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7 GOLDEN GATEWAY CENTER,
A California limited partnership

FILED
San Francisco County Superior Court
DEC 13 2019
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

10 GOLDEN GATEWAY CENTER,
11 A California limited partnership,

12 Plaintiff,

13 vs.

14 CALIFORNIA STATE TEACHERS'
15 RETIREMENT SYSTEM, and DOES 1
through 100,

16 Defendants.

CASE NO. CGC-19-58155.7

**COMPLAINT TO ADD CalSTRS TO A
JUDGMENT AS THE ALTER EGO OF THE
JUDGMENT DEBTOR**

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18 Plaintiff, Golden Gateway Center (“Gateway”), alleges as follows:

19 **SUMMARY OF FACTS AND ALLEGATIONS**

20 1. In 2006, defendant, California State Teachers’ Retirement System (“CalSTRS”), a
21 California public entity, created a single purpose entity, San Francisco Waterfront Partners II,
22 LLC (“Waterfront”), to entitle, purchase, and develop approximately three acres of real property
23 owned by Gateway adjacent to the San Francisco waterfront (the “Option Property”). Over the
24 course of the next ten years, CalSTRS funneled nearly \$90 million of teacher pension funds
25 through Waterfront in a flawed and failed attempt to entitle a development of the Option Property
26 with high rise, luxury condominiums (the “Option Project”). CalSTRS’ proposed Option
27 Project was defeated in November 2013 by a public referendum vote (the “Referendum”).
28 Waterfront never purchased the Option Property and never developed its Option Project.

2. From and after February 2015, CalSTRS, through Waterfront, tied up Gateway's real property with meritless claims designed to hold escrow open and delay closing escrow in perpetuity without making any further option payments. In October 2015, Gateway sued Waterfront for declaratory relief to clear Waterfront's claims to Gateway's real property and to have the court declare the parties' option contract terminated (the "**Underlying Litigation**").

3. In November 2015, Waterfront counter-sued alleging that Gateway had caused Waterfront's proposed development to fail by violating the provisions of the 2012 Option Agreement. During the course of the Underlying Litigation, CalSTRS funded, managed and controlled Waterfront's meritless legal claims against Gateway, including claims for fraud.

4. In February 2019, a jury verdict and the trial court's directed verdict soundly rejected all of Waterfront's claims. On February 27, 2019, the trial court entered Judgment in Gateway's favor (the "**Judgment**"). A true and correct copy of which is attached as **Exhibit "A (1)."** The trial court subsequently ordered that Gateway was the prevailing party and awarded Gateway \$9.2 million in legal expenses (the "**Prevailing Party Orders**"), true and correct copies of which are attached as **Exhibits "A (2) and A (3)."**

5. While capitalizing its special purpose entity, Waterfront, to pursue CalSTRS' litigation *objectives*, CalSTRS failed to capitalize Waterfront's litigation *obligations, i.e.*, Gateway's prevailing party legal expenses, and Waterfront has no assets to satisfy its \$9.2 million debt to Gateway. CalSTRS' conduct is unfair, unjust and inequitable, and Gateway brings this action to add CalSTRS to the Judgment as the alter ego of Judgment debtor Waterfront.

THE PARTIES

6. Gateway is a limited partnership organized and existing pursuant to California law and doing business in San Francisco.

7. Gateway is informed and believes and alleges thereon that CalSTRS is a California public entity which invests in real estate development for the benefit of its members.

8. Gateway is informed and believes and alleges thereon that Waterfront is a limited liability company organized under the laws of the State of Delaware.

1 Waterfront.

2 **COMMON ALLEGATIONS**

3 **The 2006 Gateway/Waterfront Option Agreement**

4 15. On or about February 14, 2006, Gateway and Waterfront entered into an Option to
5 Purchase agreement (the “**2006 Option Agreement**”) in which Gateway is the “Owner” and
6 Waterfront is the “Optionee.” Pursuant to the 2006 Option Agreement, Gateway granted
7 Waterfront an option to purchase and develop the Option Property owned by Gateway. The 2006
8 Option Agreement describes Waterfront’s then contemplated development of the Option
9 Property, including, inter alia, condominium towers within the 84-foot height zoning of the
10 property, to be owned by Waterfront, as well as a new tennis and swim club and health club, to be
11 retained and owned by Gateway. Over the course of the next six years from time to time, with
12 CalSTRS’ funding, oversight, and approval, Waterfront revised the Option Project.

13 **The 2006 CalSTRS/Waterfront Operating Agreement**

14 16. Gateway is informed and believes and alleges thereon that, on or about July 21,
15 2006, CalSTRS and PWP entered into a Waterfront Operating Agreement (the “**2006 Waterfront**
16 **Operating Agreement**”) in which CalSTRS is identified as the “Class A Member” and PWP is
17 identified as the “Class B Member” of Waterfront.

18 17. Gateway is informed and believes and alleges thereon that, pursuant to section
19 5.2.1 of the 2006 Waterfront Operating Agreement, CalSTRS was entitled to and did appoint two
20 members to the Waterfront Management Committee, and Waterfront was entitled to and did
21 appoint one member.

22 18. According to section 5.2.1 of the 2006 Waterfront Operating Agreement, CalSTRS
23 appointed its Director of Real Estate, Michael DiRe, and one other CalSTRS employee as its two
24 Class A members, and Waterfront appointed Simon Snellgrove as its one Class B member and
25 Manager of Waterfront. Section 5.2.2 of the 2006 Waterfront Operating Agreement provides that
26 any action by the Waterfront Management Committee requires a majority vote of its members.

27 19. Pursuant to section 5.2, the Waterfront Management Committee (controlled by
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1 CalSTRS' two votes of three) was given the "right, power and authority to direct the actions of
2 the Manager." Gateway is informed and believes and alleges thereon that, during the tenure of
3 the 2006 Operating Agreement from July 21, 2006 until March 23, 2016, CalSTRS controlled all
4 significant decisions of the three-person Waterfront Management Committee.

5 20. Section 3.3 of the 2006 Operating Agreement provides that CalSTRS will
6 contribute 99% and PWP will contribute 1% of the Capital Contributions toward Waterfront's
7 expenses. Gateway is informed and believes and alleges thereon that CalSTRS provided 99% of
8 the capital needs of Waterfront during the tenure of the 2006 Operating Agreement.

9 **The 2012 Gateway/Waterfront Amended and Restated Option Agreement**

10 21. On or about March 27, 2012, Waterfront and Gateway entered into an Amended
11 and Restated Option Agreement (the "**2012 Option Agreement**") by which Gateway gave
12 Waterfront additional time, without any additional option fees from Waterfront, to exercise the
13 option and purchase the Option Property. Gateway subsequently agreed to extend Waterfront's
14 deadline for exercising the option to February 6, 2015, also without Waterfront paying any
15 additional option fees.

16 **A Public Referendum Defeats Waterfront's Option Project**

17 22. By March 2012, with CalSTRS' approval, Waterfront had substantially revised the
18 Option Project to include luxury condominium towers which exceeded the 84-foot zoning height
19 limitation of the Option Property by over 50 feet. As a result, Waterfront needed a variance from
20 the San Francisco Board of Supervisors to entitle the Option Project. A majority of the Board of
21 Supervisors granted Waterfront's application for a variance. By June 2012, Waterfront therefore
22 had all of the regulatory approvals ("**Regulatory Approvals**") it needed to entitle, purchase and
23 develop the Option Project, although lawsuits were pending which challenged the project's
24 Environmental Impact Report ("**EIR**").

25 23. In the month after the Board granted Waterfront a zoning variance, tens of
26 thousands of San Francisco voters opposed to a luxury condominium project on the waterfront
27 signed petitions to place Waterfront's zoning variance on the ballot for a public vote by
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1 Referendum. In November 2013, the Referendum vetoed the height zoning variance approved by
2 the Board vote.

3 **Waterfront Asserts *Force Majeure***

4 24. At that point, Waterfront had sixteen months to exercise the option by the
5 February 6, 2015 extended deadline, but Waterfront had no Regulatory Approvals for the Option
6 Project, which was an Owner condition in the 2012 Option Agreement to close escrow on a
7 purchase of the Option Property. Nevertheless, on February 6, 2015, Waterfront gave Gateway a
8 written notice of option exercise stating that it would close escrow on May 7, 2015. On February
9 6, 2015, Waterfront had no reasonable likelihood of obtaining Regulatory Approvals for any
10 option project by May 7.

11 25. On February 20, 2015, just two weeks after Waterfront gave notice that it was
12 exercising the option and would close escrow on May 7, 2015, Waterfront notified Gateway that
13 the preexisting CEQA lawsuits challenging the Option Project's EIR were alleged *force majeure*
14 events, which would delay closing escrow on Waterfront's purchase of the Option Property.
15 Indeed, Waterfront contended that *force majeure* permitted Waterfront to tie up Gateway's real
16 property "in perpetuity" with no obligation by Waterfront to make additional option payments to
17 Gateway. By purportedly exercising the option and asserting *force majeure* prior to and during
18 the Underlying Litigation, Waterfront tied up Gateway's real property and prevented Gateway
19 and Gateway's tenant, Bay Club, from improving the Option Property, among other things.

20 **CalSTRS Funded, Controlled, and Managed Waterfront's Lawsuit**

21 26. After unsuccessful attempts by Gateway in the summer of 2015 to reach a
22 compromise of Waterfront's *force majeure* arguments, on October 14, 2015, Gateway filed the
23 Underlying Litigation in the form of a declaratory relief lawsuit titled "*Golden Gateway Center,*
24 *plaintiff, vs. San Francisco Waterfront Partners II, LLC, et al., defendants,*" San Francisco
25 Superior Court Case No. CGC 15-548437, seeking a judicial declaration that the option had
26 expired and that Waterfront had no further right, title or interest in Gateway's Option Property.

27 27. Only five months after Gateway filed the Underlying Litigation, CalSTRS took
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1 over sole control, management, and funding of Waterfront and the Underlying Litigation. On
2 March 23, 2016, CalSTRS and PWP entered into an Amended and Restated Waterfront Operating
3 Agreement (the “**2016 Operating Agreement**”), section 5.1 of which gives CalSTRS “sole and
4 exclusive duty, responsibility, power and authority to manage and administer all business and
5 affairs of the Company [Waterfront] and the Project” The 2016 Operating Agreement also
6 gives CalSTRS the sole authority to hire and compensate attorneys (*id.*) and “[t]o prosecute,
7 defend and settle any and all claims and litigation [that Waterfront] may assert or bring or that
8 may be asserted or brought against [Waterfront].” (*Id.* at section 5.1.6)

9 28. The 2016 Operating Agreement divests Simon Snellgrove and PWP of any right,
10 power or authority to control Waterfront’s business. (*Id.* at section 6.10.2.) From March 2016 to
11 the present, CalSTRS has been and is in sole control of all aspects of the Underlying Litigation,
12 including Waterfront’s appeal of the Judgment and the Prevailing Party Orders.

13 29. At a pretrial hearing before the Hon. Mary E. Wiss, the complex department judge
14 who handled the Underlying Litigation through trial, Waterfront made the following judicial
15 admissions about the extent of CalSTRS’ control of the Underlying Litigation (paras. 30-34,
16 below), including CalSTRS’ 2017 decision to sue Gateway for fraud:

17 30. “In 2016, CalSTRS exercised its rights to reorganize SFWP II, and from March of
18 2016 until the present, all of the management authority [sic: and] responsibility have been vested
19 in CalSTRS.” 12/27/18 HT at 105:8-11.

20 31. “There is no [Waterfront] management committee [after March 2016]; rather,
21 CalSTRS has effectively become both the manager [formerly Mr. Snellgrove] and the
22 management committee of SFWP II.” *Id.* at 105:16-19.

23 32. “What the amended operating agreement says is CalSTRS has the sole authority to
24 operate, manage, and direct the activities of SFWP II. And the person at CalSTRS who is in
25 charge of that today is Mr. DiRe.” *Id.* at 105:22-106:1.

26 33. The Court: “SFWP II still exists but is being managed, basically, by Mr. DiRe
27 since March of 2016?” Waterfront: “Correct. And he is the decision-maker.” *Id.* at 106:2-5.

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1 34. “[F]rom March 2016 forward ... Mr. DiRe has been the sole person at CalSTRS
2 with – who has been managing the 8 Washington asset.” *Id.* at 109:4-7.

3 35. As of December 2016, although the Underlying Litigation had been pending for
4 over a year, the parties’ cross claims were still contractual in nature, and Gateway had not
5 incurred significant legal expenses in the Underlying Litigation. In that month, Waterfront sought
6 Gateway’s signature on a Preliminary Project Assessment (“PPA”) to permit Waterfront to
7 pursue a hotel development on Gateway’s real property. Gateway declined to sign the PPA and
8 refused to permit Waterfront to burden Gateway’s real property with a new development project
9 for which Waterfront had not even begun to seek Regulatory Approvals.

10 36. Three months later, in apparent retaliation for Gateway’s refusal to sign the PPA,
11 Waterfront filed and served a First Amended Cross Complaint (“FACC”) accusing Gateway of
12 fraud. In July 2017, Waterfront filed and served a Second Amended Cross Complaint (“SACC”),
13 which expanded Waterfront’s fraud allegations against Gateway. Mike DiRe, CalSTRS’ Director
14 of Real Estate, admitted during the jury trial in the Underlying Litigation that it was his (i.e.,
15 CalSTRS’) decision to have Waterfront sue Gateway for fraud.

16 37. Gateway is informed and believes and alleges thereon that CalSTRS controlled
17 Waterfront’s litigation strategies and funded all of Waterfront’s litigation expenses, expert costs,
18 and other litigation fees and expenses, including in connection with Waterfront’s consolidated
19 appeal of the Judgment and the Prevailing Party Orders.

20 **CalSTRS Has a Unity of Interest with Waterfront in the Underlying Litigation**

21 38. Gateway is informed and believes and alleges thereon that CalSTRS’ motive to
22 fund the Underlying Litigation and the consolidated appeals is to recover approximately \$90
23 million it invested in the failed Option Project, as well as its costs of the Underlying Litigation
24 and appeal.

25 39. In addition, CalSTRS has utilized and continues to utilize the Underlying
26 Litigation to cast blame on Gateway for the mistake CalSTRS made in pursuing the Option
27 Project. During the course of the Option Project, CalSTRS was the subject of substantial negative
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1 publicity over spending tens of millions of dollars of teacher retirement funds to develop publicly
2 unpopular, luxury, high-rise condominiums on the San Francisco waterfront. Rather than
3 acknowledge that CalSTRS' own Management Committee decisions were the cause of the
4 Project's failure, CalSTRS through Waterfront sought to cast blame on Gateway for CalSTRS'
5 financial losses.

6 40. Gateway is informed and believes and alleges thereon that CalSTRS and
7 Waterfront had and have a unity of interest to recover CalSTRS' and Waterfront's investment
8 losses via the Underlying Litigation.

9 **CalSTRS' Conduct Is Inequitable, Unfair, and Unjust**

10 41. On February 7, 2019, the jury rendered its verdict rejecting Waterfront's fraud and
11 rescission claims. On February 8, 2019, the Court entered a directed verdict for Gateway on
12 Waterfront's breach of contract claims. On February 27, 2019, the Court entered Judgment for
13 Gateway against Waterfront. Notwithstanding the Judgment in Gateway's favor, Waterfront
14 argued in post-trial motions that Gateway was not the prevailing party and that Waterfront
15 prevailed and was entitled to recover its litigation costs from Gateway.

16 42. On August 8, 2019, Judge Wiss entered the Prevailing Party Orders for Gateway
17 and against Waterfront. Judge Wiss held that a combined \$9.2 million of legal fees and costs
18 were reasonable and were reasonably incurred by Gateway and that Gateway was entitled to
19 recover its fees and costs from Waterfront.

20 43. Gateway is informed and believes and alleges thereon that, if Waterfront had
21 prevailed in the Underlying Litigation and recovered its prevailing party litigation expenses from
22 Gateway, the sole beneficiary would have been CalSTRS.

23 44. Gateway is informed and believes and alleges thereon that Waterfront's sole
24 source of working capital to pay its litigation expenses and Gateway's prevailing party fees and
25 costs has been and is from funds supplied by CalSTRS, but CalSTRS refuses to capitalize
26 Waterfront's debt to Gateway, which will render Waterfront insolvent.

27 45. CalSTRS' failure and refusal to capitalize Waterfront's debt to Gateway is
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1 inequitable, unjust, and unfair.

2 **FIRST CAUSE OF ACTION**

3 46. Gateway incorporates each and every foregoing paragraph as though set forth
4 herein in full.

5 47. Gateway contends that CalSTRS is the alter ego of Waterfront, responsible for
6 satisfying Gateway's Judgment and the Prevailing Party Orders against Waterfront.

7 48. Gateway contends that CalSTRS funded, managed and controlled its Waterfront
8 shell to pursue the Underlying Litigation, which forced Gateway to incur \$9.2 million to defend
9 meritless claims seeking to recover \$90 million. Gateway is informed and believes and alleges
10 thereon that CalSTRS funded at least 99% of Waterfront's litigation expenses, which Waterfront
11 would have sought to recover from Gateway if Waterfront had prevailed. Gateway is informed
12 and believes and alleges thereon that CalSTRS refuses to capitalize Waterfront's debt to
13 Gateway.

14 49. Gateway is informed and believes and alleges as follow: CalSTRS contends that it
15 is not obligated to capitalize Waterfront to satisfy Waterfront's litigation indebtedness to
16 Gateway. CalSTRS contends that doing business through a limited liability company, such as
17 Waterfront, is a proper method by which real estate investors, such as CalSTRS, may avoid the
18 risk of losses when a real estate investment fails. CalSTRS denies that it controlled Waterfront or
19 has a unity of interest with Waterfront in the Underlying Litigation, denies that CalSTRS'
20 conduct was or is inequitable, unfair or unjust, and denies that CalSTRS is Waterfront's alter ego.

21 WHEREFORE, Gateway requests the following relief.
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PRAYER FOR RELIEF

WHEREFORE, Gateway prays for a judgment:

- 1. Adding CalSTRS to the Judgment in the Underlying Litigation as Waterfront's alter ego; and
- 2. For any other relief which the Court deems just and proper.

DATED: December 11, 2019

BUCHALTER
A Professional Corporation

By: 
 JAMES B. WRIGHT
 Attorneys for Plaintiff
 GOLDEN GATEWAY CENTER

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