from Doe 25 to GCL.

18 135. The transfers of not less than \$5,500,000 to Doe 25 and \$18,000,000 to GCL and
19 Does 41-50 were each a substantial factor in causing Plaintiffs' harm.

20 136. As a direct and proximate cause of these defendants' misconduct, Plaintiffs have
21 been damaged in an amount to be determined, according to proof at trial.

22 **VI.**

23 **JURY TRIAL DEMAND**

24 137. Plaintiffs and the Class demand a trial by jury.

25 **VII.**

26 **PRAYER FOR RELIEF**

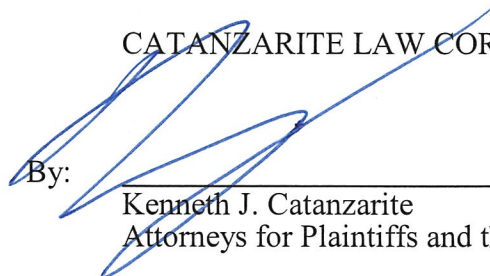
27 WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in
28 his/her/its/their favor as follows:

CATANZARITE LAW CORPORATION
2331 WEST LINCOLN AVENUE
ANAHEIM, CALIFORNIA 92801
TEL: (714) 520-5544 • FAX: (714) 520-0680

- 1 1. For compensatory damages according to proof.
- 2 2. For general damages according to proof.
- 3 3. For special damages according to proof.
- 4 4. For a constructive and resulting trust over real and personal property interests
- 5 derivative of Plaintiffs and the Class' Beneficial Interests and funds.
- 6 5. For exemplary and punitive damages according to proof.
- 7 6. Declaring that this action is a proper class action and certifying Plaintiffs as the
- 8 representatives of the Class, pursuant to Code of Civil Procedure section 382 .
- 9 7. For compensation for the reasonably necessary loss of time, attorney's fees, and
- 10 other expenditures suffered or incurred under the "tort of another" doctrine as required to act in
- 11 the protection of Plaintiffs' interests by bringing this action in accordance with *Prentice v. North*
- 12 *Am. Title Guaranty Corp.*, Alameda Division (1963) 59 Cal.2d 618; *Electrical Electronic*
- 13 *Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601.
- 14 8. For attorneys fees pursuant to any applicable contracts.
- 15 9. For costs of suit incurred.
- 16 10. For statutory damages, if any.
- 17 11. For prejudgment and post judgment interest, according to law.
- 18 12. For such other and further relief as the court may deem just and proper.

20 DATED: March 23, 2018.

CATANZARITE LAW CORPORATION

By: 

Kenneth J. Catanzarite
Attorneys for Plaintiffs and the proposed Class