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

CHEN DONGWU, CHEN SHUHUI, CHEN WEN, CHEN XIU YING, CHEN ZIWEI, CHENG GUANWEN, CHENG JIE, CHENG LING, CHENG WEIWEI, DENG ZHENGMEI, DU ERQIN, FENG BING, FENG HAO, GU BEIBEI, GUAN XUEPING, GUAN ZHIJUN, HAN LIDA, HE CHUNHUA, HE XI, HOU JIN, HU JIANJUN, HU XINGNING, HU ZHENGFU, HU ZHONGYONG, HUANG GUI MING, HUANG YING, JI TONG, JIAN ZAIHONG, JIANG YUANSHEN, KUANG SUPING, LEI MINGCHUN, LI CHAO YANG, LI FEIFEI, LI JINLIANG, LI NING, LI WANSHAN, LI WEI, LI WEI, LI XIAOLIN, LI YINGJU, LI ZHI HUI, LIN SEN, LING HAO, LING YAHUA, LIU QING SHU, LIU WEI WEI, LIU XIAOJUN, LIU YING, LU KUI, LU RUI, LU YUANQING, LUO HANGBO, MA BING, MA JIFEI, MIAO SHU, NI QIAO, QI XIAOMEI, QU XIAOYAN, PAN CE, PAN CHENG, PAN YUE XIA, REN JINGYAN, REN TAO, RUAN WEIWEN, SHEN CHAOJUN, SHENG DONG LIN, SHI BING, SUN LIANGGUI, SUN PING, TAN DAMING, TANG MINGSHAN, TANG WENWEN, TAO LANLAN, TIAN XIAOYUN, WAN JUN, WANG GUOLIANG, WANG TAO, WANG TING, WANG YAN, WANG YUN, WANG ZHENGGE, WANG ZHOU JI, WEI FANG, WEI ZHEN, WU LING, WU YONG HUA, XIA YUN, XIE SHISHI, XU YONGLIANG, XU ZEYUAN, YAN TAO, YAN XIAO XIN, YANG JIAN HUA, YANG JIE, YANG YONG JI, YANG YUE, YE CHUN LEI, YOU JUN, ZHAN BIHUA, ZHANG FENGWEN, ZHANG JIWANG, ZHANG JUAN, ZHANG JUNYI, ZHANG PU, ZHANG YAN, ZHANG YIHONG, ZHANG ZHIMIN, ZHAO CHUNYING, ZHAO HONGZHI, ZHOU BAI, ZHOU LIANCHUN, ZHOU YAN, ZHU CHAO, ZHU JIANAN, ZHU WEITE, ZHUANG ZHENGWEI, and ZOU LIANG, individually and derivatively on behalf of THE NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT FUND, LLC,

Plaintiffs,

v.

NEW YORK CITY REGIONAL CENTER LLC, GEORGE L. OLSEN, and PAUL LEVINSOHN,

Defendants,

-and-

THE NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT FUND, LLC,

Nominal Defendant.

Index No. 652024/2017

COMPLAINT

#7134503 v1 \024119 \0015

Plaintiffs Chen Dongwu, Chen Shuhui, Chen Wen, Chen Xiu Ying, Chen Ziwei, Cheng Guanwen, Cheng Jie, Cheng Ling, Cheng Weiwei, Deng Zhengmei, Du Erqin, Feng Bing, Feng Hao, Gu BeiBei, Guan Xueping, Guan Zhijun, Han Lida, He Chunhua, He Xi, Hou Jin, Hu Jianjun, Hu Xingning, Hu Zhengfu, Hu Zhongyong, Huang Gui Ming, Huang Ying, Ji Tong, Jian Zaihong, Jiang Yuanshen, Kuang Suping, Lei Mingchun, Li Chao Yang, Li Feifei, Li Jinliang, Li Ning, Li Wanshan, Li Wei, Li Wei, Li Xiaolin, Li Yingju, Li Zhi Hui, Lin Sen, Ling Hao, Ling Yahua, Liu Qing Shu, Liu Wei Wei, Liu Xiaojun, Liu Ying, Lu Kui, Lu Rui, Lu Yuanqing, Luo Hangbo, Ma Bing, Ma Jifei, Miao Shu, Ni Qiao, Qi Xiaomei, Qu Xiaoyan, Pan Ce, Pan Cheng, Pan Yue Xia, Ren Jingyan, Ren Tao, Ruan Weiwen, Shen Chaojun, Sheng Dong Lin, Shi Bing, Sun Lianggui, Sun Ping, Tan Daming, Tang Mingshan, Tang Wenwen, Tao Lanlan, Tian Xiaoyun, Wan Jun, Wang Guoliang, Wang Tao, Wang Ting, Wang Yan, Wang Yun, Wang Zhengge, Wang Zhou Ji, Wei Fang, Wei Zhen, Wu Ling, Wu Yong Hua, Xia Yun, Xie Shishi, Xu Yongliang, Xu Zeyuan, Yan Tao, Yan Xiao Xin, Yang Jian Hua, Yang Jie, Yang Yong Ji, Yang Yue, Ye Chun Lei, You Jun, Zhan Bihua, Zhang Fengwen, Zhang Jiwang, Zhang Juan, Zhang Junyi, Zhang Pu, Zhang Yan, Zhang Yihong, Zhang Zhimin, Zhao Chunying, Zhao Hongzhi, Zhou Bai, Zhou Lianchun, Zhou Yan, Zhu Chao, Zhu Jianan, Zhu Weite, Zhuang Zhengwei, and Zou Liang (collectively "Plaintiffs"), individually and derivatively on behalf of the New York City East River Waterfront Development Fund, LLC, by their undersigned attorneys, Morrison Cohen LLP, as and for their Complaint for damages and equitable relief against Defendants New York City Regional Center LLC, George L. Olsen and Paul Levinsohn (collectively, "Defendants"), allege as follows:

NATURE OF THIS ACTION

1. Plaintiffs are unsophisticated Chinese nationals, most of whom neither speak nor read English. They sought out the American dream -- the opportunity for them and

their family to live, go to school and work in the United States. But their dream has been turned into a financial nightmare.

2. Defendants schemed and conspired to fraudulently induce Plaintiffs and other investors (collectively, the "Investors") to each invest $500,000.00 under the EB-5 Immigrant Investor Program. The EB-5 program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under the program, foreigners may receive permanent residency for themselves, their spouse and unmarried children under 21 if they invest in a commercial enterprise in the United States that creates ten (10) permanent full-time jobs for U.S. workers.

3. Investors each purchased a membership unit in a New York limited liability company that was going to use their money to make a $77 million construction loan to fund renovations to the Battery Maritime Building (the "BMB"), an old ferry terminal at the lower tip of Manhattan next to the Staten Island Ferry terminal. Renovation of the BMB was part of the $300 million East River Waterfront Development Project (the "Project").

4. The limited liability company, the New York City East River Waterfront Development Fund, LLC (the "Fund"), was managed by Defendant New York City Regional Center, LLC ("NYCRC"). Defendants Olsen and Levinsohn in turn managed NYCRC. The Plaintiffs and other Investors entrusted Defendants with $77 million by purchasing one-hundred and fifty-four (154) membership units in the Fund.

5. NYCRC, Olsen and Levinsohn misled the Plaintiffs to invest, repeatedly and continually breached their fiduciary duties, failed to act as reasonable and prudent managers, breached the Fund's Operating Agreement, enriched themselves at the Fund's and the Plaintiffs' expense, violated the Limited Liability Company Law and engaged in a lengthy and extraordinary cover-up to prevent the Plaintiffs and other Investors from discovering the truth.

6. As discussed below, the Fund's Offering Brochures and Offering Memorandum were littered with material misrepresentations and omissions, including but not limited with respect to: the funding being provided by the developer, The Dermot Company, Inc. ("The Dermot Company"); the funding being provided by the City of New York, including that it minimized the risk to Investors; the purported security for the loan; and the Fund's remedies in the event of a loan default, among other things.

7. While the Defendants reaped millions in interest, origination fees from the borrower, management fees and other payments, the facts of which are exclusively known to the Defendants, renovation of the BMB turned into a catastrophe. Allegedly, the borrower used the $77 million provided by the Investors while finishing no more than 60% of the work before it stopped paying the loan.

8. As the Managing Member of the Fund, NYCRC had a fiduciary duty to secure, safeguard and protect the Fund's monies and loan and the Plaintiffs' investment; to properly oversee the borrower, the Fund's loan and construction; and to communicate the truth to the Plaintiffs and other Investors, to whom it owed an undivided duty of loyalty. NYCRC breached its fiduciary duties by, among other things:

- accepting a worthless Deficiency Guaranty for the loan from an entity with no assets;
- allowing the Fund to make a $77 million construction loan without obtaining a completion guaranty from a credit worthy entity or individual;
- failing to properly monitor the cost of renovating the BMB, including by failing to determine that the $77 million loan was less than what was necessary to complete construction in accordance with the plans and specifications, before allowing the full loan proceeds to be disbursed;
- failing to require the borrower to make capital contributions in an amount sufficient to cover the cost to complete renovations to the BMB before allowing the full loan proceeds to be disbursed;

- failing to receive final certificates of approval from the borrower, including a certificate of occupancy for the BMB, before allowing the full loan proceeds to be disbursed;

- continuing to allow the loan proceeds to be disbursed when it knew or should have known that the borrower could not complete renovations without additional capital that it did not plan to invest;

- concealing the borrower's default under the loan from the Plaintiffs;

- concealing the borrower's cessation of construction from the Plaintiffs;

- failing to enforce the Fund's rights under the loan agreement with the borrower;

- concealing from the Plaintiffs offers NYCRC had received from developers to complete renovations to the BMB and to purchase the Fund's collateral for the loan;

- failing to take reasonable and necessary steps to sell the Fund's collateral and secure the greatest return for the Fund and Investors;

- delaying the commencement of legal proceedings against the borrower so that, among other things, it did not adversely impact NYCRC's efforts to market new EB-5 projects in China, and so that if Plaintiffs later discovered the truth and commenced suit, NYCRC could argue that it was untimely;

- refusing to provide Plaintiffs with information concerning the affairs of the Fund or to account for the Fund's assets; and

- sending false and misleading communications to Plaintiffs that avoided its responsibilities and concealed Defendants' fraud, breaches of fiduciary duties and other wrongdoing.

9. Most recently, in placing Defendants' personal interests ahead of the interests of the Plaintiffs, the Fund and other Investors, NYCRC again breached its fiduciary duties by refusing to pursue offers from multiple developers who were offering to complete renovations to the BMB and purchase the Fund's loan collateral -- ***unless*** the Plaintiffs agreed to sign general releases giving up their claims against the Defendants. In other words, Defendants have threatened that NYCRC will continue to violate its fiduciary duties unless the Plaintiffs agree to release all of their claims against them. This extortionist threat typifies the underhanded

way in which the Defendants, who did not invest any of their own money, have sought to take advantage of the Investors throughout.

10. To begin with, Defendants authored, prepared, reviewed and/or approved three (3) written brochures entitled "New York City East River Waterfront Project" that were distributed to prospective investors, including the Plaintiffs, to solicit their purchase of membership units in the Fund (the "Offering Brochures"). The Offering Brochures were littered with material misrepresentations, including:

- that The Dermot Company was "funding $17 million;"
- that NYCRC's "program places the EB-5 investor 1st ahead of all other project capital with a 1st priority position and is 1st to be repaid principal, (MINIMIZING RISK)";
- that the project had been "structured to minimize risk for the EB-5 investor";
- that all NYCRC projects minimize risks by having significant amounts of government investment capital in the project; and
- that NYCRC's "philosophy" concerning EB-5 investments was to not take unnecessary risks.

11. NYCRC's Confidential Private Offering Memorandum (the "Offering Memorandum") soliciting investments also contained numerous material misrepresentations and omissions. First, notwithstanding the fact that several shell companies that were purportedly "affiliates" of The Dermot Company had been created to borrow the Investors' money and enter into a lease with the New York City Economic Development Corporation ("EDC") for the BMB, the Offering Brochures and Offering Memorandum focused extensively on the financial wherewithal of The Dermot Company. In fact, the three (3) page Section in the Offering Memorandum on "**The Borrower**" was devoted to discussing The Dermot Company, instead of the Dermot "affiliate" which entered into the loan agreement with the Fund.

12. For example, in a page entitled "INVESTOR SECURITY" in an Offering

Brochure, Defendants emphasized -- as they did in the Offering Memorandum too -- that "Dermot" "[o]wns over 2 billion in assets," over "5,800 residential rental units and retail properties in New York City, Arizona and Kansas" and has "[l]ong standing relationships with some of the top banks and institutional lenders in the United States."

13. The repeated references to "Dermot" coupled with the emphasis on the financial wherewithal of The Dermot Company was done for the purpose of misleading Plaintiffs to believe that the borrower and The Dermot Company were synonymous, and that the Investors' money was secure because a major developer with billions in assets stood behind the loan and renovation of the BMB.

14. To reaffirm this, the Offering Memorandum represented that "the Borrower would receive contributions from its owners or funds from other sources to enable the Borrower to make interest payments on the Loan." This was false and misleading because, in fact, the Defendants had not obtained a binding commitment from The Dermot Company or from any other source to make or fund the loan payments to the Fund, even if the borrower failed to make them.

15. Second, the Offering Memorandum represented that The Dermot Company would invest $17 million side-by-side with the Investors. This representation was false and misleading because, upon information and belief, The Dermot Company did not fund $17 million in capital.

16. Third, although the Offering Brochures represented that the City of New York's funding of the Project minimized Plaintiffs' risk, both the Offering Brochures and Offering Memorandum failed to disclose that the City of New York's $145 million in additional funding would not be available to help fund renovations to the BMB even if needed. Accordingly, it did nothing to minimize the risk to Investors.

17. Indeed, with a multi-billion developer and the City of New York providing, according to the Offering Brochures and Offering Memorandum, a combined $231 million in funding to the Project, including an additional $162 million side-by-side with the Investors going forward, no reasonable investor could have possibly believed that he or she needed to worry about the possibility that renovations to the BMB would not be completed because of an absence of funding.

18. However, the Offering Brochures and Offering Memorandum failed to disclose that if the Investors' $77 million was not sufficient to complete renovations to the BMB, neither The Dermot Company nor the City of New York would provide the necessary funding -- which is exactly what happened.

19. Fourth, the Offering Memorandum misrepresented that if there was a default in the loan, the Fund had remedies because the loan would be secured by both present and future assets of the borrower, "including without limitation," the borrower's leasehold interests. However, the borrower had no "present" assets, including the leasehold mortgages that had not yet been entered into. Moreover, the so-called "future" assets were entirely dependent on renovations to the BMB being completed.

20. As the Managing Member of the Fund, NYCRC owed fiduciary duties of good faith, care and undivided loyalty to the Investors, who were the Fund's Members, and to the Fund itself. NYCRC has continued to breach those fiduciary duties right up to the present.

21. For example, although the loan agreement between the Fund and the borrower contained provisions that were designed to protect the Fund by ensuring that the loan would not be disbursed unless the borrower could continually demonstrate that it had sufficient funding to complete renovations to the BMB, NYCRC failed to enforce these provisions.

22. Unbeknownst to the Plaintiffs, NYCRC continued to approve loan

disbursements even after it knew, or should have known, that the borrower did not have sufficient funds to complete renovations to the BMB. Upon information and belief, NYCRC approved the disbursement of tens of millions in loan proceeds after it should have stopped doing so and instead required the borrower to make cash contributions in an amount that was sufficient to pay the remaining full costs of construction.

23. The foregoing was all concealed from the Plaintiffs, as was the borrower's default in July 2015. Not only did Defendants conceal the truth, they affirmatively misrepresented that everything was proceeding smoothly in numerous newsletters, e-mails, press releases and other documents they sent to the Plaintiffs and other Investors.

24. In October 2016, Defendants finally informed Investors that the borrower had defaulted over a year earlier and that renovations to the BMB had ceased. Upon information and belief, Defendants concealed the truth prior to October 2016 because, among other things, they were raising capital in China for new EB-5 projects and did not want the news of their failures, or a lawsuit by the Fund's Investors, to stymie those efforts.

25. Even when they finally disclosed the borrower's default in October 2016, Defendants concealed their fraud and NYCRC's breaches of fiduciary duties, including the offers it had turned down from other developers to finish renovations to the BMB and purchase the Fund's loan collateral.

26. By letters from their counsel dated December 9, 2016 and January 19, 2017, Plaintiffs requested that Defendants provide them with information concerning the affairs of the Fund in accordance with their common law and statutory rights. Plaintiffs also sought information concerning whether The Dermot Company had invested the $17 million in capital as represented, whether efforts were being made to negotiate a sale of the loan's collateral, and how the Defendants planned to recover the Investors' money.

27. To prevent Plaintiffs from learning the truth, Defendants have failed and refused to provide the accounting and other information requested in violation of NYCRC's fiduciary duties and Section 1102 of the New York Limited Liability Company Law.

28. In short, Defendants misled the Plaintiffs to solicit their investment; breached their fiduciary duties in making and disbursing the loan and overseeing the borrower and construction; concealed and covered-up their fraud, breaches of fiduciary duties, negligence and other wrongdoing to avoid disrupting their raising of new capital in China and to delay the filing of lawsuits; refused to pursue in good faith offers they received from developers that would avoid the loss of the Plaintiffs' entire investment; and refused to answer Plaintiffs' legitimate requests for the truth.

THE PARTIES

29. Plaintiffs are Chinese foreign nationals who each invested $500,000.00 by purchasing membership units in the Fund.

30. Defendant NYCRC is a New York limited liability company and the Managing Member of the Fund with its principal place of business located at 99 Hudson Street, New York, New York 10013. NYCRC is responsible for managing the Fund's business.

31. Defendant George L. Olsen serves as a Manager of NYCRC. He is an attorney with experience in real estate. According to NYCRC's website, he resides in New York.

32. Defendant Paul Levinsohn also serves as a Manager of NYCRC. He, too, is an attorney with experience in real estate transactions. According to NYCRC's website, he resides in New York.

33. Nominal Defendant the Fund is a New York limited liability company with the objective to make investments permitted under the EB-5 Immigrant Investor Program established pursuant to 8 U.S.C. § 1153(b)(5).

34. Non-party The Dermot Company is a real estate and management company based in New York. It purports to be a fully-integrated real estate enterprise with over 15 years of experience, approximately $2 billion in assets under management, 2.5 million square feet of development projects, and 5,800 residential rental units and retail properties.

35. Non-party 10 South Street Associates, LLC ("10 South Street" or the "Borrower"), a purported affiliate of The Dermot Company, is the entity that entered into the loan agreement to borrow $77 million from the Fund. Upon information and belief, 10 South Street's members are Dermot South Street, LLC and Hanover BMB, LLC. Upon information and belief, 10 South Street had no assets at the time it borrowed the Investors' money and it has no assets today -- except for the two (2) leasehold mortgages discussed below.

36. Upon information and belief, non-party 10 SSA Landlord, LLC ("SSA Landlord"), is a purported affiliate of The Dermot Company. SSA Landlord entered into a lease with the City of New York's EDC for the BMB and two (2) Leasehold Mortgages, Security Agreement and Fixture Filings with the Fund dated July 1, 2012.

37. Non-party Dermot South Street, LLC ("Dermot South Street") is the guarantor under the Deficiency Guaranty discussed below and the Managing Member of 10 South Street. Dermot South Street's sole member is an entity named "DCC 3, LLC." Upon information and belief, Dermot South Street had no assets at the time it entered into the Deficiency Guaranty and it has no assets today.

JURISDICTION AND VENUE

38. This Court has personal jurisdiction over Defendants pursuant to CPLR § 301 because they do business in New York, committed tortious acts in New York and breached their fiduciary duties in New York, among other things. Venue is proper in New York County pursuant to CPLR §503(a).

FACTUAL ALLEGATIONS

A. The EB-5 Visa Program

39. The Immigrant Investor Program, more commonly known as the EB-5 program, was created by the Immigration Act of 1990 to stimulate the U.S. economy by giving immigrant investors the opportunity to permanently live and work in the United States after they have invested in a so-called "new commercial enterprise" ("NCE").

40. Through the EB-5 Program, a person and their immediate family can obtain permanent residency in the United States by investing $500,000.00 into a USCIS-approved project located in a Targeted Employment Area which creates a minimum of 10 jobs for United States workers. The majority of foreign investors participate in the EB-5 program by investing in commercial enterprises managed by designated "regional centers." Regional centers are entities approved by USCIS to secure foreign investment under the program and to use such investment to promote job creation within a defined geographic area.

41. The EB-5 Visa program thus serves the dual interests of spurring job creation in the United States and simultaneously affording eligible immigrants the opportunity to work, go to school and become lawful permanent residents of the United States.

B. EB-5 Practice and Procedure

42. Under the EB-5 program, the immigrant investor first applies for an immigrant visa by submitting a Form I-526, Immigrant Petition for Alien Entrepreneur. USCIS' approval of the Form I-526 is conditioned upon the immigrant's investment of the requisite amount of money in an NCE that satisfies the applicable legal requirements. Upon approval of the Form I- 526 petition, the immigrant investor and derivative family members will be granted conditional permanent residence for a two-year period. To remove the conditional resident status, the immigrant investor must file a Form I-829, Petition by Entrepreneur to Remove Conditions,

ninety days before the two-year anniversary of the granting of the EB-5 investor's conditional resident status. USCIS' approval of the Form I-829 is conditioned upon proof that the immigrant investor's investment has created at least ten full-time jobs for U.S. workers.

C. NYCRC

43. NYCRC was approved as a regional center on or about October 30, 2008. Upon information and belief, NYCRC has been operated and controlled at all relevant times by Defendants Olsen and Levinsohn, who made all decisions on behalf of NYCRC and directed its activities.

D. The East River Waterfront Development Project

44. The $300 million East River Waterfront Development Project was intended to transform a stretch of long neglected waterfront in Lower Manhattan into new public space. The Project consisted of multiple aspects, including construction of a new waterfront esplanade, pavilion buildings, sidewalks and roadways, rehabilitation of piers and slips, redevelopment of the BMB, as well as the construction of new passenger walkways, ticket windows and driveways to allow for impaired and expanded ferry service from the BMB and adjacent piers.

45. To date, the Project has created in excess of 1,584 new jobs.

46. In July 2007, The Dermot Company was named by the New York City EDC as the developer to renovate the BMB. The BMB was completed in 1909, when ferries were still a vital means of transportation in New York City. The BMB closed in 1938 and was subsequently used primarily for storage and office space. In 1967, the City designated the building as a landmark, and it was listed on the National Register of Historic Places in 1976. As part of the Project, the BMB was slated for a makeover, including construction of a "great hall" for civic and arts activities, a boutique hotel with approximately 67 rooms, and a rooftop

restaurant.

E. The Lease Agreement

47. Upon information and belief, the City of New York EDC agreed to lease the BMB to SSA Landlord and the Poulakakos family for a term of 99 years.

48. The property is not subject to a conventional mortgage, but rather a leasehold mortgage. This difference is important to understanding the rights of the Fund and Investors, and the limitations of those rights.

49. In a conventional mortgage, a developer owns a property (even subject to a senior mortgage), and can borrow funds from a lender to develop or redevelop that property by using the property itself as security. If the developer/borrower defaults on the loan, the lender can foreclose, stepping into the shoes of the developer/borrower. The property may still be subject to a mortgage, but whatever value is in the property accretes to the lender. The lender can sell the property, use the proceeds to pay off the senior mortgage and then pocket the remainder.

50. In this case, however, the City of New York has not mortgaged the property, but leased it for a 99-year term. The BMB remains City property, and not the property of the borrower. This dynamic is significant when considering the remedies available to any lender. If the borrower defaults under a mortgage, the lender typically can foreclose on the collateral. But in this case, the collateral is a 99-year lease. Foreclosure would only allow the lender to step into the shoes of the leaseholder. To blur this distinction, in an Offering Brochure, Defendants represented that a lease in excess of 49 years is "effective ownership" of the property.

F. The Offering Brochures and Offering Memorandum

51. The Fund's investment program was managed by NYCRC, who was responsible for making all decisions in relation to the acquisition, financing, structuring, monitoring and disposition of investments and for providing services to the Fund.

52. The subscription amount for each membership unit was $540,500.00, for which the capital contribution to the Fund by each member was $500,000.00.

53. With regard to the sale of membership units in the Fund, NYCRC produced and used standard Offering Brochures and the Offering Memorandum.

54. The Offering Brochures and the Offering Memorandum were distributed to the Plaintiffs, directly or indirectly, in China.

55. The Offering Brochures and the Offering Memorandum contained numerous material misrepresentations and omissions, including the following:

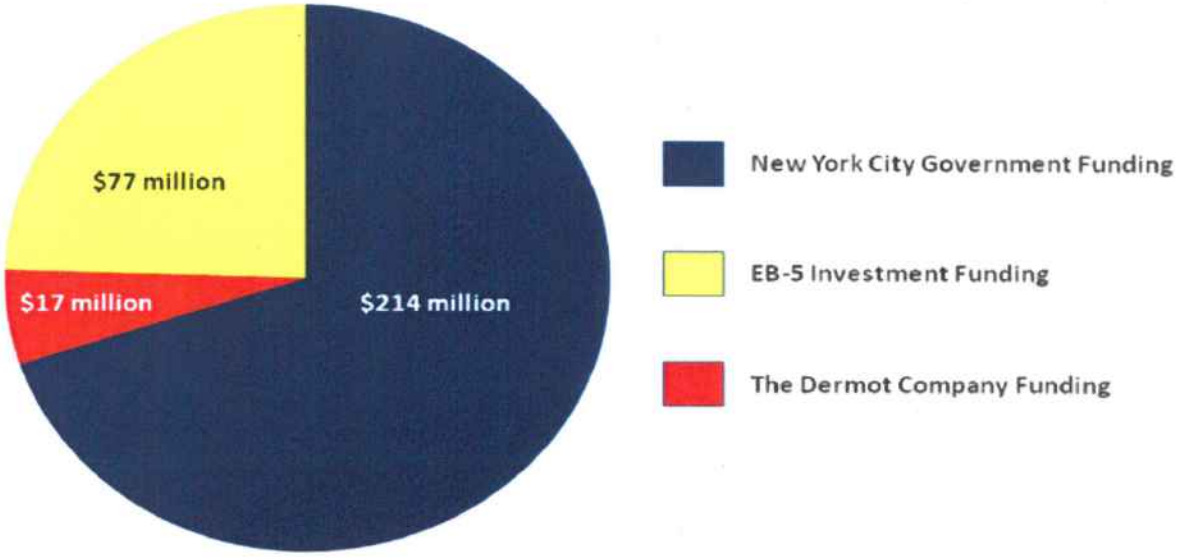
(i) Misrepresentation Of Role And Funding Of The Dermot Company

56. The Offering Memorandum contained a section labeled in bold print: **"The Borrower."** In that section, there are three (3) pages extensively discussing The Dermot Company, its expertise, government-work experience, the many banks and institutional lenders it has worked with, its many projects around New York City, its management and that it "has approximately $2 billion in assets under management." By contrast, there is a single sentence about 10 South Street, which simply states that it is an affiliate of The Dermot Company.

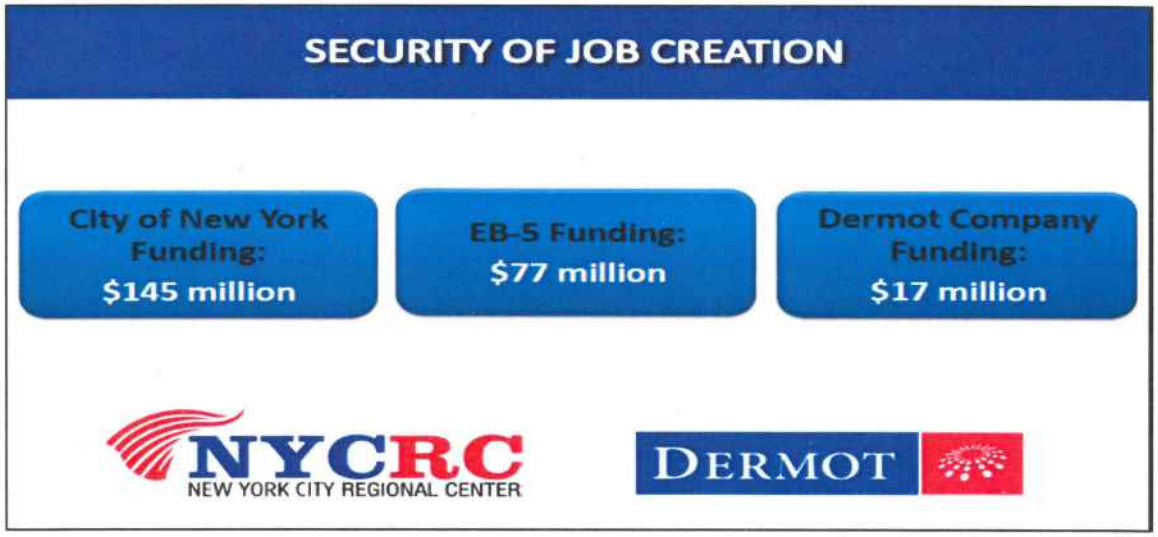
57. By devoting three (3) pages to describing The Dermot Company's financial wherewithal and experience with lenders, especially in the section of the Offering Memorandum describing **"The Borrower,"** the "Dermot" name was used to create the misimpression that The Dermot Company was synonymous with the Borrower and that a multi-billion dollar developer would be responsible for the Borrower's modest obligations under the loan and for completing renovations to the BMB.

58. Consistent with the foregoing, the Offering Brochures and Offering Memorandum represented that The Dermot Company was contributing $17 million in funding to the Project. To illustrate this representation and further mislead Investors to believe that the

Borrower and The Dermot Company were synonymous, the Offering Brochures and Offering Memorandum used the following colorful pie chart:



59. The representation that The Dermot Company was funding $17 million in capital was also iterated in the following graphic illustration in an Offering Brochure:



60. The representation that The Dermot Company was funding $17 million in capital was false and misleading because, upon information and belief, Defendants had failed to obtain The Dermot Company's agreement to do so. Although the facts have been concealed by the Defendants, who have refused to answer the Plaintiffs' legitimate requests for information, on

information and belief The Dermot Company did not contribute $17 million in capital.

61. To further mislead Plaintiffs to believe that The Dermot Company would be responsible for the Borrower's obligations, the Offering Memorandum represented "that the Borrower would receive contributions from its owners or funds from other sources to enable the Borrower to make interest payments on the Loan." This representation was false and misleading because neither the owners nor any other source, including The Dermot Company, had agreed to make or fund the Borrower's payments notwithstanding NYCRC's representation to the contrary.

62. Defendants failed to disclose in the Offering Memorandum or Offering Brochures that the Fund planned to loan $77 million to an asset-less entity, and that it planned to do so without any obligation on The Dermot Company's part to make the Loan payments, if necessary.

63. The foregoing representations and omissions, taken together and in context, were intended to create the misimpression and mislead the Plaintiffs to believe that:

(a) The Dermot Company was synonymous with the Borrower and would stand behind the loan and completing renovations to the BMB;

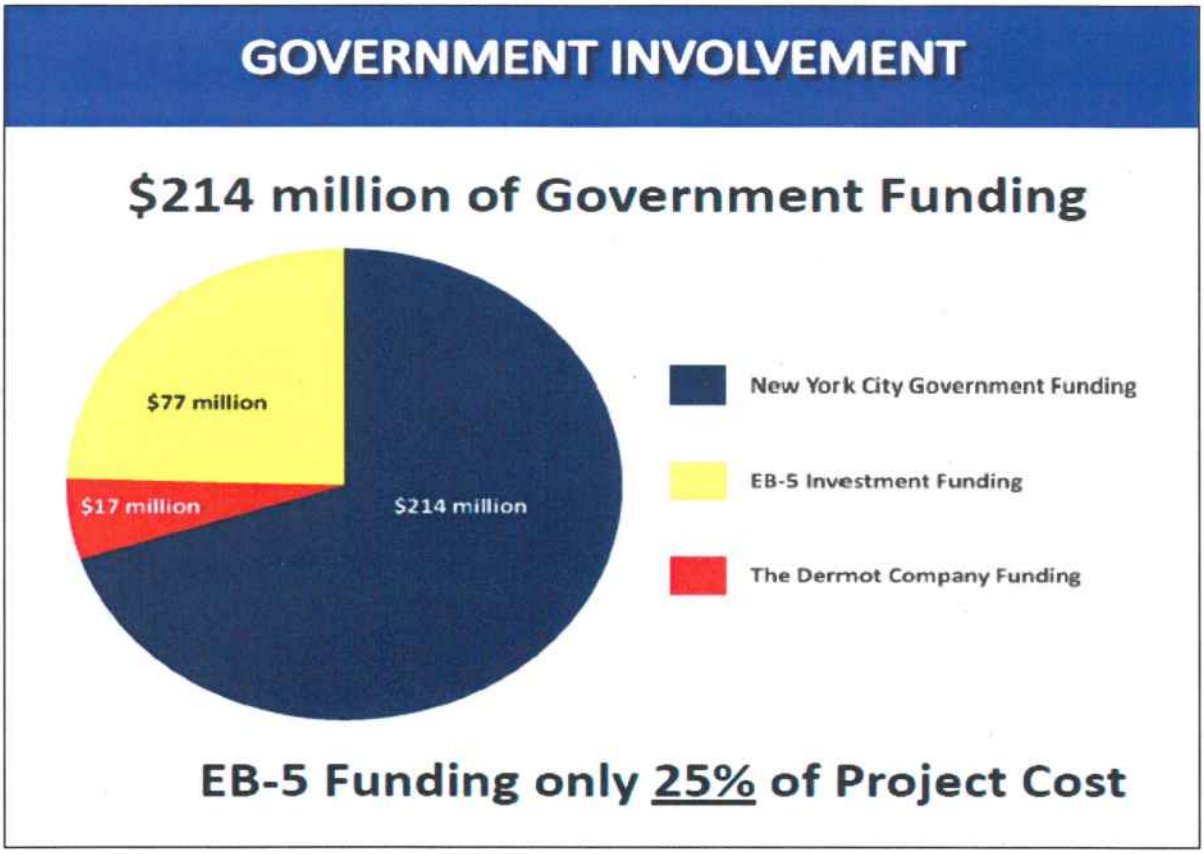
(b) The Dermot Company was committing $17 million in capital side-by-side with the Investors; and

(c) there was little or no risk because if 10 South Street could not or did not make the modest loan payments, The Dermot Company would do so.

(ii) Misrepresentation Of the City Of New York's Funding

64. An Offering Brochure emphasized in capital letters that NYCRC was, quote: **"MINIMIZING [THE] RISK"** to Investors by using **"significant amounts of government investment capital in the Project."** (Emphasis added.)

65. To highlight this, an Offering Brochure represented in a pie chart that the Investors were "Funding only 25% of Project Cost:



66. In the Section of the Offering Memorandum labeled **"Redevelopment of the Battery Maritime Building,"** Defendants represented that the Fund's loan would be used to "help fund this redevelopment."

67. Defendants' representations were intended to create the misimpression and mislead the Plaintiffs to believe that (i) the City of New York's additional funding was going to be used, side-by-side with the Investors' $77 million, to pay for renovations to the BMB, and (ii) there was little or no risk to the Investors because the City of New York was contributing the great majority of the funding to complete renovations to the BMB.

68. However, the Fund's loan was not going to be used to "help fund" renovations to the BMB. In actuality, the Fund's loan comprised all or most of the funding that would be available for completing renovations to the BMB, none of which would be funded by the City of New York.

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69. The City of New York had already spent approximately $69 million on the Project. Although it was planning to spend an additional $145 million, the Offering Memorandum failed to disclose that (i) the City of New York intended to spend the additional $145 million on the East River Esplanade and waterfront work to improve public access to the East River, as well as to perform infrastructure work and pier and seawall rehabilitation, and (ii) that none of this $145 million would be available, if needed, for completing renovations to the BMB.

70. Taken together, the pie chart, coupled with the representation that the Fund's $77 million would "help fund" renovations to the BMB, the representation that the City of New York's funding would "minimize the risk" to Plaintiffs, and the representation discussed below that the Investors' capital would be the "1st to be repaid," created the misimpression and mislead Plaintiffs to believe that the City of New York's funding was being used by the developer/Borrower to help pay for completing renovations to the BMB.

71. In truth and in fact, however, The City of New York's funding did nothing to minimize the risk that the Borrower could default, that renovations to the BMB would not be fully funded, that renovations would not be completed if the costs exceeded $77 million and that if the foregoing occurred, the Loan would not be repaid.

72. To ensure that the Plaintiffs were left with this misimpression, NYCRC concealed that (i) the Investors were funding all or most of the capital needed to finish renovating the BMB, (ii) the additional funding by the City of New York was committed to pay for other aspects of the Project and not for completing renovations to the BMB, and (iii) that if the Investors' $77 million was insufficient to cover the cost of completing renovations to the BMB, the City of New York's additional funding would not be available to help pay for it -- which is exactly what happened.

(iii) The Misleading Security Representations

73. In a page in an Offering Brochure entitled "NYCRC EB-5 INVESTMENT STRUCTURE", 'SECURED' VS. 'UNSECURED' EB-5 INVESTMENT STRUCTURE", Defendants made the following representations in bullet points:

- All NYCRC projects provide the investor with a 1st mortgage security (MINIMIZING RISK)
- NYCRC program places the EB-5 investor 1st ahead of all other project capital with a 1st priority position and is 1st to be repaid principal (MINIMIZING RISK)

74. The representation that the "NYCRC program" placed the Plaintiffs' capital "ahead of all other project capital" was false and misleading because with respect to completing renovations to the BMB, there was no "other capital." The Investors' capital/funding was "1st to be repaid" only because, upon information and belief, it was the only capital/funding that was being provided to fund the remaining renovations to the BMB.

75. By representing that the Investors' capital was "ahead of all other project capital" and would be "the 1st to be repaid," Defendants added to the misimpression that the City of New York's "funding," like the Investors' "funding," was being loaned or provided to the developer to pay, among other things, for completing renovations to the BMB.

76. The Offering Memorandum represented that the Fund's Loan would be secured by "certain present and future assets of the Borrower, including, without limitation, the Borrower's leasehold interests." This mimicked the Offering Brochure's representation that the $77 million loan was an "Asset-Backed Loan." These representations were false and misleading because, upon information and belief, the Borrower had no present assets, including the leasehold mortgages which had not yet been entered into.

77. Further, the "including without limitation" phrase created the misimpression that additional security was being given to the Fund besides the leasehold

mortgages. However, there was none. Even the so-called "future assets," such as an assignment of rents and accounts derived from the newly built hotel, restaurant and hall, were not assets at all. They were entirely contingent on renovations to the BMB being completed.

78. While the Offering Memorandum noted that there was a risk of failure or default by the Borrower, it also assured Plaintiffs that "If there is such a failure or default by the Borrower, the Fund will have contractual remedies pursuant to the Loan Agreement and the Security Documents." These representations, too, were materially misleading because they failed to disclose the main risk that could and did actually transpire: i.e., that if the Borrower stopped making the Loan payments and failed to complete renovations to the BMB, the Fund's only remedy would be to foreclose on leasehold mortgages in an unfinished building. However, the Offering Brochures and Offering Memorandum failed to disclose that if that occurred, the leasehold mortgages would not be worth the $77 million Loan amount and there would be no future assets of any value.

79. The Offering Memorandum's focus on the Fund's "contractual remedies" was a smokescreen designed to mislead Plaintiffs and other Investors to believe that if the Borrower defaulted, the Investors had remedies that would result in recovery of the Loan. However, far from "MINIMIZING RISK," NYCRC had structured the Loan so as to maximize the Investors' risk.

80. Incredibly, the Offering Brochures represented that NYCRC's philosophy concerning EB-5 investments was to not take unnecessary risks, and the Offering Memorandum similarly represented that "the Manager's general investment guidelines focus on ... [s]tructuring Investments with a view to downside protection." These representations were false and misleading because with respect to the Fund's $77 million Loan, there was little or no downside protection because NYCRC had taken unnecessary risks.

(iv) ***The Absence Of Customary Provisions For A Construction Loan***

81. The Offering Memorandum failed to disclose that construction loans, like the Loan that would be made by the Fund, customarily include guaranties to protect the lender, especially where the loan is being made to an asset-less entity.

82. The Offering Memorandum failed to disclose that in making the Loan, the Fund did not intend to receive these customary guaranties, including a payment guaranty and a completion guaranty from credit-worthy entities or individuals.

83. The Offering Memorandum also failed to disclose that in the absence of these guaranties, there was no way to ensure that renovation of the BMB would be completed and that the Loan would be repaid if the Borrower experienced problems.

84. Even when the Defendants disclosed in a single sentence buried deep in the Offering Memorandum, unlike in the Offering Brochures where nothing was said, that the Borrower was a "special purpose entity," they misrepresented that it had "present" assets when in fact it had no assets at the time.

G. The Operating Agreement

85. Section 7.1 and 7.2 of the Company's Operating Agreement set forth the powers and responsibilities of NYCRC, who was "responsible for the management of the Company's business."

86. Under Section 7.2 of the Operating Agreement, NYCRC was assigned the responsibility to, inter alia, "recommend Investments to the Members and make all decisions concerning the investigation, solicitation, origination, selection, development, negotiation, acquisition, management, structuring, commitment to or monitoring and disposition of Investments, including in connection with compliance with the job creation requirements of the Program," and "acquire, hold, sell exchange, pledge and dispose of Investments, and exercise all

rights, powers, privileges and other incidents of ownership or possession with respect to Investments."

87. NYCRC represented in the Offering Memorandum that it would be responsible for "managing all of the investments to be made by the Company." In other words, NYCRC was responsible, among other things, for performing the due diligence with respect to the Borrower and the Project; negotiating and contracting with, monitoring and overseeing the Borrower and the Borrower's renovations to the BMB; for enforcing and safeguarding the Fund's rights under the loan agreement with the Borrower; for ensuring that the Loan was adequately secured, properly disbursed and repaid; and for taking the necessary steps to protect the Fund and Investors in the event of the Borrower's default.

88. As a result of the special relationship of trust between them as Members of the Fund, in carrying out its responsibilities as the Managing Member, NYCRC owed fiduciary duties of care and undivided loyalty to the Fund and Investors, and a statutory duty to act in good faith and in a reasonably prudent manner.

H. The Loan Agreement

89. Notwithstanding that the Plaintiffs' and other Investors' entire $77 million investment was going to be used to make a construction loan, the Offering Memorandum contained a cursory description of the loan agreement (the "Loan Agreement"). The Offering Memorandum devoted significantly more space to describing The Dermot Company's financial wherewithal than it did to describing the terms of the Loan Agreement.

90. A copy of the Loan Agreement was not provided to the Plaintiffs and other Investors, who were located in China, and who were instead told that it was only "available for inspection" and then "only upon prior written request."

91. By letter dated January 17, 2017 from their counsel, Plaintiffs requested

that Defendants provide them with a full set of the loan documents. Defendants have never responded to the January 17, 2017 letter, let alone provided the loan documents to the Plaintiffs.

92. According to the Offering Memorandum, the Fund agreed to loan the Borrower an amount not to exceed $77 million and the Borrower promised to repay the loan with interest at a rate of 4.75% per annum. The effective date of the Loan Agreement is unknown to the Plaintiffs.

93. Upon information and belief, under the Loan Agreement the Fund advanced the loan proceeds from time to time during what was characterized as the "Availability Period", which was defined as the first twelve (12) months after the Effective Date of the Loan Agreement. Under Section 4.02 (a)(viii) of the Loan Agreement, the Fund was to receive a two-percent (2%) origination fee for each advance.

94. By structuring the Loan in this manner, Defendants were able to advance the entire $77 million to the Borrower within a short period of time, instead of as construction progresses, which is typical for a construction loan.

95. According to a letter dated June 11, 2014 from NYCRC to the USCIS, the Borrower received the first loan disbursement on June 29, 2012.

96. Upon information and belief, the entire $77 million was advanced by the end of 2012. This was done so that NYCRC would receive over $1.5 million in origination fees, none of which were shared with the Investors.

97. Under the Loan Agreement, upon information and belief, the advances were wired into a Depository Account, from which the Borrower would make requests for disbursements as construction progressed. Importantly, the Borrower could not disburse the loan proceeds to itself from the Depository Account without the Fund's permission, and the Loan Agreement contained provisions that were intended to protect the Fund before disbursements

were made.

98. For example, under Paragraph 4.03(e) of the Loan Agreement, the Fund was not required to permit any further Loan disbursements if in its reasonable opinion or in the opinion of its construction consultant, the $77 million loan was less than the actual sum necessary to complete construction in accordance with the set of plans and specifications approved by the Fund and to pay all construction costs. In that event, the Borrower was required to fund the so-called deficiency within ninety (90) days.

99. Upon information and belief, under Paragraph 4.03(d) of the Loan Agreement, if the Fund determined at any time that the total cost to complete the balance of construction exceeded the undisbursed Loan proceeds, it could require the Borrower to make cash contributions to cover the estimated excess costs of construction.

100. The foregoing provisions in the Loan Agreement authorized and permitted the Fund to stop disbursing the Loan unless the Borrower could demonstrate that it had sufficient funds to pay the estimated full costs of construction -- including after Hurricane Sandy.

101. To purportedly secure the Loan, the Fund entered into two leasehold mortgages. First, a Leasehold Mortgage, Security Agreement and Fixture Filing, as of July 1, 2012, with SSA Landlord as mortgagor to secure a maximum principal amount of $10 million. Second, a Leasehold Mortgage, Security Agreement and Fixture Filing, as of July 1, 2012, with SSA Landlord as mortgagor to secure a maximum principal amount of $67 million.

102. To supposedly further secure the Loan, the Fund received a Deficiency Guaranty, also made as of July 1, 2012, from Dermot South Street as guarantor. In the Deficiency Guaranty, the Guarantor "unconditionally and absolutely guarantees the due and punctual payment of the principal required to be paid pursuant to the Loan Documents, the interest thereon and any other moneys due or which may become due thereon," to the extent advanced by the

Fund. The Deficiency Guaranty covered the "deficiency which still exists between the unpaid Guaranty Amount and the amount obtained by Mortgagee following Mortgagee's suing on the Promissory Note and/or foreclosing the Mortgage."

103. According to the Deficiency Guaranty, it was a critical predicate for the Fund's loan. In fact, the Deficiency Guaranty recites that the Fund was not "willing to make the Loan unless the Guarantor guarantees the payment of principal and interest and any other charges provided for in the Loan Documents (to the extent same cannot be recovered from the collateral as described in the Loan Documents)."

104. The Deficiency Guaranty was thus supposedly intended to ensure that if the Borrower defaulted on the loan and foreclosure of the leasehold mortgages did not result in recovery of the full loan amount, the Fund would nonetheless be able to recover the Loan amount in full. However, because the guarantor was an asset-less entity, the Deficiency Guaranty was actually worthless. NYCRC failed to disclose this to the Investors.

105. Unbeknownst to Investors at the time, the Loan Agreement was apparently amended at least once. According to the explanation contained in a note to the Fund's financial statements, the amendment took place in July 2012, and enabled the Borrower to "re-borrow" any interest payments made to the Fund after March 16, 2013, up to $5.5 million.

106. Upon information and belief, under the guise of amending the Loan Agreement, Defendants actually provided The Dermot Company and/or SSA Landlord with $5.5 million to satisfy, in whole or in part, the equity requirement under SSA Landlord's July 1, 2012 lease with the City of New York EDC.

107. Accordingly, for all intents and purposes, NYCRC had the Fund loan $5.5 million to SSA Landlord without disclosing this in advance to the Investors, without entering into a loan agreement or promissory note and without receiving any security.

108. Upon information and belief, NYCRC agreed to have the Fund loan SSA Landlord up to $5.5 million to satisfy the equity requirement under its lease with the New York City EDC in order to conceal from Investors that The Dermot Company would not provide SSA Landlord with the monies necessary to do so.

109. Upon information and belief, the $5.5 million that was used by SSA Landlord to satisfy the equity requirement under its lease was deposited into a "deferred funds account."

110. Plaintiffs are without knowledge concerning what happened to the $5.5 million and the Defendants have refused to disclose any information or account for these monies.

I. The Investors Make Their Investments, And NYCRC Handsomely Profits

111. The Investors purchased a total of 154 membership units in the Fund. The Fund thereafter allegedly loaned the Borrower up to the total amount of $77 million.

112. To the best of Plaintiffs' knowledge, NYCRC, Levinsohn and Olsen did not invest a single penny of their own money in the Fund or in the Project and shared none of the risks. Nonetheless, they reaped enormous financial rewards.

113. Interest was paid to the Fund at a rate of 4.75% or over $3.6 million per year.

114. NYCRC paid itself a yearly management fee of at least 2% of the $77,000,000 – or over $1.5 million each year.

115. NYCRC also received a 2% origination fee for each Loan advance, in the aggregate amount of at least $1.5 million. Plaintiffs are without knowledge as to what origination fees or other consideration NYCRC received for allowing The Dermot Company and/or SSA Landlord to "re-borrow" up to $5.5 million.

J. Construction Begins And Then Ends

116. Upon information and belief, renovations to the BMB began in the first quarter of 2012 and ceased in 2015 or early 2016. According to the June 11, 2014 letter from NYCRC to the USCIS, $54,132,486 of the $77 million Loan had been spent by "The Dermot Company," sixty-percent (60%) of the construction work on the BMB had been completed and the remaining renovations to the BMB would be completed by April 2015.

117. NYCRC has not disclosed what took place subsequent to June 11, 2014, that resulted in the remaining renovations not being completed, but the remaining $23 million was allegedly disbursed and spent.

118. According to newsletters NYCRC sent to the Plaintiffs and other Investors between 2013 and May 2016, renovations to the BMB were proceeding smoothly throughout this entire time period.

119. Upon information and belief, the Borrower failed to remit quarterly interest payments to the Fund beginning as early as July 1, 2015. SSA Landlord also failed to remit rent to the New York City EDC; failed to remit payment in lieu of tax to the New York City Department of Finance; and failed to pay insurance premiums, security for the premises, utilities, fire safety expense and for an exterminator.

K. The Potential Sale Of The Loan Collateral

120. Upon information and belief, at a time in 2015 or 2016 presently unknown to the Plaintiffs, from whom the facts have been concealed, NYCRC received offers from several developers who were interested in completing renovations to the BMB and purchasing the Fund's leasehold mortgages.

121. Upon information and belief, The Witkoff Group ("Witkoff") was one such developer. Witkoff is a privately held, global real estate development and investment firm

founded in 1997 and headquartered in New York City. Witkoff currently owns a large diverse portfolio and has a number of high-profile projects under development.

122. According to the New York City EDC, NYCRC and Witkoff reached agreement some time in 2016 in a letter of intent under which Witkoff would have contributed millions in new capital and purchased the Fund's leasehold mortgages, and the City of New York would have made concessions, including: (i) adjustments to the base rent schedule to provide Witkoff with a satisfactory cash flow stream; (ii) a deferral of projected, guaranteed amounts due under the lease, with repayment instead conditioned upon performance hurdles; and (iii) an adjustment to landlord percentage rent participation to revenue greater than $35 million, which is almost double the original threshold of $18 million.

123. According to the New York City EDC, NYCRC backed out of the Witkoff deal, reneging on a letter of intent and refusing to even attempt to negotiate a higher price with Witkoff. As a result of NYCRC's actions, the New York City EDC is attempting to terminate its lease with SSA Landlord.

124. Without an agreement to bring in a new developer to complete renovations to the BMB, the Fund's leasehold mortgages are likely to have little value.

L. NYCRC Conceals Its Wrongdoing And Lies To Investors

125. In accordance with Section 12.4 of the Fund's Operating Agreement, NYCRC shall prepare and deliver to each Investor a report reviewing the Fund's activities on at least a semi-annual basis. In accordance with Section 12.3 of the Operating Agreement, NYCRC shall provide to each Investor an annual audited report prepared by one of the nationally recognized accounting firms within 120 days after the end of each fiscal year of the Fund.

126. NYCRC has failed to send semi-annual and annual reports to the Plaintiffs and other Investors as required under the Operating Agreement.

127. NYCRC has sent to Investors what it characterized as "Newsletters" on various dates. Upon information and belief, as the Managing Members of NYCRC, Defendants Olsen and Levinsohn authored, authorized, oversaw, reviewed and/or approved all of the representations and omissions in the Newsletters.

128. For example, in July 2013, March 2014 and September 2014, NYCRC sent Newsletters to Plaintiffs and other Investors. The July 2013 "News Brief" informed Plaintiffs that "construction work of the Battery Maritime Building is proceeding apace", including that "[w]ork within the building is ongoing… ."

129. The February 2014 Newsletter contained eight (8) pages of reports and pictures describing the progress of construction at the BMB.

130. Similarly, the September 2014 Newsletter included nine (9) pages of reports and pictures describing the ongoing progress of construction at the BMB.

131. The July 2013, March 2014 and September 2014 Newsletters, all of which were sent subsequent to when Hurricane Sandy made landfall in New York City in October 2012, did not report or claim that there were any problems with completing renovations to the BMB as a result of Hurricane Sandy or any alleged cost overruns.

132. Consistent with the representations in the Offering Brochures and Offering Memorandum, the July 2013, March 2014 and September 2014 Newsletters represented that NYCRC had structured the investment "to provide specialized collaterals for EB-5 investors to serve as guarantees for their investment."

133. On or about August 9, 2015, Defendants sent Plaintiffs what they labeled their "9th Newsletter", in which they assured Plaintiffs on page one (1) that:

> We firmly believe that continuing to provide you with news about your investment, project progress and the NYCRC is essential. Additionally, we will continue to address all of your concerns as always.

134. The August 2015 Newsletter included nine (9) pages of reports and pictures on the progress of construction, including on "the internal space in the building [which] is currently undergoing renovation." The August 2015 Newsletter concealed from Investors that the Borrower was already in default.

135. The August 2015 Newsletter represented to Plaintiffs that "one of the final steps in the construction process," interior decoration, was "in progress." In fact, construction had stopped or was going to stop shortly and was not even close to its "final steps."

136. In an email from NYCRC's Business Development Director, Lin Wu, that accompanied the August 2015 Newsletter, Defendants urged Plaintiffs and other Investors to tell their "friends and family" about NYCRC because "we have projects readily available" for them. As in prior Newsletters, Defendants characterized NYCRC as "the best regional center in the entire United States" based on its "outstanding track record" and the fact that it provided "EB-5 investors with specialized mortgage products to guarantee the investment." This was not the first or last time that NYCRC would put its own interest in soliciting new EB-5 investors in China ahead of its fiduciary duties to the Fund and Plaintiffs, including the duty to tell them the truth.

137. Just a month earlier, by letter dated July 7, 2015, Lin Wu had written to the Plaintiffs and other Investors to inform them that NYCRC was "proud to have provided investors with safe EB-5 projects" and to ask them to "Please tell your friends and family members about New York City Regional Center and our performance." (Emphasis in original.)

138. In a September 26, 2015 press release concerning the Project made after the Borrower's undisclosed default, NYCRC's George Olsen stated that "[w]e look forward to continuing our brilliant performance through the provision of EB-5 projects with reasonable structure and professionalism."

139. In May 2016, Defendants sent Plaintiffs what would turn out to be the last

Newsletter. In order to continue to mislead Plaintiffs to believe that renovation work at the BMB was proceeding forward with no problems, the May 2016 Newsletter devoted over nine (9) pages to describing the "New York East River Waterfront Project Progress," including misrepresenting that "[t]he internal space in the [BMB] . . . is currently undergoing renovation . . . ."

140. Investors reading the May 2016 Newsletter would have been given no reason to believe that the Borrower was in default, renovations to the BMB had stopped and the Investors faced the loss of their entire $77 million investment.

141. Defendants continued to misrepresent to Plaintiffs and other Investors in the May 2016 Newsletter that "[t]he structure" they used "can provide EB-5 investors with specialized mortgage products to guarantee the investment."

142. In truth and in fact, the manner in which Defendants had structured the Loan had not only failed to guarantee repayment, it had essentially guaranteed that the Investors would never get back their $77 million if the Borrower defaulted, especially if the default occurred before renovations to the BMB were completed.

143. Throughout this entire time period, and prior to October 21, 2016, Defendants concealed from the Plaintiffs and other Investors that: the Loan was in default; neither the Borrower nor The Dermot Company intended to make the Loan payments or provide the funding necessary to complete renovations to the BMB; there were no specialized mortgage products to guarantee the Loan; the Deficiency Guaranty was worthless; The Dermot Company had not contributed $17 million in capital; the City of New York's $145 million in funding was not being used to pay for renovations to the BMB; the Borrower had ceased all work at the BMB; the Fund had permitted the full Loan to be disbursed without ensuring that the Borrower had sufficient funds to pay the full cost of construction; the Fund had loaned $5.5 million to SSA Landlord without any agreement or security; Defendants had received and rejected proposals

from other developers to complete the renovations and purchase the Fund's leasehold mortgages; and the Plaintiffs were facing the loss of their entire investment because of the Defendants' fraud, breaches of fiduciary duties and other wrongful actions.

144. Little did the Plaintiffs know that NYCRC, Olsen and Levinsohn were engaged in a massive cover-up so that they could continue to raise capital from investors in China to fund the new EB-5 projects they were marketing, and so that they could later argue if the Plaintiffs and other Investors discovered their wrongdoing and filed suit that it was untimely.

145. During this period of time, Defendants were attempting to raise additional capital from investors in China for new EB-5 projects, including but not limited to the New York City Wireless Network Infrastructure Construction Project (Phase 2) and the JFK Airport Redevelopment Project. Defendants concealed and hid the truth from the Plaintiffs because if the truth had been disclosed, the bad publicity would have made it impossible for them to secure new investors in China. Accordingly, Defendants put their own interests in raising new capital ahead of their fiduciary obligations to the Fund and Investors, including the Plaintiffs.

146. In order to conceal the truth from Investors, Defendants also delayed in having the Fund exercise its rights under the Loan Agreement, including by not filing an action against the Borrower until September 20, 2016, well over a year after the Borrower's default.

M. NYCRC's Misleading Letters And E-Mails

147. On October 1, 2015, Lin Wu of NYCRC sent an email to Plaintiffs and other Investors announcing that the first batch of I-829 applications had been approved by the USCIS, which she characterized as "another major milestone for" NYCRC. While wishing Investors and their families "every success", Ms. Wu's email concealed that the Borrower was in default and that Plaintiffs' investment was now at great risk of being lost because of NYCRC.

148. On February 27, 2016, Lin Wu emailed Investors "to extend a special

invitation to you, your friends and family members" to attend the "roll out" of NYCRC's new EB-5 project in Shanghai on March 5, 2016. Again, not a word was disclosed about the Borrower's default.

149. It was not until eight months later, by letter dated October 21, 2016, signed by Defendants Olsen and Levinsohn, that NYCRC finally disclosed that the Loan was in default and that renovations to the BMB had ceased. Even then, however, the Defendants were far from candid with Investors.

150. In finally disclosing that the Borrower was in default, Defendants' entire explanation consisted of a perfunctory sentence, as follows: "Dermot has claimed that unavoidable delays caused by Hurricane Sandy as well as increased construction costs have caused issues with the Project." However, Hurricane Sandy struck the New York area in October 2012, and approximately three more years of construction continued following the storm.

151. Either NYCRC's monitoring of the Borrower and construction was so lax that it cannot explain why construction has ceased, including whether The Dermot Company's and/or the Borrower's explanation is true, or it is covering up what really happened.

152. If The Dermot Company's and/or the Borrower's explanation is true, then NYCRC should have known long before the default that the actual sum necessary to complete renovations to the BMB exceeded the contributed capital and it should have exercised the Lender's rights under various provisions in the Loan Agreement, including Sections 4.03 and 7.01, and stopped permitting disbursement of the Loan.

153. NYCRC's October 21, 2016 letter stated that "[o]ver recent months ... Dermot has failed to pay interest on the Loan." In fact, the Borrower had not made any Loan payments since early 2015, and the representation that the default was "over recent months" was intended to cover-up that Defendants had been concealing the truth from the Plaintiffs for well

over a year.

154. While Defendants' October 21, 2016 letter claimed that NYCRC had made "protective advances" of some $1,213,370, it failed to disclose that as the Fund's Managing Member, NYCRC was required to make these payments under the Fund's Operating Agreement. In any event, NYCRC simply used part of the millions it received in interest and fees.

155. The October 21, 2016 letter also continued to conceal that the Offering Memorandum, Offering Brochures and Newsletters had misrepresented and omitted material facts; that renovations to the BMB had been halted long ago; that NYCRC had caused the Fund to not file suit against the Borrower for over a year so that it could continue to raise capital in China for new EB-5 projects; that NYCRC had rejected proposals under which a new developer would have completed renovations to the BMB, purchased the Fund's leasehold mortgages and the Plaintiffs would have recouped part of their investment; and that NYCRC's lawsuit against the Borrower to foreclose on the leasehold mortgages would not result in the recovery of the $77 million Loan.

156. In response to Defendants' October 21, 2016 letter, Investors attempted to communicate with NYCRC. Upon information and belief, in telephone conversations and e-mails with Investors, including an e-mail to Cheng Ling on October 29, 2016, Lin Wu represented that:

(i) The loan period would be maintained; and

(ii) The project developers had not given up on the project.

Each of these representations was false and misleading and was made to further conceal the truth from the Plaintiffs and mislead them to believe that the Defendants were acting in their best interests so that, among other things, the Plaintiffs would not take legal action.

157. Defendants were aware, especially after sending their October 21, 2016 letter, that Investors would be communicating with each other concerning the sudden and drastic

turn of events. Accordingly, by misrepresenting to Cheng Ling that the Loan would be repaid and the developer had not given up, they intended for these misrepresentations to be disseminated throughout the entire investor community.

158. Subsequently, Defendants became aware that the Plaintiffs had taken steps to protect themselves, including by retaining counsel in the United States. Accordingly, by letter dated December 4, 2016, Defendants finally disclosed to Investors that the developer "has ceased construction and has stated that it is unable to proceed with the completion of the project."

159. The December 4, 2016 letter also disclosed for the first time that Witkoff had made an offer to finish renovations to the BMB and purchase the Fund's leasehold mortgages. According to the Defendants, Witkoff had "recently made an offer to purchase the EB-5 loan" for $7 million. However, Defendants informed Investors that they "believe the better option is to continue to pursue the foreclosure action against Dermot with the goal of securing something greater than a total return of only $7 million to the EB-5 investors either at some later time during the foreclosure proceeding or through an auction at the conclusion of the foreclosure proceeding."

160. Defendants' December 4, 2016 letter failed to disclose the complete terms of the Witkoff offer or address whether NYCRC had even attempted to negotiate improved terms. The letter also failed to provide any information concerning, among other things, the New York City EDC's financial demands that Defendants' letter claimed would hinder any potential replacement developer's ability to fully repay the $77 million loan. Other than describing the alleged "actions the NYCRC is taking to protect" the Investors, the December 4, 2016 letter disclosed little or nothing.

161. Because the Defendants' December 4, 2016 letter raised far more questions than it answered, by letter from their counsel dated December 9, 2016, Plaintiffs

requested that Defendants provide them with information and documents that had never been disclosed to them:

> Our clients are in receipt of your letters dated October 21, 2016 and December 4, 2016. In response to your letters, the Investors have the following requests for information and documents concerning the affairs of the Fund:
>
> Your December 4, 2016 letter refers to an offer made by the Witkoff Group ("Witkoff") "to purchase the EB-5 loan in an effort to replace Dermot as the developer of the project." What were the precise terms of the Witkoff offer? Under Witkoff's offer, what amount would have been realized by the Investors? Was a counter-offer made and, if so, what were the terms? Are negotiations with Witkoff still taking place? Please provide us with copies of Witkoff's offer, any counter-offers, any letter of intent or term sheet, and the written communications between you, Witkoff and the New York City Economic Development Corporation ("EDC") concerning Witkoff's proposal.
>
> * * *
>
> Your December 4, 2016 letter states that NYCRC "does not believe it is fair for the EB-5 investors to bear such a significant financial loss, while EDC, as landlord, and Dermot, as the borrower of EB-5 Capital, will suffer no loss." The Investors agree.
>
> Accordingly, what action does the New York City Regional Center, LLC ("NYCRC") and/or the Fund plan to take to cause The Dermot Company, Inc. and/or EDC to share with Investors in the potential loss here? Are you planning to file an action against The Dermot Company, Inc.? Against the EDC? If, so what claims do you plan to assert that will result in recovery of all or part of the $77 million loan and/or money damages to compensate the Investors?
>
> Please provide us with NYCRC's written communications with the EDC concerning both the Stoneleigh and Witkoff offers, including EDC's financial demands that your letter indicates would hinder any potential replacement developer's ability to fully repay the $77 million loan.
>
> In your December 4, 2016 letter, you state that rather than accepting the proposal made by Witkoff, "the better option is to continue to pursue the foreclosure proceeding against Dermot with the goal of securing something greater than a

> total return of only $7 million to the EB-5 investors either at some later time during the foreclosure proceeding or through an auction at the conclusion of the foreclosure proceeding."
>
> First, does the borrower or guarantor against whom the Fund has initiated action have any assets from which the loan can be repaid in whole or in part? If not, then how do you expect this action to result in a greater return to the Investors than Witkoff's offer?
>
> Second, are you currently engaged in active discussions with any potential replacement developers to step in and complete renovation of the BMB? If so, please provide us with details, including how the loan will be addressed? If not, what is your basis for believing that the foreclosure proceeding will result in a better result for Investors than pursuing an improved offer from Witkoff or Stoneleigh?
>
> With respect to the $77 million loan by the Fund to a Dermot affiliate, please provide the dates and amounts of the loan disbursements. Has any part of the $77 million been withheld, including in a deferred funds account? If not, what happened to the $5.5 million that was in the deferred funds account? What interest payments have been received by the Fund pursuant to the loan?

162. In breach of its fiduciary obligations and Section 1102 of the New York Limited Liability Company Law, by letter from its attorneys dated January 3, 2017, NYCRC failed to provide any of the information, documents or accounting requested by the Plaintiffs concerning the affairs of the Fund.

163. By letter from their counsel dated January 19, 2017, Plaintiffs reiterated their requests for the information, documents and accounting set forth in the December 9, 2016 letter, and also requested:

(i) a full set of the loan documents for the $77 million loan made by the Fund, including but not limited to all payment guaranties; all completion guaranties; all interest and carry guaranties; all good guy guaranties; and any other guaranties that were received in connection with the loan;

(ii) documents evidencing the due diligence that was performed by the New York City Regional Center

("NYCRC") before the loan was made, including with respect to the financial feasibility of the project, projected costs and with respect to whether the developer had entered into maximum price contract with contractors;

(iii) documents evidencing that, as represented in the Offering Memorandum dated February 1, 2011 . . . the borrower invested $17 million of capital into renovation of the Battery Maritime Building; and

(iv) all appraisals of the value of the leasehold interest encumbered by the Fund's mortgage(s).

164. In response to the January 19, 2017 letter, Defendants provided none of the requested information, documents or accounting.

N. NYCRC's Foreclosure Action

165. To cover-up and conceal the Borrower's default from the Plaintiffs and other Investors, Defendants had the Fund delay in exercising its rights under the Loan Agreement. This delay has and will result in significant damages to the Fund and Plaintiffs, including the loss of valuable historic tax credits that were and are critical to any developer's willingness to finish renovations to the BMB and the purchase price any developer will pay for the Fund's leasehold mortgages.

166. Thus, it was not until September 20, 2016, well over a year after the Borrower's default, that NYCRC finally caused the Fund to file suit against the Borrower, SSA Landlord, Dermot South Street, LLC and contractors who presumably hold mechanics' liens seeking to foreclose on its leasehold mortgages and to enforce the worthless Deficiency Guaranty.

167. To mislead the Plaintiffs, most of whom have little or no understanding of the United States legal system, to believe that a lawsuit had been filed to recover the $77 million, Defendants' October 21, 2016 letter stated that the action was "against Dermot, the developer and borrower of EB-5 capital." That might have raised hopes of recovery, since The Dermot Company is a solvent entity. But the lawsuit is not in fact against "Dermot"; it is against 10

South Street, SSA Landlord LLC and Dermot South Street, all asset-less entities.

168. Defendants' October 21, 2016 letter failed to explain that the action filed will not result in recovery of the Investors' money because the Fund loaned $77 million to an asset-less entity secured by a worthless Deficiency Guaranty and leasehold mortgages that are worth far less than $77 million.

O. NYCRC's Further Breaches Of Fiduciary Duties

169. NYCRC had a fiduciary duty to properly manage the Fund's assets.

170. NYCRC breached its fiduciary duties by failing to obtain a payment guaranty and a completion guaranty from The Dermot Company or from another credit worthy entity or individual before the Loan was disbursed. The absence of a completion guaranty combined with the worthless Deficiency Guaranty left NYCRC with no meaningful way to recoup the Investors' money if the Borrower stopped construction and paying the Loan.

171. Under the guise of amending the Loan Agreement, NYCRC breached its fiduciary duties by providing The Dermot Company and/or SSA Landlord with up to $5.5 million to satisfy the equity requirement under SSA Landlord's lease with the City of New York EDC, including without receiving any security for this loan.

172. As experienced attorneys and developers, Defendants Olsen and Levinsohn were well aware that NYCRC was acting imprudently, in bad faith, in breach of its fiduciary duties and not in the best interests of the Investors and the Fund by making, amending and disbursing the Loan under these conditions.

173. The Investors are without knowledge of the reasons why the Defendants structured the Loan to make it essentially risk free for The Dermot Company and incredibly risky for the Investors. This information is within the exclusive possession of the Defendants, who have refused to disclose any facts, information or documents.

174. NYCRC also breached its fiduciary duties: by failing to properly monitor renovations to the BMB, including after Hurricane Sandy, and verifying that renovations could be completed without additional funding; by continuing to permit disbursement of the Loan after Hurricane Sandy; by failing to require the Borrower to make capital contributions in an amount sufficient to cover the cost to complete renovations to the BMB before permitting disbursement of the Loan; by failing to ensure that the Borrower was on track to complete construction in accordance with the plans and specifications before permitting disbursement of the Loan; by permitting the full amount of the Loan to be disbursed to the Borrower before receiving the final certificates of approval, including a certificate of occupancy for the mortgaged property; and by failing to timely commence an action against the Borrower.

175. Upon information and belief, NYCRC knew, or should have known, long before it permitted the full $77 million Loan to be disbursed, that the Borrower lacked sufficient funds to complete renovations to the BMB. Notwithstanding the foregoing, NYCRC breached its fiduciary duties by continuing to permit loan disbursements without requiring the Borrower to make the necessary cash contributions to cover the deficiency.

176. For example as of June 11, 2014, NYCRC claimed that sixty-percent (60%) of the renovation work at the BMB had been completed and that $54,132,486 of the Loan had been spent by the Borrower. Based on NYCRC's and its construction consultant's access to the Borrower's books and records and other information, NYCRC knew or should have known that the Borrower lacked the funding necessary to complete construction in accordance with the plans and specifications but nonetheless allowed the remaining $22,880,514 of the Fund's monies to be wasted by permitting the Borrower to disburse these monies to itself.

177. NYCRC further breached its fiduciary duties by concealing and not immediately informing Investors that (i) The Dermot Company had not contributed $17 million in

capital; (ii) the Borrower had ceased making renovations to the BMB; (iii) Loan payments had ceased and the Borrower was in default; (iv) to complete construction, the costs would significantly exceed the capital invested, which consisted entirely or almost entirely of the Investors' $77 million; (v) the $145 million in funding for the Project that was being contributed by the City of New York was not going to be used to fund renovations to the BMB, even if needed; (vi) neither The Dermot Company nor anyone else had agreed to make the Loan payments if the Borrower failed to do so; and (vii) it had rejected proposals from developers under which renovations to the BMB would be completed, the Fund's leasehold mortgages would be sold and the Plaintiffs and other Investors would have recovered part of their investment.

P. NYCRC's Most Recent Breach Of Fiduciary Duty

178. In an extortionist attempt to bully the Plaintiffs into not filing suit against them, Defendants recently threatened that NYCRC would reject the offers from developers to purchase the Fund's leasehold mortgages and complete renovations to the BMB ***unless*** the Plaintiffs agree to sign releases of their claims against the Defendants.

179. Defendants have threatened that unless the Plaintiffs sign general releases, they will proceed with the foreclosure action and later auction the Fund's leasehold mortgages at a foreclosure sale rather than solicit and accept the best offer from a developer now, while the mortgages have their greatest value and before valuable historic tax credits expire.

180. In other words, Defendants have threatened that unless they receive full releases that bar Plaintiffs from filing suit against them, they will purposefully ensure that renovations to the BMB are not completed and the leasehold mortgages are not sold, regardless of NYCRC's fiduciary duties to the Plaintiffs and the Fund.

181. In conditioning the sale of the Fund's leasehold mortgages on its receipt of general releases from the Plaintiffs, NYCRC has turned a blind eye to its obligations as Managing

Member of the Fund and put its own interests ahead of the interests of the Plaintiffs, the Fund and other Investors in breach of its fiduciary obligations.

COUNT I[1]
Common Law Fraud

182. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-181 above as if fully restated herein.

183. As described in detail above, in the Offering Brochures and Offering Memorandum, Defendants misrepresented material facts or omitted to state material facts necessary in order to make the statements made not misleading as to investment in the Fund.

184. Defendants made the following misrepresentations or omissions, among others:

(i) They misrepresented that The Dermot Company was funding $17 million in capital;

(ii) They used the "Dermot" name and three (3) pages in the Section of the Offering Memorandum devoted to **"The Borrower,"** in which they touted The Dermot Company's financial wherewithal and its experience with lenders, to create the misimpression that The Dermot Company, a multi-billion developer, was synonymous with the Borrower and was standing behind renovation of the BMB and payment of the Loan;

(iii) They misrepresented "that the Borrower would receive contributions from its owners or funds from other sources to enable the Borrower to make interest payments on the Loan."

(iv) They failed to inform the Plaintiffs that neither The Dermot Company nor any other source had agreed to make or fund the Borrower's interest payments because NYCRC had failed to negotiate any such obligation notwithstanding its representation to the contrary;

(v) They failed to inform the Plaintiffs that the Fund planned to loan $77 million to an asset-less entity, and that it planned

[1] Unless otherwise specified, all counts are plead as against all three (3) Defendants.

to do so without any obligation on The Dermot Company's part to make the Loan payments if necessary;

(vi) They misrepresented that the City of New York's involvement in, and funding of the Project minimized the risk to Investors;

(vii) They failed to disclose that the additional $145 million in Project funding being provided by the City of New York would not be available to pay for completing renovations to the BMB, even if needed;

(viii) They used the pie chart in the Offering Brochures and Offering Memorandum, along with the representation contained in the Section of the Offering Memorandum on "Redevelopment of the Battery Maritime Building" that the Fund's loan was to "help fund" renovations, to create the misimpression that the City of New York's additional funding, like the Investors' funding, would help fund renovations to the BMB;

(ix) They failed to disclose that the Investors were funding all or most of the capital needed to renovate the BMB;

(x) They failed to disclose that if the Investors' $77 million was insufficient to pay for the remaining renovations to the BMB, neither the City of New York nor The Dermot Company would pay to complete the renovations;

(xi) They misrepresented that the Investors had been given a "mortgage on the landmark Battery Maritime Building" when, in fact, the Fund had received only leasehold mortgages;

(xii) They misrepresented that the "NYCRC program places the EB-5 investor 1st ahead of all other project capital" and that Investors would be the "1st to be repaid";

(xiii) They failed to inform the Plaintiffs that the Investors' capital was "1st" because it was the only capital being used to fund renovations to the BMB;

(xiv) They misrepresented that the Loan would be secured by "certain present and future assets of the Borrower, including, without limitation, the Borrower's leasehold interests." However, they failed to inform the Plaintiffs that the Borrower had no present assets. Moreover, the "including without limitation" phrase was intended to and did convey that security was being given to the Fund

besides the mortgages on the Borrower's leasehold interests. In fact, there was none;

(xv) They misrepresented that if there were a "failure or default by the Borrower," the Fund "will have contractual remedies pursuant to the Loan Agreement and the Security, documents." However, the focus on the Fund's "contractual remedies" was a smokescreen designed to conceal the real risk, to wit: that if construction ceased and the Borrower stopped making the loan payments -- which is exactly what happened -- the Fund's only remedy would be to foreclose on the leasehold mortgages in an unfinished building which would be worth a fraction of the Loan;

(xvi) They misrepresented that NYCRC's philosophy concerning EB-5 investments was to not take unnecessary risks and that the Manager's general investment guidelines focus on ... [s]tructuring Investments with a view to downside protection"; and

(xvii) They failed to disclose that construction loans customarily include guaranties that they had not received in making the Loan and that, as a result, there was no way to ensure that renovations to the BMB would be completed and that the Loan would be repaid if the Borrower experienced problems.

185. Defendants NYCRC, Olsen, and Levinsohn made the misrepresentations and omissions of material facts set forth above.

186. The misrepresentations and omissions were false and misleading at the time they were made, and they were made in order to defraud the Plaintiffs.

187. Defendants knew or consciously disregarded that the representations were false when made and/or they made the representations and omissions with reckless disregard as to their truth or falsity.

188. Subsequent to the time Plaintiffs purchased their membership units in the Fund, Defendants continued their scheme to defraud by, among other things:

(i) concealing from the Plaintiffs that The Dermot Company had not contributed $17 million in capital;

(ii) concealing from the Plaintiffs that, according to the Borrower, the costs of renovating the BMB had allegedly increased, all of the Investors' money had been spent, and neither the Borrower, The Dermot Company nor the City of New York intended to fund the costs necessary to complete renovations to the BMB;

(iii) concealing from the Plaintiffs that The Dermot Company had not agreed to make the Loan payments if the Borrower failed to do so;

(iv) concealing from the Plaintiffs that because there was no completion guaranty from a credit-worthy entity or individual, renovations to the BMB could not be completed;

(v) concealing from the Plaintiffs that the Deficiency Guaranty was worthless;

(vi) concealing from the Plaintiffs that the Borrower was threatening to and did cease all construction;

(vii) concealing from the Plaintiffs that the Borrower had stopped making the Loan payments and was in default;

(viii) concealing from the Plaintiffs that several developers had proposed to contribute millions to complete renovations to the BMB if Defendants would agree to sell the Fund's leasehold mortgages;

(ix) concealing from the Plaintiffs the terms of the proposals being made by developers to purchase the Fund's leasehold mortgages and what, if anything, they had done to negotiate the best outcome for Investors;

(x) concealing from the Plaintiffs that the Fund had, under the guise of amending the Loan Agreement, given The Dermot Company or SSA Landlord $5.5 million to use to satisfy the equity requirement under SSA Landlord's lease with the New York City EDC;

(xi) concealing from the Plaintiffs what happened to the $5.5 million the Fund gave to SSA Landlord;

(xii) delaying in filing suit against the Borrower so that they could continue to conceal the Borrower's default; and

(xiii) when they finally disclosed that the Loan was in default and that construction had ceased, attempting to mislead the

> Plaintiffs to believe that there was no need for them to take legal action because the Fund had filed its own "legal proceeding" against "Dermot." However, Defendants failed to disclose that this action would not result in recovery of the $77 million loan and, at best, would result in the Fund taking over a lease in an unfinished building that is not worth $77 million.

189. Prior to their October 21, 2016 letter, Defendants continued to mislead the Plaintiffs and conceal their fraud and wrongdoing by informing Investors that: the Loan would be repaid in 2017, the Borrower was making interest payments on the Loan and had not defaulted, and construction was proceeding without any problem.

190. To conceal their wrongdoing, in 2015 and 2016, Defendants drafted and sent Newsletters and e-mails to the Plaintiffs that were littered with material misrepresentations, including:

(i) that construction was proceeding at the BMB;

(ii) that the Borrower was paying interest on the Loan; and

(iii) that the manner in which the investment had been structured had provided the Investors with a specialized mortgage to guarantee their investment.

191. Similarly, prior to their December 4, 2016 letter, when developers expressed an interest in completing renovations to the BMB and purchasing the Fund's leasehold mortgages, Defendants concealed this from the Plaintiffs because they did not want to disclose that: the Borrower was in default; construction had ceased; The Dermot Company was not paying the Loan; the Defendants had loaned $77 million to an asset-less entity without payment and completion guaranties from a credit-worthy entity or individual; the Deficiency Guaranty was worthless; and because of the manner in which they had structured and failed to secure the Loan or properly monitor disbursement of the Loan proceeds, there was no meaningful remedy to recover the $77 million, including a "specialized mortgage" that guaranteed repayment.

192. Defendants concealed and covered-up the Fund's dire state of affairs

because (i) they knew that if told the truth, the Plaintiffs would file suit against them, and (ii) NYCRC was in the process of soliciting EB-5 investors in China and they knew that once news of their wrongdoing reached Investors, NYCRC's ability to solicit new investors would be severely compromised.

193. NYCRC, Olsen, and Levinsohn had actual knowledge that their representations and omissions were false and misleading, and they intended that the Plaintiffs would rely upon them to their detriment.

194. Defendants had a duty to disclose the material information they concealed from the Plaintiffs, including because of NYCRC's special relationship to the Plaintiffs as Managing Member of the Fund and because of their superior knowledge of facts that were unavailable to the Plaintiffs.

195. Plaintiffs reasonably relied upon the foregoing representations and omissions to their detriment, including by purchasing membership units in the Fund and by later delaying legal action against the Defendants.

196. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial, including the loss of their investment.

197. Defendants' actions were wanton, willful, malicious, morally culpable and were taken in bad faith. Defendants' actions and willful misconduct demonstrate a criminal indifference to civil obligations and warrant the imposition of punitive damages in an amount of at least $100 million.

COUNT II
Derivative Claim For Breach of Fiduciary Duty (Against NYCRC)

198. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-197 above as if fully restated herein.

199. Plaintiffs were Members of the Fund at the time of the events set forth

herein and they are Members today.

200. As Managing Member of the Fund, NYCRC owed the Fund, Plaintiffs and Investors fiduciary duties of good faith, due care, undivided loyalty and a duty and obligation to make full disclosure of all material facts involving the Fund.

201. Under Section 409(a) of the New York Limited Liability Company Law, NYCRC had a statutory duty to perform its duties "in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances."

202. NYCRC breached its fiduciary duties by, among other things:

(i) In July 2012, accepting a worthless Deficiency Guaranty from an asset-less entity;

(ii) failing to obtain a completion guaranty from a credit-worthy entity or individual before fully disbursing the Loan in 2015 or 2016;

(iii) failing to properly monitor the Borrower and renovations to the BMB up through 2015 or 2016;

(iv) failing to ensure, including after Hurricane Sandy, that renovations to the BMB could be completed without additional capital to cover the full cost of construction;

(v) permitting the Loan proceeds to be disbursed up through 2015 or 2016 without first determining that the cost to complete renovations to the BMB did not exceed the undisbursed Loan proceeds;

(vi) continuing to allow the Loan to be disbursed up through 2015 or 2016 when it knew or should have known that the Borrower could not complete renovations to the BMB without additional funding that it did not plan to invest;

(vii) permitting the Loan proceeds to be disbursed up through 2015 or 2016 without first determining that the actual sum necessary to complete construction in accordance with the plans and specifications did not exceed the Loan and without requiring the Borrower to fund the deficiency;

(viii) permitting the Loan proceeds to be fully disbursed up through 2015 or 2016 before receiving final certificates of approval, including a certificate of occupancy for the BMB;

(ix) providing up to $5.5 million to The Dermot Company or SSA Landlord on dates presently unknown to the Plaintiffs under the guise of amending the Loan Agreement, including without any disclosure to the Investors or security;

(x) failing to ensure that The Dermot Company invested $17 million in capital;

(xi) failing to enforce the Fund's rights under the Loan Agreement;

(xii) failing to disclose that the Borrower had stopped making Loan payments and was in default;

(xiii) failing to disclose that the Borrower had ceased all work;

(xiv) failing to disclose that neither The Dermot Company nor anyone else had agreed to make the Loan payments if the Borrower failed to do so;

(xv) sending written reports, Newsletters and e-mails that concealed the Borrower's default, the cessation of construction, NYCRC's fraud, negligence and breaches of fiduciary duty, and misrepresented that renovations to the BMB were proceeding without problem;

(xvi) delaying in filing suit against the Borrower so as to conceal the foregoing;

(xvii) rejecting proposals by developers to complete renovations to the BMB and purchase the Fund's leasehold mortgages, including without disclosing the proposals to the Plaintiffs;

(xviii) wasting the Fund's opportunity to recoup part of the Loan from a new developer;

(xix) failing to honestly communicate with the Investors concerning the foreclosure action against the Borrower and the prospects for recovery of the $77 million Loan; and

(xx) putting its own interests, including in raising additional EB-5 capital in China, ahead of the interests of the Plaintiffs, the Fund and other Investors.

203. NYCRC breached its fiduciary duties so that, among other things, it could earn millions in fees, interest, profits and commissions (i) by advancing the full Loan proceeds to the Borrower upfront, instead of as construction progressed, and (ii) by entering into agreements

with investors in China to raise capital for new EB-5 projects in 2015 and 2016.

204. NYCRC mismanaged the Fund's business, put its own interests ahead of the Fund's and the Investors' interests, acted in bad faith, was disloyal and wasted the Fund's assets.

205. As the Managing Member of the Fund, NYCRC has full control over whether to bring actions on the Fund's behalf. Accordingly, it would be an exercise in futility to demand that NYCRC have the Fund bring an action against NYCRC.

206. By reason of the foregoing, Plaintiffs have been damaged derivatively on behalf of the Fund in an amount to be determined at trial.

207. NYCRC should be ordered to disgorge all of the benefits it wrongfully obtained as a result of its breaches of fiduciary duties, including the fees, interest, profits and commissions it has received and will receive from the Loan and from new EB-5 projects it marketed in China.

208. Plaintiffs are entitled to further equitable relief removing NYCRC as the Managing Member of the Fund.

COUNT III
Aiding and Abetting Fraud

209. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-208 above as if fully restated herein.

210. As described above, NYCRC, Olsen, and Levinsohn defrauded the Plaintiffs.

211. As the Managers of NYCRC and participants in the acts complained of, Olsen and Levinsohn had actual knowledge of the fraud being committed by NYCRC, and NYCRC had actual knowledge of the fraud being committed by Olsen and Levinsohn.

212. Olsen and Levinsohn, as the Managers of NYCRC, authored, reviewed,

oversaw, authorized and/or approved the Offering Brochures, the Offering Memorandum and the Newsletters, letters, reports and emails sent to the Plaintiffs by NYCRC.

213. As the Managers of NYCRC, Olsen and Levinsohn controlled NYCRC and made all decisions on behalf of NYCRC, including determining what NYCRC did and did not represent and disclose to the Plaintiffs.

214. To the extent the fraud lies only against NYCRC, Olsen and Levinsohn knowingly participated in, aided and abetted, directed, solicited and provided substantial assistance to NYCRC.

215. To the extent the fraud lies only against Olsen and Levinsohn, NYCRC participated in, aided and abetted, directed, solicited and provided substantial assistance to them.

216. Defendants knowingly participated in, aided and abetted, directed, solicited and substantially assisted each other as described herein in order to obtain monies from the Plaintiffs and to enrich themselves at the Plaintiffs' expense.

217. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial, including the loss of their investment.

218. Defendants' actions were wanton, willful, malicious, morally culpable, and were taken in bad faith. Defendants' actions and willful misconduct demonstrate a criminal indifference to civil obligations and warrant the imposition of punitive damages in an amount of at least $100 million.

COUNT IV
Derivative Claim for Breach of Fiduciary Duty - Refusal to Sell Leasehold Mortgages (Against NYCRC)

219. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-218 above as if fully restated herein.

220. Plaintiffs were Members of the Fund at the time of the events set forth

herein and they are Members today.

221. As the Managing Member of the Fund, NYCRC owed fiduciary duties to the Fund, including to maximize the value of the Fund's leasehold mortgages by obtaining the best and highest sales price that is reasonably available.

222. Multiple developers were and are interested in completing renovations to the BMB and purchasing the Fund's leasehold mortgages. Several of these developers have recently made written offers to NYCRC.

223. In a letter to the Plaintiffs and other Investors dated March 7, 2017, NYCRC represented that it "has received three (3) new written offers to purchase the [leasehold mortgages] from various real estate companies." According to NYCRC's March 7, 2017 letter, the offers range from $13 to $15 million.

224. In its March 7, 2017 letter, NYCRC further represented that:

> In terms of next steps, the NYCRC, as Manager, plans to discuss each offer with the respective developer to determine which offer has the greatest likelihood of closing and which will secure the best return for you, the Company's EB-5 investors.

225. In breach of its fiduciary duties, NYCRC has threatened to refuse to accept any offer from a developer unless the Plaintiffs all execute general releases of their rights and claims against NYCRC.

226. NYCRC's demand that Plaintiffs must sign general releases before it will accept any developer's offer violates NYCRC's duty of good faith and undivided loyalty, and places NYCRC's own personal interests ahead of the Fund's, the Plaintiffs' and Investors' best interests.

227. NYCRC's extortionate demand is an attempt by it to misuse its position as Managing Member of the Fund to secure releases to which it has no legal right under the Fund's

Operating Agreement or law.

228. Upon information and belief, NYCRC's refusal to accept any offer to purchase the Fund's leasehold mortgages and instead force a foreclosure sale will result in (i) the loss of historic tax credits that are valuable to any developer who is interested in completing renovations to the BMB and purchasing the mortgages, and (ii) to the further decay and deterioration of the BMB, which will increase the cost to complete renovations. Accordingly, NYCRC's actions will result in a lower purchase price for the Fund's leasehold mortgages or no sale whatsoever, and thereby to the waste of the Fund's assets.

229. As the Managing Member of the Fund, NYCRC has full control over whether to bring actions on the Fund's behalf. Accordingly, it would be it would be an exercise in futility to demand that NYCRC have the Fund bring an action against NYCRC.

230. As a result of the foregoing, the Plaintiffs have been damaged derivatively on behalf of the Fund in an amount to be determined at trial, including the (i) loss of the monies the Fund would have received from a developer who purchased the Fund's leasehold mortgages, and/or (ii) the decrease in the amount that is paid by a developer to purchase the leasehold mortgages as a result of NYCRC's actions.

231. In addition, NYCRC should be ordered to disgorge all of the benefits it wrongfully obtained as a result of its breaches of fiduciary duties, including the fees, interest, profits and commissions it has received and will receive from the Loan and from the new EB-5 projects it marketed in China.

232. Further, in accordance with its fiduciary obligations, a mandatory injunction should issue ordering NYCRC to sell the Fund's leasehold mortgages upon the best terms reasonably available for such a sale.

233. Plaintiffs are entitled to further equitable relief removing NYCRC as the

Managing Member of the Fund.

COUNT V
Breach of Fiduciary Duty (Against NYCRC)

234. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-233 above as if fully restated herein.

235. As Managing Member of the Fund, NYCRC owed fiduciary duties to the Plaintiffs, including the duties of good faith, due care, undivided loyalty and a duty and obligation to make full disclosure of all material facts involving the Fund.

236. Under Section 409(a) of the New York Limited Liability Company Law, NYCRC had a statutory duty to perform its duties "in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances."

237. NYCRC breached its fiduciary duties to the Plaintiffs as set forth above.

238. NYCRC also breached its fiduciary duties to the Plaintiffs to the extent its refusal to sell the Fund's leasehold mortgages unless it received releases from the Plaintiffs caused individual harm to the Plaintiffs instead of to the Fund.

239. By reason of the foregoing, to the extent harm was suffered by the Plaintiffs individually, Plaintiffs seek damages in an amount to be determined at trial.

240. NYCRC should be ordered to disgorge all of the benefits it wrongfully obtained as a result of its breaches of fiduciary duties, including the fees, interest, profits and commissions it has received and will receive from the Loan and from the EB-5 projects it marketed in China.

241. Plaintiffs are entitled to further equitable relief removing NYCRC as the Managing Member of the Fund.

COUNT VI
Derivative Claim for Aiding and Abetting Breach of Fiduciary Duty (Against Olsen and Levinsohn)

242. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-241 above as if fully restated herein.

243. Plaintiffs were Members of the Fund at the time of the events set forth herein and they are Members today.

244. As attorneys and the Managers of NYCRC, Olsen and Levinsohn knew that NYCRC owed fiduciary duties to the Fund, under both common and statutory law.

245. As the Managers of NYCRC, Olsen and Levinsohn controlled NYCRC and made all decisions on NYCRC's behalf.

246. As the Managers of NYCRC, Olsen and Levinsohn determined, authorized and approved: (i) the terms under which the Fund would loan $77 million to the Borrower, including the Loan Agreement, the Deficiency Guaranty and the security it would receive for the Loan, (ii) the amendment of the Loan Agreement, (iii) when and if NYCRC would permit the Loan proceeds to be disbursed, (iv) the Newsletters, letters, reports and e-mails NYCRC sent to the Investors, (v) whether NYCRC would enter into an agreement with a developer to sell the Fund's leasehold mortgages and the terms of any such agreement, and (vi) the Fund's actions and inactions that constituted the breaches of fiduciary duties set forth above.

247. As the Managers of NYCRC, Olsen and Levinsohn put their own and NYCRC's personal interests, including in receiving origination fees, raising capital in China for new EB-5 projects and in receiving general releases from the Plaintiffs, ahead of NYCRC's fiduciary duties to the Fund.

248. With knowledge that NYCRC would be in breach of its fiduciary duties, Olsen and Levinsohn induced the aforementioned breaches of fiduciary duties, and knowingly

participated in, aided and abetted, directed, solicited and provided substantial assistance to NYCRC.

249. As the Managing Member of the Fund, NYCRC has full control over whether to bring actions on the Fund's behalf. Accordingly, it would be it would be an exercise in futility to demand that NYCRC have the Fund bring an action against NYCRC.

250. By reason of the foregoing, Plaintiffs have been damaged derivatively on behalf of the Fund in an amount to be determined at trial.

251. In addition, Olsen and Levinsohn should be ordered to disgorge all of the benefits they and NYCRC wrongfully obtained as a result of their aiding and abetting NYCRC's breaches of fiduciary duties, including the fees, interest, profits and commissions they have received and will receive from the Loan and from new EB-5 projects that were marketed in China.

COUNT VII
Aiding and Abetting Breach of Fiduciary Duty
(Against Olsen and Levinsohn)

252. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-251 above as if fully restated herein.

253. As attorneys and the Managers of NYCRC, Olsen and Levinsohn knew that NYCRC owed fiduciary duties to the Plaintiffs under both common and statutory law.

254. As the Managers of NYCRC, Olsen and Levinsohn controlled NYCRC and made all decisions on NYCRC's behalf, as set forth in detail above.

255. As the Managers of NYCRC, Olsen and Levinsohn determined what NYCRC did and did not disclose to the Plaintiffs and, upon information and belief, they directed NYCRC's cover-up and dissemination to the Plaintiffs of false and misleading information.

256. As the Managers of NYCRC, Olsen and Levinsohn put their own and

NYCRC's personal interests, including in receiving origination fees, raising capital in China for new EB-5 projects and in receiving general releases from the Plaintiffs, ahead of NYCRC's fiduciary duties to the Plaintiffs.

257. With knowledge that NYCRC would be in breach of its fiduciary duties, Olsen and Levinsohn induced the aforementioned breaches of fiduciary duties, and knowingly participated in, aided and abetted, directed, solicited and provided substantial assistance to NYCRC.

258. By reason of the foregoing, to the extent harm was suffered by the Plaintiffs individually, Plaintiffs seek damages in an amount to be determined at trial,

259. In addition, Olsen and Levinsohn should be ordered to disgorge all of the benefits they and NYCRC wrongfully obtained as a result of their aiding and abetting NYCRC's breaches of fiduciary duties, including the fees, interest, profits and commissions they have received and will receive from the Loan and from new EB-5 projects that were marketed in China.

COUNT VIII
Breach of the Operating Agreement (Against NYCRC)

260. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-259 above as if fully restated herein.

261. NYCRC and the Members of the Fund, including the Plaintiffs, are parties to the Fund's Operating Agreement.

262. Pursuant to Section 5.2 of the Operating Agreement, as the Managing Member of the Fund, NYCRC was responsible for paying certain expenses related to the Fund's operations, including but not limited to (i) expenses incurred by the Fund in connection with obtaining legal, tax, accounting, valuation and other professional advice, (ii) expenses incurred by the Fund in monitoring, managing, selling or disposing of any investment, (iii) out-of-pocket

expenses incurred in connection with the collection of amounts due to the Fund, (iv) the Fund's Management Fee, (v) insurance premiums, and various other Fund expenses.

263. Pursuant to Section 5.2 of the Operating Agreement, NYCRC was only permitted to pay the foregoing Fund expenses from "Distributable Cash realized from Interest Income," to the extent available.

264. Pursuant to Section 5.2(b) of the Operating Agreement, to the extent the Fund's expenses exceeded the then available Interest Income, NYCRC was obligated to advance payment for those expenses, for which it would be reimbursed by the Fund from future Interest Income or Disposition Income, to the extent available.

265. Upon information and belief, NYCRC willfully breached the Operating Agreement by, among other things, using monies paid by the Plaintiffs and other Investors to purchase membership units in the Fund to pay the Fund's foregoing expenses, including but not limited to legal fees, insurance, accounting fees and other expenses, the facts of which are in Defendants' exclusive possession.

266. NYCRC also willfully breached Section 12 of the Operating Agreement by failing to prepare and deliver to each Plaintiff on at least a semi-annual basis a report reviewing the Fund's activities and an annual audited report.

267. Plaintiffs fully performed their obligations under the Operating Agreement.

268. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

COUNT IX
Tortious Inducement of Breach of Contract
(Against Olsen and Levinsohn)

269. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-268

above as if fully restated herein.

270. As the Managers of NYCRC, Olsen and Levinsohn had actual knowledge of the existence and terms of the Fund's Operating Agreement.

271. As the Managers of NYCRC, Olsen and Levinsohn had actual knowledge that NYCRC would be willfully breaching the Operating Agreement if (i) it used any part of the monies paid by the Plaintiffs and other Investors to purchase membership units in the Fund to pay certain of the Fund's expenses, including legal fees, insurance, accounting fees and other expenses, the facts of which are within Defendants' exclusive possession, and (ii) it failed to provide Plaintiffs with the reports required under Section 12 of the Fund's Operating Agreement.

272. Olsen and Levinsohn knowingly and intentionally induced and procured NYCRC to willfully breach the Operating Agreement in the manner set forth above.

273. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

COUNT X
Breach of the Implied Covenant of
Good Faith and Fair Dealing (Against NYCRC)

274. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-273 above as if fully restated herein

275. Sections 7.1 and 7.2 of the Fund's Operating Agreement set forth the specific duties, responsibilities and power of NYCRC, including that NYCRC "shall be responsible for the management of the Company's business." This includes the responsibility, among other things, to (i) make all decisions concerning the selection, negotiation, management, structuring, monitoring and disposition of investments, (ii) acquire, hold, sell, exchange, pledge and dispose of investments, (iii) enter into, perform and make contracts, agreements and guarantees on behalf of the Fund, and (iv) collect sums due the Fund, including bringing actions

on its behalf to do so.

276. In exercising its powers and performing its duties and responsibilities under the Fund's Operating Agreement, NYCRC had a duty to exercise its discretion reasonably and in good faith, so as not to deprive the Plaintiffs of the fruits of the agreement.

277. NYCRC has exercised its powers and performed its duties and responsibilities under the Operating Agreement malevolently, in bad faith and to benefit itself at the expense of the Plaintiffs. NYCRC has abused it powers as the Managing Member of the Fund, including by among other things (i) failing to in good faith negotiate with developers to compete renovations to the BMB and sell the Fund's leasehold mortgages, (ii) failing to in good faith dispose of the Fund's investment, (iii) failing to in good faith exercise the Fund's rights under the Loan Agreement, (iv) failing to in good faith collect the sums due and owing to the Fund under the Loan, including unnecessarily and unreasonably delaying in attempting to do so. In so doing, NYCRC has deprived the Plaintiffs of the fruits and benefits under the Operating Agreement, in breach of the covenant of good faith and fair dealing that is implied in every contract in New York, including the Operating Agreement.

278. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial, including the loss of their investment.

COUNT XI
Derivate Claim for Gross Negligence

279. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-278 above as if fully restated herein.

280. Plaintiffs were Members of the Fund at the time of the events set forth herein and they are Members today.

281. As Managing Member of the Fund, NYCRC owed a duty to the Fund to exercise reasonable skill and due care with respect to the monies entrusted to it by the Fund,

including by (i) ensuring that the moneys were adequately protected and secure before the Loan was disbursed, (ii) monitoring the Loan, the Borrower and renovations to the BMB after the Loan Agreement became effective, including before each disbursement was made, and (iii) taking steps to protect and safeguard the investment when it learned that the Borrower intended to and/or had defaulted under the Loan Agreement.

282. As the Managers of NYCRC, Olsen and Levinsohn owed the same duties to the Fund.

283. As described in detail in the Paragraphs set forth above, Defendants failed to exercise reasonable skill and due care. Instead, they were grossly negligent and breached their duties in numerous respects.

284. Upon information and belief, Defendants were grossly negligent in additional respects, but have covered-up and concealed the facts from the Plaintiffs.

285. As the Managing Member of the Fund, NYCRC has full control over whether to bring actions on the Fund's behalf. Accordingly, it would be an exercise in futility to demand that NYCRC have the Fund bring an action against NYCRC.

286. By reason of the foregoing, Plaintiffs have suffered damages derivatively on behalf of the Fund in an amount to be determined at trial, including the loss of the Loan.

COUNT XII
Gross Negligence

287. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-286 above as if fully restated herein.

288. As Managing Member of the Fund, NYCRC owed fiduciary duties to Plaintiffs, as Members in the Fund. As the Managers of NYCRC, Olsen and Levinsohn owed the same duties to the Plaintiffs.

289. As described in detail in the Paragraphs set forth above, Defendants failed

to exercise reasonable skill and due care. Instead, they were grossly negligent and breached their duties to the Plaintiffs in numerous respects.

290. Upon information and belief, Defendants were grossly negligent in additional respects, but have covered-up and concealed the facts from the Plaintiffs.

291. By reason of the foregoing, to the extent harm was suffered by the Plaintiffs individually, Plaintiffs seek damages in an amount to be determined at trial.

COUNT XIII
Negligent Misrepresentation

292. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-291 above as if fully restated herein.

293. As detailed above, Defendants misrepresented and omitted material facts in the Offering Brochures, Offering Memorandum, Newsletters, letters, emails and in their other communications with the Plaintiffs.

294. To the extent the misrepresentations and omissions were not intentionally made, they were negligently made.

295. Plaintiffs reasonably relied on the foregoing misrepresentations and omissions to their detriment.

296. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial, including the loss of their investment.

COUNT XIV
Unjust Enrichment

297. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-296 above as if fully restated herein.

298. Defendants benefitted from the Plaintiffs' purchase of membership units in the Fund and from the Fund's Loan to the Borrower at the expense of the Plaintiffs, including

by receiving millions in origination fees, management fees, commissions, interest and other payments, the facts of which are not presently known to the Plaintiffs and are in the exclusive possession of the Defendants.

299. Defendants also benefitted at the expense of the Plaintiffs by concealing the truth, including the Borrower's default, and delaying action against the Borrower so that they could raise new capital from EB-5 investors in China. Upon information and belief, Defendants earned tens of millions in fees, interest and commissions from loans they made through entities they formed using the proceeds raised from the new EB-5 investors they solicited in China, who would not have invested had they known the truth about the Fund's dire state of affairs and the Defendants' reprehensible conduct.

300. It would be contrary to equity and good conscience to permit Defendants to retain the monies they received at the expense of the Plaintiffs, including the tens of millions in fees, interest and commissions they have received and will continue to receive from the new EB-5 projects they marketed at the expense of the Plaintiffs.

301. By reason of the foregoing, to the extent harm was suffered by the Plaintiffs individually, Plaintiffs seek damages in an amount to be determined at trial, including the loss of their investment, and Defendants should be made to disgorge to the Plaintiffs the millions they have received and will continue to receive in the future in an amount to be determined at trial.

COUNT XV
Derivative Claim for Unjust Enrichment

302. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-301 above as if fully restated herein.

303. Plaintiffs were Members of the Fund at the time of the events set forth herein and they are Members today.

304. Defendants benefitted at the expense of the Fund by delaying action against the Borrower so that they could raise new capital from EB-5 investors in China. Upon information and belief, Defendants earned tens of millions in fees, interest and commissions from loans they made through entities they formed using the proceeds raised from the new EB-5 investors they solicited in China, who would not have invested had they known the truth about the Fund's dire state of affairs and the Defendants' reprehensible conduct.

305. As a result of the Defendants' delay in enforcing the Fund's rights, the value of the Fund's leasehold mortgages has been damaged, the BMB has further decayed and deteriorated and important tax credits have or will be lost.

306. It would be contrary to equity and good conscience to permit Defendants to retain the monies they received at the expense of the Fund, including the tens of millions in fees, interest and commissions they have received and will continue to receive from the new EB-5 projects they marketed at the expense of the Fund.

307. As the Managing Member of the Fund, NYCRC has full control over whether to bring actions on the Fund's behalf. Accordingly, it would be an exercise in futility to demand that NYCRC have the Fund bring an action against NYCRC.

308. By reason of the foregoing, Plaintiffs have suffered damages derivatively on behalf of the Fund in an amount to be determined at trial, and Defendants should be made to disgorge the millions they have received and will continue to receive in the future in an amount to be determined at trial.

COUNT XVI
Accounting (Against NYCRC)

309. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-308 above as if fully restated herein.

310. The Fund is a New York limited liability company and is governed by

New York law.

311. Plaintiffs are Members in the Fund.

312. NYCRC was entrusted by law and contract with a duty to account to the Plaintiffs for the Fund's business.

313. Defendants have refused to provide Plaintiffs with the information, documents and accounting concerning the affairs of the Fund requested in their counsel's December 9, 2016 and January 19, 2017 letters.

314. Defendants have refused to account for the Fund's business affairs, including the monies invested by the Plaintiffs.

315. Plaintiffs request that NYCRC provide an accounting forthwith, including but not limited with respect to (i) the purported expenditure by the Fund, NYCRC, the Borrower, The Dermot Company or their affiliates of the $77 million provided by Investors, so that an examination may be made of whether the Plaintiffs' investment has been dissipated, improperly used and is still being held in any part by the Defendants or their affiliates, (ii) all interest, fees, commissions or other consideration it received from the Borrower, The Dermot Company or other parties in connection with the Project and Loan, and (iii) the $5.5 million that, under the guise of amending the Loan Agreement, was given to The Dermot Company or SSA Landlord, and (iv) any monies received by the Fund, NYCRC, the Borrower or The Dermot Company under a builders risk insurance or any other policies covering the Project as a result of Hurricane Sandy.

316. No adequate legal remedy exists in the absence of an accounting.

COUNT XVII
Violation of Section 1102 of The New York Limited Liability Company Law (Against NYCRC)

317. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-316 above as if fully restated herein.

318. Pursuant to Section 1102 of the New York Limited Liability Company Law, Plaintiffs are entitled to inspect and copy any "information regarding the affairs of the limited liability company as is just and reasonable."

319. In violation of Section 1102, NYCRC has refused to provide Plaintiffs with, among other things, the information requested in their counsel's December 9, 2016 and January 19, 2017 letters to NYCRC.

320. By reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

321. Because money damages will not be an adequate remedy, Plaintiffs are also entitled to injunctive relief ordering NYCRC to provide them with the requested information and documents concerning the affairs of the Fund and such additional information as is just and reasonable.

CONCLUSION

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

(i) compensatory damages, individually and derivatively on behalf of the Fund, in the amount of at least $77 million;

(ii) punitive damages, individually and derivatively on behalf of the Fund, in the amount of at least $100 million;

(iii) equitable relief, individually and derivatively on behalf of the Fund, ordering Defendants to disgorge the benefits they have received and will receive as a result of NYCRC's breaches of fiduciary duties, including all fees, interest, commissions or other payments, in an amount to be determined at trial;

(iv) equitable relief, individually and derivatively on behalf of the Fund, removing NYCRC as the Managing Member of the Fund;

(v) equitable relief requiring NYCRC to provide an accounting forthwith;

(vi) equitable relief requiring NYCRC to provide all information regarding its affairs as is just and reasonable in accordance with Section 1102 of the New York Limited Liability Company Law;

(vii) pre- and post-judgment interest at the applicable statutory rates; and

(viii) such other and further relief, including reasonable attorneys' fees, as the Court may deem just and appropriate.

Dated: New York, New York
May 5, 2017

Respectfully submitted

MORRISON COHEN LLP

By 
Howard S. Wolfson
David B. Saxe
Jason P. Gottlieb
Mark S. Jarashow
909 Third Avenue
New York, New York 10022
Tel: (212) 735-8600
Fax: (212) 735-8708
hwolfson@morrisoncohen.com
dsaxe@morrisoncohen.com
jgottlieb@morrisoncohen.com
mjarashow@morrisoncohen.com
Attorneys for Plaintiffs

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Index No. 652024/2017

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

CHEN DONGWU, CHEN SHUHUI, CHEN WEN, CHEN XIU YING, CHEN ZIWEI, CHENG GUANWEN, CHENG JIE, CHENG LING, CHENG WEIWEI, DENG ZHENGMEI, DU ERQIN, FENG BING, FENG HAO, GU BEIBEI, GUAN XUEPING, GUAN ZHIJUN, HAN LIDA, HE CHUNHUA, HE XI, HOU JIN, HU JIANJUN, HU XINGNING, HU ZHENGFU, HU ZHONGYONG, HUANG GUI MING, HUANG YING, JI TONG, JIAN ZAIHONG, JIANG YUANSHEN, KUANG SUPING, LEI MINGCHUN, LI CHAO YANG, LI FEIFEI, LI JINLIANG, LI NING, LI WANSHAN, LI WEI, LI WEI, LI XIAOLIN, LI YINGJU, LI ZHI HUI, LIN SEN, LING HAO, LING YAHUA, LIU QING SHU, LIU WEI WEI, LIU XIAOJUN, LIU YING, LU KUI, LU RUI, LU YUANQING, LUO HANGBO, MA BING, MA JIFEI, MIAO SHU, NI QIAO, QI XIAOMEI, QU XIAOYAN, PAN CE, PAN CHENG, PAN YUE XIA, REN JINGYAN, REN TAO, RUAN WEIWEN, SHEN CHAOJUN, SHENG DONG LIN, SHI BING, SUN LIANGGUI, SUN PING, TAN DAMING, TANG MINGSHAN, TANG WENWEN, TAO LANLAN, TIAN XIAOYUN, WAN JUN, WANG GUOLIANG, WANG TAO, WANG TING, WANG YAN, WANG YUN, WANG ZHENGGE, WANG ZHOU JI, WEI FANG, WEI ZHEN, WU LING, WU YONG HUA, XIA YUN, XIE SHISHI, XU YONGLIANG, XU ZEYUAN, YAN TAO, YAN XIAO XIN, YANG JIAN HUA, YANG JIE, YANG YONG JI, YANG YUE, YE CHUN LEI, YOU JUN, ZHAN BIHUA, ZHANG FENGWEN, ZHANG JIWANG, ZHANG JUAN, ZHANG JUNYI, ZHANG PU, ZHANG YAN, ZHANG YIHONG, ZHANG ZHIMIN, ZHAO CHUNYING, ZHAO HONGZHI, ZHOU BAI, ZHOU LIANCHUN, ZHOU YAN, ZHU CHAO, ZHU JIANAN, ZHU WEITE, ZHUANG ZHENGWEI, and ZOU LIANG, individually and derivatively on behalf of THE NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT FUND, LLC,

Plaintiffs,

v.

NEW YORK CITY REGIONAL CENTER LLC, GEORGE L. OLSEN, and PAUL LEVINSOHN,

Defendants,

-and-

THE NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT FUND, LLC,

Nominal Defendant.

COMPLAINT

ATTORNEYS FOR PLAINTIFFS

MorrisonCohen LLP

909 Third Avenue, New York, NY 10022-4731 •
p:212.735.8600 • f:212.735.8708