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7 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, WEST DISTRICT**

10 NEIL SHEKHTER, an individual;
CHRISTINE HAYWORTH, an individual;
11 JENIFFER MIRANDA, an individual; KATE
MEDIANA, an individual; SERGIO
12 QUINTANA, an individual; NELLY
PADILLA, an individual; OLENA
13 POLENDER, an individual; ABEL
SERRANO, an individual; NADER
14 ESMAILZADEH, an individual; LEO
VILLALOBOS, an individual; JEFF
15 PAYNTON, an individual; MAGGIE
MIGUEL, an individual; NMS PROPERTIES,
16 INC., a California corporation; NMS
CAPITAL PARTNERS I, LLC, a California
17 limited liability company,

18 Plaintiffs,

19 v.

20 DENNIS J. WONG, an individual; MARK L.
FRIEDMAN, an individual; DAVID M.
21 WAKS, an individual; ERIC SAMEK, an
individual; MARC DAVIDSON, an
22 individual; JEFF FURBER, an individual;
MIKE MCGREAL, an individual; AMANDA
23 ZINSMEYER, an individual; DARRYL
HOWARD, an individual; ERICA SANCHEZ,
24 an individual; LARRY KALESTAD, an
individual; ERIC JUMPER, an individual;
25 PATTI SINGLETON, an individual;
SHELLEE RADER, an individual; ANNA
26 GUILLEN, an individual; KELLY TESSO, an
individual; FRANCISCO OSEGUEBA, an
27 individual; SPI HOLDINGS, LLC, a Delaware
limited liability company; FULCRUM
28 PROPERTY CORP., a California corporation;

CASE NO. SC126760

SECOND AMENDED COMPLAINT FOR:

1. **DECLARATORY RELIEF;**
2. **TRESPASS;**
3. **ASSAULT;**
4. **BATTERY;**
5. **FALSE IMPRISONMENT;**
6. **INFLICTION OF EMOTIONAL DISTRESS;**
7. **CONVERSION;**
8. **TRESPASS TO CHATTELS;**
9. **TORTIOUS INTERFERENCE WITH CONTRACT;**
10. **INVASION OF PRIVACY;**
11. **HACKING;**
12. **UNFAIR COMPETITION;**
13. **AIDING AND ABETTING;**
14. **CIVIL CONSPIRACY;**
15. **BREACH OF IMPLIED COVENANT;**
16. **BREACH OF FIDUCIARY DUTY;**
17. **FRAUDULENT CONCEALMENT;**
18. **BREACH OF CONTRACT;**
19. **CONVERSION;**
20. **BREACH OF CONTRACT; AND**
21. **CONVERSION.**

[DEMAND FOR JURY TRIAL]

1 WRC HOLDINGS, LLC, a California limited
2 liability company; SCRVSPE 1 LP, a
3 Delaware limited partnership; FFLPSPE 1 LP,
4 a Delaware limited partnership; VERBENA
5 SPE 1 LP, a Delaware limited partnership;
6 REP WRC SPE 1 LP, a Delaware limited
7 partnership; SPI 555 SPE 1 LP, a Delaware
8 limited partnership; RS 555 SPE 1 LP, a
9 Delaware limited partnership; DW 555 SPE 1
10 LP, a Delaware limited partnership; SCRVSPE
11 SPE 2 LP, a Delaware limited partnership;
12 FFLPSPE 2 LP, a Delaware limited
13 partnership; VERBENA SPE 2 LP, a
14 Delaware limited partnership; REP WRC SPE
15 2 LP, a Delaware limited partnership; SPI 555
16 SPE 2 LP, a Delaware limited partnership; RS
17 555 SPE 2 LP, a Delaware limited partnership;
18 DW 555 SPE 2 LP, a Delaware limited
19 partnership; US RESIDENTIAL GROUP,
20 LLC, a Texas limited liability company;
21 GREYSTAR REAL ESTATE PARTNERS,
22 LLC, a Delaware limited liability company;
23 PRAVIS, LLC, a California limited liability
24 company; AEW CAPITAL MANAGEMENT,
25 L.P., a Delaware limited partnership; P6 LA
26 MF HOLDINGS SPE, LLC, a Delaware
27 limited liability company; AEW PARTNERS
28 VI, L.P., a Delaware limited partnership; AEW
PARTNERS VI, INC., a Delaware
corporation; AEW VI, L.P., a Delaware
limited partnership; and DOES 1-50,

Defendants.

AND ALL RELATED CROSS-ACTIONS.

Assigned for All Purposes to the
Hon. Gerald Rosenberg, Dept. WE-K

Action Filed: December 1, 2016
Trial Date: None

1 Plaintiffs Neil Shekhter (“Shekhter”); Christine Hayworth; Jeniffer Miranda; Kate
2 Mediana; Sergio Quintana; Nelly Padilla; Olena Polender; Abel Serrano; Nader Esmailzadeh; Leo
3 Villalobos; Jeff Paynton; Maggie Miguel; NMS Properties, Inc. (“NMS Properties”); and NMS
4 Capital Partners I, LLC (“NMS Capital”) allege as follows:

5 INTRODUCTION

6 1. As set forth below, there are two aspects of this case:

7 A. Voiding of the sale of five multi-unit apartment buildings in West Los
8 Angeles that were first, transferred to a joint venture based on fraudulent misrepresentations and,
9 second, then purportedly “sold” by the joint venture in a self-serving, collusive transaction; and

10 B. The scheme implemented by way of the “sale” referenced in Paragraph A
11 above, to confiscate Plaintiffs’ equity in the joint venture.

12 A. Voiding The Sale Of The Five Buildings

13 2. In an action currently pending in Superior Court, known as the *Lincoln Studios*
14 case, the NMS Plaintiffs are seeking to rescind the transfers of five out of the nine Properties that
15 were purportedly sold in November 2016. The Court of Appeal reversed the prior dismissal of the
16 *Lincoln Studios* case on demurrer, holding that Shekhter and the other plaintiffs are entitled to
17 proceed against AEW on their fraud claim.

18 3. Specifically, the Court of Appeal ruled that there is a legitimate issue as to whether
19 “during negotiations, AEW knowing [sic] made false representations about the joint venture
20 program, including that there was a monetization right and that Shekhter’s transfer of his
21 properties to the joint venture at below fair market value would be ‘of no moment’ because of his
22 right to ‘take-out’ AEW within a few years.”

23 4. As the NMS Plaintiffs have alleged in *Lincoln Studios*, both before and after the
24 joint venture was formed, AEW and its executives, Defendants Eric Samek (“Samek”) and Marc
25 Davidson (“Davidson”), promised Shekhter that he would have the right to take-out, or
26 “monetize,” AEW’s interest in the joint venture within 5 years by paying AEW a 24% annual
27 return on its investment but not less than 1.75 times its invested capital in the joint venture.

28 5. Relying on those promises, Shekhter and his entities transferred five valuable

1 properties into the venture for over \$50 million below market value; contributed over \$10 million
2 in cash to the venture; and developed the properties without charging a developer's fee. But when
3 Shekhter tried to exercise the take-out right in 2013 by paying AEW the amount that the parties
4 had agreed would be required (\$106 million), AEW went back on its word and repudiated the
5 take-out right.

6 6. The NMS Plaintiffs are seeking to rescind the transfers of the five properties in the
7 *Lincoln Studios* case. If the Plaintiffs prevail in the *Lincoln Studios* case, as they believe they will,
8 they will rescind the transfers of the five properties, and then ask this Court to void their
9 subsequent sale to the Defendants herein (the "Buyer Defendants"), who were not bona fide
10 purchasers.

11 **B. The Scheme To Confiscate NMS's Equity**

12 7. This case also involves a scheme to confiscate Shekhter's and NMS Capital's
13 equity in the joint venture between NMS Capital and Defendant P6 LA MF Holdings SPE, LLC.
14 The joint venture was formed in September 2010. It owned nine luxury apartment buildings in
15 Santa Monica and West Los Angeles worth more than half a billion dollars (the "Properties").

16 8. The Properties appreciated significantly in value after September 2010, and AEW
17 was not satisfied with the 24% return on its invested capital that it had agreed to. So AEW
18 implemented a plan to cut Shekhter/NMS Capital out of the joint venture and take the equity for
19 itself.

20 9. Unbeknownst to Shekhter, AEW put its plan into action in 2013 when AEW
21 refused to accept Shekhter/NMS Capital's \$106 million offer, which reflected a 24% return for
22 three years on AEW's invested capital of \$60 million. The offer was based on AEW's
23 representations that Shekhter/NMS Capital would have the right to take-out, or monetize, AEW's
24 interest in the joint venture if NMS Capital paid AEW a 24% IRR or 1.75 times its invested
25 capital, whichever was greater. If AEW had accepted the tender offer, its interest in the joint
26 venture would have been zeroed out.

27 10. In February 2015, there was an offer to purchase the Properties for \$500 million.
28 AEW knew that if it accepted this offer, it would only receive its invested capital plus a 24%

1 return, and NMS would keep the rest of the proceeds from the sale. AEW did not want that to
2 occur.

3 11. So AEW refused to consider the \$500 million offer because it wanted the entire
4 portfolio for itself—all of Shekhter/NMS Capital’s investment and all of their equity—over \$300
5 million. Rather than accept the offer, AEW lied and told Shekhter that it would retain a broker to
6 market the Properties to see if the joint venture could get a higher price. This was a sham. The
7 Properties were not marketed for sale in 2015.

8 12. Then, in September 2015, just days before the five-year anniversary of the joint
9 venture, AEW purported to remove NMS Capital as the “Operating Member.” By doing so, AEW
10 caused NMS to lose its “promote” worth tens of millions of dollars, which results in AEW being
11 entitled to a greater share of the proceeds from any sale of the Properties.

12 13. AEW implemented its plan to take Shekhter/NMS Capital’s equity when, in
13 November 2016, it sold the Properties to Defendants Mark L. Friedman (“Friedman”) and the rest
14 of the Buyer Defendants. AEW and the Buyer Defendants conspired to “sell” the Properties in a
15 covert transaction, without the involvement or knowledge of NMS.

16 14. AEW has not distributed any proceeds from the sale to NMS Capital and does not
17 intend to do so. Rather, AEW is confiscating Plaintiffs’ equity and keeping it all for itself.

18 15. Friedman is a long-time partner of AEW. Through his company, Fulcrum Property
19 Corp. and its affiliates, Friedman has been a partner with AEW for 26 years in a major shopping
20 center in Sacramento, California. In fact, the Director of AEW’s Direct Investment Group
21 currently serves as the Managing Partner of the joint venture that owns this property.

22 16. AEW sold the Properties to its partner—rather than a bona fide third-party
23 purchaser through an arm’s-length transaction—because the Buyer Defendants would not stand in
24 the way of AEW confiscating Shekhter/NMS Capital’s equity in the joint venture. The Buyer
25 Defendants allowed AEW to do what it wanted; and, in exchange, they received the Properties for
26 approximately \$100 million below market value.

27 17. Everything about the transaction is irregular, confirming Defendants’ intent to use
28 it as a means of misappropriating NMS Capital’s interest in the Properties. The sale price of

1 \$430.5 million is approximately \$70 million less than the prior \$500 million offer, and
2 approximately \$100 million below market value based on contemporaneous sales of comparable
3 properties.

4 18. AEW caused the joint venture to take back \$236.8 million in seller financing. And
5 AEW has made no distributions to NMS Capital since closing the sale. In fact, AEW instructed—
6 and the Buyer Defendants permitted—the escrow company that handled the sale to distribute the
7 proceeds solely to AEW.

8 19. AEW also caused the joint venture to indemnify the Buyer Defendants against any
9 litigation filed by Shekhter/NMS Capital, meaning, there was no risk to the Buyer Defendants in
10 conspiring with AEW. Any arm’s-length buyer would have been put on notice of NMS Capital’s
11 equity and would not have done the deal on these terms.

12 20. AEW had no right to sell the Properties to the Buyer Defendants under these terms.
13 The Buyer Defendants were not, and are not, bona fide purchasers. AEW did not sell the
14 Properties to an arm’s-length buyer because a legitimate arm’s-length buyer would not have gone
15 along with AEW’s scheme to confiscate Plaintiffs’ equity.

16 21. A few months before AEW entered into this sweetheart deal with the Buyer
17 Defendants, NMS Capital offered AEW \$500 million for the portfolio and provided proof of
18 funds. The sale would have closed, no seller financing or indemnities would have been provided
19 by the joint venture, and NMS Capital would have received its share of the proceeds. But AEW
20 refused to sell to NMS.

21 22. In this lawsuit, Plaintiffs seek to have the November 2016 “sale” deemed invalid,
22 and unwound in its entirety.

23 PARTIES

24 Plaintiffs

25 23. Neil Shekhter is, and at all times relevant to this Complaint was, an individual
26 residing in Los Angeles County, California. He is the Chief Executive Officer of NMS Properties.

27 24. Christine Hayworth is, and at all times relevant to this Complaint was, an
28 individual residing in Los Angeles County, California. She was the Concierge at one of the

1 Properties.

2 25. Jeniffer Miranda is, and at all times relevant to this Complaint was, an individual
3 residing in Los Angeles County, California. She was the Assistant Community Manager for the
4 Properties.

5 26. Kate Mediana is, and at all times relevant to this Complaint was, an individual
6 residing in Los Angeles County, California. She was a Senior Community Manager for the
7 Properties.

8 27. Sergio Quintana is, and at all times relevant to this Complaint was, an individual
9 residing in Los Angeles County, California. He was a Community Manager for one of the
10 Properties.

11 28. Nelly Padilla is, and at all times relevant to this Complaint was, an individual
12 residing in Los Angeles County, California. She was a Leasing Specialist for one of the
13 Properties.

14 29. Olena Polender is, and at all times relevant to this Complaint was, an individual
15 residing in Los Angeles County, California. She was the Area Manager for one of the Properties.

16 30. Abel Serrano is, and at all times relevant to this Complaint was, an individual
17 residing in Los Angeles County, California. He was the Regional Maintenance Supervisor for
18 NMS Properties.

19 31. Nader Esmailzadeh is, and at all times relevant to this Complaint was, an individual
20 residing in Los Angeles County, California. He was the Property Manager for one of the
21 Properties.

22 32. Leo Villalobos is, and at all times relevant to this Complaint was, an individual
23 residing in Los Angeles County, California. He was the Maintenance Supervisor for one of the
24 Properties.

25 33. Jeff Paynton is, and at all times relevant to this Complaint was, an individual
26 residing in Los Angeles County, California. He was the Assistant Community Manager for one of
27 the Properties.

28 34. Maggie Miguel is, and at all times relevant to this Complaint was, an individual

1 residing in Los Angeles County, California. She was the Area Manager for the Properties.

2 35. NMS Properties is a California corporation with its principal place of business in
3 Santa Monica, California.

4 36. NMS Capital is a California LLC with its principal place of business in Santa
5 Monica, California.

6 **Defendants**

7 37. The Buyer Defendants:

8 a. Mark L. Friedman is an individual who, on information and belief, resides
9 in Sacramento, California, and is the Founder and President of Fulcrum Property Corp., as well as
10 a member and/or authorized representative of Defendants SCR V SPE GP 1 LLC, FFLP SPE 1 LP,
11 SCR V SPE GP 2 LLC and FFLP SPE 2 LP who, through one or more of these entities, claims
12 ownership of one or more of the Properties.

13 b. Dennis J. Wong is an individual who, on information and belief, resides in
14 San Francisco, California, and is the Co-Founder and Managing Director of SPI Holdings, LLC,
15 as well as a member and/or authorized representative of Defendants SPI 555 SPE 1 LP, RS 555
16 SPE 1 LP, DW 555 SPE 1 LP, Verbena SPE 1 LP, SPI 555 SPE 2 LP, RS 555 SPE 2 LP, DW 555
17 SPE 2 LP, and Verbena SPE 2 LP who, through one or more of these entities, claims ownership of
18 one or more of the Properties.

19 c. David M. Waks is an individual who, on information and belief, resides in
20 Sacramento, California, and is a member and/or authorized representative of Defendants WRC
21 Holdings, LLC, REP WRC SPE 1 LP, and REP WRC SPE 2 LP who, through one or more of
22 these entities, claims ownership of one or more of the Properties.

23 d. SPI Holdings, LLC is a Delaware LLC with its principal place of business
24 in San Francisco, California.

25 e. Fulcrum Property Corp. is a California corporation with its principal place
26 of business in Sacramento, California.

27 f. WRC Holdings, LLC is a California LLC with its principal place of
28 business in Sacramento, California.

- 1 g. SCRV SPE 1 LP is a Delaware limited partnership with its principal place
2 of business in Sacramento, California that claims ownership of one or more of the Properties.
- 3 h. FFLP SPE 1 LP is a Delaware limited partnership with its principal place of
4 business in Sacramento, California that claims ownership of one or more of the Properties.
- 5 i. Verbena SPE 1 LP is a Delaware limited partnership with its principal place
6 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 7 j. REP WRC SPE 1 LP is a Delaware limited partnership with its principal
8 place of business in Sacramento, California that claims ownership of one or more of the
9 Properties.
- 10 k. SPI 555 SPE 1 LP is a Delaware limited partnership with its principal place
11 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 12 l. RS 555 SPE 1 LP is a Delaware limited partnership with its principal place
13 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 14 m. DW 555 SPE 1 LP is a Delaware limited partnership with its principal place
15 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 16 n. SCRV SPE 2 LP is a Delaware limited partnership with its principal place
17 of business in Sacramento, California that claims ownership of one or more of the Properties.
- 18 o. FFLP SPE 2 LP is a Delaware limited partnership with its principal place of
19 business in Sacramento, California that claims ownership of one or more of the Properties.
- 20 p. Verbena SPE 2 LP is a Delaware limited partnership with its principal place
21 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 22 q. REP WRC SPE 2 LP is a Delaware limited partnership with its principal
23 place of business in Sacramento, California that claims ownership of one or more of the
24 Properties.
- 25 r. SPI 555 SPE 2 LP is a Delaware limited partnership with its principal place
26 of business in San Francisco, California that claims ownership of one or more of the Properties.
- 27 s. RS 555 SPE 2 LP is a Delaware limited partnership with its principal place
28 of business in San Francisco, California that claims ownership of one or more of the Properties.

1 t. DW 555 SPE 2 LP is a Delaware limited partnership with its principal place
2 of business in San Francisco, California that claims ownership of one or more of the Properties.

3 38. Alter Ego Allegations Regarding the Buyer Defendants:

4 a. Defendants Dennis J. Wong and his affiliated entities, SPI Holdings, LLC,
5 Verbena SPE 1 LP, SPI 555 SPE 1 LP, RS 555 SPE 1 LP, DW 555 SPE 1 LP, Verbena SPE 2 LP,
6 SPI 555 SPE 2 LP, RS 555 SPE 2 LP, and DW 555 SPE 2 LP; Mark L. Friedman and his affiliated
7 entities, Fulcrum Property Corp., SCR V SPE 1 LP, FFLP SPE 1 LP, SCR V SPE 2 LP, and FFLP
8 SPE 2 LP; and David M. Waks and his affiliated entities, WRC Holdings, LLC, REP WRC SPE 1
9 LP, and REP WRC SPE 2 LP, respectively, do not function as separate entities. Instead, there is
10 such unity of interest and ownership between them that the separate personalities of the entity
11 Defendants and individual Defendants no longer exist. In particular, and on information and
12 belief:

13 b. These entity Defendants are mere shells that exist solely to enable the
14 individual Defendants to circumvent laws and regulations and to otherwise gain unfair advantages
15 including false claims of ownership of the Properties;

16 c. The entity Defendants have no employees, specific offices, bank accounts,
17 or letterhead, and the individual Defendants exercise total control over them and their operations;

18 d. The individual Defendants conduct the entity Defendants as a common
19 enterprise, lacking independence or any kind of arm's-length relationship; and

20 e. Consequently, if the acts of the entity Defendants are treated as those of the
21 entities alone, it would sanction a fraud or promote injustice to uphold the entity's separate
22 existence and allow the individual Defendants to escape personal liability.

23 39. The Management Defendants:

24 a. US Residential Group, LLC is a Texas LLC with its principal place of
25 business in Greenville, South Carolina as well as offices in California.

26 b. Greystar Real Estate Partners, LLC is Delaware LLC with its principal
27 place of business in Charleston, South Carolina as well as offices in California.

28 c. Pravis, LLC is a California LLC with its principal place of business in

1 Irvine, California.

2 d. Mike McGreal is an individual who, on information and belief, resides in
3 Los Angeles, California, and is a Regional Manager for Defendant US Residential Group, LLC.

4 e. Amanda Zinsmeyer is an individual who, on information and belief, resides
5 in Dallas, Texas, and is the Vice President, Education and Marketing for Defendant US
6 Residential Group, LLC.

7 f. Darryl Howard is an individual who, on information and belief, resides in
8 Los Angeles, California, and is a Regional Maintenance Supervisor for Defendant US Residential
9 Group, LLC.

10 g. Erica Sanchez is an individual who, on information and belief, resides in
11 Denver, Colorado, and is a Business Development Analyst for Defendant US Residential Group,
12 LLC.

13 h. Larry Kalestad is an individual who, on information and belief, resides in
14 Orange County, California, and is the Senior Director of Real Estate for Defendant Greystar Real
15 Estate Partners, LLC.

16 i. Eric Jumper is an individual who, on information and belief, resides in
17 Irvine, California, and is a Regional Maintenance Manager for Defendant Greystar Real Estate
18 Partners, LLC.

19 j. Patti Singleton is an individual who, on information and belief, resides in
20 San Francisco, California, and is a Regional Marketing Director for Defendant US Residential
21 Group, LLC.

22 k. Shellee Rader is an individual who, on information and belief, resides in
23 Plano, Texas, and is a Regional Manager for Defendant US Residential Group, LLC.

24 l. Anna Guillen is an individual who, on information and belief, resides in
25 California and is an employee of Defendant US Residential Group, LLC.

26 m. Kelly Tesso is an individual who, on information and belief, resides in
27 Riverside, California, and is an Area Manager for Defendant US Residential Group, LLC.

28 n. Francisco Osegueba is an individual who, on information and belief, resides

1 in California and is an employee of Defendant US Residential Group, LLC.

2 40. The AEW Defendants:

3 a. P6 LA MF Holdings SPE, LLC (“P6”) is a Delaware LLC and was formed
4 by AEW Capital Management, L.P. to be the “Investor Member” in the joint venture with NMS
5 Capital.

6 b. AEW Capital Management, L.P. (“AEW Capital”) is a Delaware limited
7 partnership that manages AEW Partners VI, L.P.

8 c. AEW Partners VI, L.P. is a Delaware limited partnership and the “fund”
9 managed by AEW Capital that invested, indirectly, in the joint venture with NMS Capital.

10 d. AEW VI, L.P. is a Delaware limited partnership that has acted through its
11 general partner, AEW Partners VI, Inc.

12 e. AEW Partners VI, Inc. is a Delaware corporation and the general partner of
13 AEW VI, L.P.

14 41. Samek is an individual who, at all relevant times, was an officer, director and/or
15 managing agent of the foregoing entities, collectively referred to herein as “AEW.” At all relevant
16 times, Samek has acted individually and on behalf of AEW in connection with the matters that are
17 the subject of this action. Samek obtained personal benefits from AEW by engaging in the
18 malfeasance described herein. Samek culpably participated in the misconduct on which Plaintiffs’
19 claims are based. Samek has since founded and is an officer, director and/or management agent of
20 Brasa Capital Management.

21 42. Davidson is an individual who, at all relevant times, has been an officer, director
22 and/or managing agent of AEW. At all relevant times, Davidson has acted individually and on
23 behalf of AEW in connection with the matters that are the subject of this action. Davidson
24 obtained personal benefits from AEW by engaging in the malfeasance described herein. Davidson
25 served as Samek’s supervisor and knowingly authorized and approved of Samek’s conduct in
26 connection with the matters that are the subject of this action. Davidson personally and culpably
27 participated in the misconduct on which Plaintiffs’ claims are based. Davidson also personally
28 made misrepresentations and concealed material facts from NMS Capital and its principal,

1 Shekhter.

2 43. Jeff Furber (“Furber”) is an individual who, at all relevant times, has been the Chief
3 Executive Officer of AEW Capital with oversight responsibility for all of AEW’s operating
4 business units in the United States. At all relevant times, Furber has acted individually and on
5 behalf of AEW in connection with the matters that are the subject of this action. On information
6 and belief, Furber authorized and approved of Davidson’s and Samek’s conduct in connection
7 with the matters that are the subject of this action and obtained personal benefits from AEW by
8 engaging in the malfeasance described herein.

9 44. Alter Ego Allegations Regarding the AEW Defendants:

10 a. Except for AEW Capital, the AEW entities do not function as separate
11 entities, but are mere shells designed to allow AEW Capital to circumvent laws and regulations
12 and to otherwise gain unfair advantages.

13 b. Except for AEW Capital, the AEW entities have no employees, specific
14 offices, bank accounts, or letterhead.

15 c. The AEW entities use the same employees, i.e., employees of AEW
16 Capital, and use the same e-mail domain, i.e., (name)@aew.com. AEW Capital controls the
17 operations of the other AEW entities.

18 d. The AEW entities, other than AEW Capital, do not observe entity
19 formalities.

20 e. The AEW entities are conducted as a common enterprise, lacking
21 independence or any kind of arm’s-length relationship.

22 f. Except for AEW Capital, the AEW entities are materially undercapitalized.

23 g. The Investor Member (P6) did not open or maintain a bank account or
24 obtain authorization to do or transact business in California to further an unlawful practice of
25 avoiding paying taxes to the Franchise Tax Board of the State of California.

26 h. Based on the way that they have operated, the AEW entities should not be
27 viewed as separate or independent entities for legal purposes.

28 i. Except for AEW Capital, the AEW entities are mere instrumentalities of

1 AEW Capital.

2 j. It would be manifestly unjust to treat the AEW entities as anything but alter
3 egos of each other.

4 45. The true names and capacities of Defendants DOES 1 through 50 are unknown to
5 Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs will, if
6 necessary, amend this Complaint to show the true names and capacities of DOES 1 through 50
7 when their names and capacities have been ascertained. Among others, and without limitation,
8 DOES 1 through 50 include agents, affiliates and representatives of the other Defendants, private
9 security personnel, locksmiths, computer and computer networking technicians, and others who
10 culpably participated in or are in some other way responsible for the misconduct committed by the
11 other Defendants and for the damages Plaintiffs suffered, as alleged herein.

12 FACTS COMMON TO ALL CAUSES OF ACTION

13 The Joint Venture

14 46. Shekhter is a real estate developer and, through his companies, an owner with over
15 2,000 apartment units in Santa Monica and the Westside of Los Angeles. Shekhter and his family
16 have been working on developing the Properties at issue in this case for over ten years. Shekhter's
17 plan was to keep the Properties in the family for years to come.

18 47. AEW is one of the largest hedge funds in the world, headquartered on the East
19 Coast, with assets of over \$60 billion, and operating throughout the country, including in
20 California. It is a sophisticated international hedge fund.

21 48. Samek was an executive at AEW in charge of operations on the West Coast. This
22 lawsuit arises, in large part, from AEW and Samek concocting and implementing a scheme to
23 cheat Shekhter and entities under his control out of the fruits of their labor and their portfolio of
24 real estate projects. Samek has since left AEW and started his own hedge fund called Brasa
25 Capital Management operating in Century City, California.

26 49. In 2010, Shekhter was looking for the financing to develop the Properties.

27 50. Samek was introduced to Shekhter in early 2010 by Ed Zimbler ("Zimbler"), a
28 broker with Berkadia Commercial Mortgage, LLC. Samek befriended Shekhter and gained his

1 trust and confidence. He proposed that Shekhter, through one of his entities, partner with AEW to
2 acquire, develop and operate residential and commercial real estate projects in the Los Angeles
3 area.

4 51. Samek and AEW induced Shekhter to enter into a joint venture with AEW by
5 making false representations about AEW's joint venture program: namely, that Shekhter would
6 have the right to acquire, or monetize, AEW's interest in the joint venture based on a negotiated
7 formula.

8 52. Specifically, Samek promised Shekhter that he would have the right to "monetize,"
9 or take-out, AEW's interest in the joint venture by ensuring that AEW would receive, by payments
10 from Shekhter, the greater of: (1) 1.75 times its invested capital, or (2) a 24% annual return (the
11 "Monetization Formula"). In the real estate business, to "monetize" an asset, such as an interest in
12 real estate or in an entity that owns real estate, is understood to mean to engage in a transaction
13 that results in the interest being exchanged for money.

14 53. For example, to "monetize" a membership interest in a limited liability company
15 that owns an interest in real estate is to exchange that interest for the payment of cash. This
16 process is often referred to as a "take-out," "buy-out" or "monetization." Shekhter relied on
17 Samek's representations and agreed to proceed with a joint venture with AEW on that basis.
18 Shekhter trusted Samek and believed he was being honest and truthful when he made those
19 representations. Shekhter would not have proceeded with the joint venture without these
20 assurances.

21 54. Samek told others, including Daniel Lennon, who was an employee at AEW at the
22 time, that he and Shekhter negotiated the deal on the understanding that Plaintiffs had a take-out
23 right. Lennon has executed a sworn declaration attesting to the following: "Mr. Samek told me
24 that NMS believed the deal between NMS and AEW was that NMS had the right to monetize or
25 take-out AEW's interest in the joint venture by paying AEW 1.75 times its invested capital, or
26 24% per year on its investment, whichever was greater." Lennon further stated: "Mr. Samek told
27 me that this was how he and Mr. Shekhter negotiated the deal."

28 55. That Samek made these representations to Shekhter has been confirmed in other

1 ways. For instance, Zimbler has confirmed that Samek told him that Shekhter negotiated for and
2 would have a take-out right. Specifically, Zimbler has testified under oath that he spoke with
3 Samek, and Samek confirmed that the take-out right was part of AEW's joint venture program
4 and, in particular, the deal between Shekhter and AEW. In fact, Zimbler testified that he
5 introduced AEW to other developers in California because of Samek's representations regarding
6 AEW's joint venture program and the ability for developers, like Shekhter, to take-out, or
7 monetize, AEW's interest in the joint venture.

8 56. In addition, in an e-mail sent by Samek in May 2010 to an attorney and another
9 executive at AEW, Samek confirmed that he had agreed to terms with Shekhter, which included
10 the right to "monetize AEW's investment" and provided that, if he did so within five years, then
11 Plaintiffs "will keep all proceeds above AEW's 24% annual return" and AEW's "minimum equity
12 multiple of 1.75x." In other words, Shekhter would have the right to take-out AEW by paying
13 AEW whatever amount was needed to ensure that AEW had received the greater of 1.75 times its
14 investment or a return of 24% per year because at that point all of the economic benefits from the
15 joint venture would inure to Shekhter's benefit.

16 57. In September 2010, in reliance on Samek's representations, Shekhter, through his
17 company NMS Capital, entered into a joint venture ("JV") with AEW that provided NMS with a
18 portion of the financing that was needed to develop the Properties. AEW agreed to invest \$60
19 million in the JV and, through AEW affiliate P6, is its "Investor Member." NMS Capital is its
20 "Operating Member."

21 58. From the JV's inception—and even before—Samek and his supervisor Davidson
22 were intimately involved in the JV. Samek made, and Davidson approved, specific
23 representations to Shekhter that he would have the right—through NMS Capital—to monetize
24 AEW's interest in the JV and its assets, the Properties. Samek also contrived—and Davidson
25 approved—a plan to deprive Shekhter of this right and seize the Properties for AEW's sole
26 benefit.

27 **NMS's Contributions to the Joint Venture Based on AEW's Representations**

28 59. In reliance on Samek's representations, Shekhter agreed to, and did, transfer

1 properties that he owned through his entities to the JV entity. As such, Shekhter and entities under
2 his control transferred four properties into the JV for below fair market value, namely: (a) 375 N.
3 La Cienega Boulevard, Los Angeles, California (the “La Cienega Property”); (b) 9901
4 Washington Boulevard, Culver City, California (the “Washington Property”); (c) 819-829
5 Broadway, Santa Monica, California (the “Broadway Property”); and (d) 1447 Lincoln Boulevard,
6 Santa Monica, California (the “Lincoln Property”).

7 60. Shekhter transferred these four properties to the JV for nearly \$50 million below
8 their fair market value, as summarized below:

Property	Date Transferred	Market Value @ Transfer	Amount Paid	Description
Broadway	09/08/10	\$18,000,000	\$4,300,000	116 units & 3,000 SF Retail
Lincoln	11/09/10	\$18,000,000	\$8,975,891	97 units & 7,000 SF Retail
La Cienega	03/14/12	\$25,000,000	\$11,000,000	125 units & 7,000 SF Retail
Washington	06/12/12	\$25,000,000	\$12,000,000	131 units & 12,000 SF Retail
Total		\$86,000,000	\$36,275,891	

14 61. Shekhter transferred the properties for below fair market value only because of the
15 monetization feature. As Samek repeatedly told Shekhter, the amount at which the properties
16 would be contributed to the JV would be irrelevant given the monetization right promised by
17 AEW and Shekhter’s intent to exercise it. Samek told Shekhter that because the deal was
18 structured to have Shekhter take AEW out within five years, the take-out price was based on the
19 Monetization Formula.

20 62. The Monetization Formula, in turn, was based on the amount of financing that
21 AEW provided—not on the value of the JV’s assets (i.e., the properties). Therefore, according to
22 Samek, the “price” that the JV paid for the properties was irrelevant. The properties were going to
23 be Shekhter’s once AEW was paid off. Samek also pointed out that by transferring the properties
24 to the JV for less than their fair market values, more properties could be acquired and developed
25 based on the amount AEW would be investing (\$60 million), which would inure to Shekhter’s
26 benefit in the end, when he reacquired them.

27 63. In addition, Shekhter also arranged for the transfer of a fifth property, located at
28 1410 5th Street, Santa Monica, California (the “1410 Property”), to the JV. The 1410 Property

1 includes 62 residential units and approximately 8,000 square feet of retail. The 1410 Property was
2 in escrow, and under Shekhter's control, at the time of the transfer to the JV. Shekhter intended to
3 develop the 1410 Property and keep it for his family.

4 64. In total, Shekhter and entities under his control transferred five properties (together
5 referred to as the "Five Properties") to the JV. They did so only because Shekhter and Samek
6 agreed that Shekhter could monetize, or take-out, AEW's interest by way of the Monetization
7 Formula.

8 65. AEW also intended to and did, by its representations, induce Shekhter to make
9 capital contributions to the JV in excess of \$10 million. Shekhter would not have made these
10 contributions had Samek and AEW not repeatedly represented to Shekhter that he would have the
11 right to take-out, or monetize, AEW's investment in the JV. Shekhter justifiably and reasonably
12 relied on AEW's representations.

13 66. Shekhter made the aforementioned property transfers and capital contributions
14 between 2010 and the first half of 2013.

15 **Shekhter/NMS Capital Develop, Construct, and Manage the JV Properties**

16 67. The JV thereafter acquired four properties in addition to the Five Properties:
17 (1) 1502 Broadway, Santa Monica, California; (2) 1420 5th Street, Santa Monica, California;
18 (3) 1430 5th Street, Santa Monica, California; and (4) 1511 15th Street, Santa Monica, California
19 (together the nine JV properties are referred to as the "Properties").

20 68. All told, the JV came to own a portfolio of nine real estate projects. The Properties
21 are mixed use, multi-unit luxury apartment buildings in some of the most desirable neighborhoods
22 in Santa Monica and the Westside of Los Angeles. Through Shekhter's and his companies' efforts
23 to build and develop the Properties, their market value has more than quintupled, rising to
24 approximately \$550 million or \$1,100 per square foot since their acquisition. The Properties now
25 consist of approximately 700 units plus 45,000 square feet of commercial space.

26 69. Shekhter's company, NMS Properties, managed the Properties for approximately
27 ten years. NMS Properties maintained on-site management offices at the Properties staffed by
28 experienced management personnel. Five years remain on NMS Properties' lease at the buildings.

1 70. Shekhter's companies also acquired, entitled and built the Properties. All AEW did
2 was invest money.

3 **AEW Refuses to Consider NMS Capital's Offers to Purchase the JV Properties and Instead**
4 **Seeks to Take NMS Capital's Equity in the Joint Venture**

5 71. In June 2013, pursuant to Samek's and AEW's representations that Shekhter had a
6 right to take-out, or monetize, AEW's interest in the JV, Shekhter tendered \$106 million to AEW,
7 consisting of AEW's \$60 million investment plus \$46 million for interest at 24% per year for each
8 of the three years in which the JV had existed. AEW did not respond to the tender or deny
9 Shekhter's right to make it.

10 72. Finally, in November 2013, AEW claimed for the first time that Shekhter did not
11 have the monetization right that was promised. AEW took this position because the Properties
12 had appreciated significantly in value—due to Shekhter's development and management—and
13 AEW wanted even more than the \$106 million. Therefore, at the direction of Samek, and with the
14 approval of Davidson, AEW refused to accept the tender, and repudiated Shekhter's right to make
15 it and AEW's obligation to accept it.

16 73. In September 2015, just days before the five-year anniversary of the joint venture,
17 AEW removed NMS Capital as the "Operating Member." As a result, NMS Capital lost its
18 "promote" under the terms of the joint venture agreement. The "promote" was intended to
19 compensate Shekhter and NMS Capital for their work in acquiring, entitling, developing and
20 managing the Properties. The way it worked was that if NMS Capital was the "Operating
21 Member" after the five-year anniversary, it would be entitled to a 45% share of the proceeds from
22 any sale of the Properties, rather than a 30% interest. The "promote" is worth tens of millions of
23 dollars.

24 74. Removing NMS Capital as the "Operating Member" also prevented it from
25 exercising its buy/sell right under Section 11 of the joint venture agreement. Meaning, NMS
26 Capital was locked in the JV and could not force AEW to sell it the Properties.

27 75. In 2015, Shekhter reiterated his offer, made in 2013, to pay AEW the sum of
28 \$106,265,500, the maximum amount to which AEW was entitled based on the Monetization

1 Formula, which equated to an over \$46 million profit for AEW. AEW and Samek again refused.

2 76. Also, in June 2016, NMS Capital offered to purchase AEW's interest in the JV and
3 the Properties based on a \$500 million valuation of the JV assets. With the approval and
4 participation of its top executives—Defendants herein, including Samek, Davidson, and Furber—
5 AEW refused NMS Capital's offer.

6 77. AEW did not accept any of NMS Capital's offers because it knew that if it did,
7 NMS Capital would receive its share of the proceeds from that sale. AEW could not confiscate
8 NMS Capital's equity in the JV if it sold to NMS Capital, so that was never an option for AEW.

9 **AEW Refuses to Consider Third-Party Offers to Purchase the Properties**

10 78. In February 2015, there was a bona fide offer from a third party—Strand Properties
11 Corporation (“Strand”)—to purchase the JV portfolio for \$500 million. After accounting for the
12 loans on the Properties, the sale would have resulted in a distribution of \$224 million to NMS
13 Capital. AEW refused to consider the offer because it wanted to take for itself all of NMS
14 Capital's equity in the JV.

15 79. AEW knew that if it accepted Strand's offer, NMS Capital would receive its share
16 of the proceeds from the sale at the close of escrow. AEW did not want that to happen.

17 80. To get what it wanted, AEW told Shekhter/NMS Capital that it wanted to test the
18 market to see if they could get an offer for more than the \$500 million Strand had offered. AEW
19 retained Eastdil Secured, LLC (“Eastdil”) and told Shekhter that Eastdil would market the
20 Properties for sale. That never happened. Eastdil did not list the Properties or market them for
21 sale.

22 **The Lincoln Studios Appeal**

23 81. The resulting dispute between AEW and NMS spawned a series of lawsuits.

24 82. In *Lincoln Studios v. DLA, et al.*, LASC Case No. BC551551 (“*Lincoln Studios*”),
25 Shekhter and other plaintiffs sued AEW to enforce what they alleged, in their Third Amended
26 Complaint (“*Lincoln TAC*”), was a take-out right under the terms of the written joint venture
27 agreement between NMS Capital and P6 (“Joint Venture Agreement”)—specifically, Article 6 of
28 the Joint Venture Agreement. They also alleged other claims as a result of AEW's misconduct. In

1 April 2016, the trial court (Hon. Suzanne G. Bruguera (Ret.)) sustained a demurrer without leave
2 to amend as to all causes of action in the *Lincoln* TAC. The trial court subsequently issued
3 terminating sanctions against NMS Capital. The NMS plaintiffs appealed.

4 83. On June 20, 2018, the Court of Appeal, Second District, issued two opinions in
5 *Lincoln Studios*: (1) Demurrer Opinion [*Lincoln Studios LLC, et al. v. P6 LA MF Holdings SPE,*
6 *LLC*, No. B276726]; and (2) Sanctions Opinion [*Lincoln Studios LLC, et al. v. P6 LA MF*
7 *Holdings SPE, LLC*, No. B279305].

8 84. In the Demurrer Opinion, the Court of Appeal *reversed* the trial court's dismissal of
9 the *Lincoln* TAC. (*See* Demurrer Opinion at 2, 13.) The Court of Appeal held that the TAC
10 "adequately allege[d] causes of action for breach of contract, fraud and breach of fiduciary duty."
11 (*Id.* at 2.) The court only affirmed the dismissal of the First Cause of Action for Breach of
12 Contract as to Article 6 of the Joint Venture Agreement. It reversed with respect to all remaining
13 causes of action.

14 85. In doing so, the Court of Appeal held that plaintiffs could amend the complaint:
15 "The matter is remanded to the trial court with instructions to permit the appellants an opportunity
16 to amend the surviving claims." (*Id.*) Accordingly, plaintiffs have filed their Fourth Amended
17 Complaint ("*Lincoln* FAC"). The *Lincoln* FAC alleges a single cause of action for fraud. As
18 discussed below, the fraud claim alleged in the *Lincoln* FAC is in line with the Court of Appeal's
19 Demurrer Opinion.

20 86. In the other opinion issued on the same date, the Sanctions Opinion, the Court of
21 Appeal affirmed a portion of the trial court's award of terminating sanctions against NMS Capital.
22 (*See* Sanctions Opinion at 17.) The Court of Appeal also reversed the trial court's order granting
23 terminating sanctions against ten of eleven of the plaintiffs named in the *Lincoln* TAC. (*See id.* at
24 26.)

25 87. Also, in the Demurrer Opinion, the Court of Appeal rejected AEW's argument that
26 the claims alleged by the ten *Lincoln Studios* plaintiffs were rendered moot. (*See* Demurrer
27 Opinion at 25.) Accordingly, the Court of Appeal upheld the right of those plaintiffs to prosecute
28 their claims regardless of Judge Bruguera's decision to impose terminating sanctions against NMS

1 Capital.

2 88. In addition, the Court of Appeal overturned an award of monetary sanctions
3 against all plaintiffs, including NMS Capital, finding that the trial court exceeded its authority and
4 “violated due process” when it imposed over \$6 million in monetary sanctions against them
5 without providing them with a hearing. (*See* Sanctions Opinion at 24-25.)

6 89. The Court stated that the *Lincoln Studios* case should proceed on its merits: first,
7 when it held that, “[t]he matter is remanded to the trial court with instructions to permit [Plaintiffs]
8 an opportunity to amend the surviving claims” (Demurrer Opinion at 2); and second, as noted
9 above, when it “decline[d] to hold that any error in the ruling on the demurrer is harmless because
10 the complaint was subsequently dismissed as a discovery sanction” (*id.* at 25).

11 90. In deciding that plaintiffs’ fraud claim can proceed, the Court of Appeal noted that
12 the “TAC alleges that during negotiations, AEW knowing [*sic*] made false representations about
13 the joint venture program, including that there was a monetization right and that [plaintiff Neil]
14 Shekhter’s transfer of his properties to the joint venture at below fair market value would be ‘of no
15 moment’ because of his right to ‘take-out’ AEW within a few years.” (*Id.* at 23.)

16 91. Shekhter and the other plaintiffs in *Lincoln Studios* amended their complaint in
17 accordance with the Court of Appeal’s decision, alleging that AEW fraudulently induced them to
18 transfer the Five Properties into the JV at significantly below fair market value by promising and
19 misrepresenting that they would have a right to take-out, or monetize, AEW’s interest in the JV
20 based on a negotiated formula. (*Lincoln* FAC ¶¶ 13, 21-26, 69-72.) Plaintiffs justifiably relied on
21 these representations and would never have transferred the properties into the JV, much less
22 transferred them at below-market prices, if the AEW defendants did not represent to plaintiffs that
23 they would have the take-out right. (*Id.* ¶¶ 27-33, 73-76.)

24 92. The *Lincoln Studios* plaintiffs are seeking, *inter alia*, rescission of the transfers of
25 the Five Properties. (*Id.* ¶¶ 39, 65.) If plaintiffs prevail in *Lincoln Studios*, those transfers would
26 be unwound, and AEW would not have had the right to sell the Five Properties to the Buyer
27 Defendants in November 2016. Accordingly, the “sale” to the Buyer Defendants in this case
28 would be deemed null and void.

1 93. The allegations in *Lincoln Studios* are based on: representations made by AEW that
2 Shekhter, either directly or through entities that he controlled, had a take-out right which plaintiffs
3 relied on to transfer the Five Properties, make capital contributions, and provide services to the
4 JV. These representations were made orally and in writing.

5 94. The Court of Appeal's findings of spoliation have nothing to do with these
6 representations. No documentary evidence relating to this issue was destroyed or is otherwise
7 unavailable to AEW. Nothing has occurred that would deprive AEW of its right to a fair trial on
8 the claim alleged against it in *Lincoln Studios*.

9 95. AEW's representations were made in 2010, and plaintiffs' transfers of the
10 properties occurred shortly thereafter. The spoliation, however, occurred years later, in 2015.
11 AEW's right to a fair trial on the issues raised in the FAC has not been—and cannot be—affected
12 by any spoliation of evidence.

13 **Defendants' Unauthorized Below-Market "Sale" of the Properties**

14 96. In or around November 2016, AEW entered into a secret agreement with
15 Defendants Dennis Wong, Mark Friedman, David Waks, and their various entities (collectively,
16 the "Buyer Defendants") to sell the Properties out from under NMS Capital and Shekhter (the
17 "Sale"), seize possession of the Properties by force, and physically expel NMS Properties and the
18 individual Plaintiffs from them.

19 97. The Buyer Defendants knew about the pending litigation between NMS and AEW
20 and NMS Capital's claim that it had the right to take-out, or monetize, AEW's interest in the JV
21 and its assets, the Properties.

22 98. AEW sold the Properties to the Buyer Defendants in order to misappropriate NMS
23 Capital's share of the sale proceeds. The Buyer Defendants allowed AEW to do whatever it
24 wanted, including not distributing any of the proceeds from the Sale to NMS Capital. The Buyer
25 Defendants did so because they are insulated from any liability by the indemnity that AEW caused
26 the JV to issue, and they got to purchase the Properties for significantly below market value.

27 99. To facilitate their conspiracy, AEW and the Buyer Defendants enlisted the help of
28 two management companies (named as defendants herein) to seize control of the Properties and,

1 more importantly, their finances. Once these companies were in place, AEW and the Buyer
2 Defendants would direct them to make distributions of cash to them from the Properties' bank
3 accounts and "service the debt" the Buyer Defendants had used to purchase the Properties. In this
4 way, the Buyer Defendants and AEW would have total control over the approval and disposition
5 of such "debt service" payments, which they would ensure benefited only themselves.

6 100. The Buyer Defendants and AEW set their plan in motion by directing Defendant
7 Pravis to rent several units in two of the Properties they planned to seize, 1410 5th Street and 1430
8 5th Street. Pravis, which provides computer and networking expertise, would then have key fobs
9 to allow other Management Defendants in, as well as inside access to Plaintiffs' computer
10 systems, which on information and belief Pravis's employees helped the Management Defendants
11 hack.

12 101. A few days after Pravis had inserted its operatives, AEW and the Buyer Defendants
13 recorded a series of grant deeds they and the Management Defendants would use to claim
14 ownership of the Properties. Then, they sent the Management Defendants, Pravis, US Residential
15 Group, LLC ("USRG"), Greystar Real Estate Partners, LLC ("Greystar") and their employees,
16 with a small army of professional hackers, locksmiths, and private security guards to storm
17 Plaintiffs' offices at each of the Properties.

18 102. The team of intruders fanned out through each of the buildings. They claimed to
19 have a court order making them the new owners and managers. That was false. There was no
20 such court order. The security guards claimed to be police who had authority to forcibly remove
21 the employees from their management offices. That was also false. Under these false pretenses,
22 Defendants demanded that Plaintiffs hand over their keys and passwords to computers containing
23 critical business information, and ordered Plaintiffs to leave the Properties immediately.

24 103. For more than six hours until the police were able to restore order, Defendants
25 ransacked Plaintiffs' offices. They changed and disabled locks to the buildings, preventing
26 Plaintiffs, tenants and applicants from entering. They systematically hacked into Plaintiffs'
27 computers, overriding them with specialized software that allowed them to off-load huge amounts
28 of data and take control of the buildings' electronic locks and elevators. They had their private

1 security guards illegally confine Plaintiffs, locking them in their offices and refusing to allow them
2 to use the bathroom. Defendants dragged Plaintiffs away from their computers and held them
3 under guard if they sought to prevent Defendants' unauthorized computer access.

4 104. Defendants terrorized Plaintiffs, manhandling them and screaming threats,
5 throwing Plaintiffs out of their own offices or locking them inside, and rummaging through
6 Plaintiffs' personal and business property. Defendants shut down Plaintiffs' business, prevented
7 existing tenants from entering their own buildings and new tenants from moving in. Defendants
8 stole keys to the Properties, as well as vast quantities of confidential data from Plaintiffs'
9 computers, and caused significant property damage in their efforts to lock Plaintiffs out of their
10 own buildings. Defendants even used Plaintiffs' own office equipment to print up flyers
11 announcing their hostile takeover to tenants and redirecting rent payments to themselves.

12 105. Both during and since their hostile takeover, Defendants sought to justify their
13 conduct on the grounds that they had purchased the Properties in a legitimate, arm's-length
14 transaction, and that they now held clear title to the buildings. Defendants' only "proof" of such
15 ownership, however, is nothing more than the series of grant deeds they recorded an hour before
16 they stormed the Properties. Defendants flashed pictures of these deeds, on their cell phones, to a
17 few employees of NMS Properties while attempting to drive them from their offices.

18 106. In the weeks following Defendants' hostile takeover, details of the purported sale
19 of the Properties trickled out in filings in this and other litigation. Those details show the Sale was
20 neither arms'-length nor legitimate. Among other things:

21 a. The Sale was more than \$100 million *below market*—in a contemporaneous
22 transaction, Eastdil, the same broker Defendants used for the Sale, closed another sale of two
23 comparable luxury apartment properties for \$1,100 per square foot, close to NMS Capital's \$1,000
24 per square foot offer for the Properties and \$300 per square foot more than the Buyer Defendants
25 paid.

26 b. The Sale was financed by \$236.8 million in loans that NMS Capital's JV
27 partner (Defendant AEW) caused the JV to make to the Buyer Defendants—without NMS
28 Capital's knowledge or approval and in breach of the Joint Venture Agreement—which

1 Defendants seek to have the Court-appointed interim manager of the Properties repay (under the
2 guise of “servicing debt”) using rent proceeds.

3 c. The Sale closed without title insurance—this is *opposite* of having “clear
4 title” to the Properties—and, in post-Sale pleadings in *Lincoln Studios*, AEW has continued to
5 assert that either it or the JV with NMS Capital still owns the Properties and is entitled to the rents
6 from them, which cannot be true if the Buyer Defendants are the owners.

7 d. AEW caused the JV to indemnify the Buyer Defendants against litigation
8 filed by Shekhter/NMS Capital challenging the Sale, and caused the JV to guarantee the lease rent
9 payments from the Properties. Meaning, there was no risk to the Buyer Defendants.

10 e. AEW did not distribute any of the proceeds from the Sale to NMS Capital.
11 AEW instead instructed the escrow company handling the Sale to transfer all of the funds to
12 AEW. As a result, AEW has total control over the proceeds and intends to keep them for itself.

13 107. Even at the artificially discounted price the Buyer Defendants paid for the
14 Properties, the Sale was a massive transaction, one of the largest of its kind at the time. On
15 information and belief, Samek and Davidson could not have authorized AEW to go forward with
16 the Sale without obtaining approval from AEW’s CEO, Defendant Jeff Furber. On information
17 and belief, Furber approved the Sale on terms contrived by Samek and Davidson because of the
18 massive potential profit AEW stood to gain.

19 108. At every stage, AEW and its senior executives Samek, Davidson, and Furber
20 concealed the impending Sale, and the terms of the agreement with the Buyer Defendants, from
21 NMS Capital. These Defendants instructed their broker and banks not to communicate with NMS
22 Capital. And in the separate lawsuits between the parties, AEW and its affiliates refused to engage
23 in discovery in order to stymie NMS Capital’s efforts to obtain the sale agreement to uncover its
24 terms until the Sale was complete and AEW had absconded with the proceeds.

25 109. Defendants’ conduct is shocking. They conspired to take over the Properties by
26 force. Defendants tried to steamroll their way into *de facto* possession of the Properties, and the
27 rental proceeds from them, so they could consummate their unauthorized Sale and make off with
28 the proceeds. Using an illegitimate covert “sale” at below-market prices as a pretext, Defendants

1 forcibly removed Plaintiffs from their offices or confined them for hours against their will,
2 destroyed and defaced property, stole confidential business information, hacked Plaintiffs’
3 computer systems and interfered with Plaintiffs’ valuable business relationships.

4 **Defendants Attempt to Seize the Properties by Force**

5 110. To further their plan to appropriate NMS Capital’s financial stake in the Properties
6 for themselves, AEW and the Buyer Defendants concocted a detailed plan to simultaneously seize
7 the buildings and take control of their bank accounts. The “Westside Collection Transition Plan,”
8 as Defendants called it, laid out a 15-point strategy to forcibly expel Plaintiffs from the Properties,
9 change the locks, alarm codes, signs, and utility accounts to the buildings, and take control of
10 Plaintiffs’ books, records, electronic key fob and video surveillance systems, among many other
11 things.

12 111. At 12:10 p.m. on Monday, November 21, 2016, as part of their plan to take over the
13 Properties, AEW and Defendants Wong, Friedman and Waks recorded grant deeds to the
14 Properties with the Los Angeles County Recorder’s Office listing their entities, Defendants SCR
15 SPE 1 LP, FFLP SPE 1 LP, Verbena SPE 1 LP, REP WRC SPE 1 LP, SPI 555 SPE 1 LP, RS 555
16 SPE 1 LP, DW 555 SPE 1 LP, SCR V SPE 2 LP, FFLP SPE 2 LP, Verbena SPE 2 LP, REP WRC
17 SPE 2 LP, SPI 555 SPE 2 LP, RS 555 SPE 2 LP, and DW 555 SPE 2 LP, as purchasers of the
18 Properties.

19 112. At the same time, the Defendants tasked with executing the “Westside Collection
20 Transition Plan” began gathering outside the Properties. They parked their cars in visitor and
21 reserved tenant spaces, blocking access to the buildings. Then, at 1 p.m., Defendants McGreal,
22 Zinsmeyer, Sanchez, Howard, Jumper, Singleton, Rader, Guillen, Tesso, and Osegueba, along
23 with other USRG and Greystone personnel, several locksmiths, private security guards, and
24 computer technicians from Defendant Pravis, simultaneously stormed the buildings.

25 **1502 Broadway**

26 113. Shortly after 1 p.m., Plaintiff Kate Mediana, the Senior Community Manager for
27 the Properties, received a panicked call from Christine Hayworth, the concierge at 1502
28 Broadway. A group of Defendants, including Erica Sanchez and a 6’3, 300 lb. security guard, had

1 come into the lobby and surrounded her desk. They ordered Ms. Hayworth to step away from her
2 desk, take her personal belongings and leave.

3 114. Defendants announced that USRG was the new management company and was
4 taking over. When Ms. Hayworth asked Defendants for identification, they refused to provide
5 any. Instead, they shoved a cell phone in her face, showing her a picture of a letter or possibly a
6 deed. When Ms. Hayworth pointed out that the document on the phone was for a different
7 property, Defendants said it made no difference.

8 115. Ms. Mediana asked to speak to Defendants, and Ms. Hayworth handed the phone to
9 Defendant Sanchez. Ms. Mediana told Sanchez she and the other intruders had no right to be on
10 the property causing a major disruption at the office and threatening her staff. Sanchez told Ms.
11 Mediana that Defendants were not going to leave.

12 116. At that point, Sanchez sat down in Ms. Hayworth's chair and began going through
13 her drawers and computer files. Sanchez used the chair to block Ms. Hayworth's access to her
14 office phone. The security guard who had come in with Sanchez locked the office door,
15 preventing Ms. Hayworth from leaving and preventing tenants and the other Plaintiffs from
16 entering.

17 117. In response to Ms. Hayworth's call, Ms. Mediana asked her Assistant Community
18 Manager, Jeniffer Miranda, to go to 1502 Broadway to see what was happening. When Ms.
19 Miranda arrived, she managed to get inside the lobby where she saw Sanchez sitting at Ms.
20 Hayworth's desk next to another USRG man with a list. Two locksmiths were changing the locks
21 on all the building's doors.

22 118. Ms. Miranda tried to shut down several computers to prevent Defendants'
23 unauthorized access to confidential information of NMS Properties and its tenants. When she
24 tried to unplug Ms. Hayworth's computer, Sanchez and the man with the list grabbed her arm and
25 dragged her away. They called over their security guard to block her access. He came up behind
26 Ms. Miranda, forcing her to move to a couch where Ms. Hayworth was sitting.

27 119. When Ms. Miranda said she would call the police, the guard told her – falsely – “I
28 am the police.” He stood by the door like a bouncer, preventing Ms. Miranda or Ms. Hayworth

1 from leaving. When Plaintiffs or tenants came to the door to investigate, the guard would say into
2 an earpiece, “We have company.” Having already been manhandled by Defendants, Ms. Miranda
3 feared for her safety if she tried to get out, so she stayed seated with Ms. Hayworth instead.

4 120. Eventually, Alan Shekhter, Shekhter’s son, arrived at 1502 Broadway to see what
5 was going on. The guard prevented him from entering. The man with the list, who said his name
6 was “Leo,” claimed – falsely – to have a court order giving USRG the right to take over the
7 building. When Mr. Shekhter demanded to see the order, the security guard showed him a
8 partially obscured letter or deed that referred to a different property. He continued to block Mr.
9 Shekhter from getting to Ms. Hayworth.

10 121. For almost five hours, Sanchez, “Leo,” and their locksmiths and security guards
11 remained in control of the building. They rummaged through paper and computer files of
12 employees and tenants, changed locks, and took keys and garage door openers. They informed
13 applicants their meetings with Plaintiffs were cancelled and blocked existing tenants from the
14 building’s office and elevators, which they shut down.

15 122. When Plaintiffs’ counsel and the Santa Monica Police Department finally were able
16 to convince Defendants to leave, Sanchez said ominously to Plaintiffs, “We’ll be back.”

17 **1410 5th Street**

18 123. A few minutes after her call with Ms. Hayworth, Ms. Mediana received another
19 distressed call from Aaron Shuman, the concierge at 1410 5th Street. A group of ten Defendants
20 had invaded that building claiming to be taking over management.

21 124. Ms. Mediana headed over to 1410 5th Street to ensure Mr. Shuman’s safety.
22 Defendants McGreal and Zinsmeyer came up to Ms. Mediana, told her the buildings had been
23 sold, and ordered her to leave immediately. Ms. Mediana called 911 to report Defendants’
24 invasion of two Properties.

25 125. Shortly thereafter, Shekhter arrived. He asked who Defendants were and what they
26 were doing. Defendants refused to say who they were. One, a security guard, grabbed him by the
27 shirt and shouted at him to leave, his face just inches from Shekhter’s.

28 126. The guard then went inside and began walking around the building, intimidating

1 NMS Properties' employees and tenants by shoving his phone in their faces and videotaping them.

2 127. Shaken, Ms. Mediana asked Mr. Shuman to stay with her until several hours later
3 when the police arrived and persuaded Defendants to leave the building.

4 **829 Broadway**

5 128. After Defendants left 1410 5th Street, Ms. Mediana locked the doors and headed to
6 829 Broadway. When she arrived, the doors were locked and guarded. But the window shades
7 were open and she was able to videotape another group of Defendants physically blocking Abel
8 Serrano, NMS Properties' Regional Maintenance Supervisor, from moving through the office.

9 129. Several hours earlier, while Defendants were storming the other Properties, Nelly
10 Padilla, a Leasing Specialist, returned to 829 Broadway from lunch. She noticed a large group
11 gathered outside the building and, when she went inside, they followed behind her.

12 130. One of the Defendants, a blonde-haired woman who did not identify herself,
13 announced that they were taking over the building. She shoved a phone in the face of Nicole
14 Woolley, Assistant Community Manager, purporting to show her a "deed" to the property. The
15 woman shouted repeatedly to locksmiths who had come with her to "change the locks." She then
16 grabbed the roller chair Ms. Woolley was sitting in and yanked it away from the desk. A Pravis
17 computer technician immediately jacked into the USB port on Ms. Woolley's computer. The
18 screen changed, and the blonde woman told the Pravis tech, "We want the rent-roll." The rent-roll
19 is a register showing the rent due and total amount received from each tenant of a building. A
20 substantial amount of other confidential information was stored on Ms. Woolley's computer, and
21 her personal e-mail account was open on it as well.

22 131. Seeing Defendants spreading out through the building, Ms. Woolley went to her
23 office to get her bag and personal belongings. When she arrived, another woman with a ponytail
24 was inside. The woman demanded that Ms. Woolley open her computer, but Ms. Woolley
25 refused. The woman then grabbed Ms. Woolley's building keys and garage door openers and
26 forced her out of her own office. A security guard stood by the office door, refusing to let anyone
27 but Defendants in or out, even to use the bathroom. He, too, claimed – falsely – to be a police
28 officer and told Ms. Woolley, "I won't need to call for backup."

1 132. Meanwhile, Ms. Padilla had seen Defendants' computer tech hack into Ms.
2 Woolley's computer. She began moving around the offices, shutting down other computers to
3 prevent Defendants' unauthorized access. When Defendants saw what she was doing, they
4 expelled her from the building. Ms. Padilla was quite ill and Defendants refused to allow her back
5 into the building to use the bathroom, forcing her to wait four hours on the sidewalk in the cold.

6 133. Olena Polender, the Area Manager for the Properties, was back in her office while
7 all of this was happening. She noticed a group of ten Defendants spreading out through the
8 building. They shoved a phone in her face, too, claiming the buildings had been sold and ordering
9 her to leave her keys and get out. Ms. Polender refused. She asked Defendants to take a seat
10 while she called her supervisor to find out what was going on. Defendants told her that was
11 unnecessary because other Defendants had already taken over her supervisor's office.

12 134. Ms. Polender then tried to shut down her computer. One of the Defendants, a
13 woman, leaped for the computer to stop it from powering down, but fortunately did not reach it in
14 time.

15 135. Another Defendant, a security guard, came over and blocked the door to Ms.
16 Polender's office, confining her there. As Ms. Polender looked around the building, she noticed
17 all of her employees were locked outside on the sidewalk. She was alone in the building with ten
18 hostile strangers, unable to leave her office. Terrified, Ms. Polender opened the blinds to her
19 office window so her employees could see inside. Because of this, Ms. Mediana was later able to
20 film Defendants assaulting Abel Serrano, as noted above.

21 136. The security guard refused to allow Ms. Polender to leave her office, even to use
22 the bathroom. She told him what he was doing was illegal. When he raised his hands as if to grab
23 or strike her, Ms. Polender screamed not to touch her. He still refused to let her leave. In fear,
24 Ms. Polender tried to have one of the maintenance workers stay with her to make sure Defendants
25 did not hurt her, but the guard would not allow the worker inside.

26 137. From her office, Ms. Polender could see Defendants changing locks to all the doors
27 and downloading data from Ms. Woolley's computer. When she tried to open her own desk
28 drawers to retrieve a pair of shoes she kept there, Defendants screamed at her to sit quietly and not

1 touch anything.

2 138. About half an hour after Defendants invaded 829 Broadway, Sergio Quintana, a
3 Community Manager, arrived at the building from another property. A security guard stopped
4 him from entering 829 Broadway, and another Defendant told him he had to leave because USRG
5 was taking over. Mr. Quintana noticed Ms. Polender open the blinds to her office window and
6 saw that she was alone. He did not want to leave her. The two exchanged texts, and Ms. Polender
7 asked him to call the police.

8 139. Eventually the guard blocking Ms. Polender's door was called away. Ms. Polender
9 snuck out of her office and unlocked the front door of the building, letting Mr. Quintana inside.
10 When Defendants realized what Ms. Polender had done, they had their security guards physically
11 block the front door, preventing Ms. Polender and Mr. Quintana from leaving or moving around
12 the building, even to use the bathroom. Mr. Quintana noticed one of the guards appeared to have a
13 gun on his belt, which dissuaded him from taking more assertive action to leave or protect his
14 colleagues.

15 140. After a time, the police arrived. They discussed the situation with Defendants, who
16 refused to leave, continuing to claim to be the owners of the building. Eventually the police left to
17 take reports from other buildings, and Mr. Serrano arrived.

18 141. At about 3 p.m., Mr. Serrano got a call informing him that people had come into
19 the Properties and begun locking out NMS Properties' personnel and hacking into their computers.
20 After calling maintenance staff at several of the buildings, who confirmed the news, Mr. Serrano
21 headed to 829 Broadway.

22 142. Because Ms. Polender had unlocked the front door, Mr. Serrano was able to get
23 inside the building, but Defendants blocked him from moving to the back office where the NMS
24 Properties' servers were located. Mr. Serrano was trying to shut down the servers to prevent
25 further unauthorized computer access by Defendants. Everywhere Mr. Serrano moved,
26 Defendants moved, using their bodies to block him, shouting "You're not going anywhere!"
27 When he made clear they had no right to be there and that he intended to shut down their access to
28 the building's computers, two of the Defendants, a woman and a man, grabbed his arms to stop

1 him. He yelled at them not to touch him and proceeded to disconnect the computer system. Ms.
2 Mediana, who was outside the building, filmed part of this encounter through Ms. Polender's open
3 blinds.

4 143. Eventually, the police returned and said Defendants had no right to confine
5 Plaintiffs in or restrict their access to the building. Defendants left, and Plaintiffs were able to
6 return to the building. Mr. Serrano then headed to 1410 5th Street to check on Ms. Miranda,
7 whom he heard had been roughed up, and ensure that the group of Defendants there was also
8 leaving. He spent the rest of the evening coordinating repairs to the locks Defendants had changed
9 on the doors to the Properties and getting other systems back on line. Defendants never returned
10 Ms. Woolley's building keys or garage door openers.

11 375 N. La Cienega

12 144. At the same time the other Properties were being invaded, a group of 15 to 20
13 Defendants stormed into 375 N. La Cienega. Defendant Larry Kalestad demanded to speak to the
14 person in charge and ordered everyone else to pack their personal belongings and leave
15 immediately. Leo Villalobos, the Maintenance Supervisor for the building, told Defendant
16 Kalestad that Nader Esmailzadeh, the Community Manager for the building, was "the person in
17 charge."

18 145. Kalestad and two other DOE Defendants, who appeared to be private security
19 guards, walked into Mr. Esmailzadeh's office and stated that the building had been sold an hour
20 ago. Kalestad refused to show Mr. Esmailzadeh any identification, and no other Defendant
21 identified him or herself. Instead, Kalestad handed Mr. Esmailzadeh a copy of Stephen Ragland's
22 letter to Plaintiffs' counsel as "proof" that Defendants owned the building. The letter shows 372
23 N. La Cienega as the address of the building Defendants claimed to own, not 375 N. La Cienega,
24 which was the building they were invading.

25 146. Mr. Esmailzadeh politely asked Kalestad and the other Defendants to wait while he
26 called Maggie Miguel, Area Manager for the Properties, for guidance. Defendants ignored Mr.
27 Esmailzadeh and instead began rifling through files and binders in the leasing office. One grabbed
28 a copy of a lease that Jeff Paynton, the Assistant Community Manager, was printing for a tenant

1 who would be moving in shortly.

2 147. Several Defendants sat down at Plaintiffs' computers and began printing off or
3 photocopying sensitive information about tenants and stuffing the printouts in their bags. At that
4 point, Mr. Esmailzadeh called the police and demanded that Defendants return the papers they had
5 printed out. Defendants refused.

6 148. Mr. Paynton, Assistant Community Manager, shut down his computer in an effort
7 to stop Defendants' unauthorized access. He texted the concierge's desk to do the same, but got
8 no response. When he went to investigate, Mr. Paynton saw one of the Defendants logged into the
9 concierge desk computer. Mr. Paynton shut it down. Defendants then accessed the building's
10 server room and began disconnecting cables from the servers, cutting off phone, internet, elevator,
11 and electronic key fob access to Plaintiffs, residents and retail tenants of the property.

12 Approximately twenty residents, many living on the building's fifth floor, began to complain to
13 Plaintiffs about their inability to use the elevators. Defendants told them brusquely to "use the
14 stairs."

15 149. Defendants took the building's garage door remotes and disabled access to the
16 parking structure, forcing the gates closed. Several tenants asked how they were supposed to get
17 to their cars. One DOE Defendant shouted at one of them to "use the ramp!" The building's
18 parking structure does not have a ramp. Mr. Paynton escorted a tenant to her car. When Mr.
19 Villalobos managed to override the parking structure gates, Defendants used their cars to block
20 residents' reserved spaces.

21 150. A prospective tenant was unable to find parking in the building because Defendants
22 had blocked all the visitor and reserved tenant spaces. Moreover, because Defendants had shut
23 down Plaintiffs' computer systems, Mr. Paynton was unable to process the prospective tenant's
24 application or other paperwork. Still another prospective tenant expressed an interest in leasing,
25 but became uncomfortable as a result of Defendants' conduct and left without filling out an
26 application.

27 151. Defendants hacked into Mr. Villalobos's computer while he was dealing with the
28 parking structure gates. Despite repeated requests by him, Mr. Paynton, Mr. Esmailzadeh, and

1 others to stop, Defendants continued their unauthorized computer access. Plaintiffs therefore
2 began unplugging the office computers and gathering power cords. One DOE Defendant tried to
3 stop Mr. Villalobos, shoving him away from a computer. Mr. Villalobos stumbled backward, and
4 Mr. Esmailzadeh told the Defendant not to touch his staff.

5 152. Another DOE Defendant, a computer technician, retrieved a power cord from his
6 truck, plugged it and an unknown external device into Mr. Villalobos's computer, and hacked into
7 it again. Mr. Villalobos saw the Defendant insert a flash drive and CD Rom disk into the
8 computer.

9 153. Defendants downloaded a currently unknown quantity of confidential information
10 from Yardi. Yardi is a property management program used to store and manage confidential
11 financial and other information pertaining to NMS Properties and its residents. They also
12 removed paper tenant files and put them in their bags. These files contain rental applications,
13 income verification, canceled checks and other sensitive information.

14 154. A group of DOE Defendant locksmiths took the building keys from the concierge
15 and used them to begin changing the locks on all the doors. When Mr. Villalobos took the keys
16 back from these Defendants, they went and got specialized locksmith guns, blew out the cylinders,
17 and continued changing locks.

18 155. Defendants informed Plaintiffs and non-party building staff, including two porters
19 and the concierge, they were terminated immediately and should not report to work the next day.
20 They said if any staff did show up, they would be arrested for trespassing. Then, to obtain
21 passwords, keys, and a tour of the building, Defendants offered Jacob France, the former
22 concierge for 375 N. La Cienega, a job with Greystar. As a result, Mr. France stopped responding
23 to instructions from Mr. Esmailzadeh and began aiding Defendants' attempts to access Plaintiffs'
24 computer systems and secure areas of the building.

25 156. Eventually, the police arrived. Ms. Miguel presented them with Judge Johnson's
26 order in the *Property Management Lawsuit*. Defendants still refused to leave and continued
27 changing locks on the building's doors and downloading information from Plaintiffs' computers.
28 The police directed Defendants to restore power to the elevators and leave the building.

1 Defendants refused to say what information they had accessed or taken from Plaintiffs' computers
2 and paper files. They did not leave keys for the new locks they had installed on Plaintiffs' server
3 room and leasing office and did not restore the original locks. Plaintiffs were unable to access or
4 properly use their computers for several days after Defendants hacked into them. And Messrs.
5 Villalobos and Esmailzadeh, and Ms. Miguel, had to stay late into the evening repairing the locks.

6 157. Because of the damage Defendants had done, Plaintiffs were unable to operate the
7 electronic door access in the building, preventing a tenant from moving in that day. One tenant
8 complained that Defendants had intercepted a package containing medication he needed. And
9 another planned to submit a notice to vacate because of the disruption Defendants caused.

10 **Plaintiffs Finally End Defendants' Hostile Takeover Attempt**

11 158. While all of this was unfolding at the Properties, Plaintiffs' counsel received a
12 letter dated November 17, 2016—four days earlier—from Defendants' counsel, Stephen Ragland.
13 The letter claims the Buyer Defendants had just purchased the Properties.

14 159. In the letter, Mr. Ragland acknowledges that he is “of course, familiar with the past
15 **and ongoing litigation** between Mr. Shekhter and his interests, on one hand, and AEW Capital
16 Management L.P. and its interests, on the other.” Indeed, Mr. Ragland represented one of the
17 parties to the *Lincoln Studios* lawsuit who was later dismissed from the case. In other words,
18 when Defendants decided to seize the Properties by force, they were well aware that their
19 ownership and the right to manage them were the subject of active litigation.

20 160. Mr. Ragland's letter was a shock to Plaintiffs' counsel who, like Plaintiffs, had no
21 advance warning of Defendants' planned hostile takeover of the buildings. Plaintiffs' counsel
22 rushed to the Properties to aid their clients and prevent Defendants' hostile takeover. Despite
23 claiming to have a court order establishing their ownership of the Properties, Defendants could not
24 produce anything giving them the right to occupy the buildings or throw Plaintiffs out, as they had
25 done. The police ultimately determined that Defendants had no right to stay and ordered them to
26 leave.

27 161. Defendants, however, threatened to return. Because Defendants had dressed like
28 ordinary tenants and applicants, Plaintiffs had no way of knowing they did not belong in the

1 Properties until they were being dragged away from their desks and thrown outside or locked in
2 their offices under guard. As a result, Plaintiffs were badly shaken and constantly on edge,
3 expecting another invasion of their workplace at any moment. NMS Properties had to post guards
4 outside the buildings to help reassure its employees that they were safe.

5 162. Defendants' hostile takeover of the Properties caused serious, lasting reputational
6 harm to Shekhter and to NMS Properties. It caused a commotion on the sidewalks outside the
7 buildings where, for example, one of the DOE Defendant security guards grabbed Shekhter's shirt
8 and screamed at him in front of passersby. It also created a chaotic and unsettling six hours for
9 current and prospective residents, who were locked out of building elevators, parking, and offices,
10 had deliveries intercepted, and meetings cancelled. The incident even drew the attention and
11 concern of the Community Development Corporation of Santa Monica, with which Shekhter does
12 a great deal of work, casting doubt on his future development projects in the city.

13 163. Defendants subordinated the judicial system and basic human decency to their
14 greed and desire to acquire valuable real estate. No one should have to suffer the physical,
15 emotional and financial harm Defendants inflicted on Plaintiffs and their tenants in that effort.

16 **AEW Has Continued to Violate Plaintiffs' Rights**

17 164. For years, NMS Capital was provided Schedule K-1 tax forms listing it as a thirty
18 percent (30%) owner of the JV with AEW. Unilaterally, and without explanation or justification,
19 AEW reduced NMS Capital's interest on the Schedule K-1 tax forms to eighteen percent (18%).
20 This alleged change in NMS Capital's interest in the JV is worth tens of millions of dollars to
21 NMS Capital, and would result in a windfall to AEW. AEW has refused to give NMS Capital any
22 information for this change. In fact, AEW has instructed the accountants for the JV to not talk to
23 or provide any information to NMS Capital.

24 165. AEW also caused the JV to issue Schedule K-1 tax forms to NMS Capital
25 allocating millions of dollars in taxable income from the sham Sale by AEW to the Buyer
26 Defendants. AEW has pocketed money from the Sale and has refused to make any distributions to
27 NMS Capital. As a result, NMS Capital is faced with millions of dollars in potential tax liabilities
28 without having received a dime. AEW has done this to leverage NMS Capital and cause NMS

1 Capital problems with the Internal Revenue Service.

2 166. Along the same lines, NMS Capital owns a three percent (3%) interest in 1410
3 Fifth Street, LLC—the JV entity that owned the 1410 Property. For years, NMS Capital was
4 provided Schedule K-1 tax forms listing it as a three percent (3%) owner of 1410 Fifth Street,
5 LLC. NMS Capital acquired this interest from Zimbler. Meaning, NMS Capital owns the 3% in
6 1410 Fifth Street, LLC separate and apart from its interest in the JV.

7 167. As part of the sale to the Buyer Defendants, AEW falsely represented to the Buyer
8 Defendants and to the escrow company handling the transaction that the JV was the sole member
9 and 100% owner of 1410 Fifth Street, LLC. AEW fraudulently and intentionally concealed NMS
10 Capital's 3% interest.

11 168. Furthermore, AEW has never paid NMS Capital its 3% share of the proceeds from
12 the purported sale of the 1410 Property to the Buyer Defendants. AEW has no basis to withhold
13 this payment. In fact, AEW has acknowledged NMS Capital's interest by causing 1410 Fifth
14 Street, LLC to issue Schedule K-1 tax forms to NMS Capital showing the 3%.

15 169. In January 2018, AEW forged a "Customer's Authorized Signature" for a bank
16 account at Pacific Commerce Bank which belonged to NMS Properties. AEW submitted the form
17 to the bank, which caused the bank to flag the forgery and issue a fraud alert.

18 **FIRST CAUSE OF ACTION**

19 *Declaratory Relief*

20 **(By Plaintiffs Neil Shekhter, NMS Capital, and NMS Properties Against All Defendants)**

21 170. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
22 herein.

23 171. An actual dispute has arisen between Plaintiffs and Defendants regarding the
24 ownership, possession, and management of the Properties.

25 172. The Buyer Defendants claim to have purchased the Properties from AEW, and have
26 recorded deeds and made public representations to that effect, including to the buildings'
27 residents. Defendants, including AEW, also contend the default judgment entered in *Lincoln*
28 *Studios* authorized the Sale and permits them to terminate NMS Properties as manager of the

1 Properties and expel it from the buildings.

2 173. Shekhter, NMS Capital, and NMS Properties, on the other hand, dispute
3 Defendants' claimed ownership of the Properties and their purported right to possess and manage
4 them. The Sale was highly irregular and designed to divest NMS Capital of its interest in the
5 Properties, which AEW and the Buyer Defendants intend to appropriate to themselves:

6 a. The Sale closed for \$430.5 million which, based on a contemporaneous sale
7 of two comparable luxury apartment buildings using the same broker, is more than \$100 million—
8 \$300 per square foot—below market, and almost as much below Shekhter's / NMS Capital's buy-
9 out offer;

10 b. The bulk of the purchase price—\$236.8 million—consists of unauthorized
11 loans AEW caused the JV to issue to the Buyer Defendants, which AEW intends to repay with
12 rent proceeds extracted from the Properties and/or by selling the promissory notes on the market;

13 c. The Sale closed without title insurance;

14 d. Despite the Buyer Defendants' claims to have clear title to the Properties, in
15 *Lincoln Studios*, AEW has filed declarations claiming either the JV or AEW or both still own the
16 Properties and are entitled to the rents from them; and

17 e. Neither AEW nor the Buyer Defendants have made any distributions to
18 NMS Capital of the proceeds from the purported sale—NMS is still a member of the JV entitled to
19 such distributions.

20 174. In addition, NMS Properties has a ten-year lease to office space in the buildings
21 with approximately five years left on it.

22 175. Defendants cannot take the Properties by force or obtain ownership by recording
23 deeds and clouding title to the buildings.

24 176. A judicial declaration is necessary to determine the parties' rights and obligations
25 in light of this dispute. NMS Capital and NMS Properties claim they have the right to ownership,
26 possession, and management of the Properties; and Defendants contend the opposite.

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SECOND CAUSE OF ACTION

Trespass

(By Plaintiffs NMS Capital and NMS Properties Against the Management Defendants; and DOES 1-50)

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177. Plaintiffs incorporate each of the foregoing allegations as though set forth in full herein.

178. Shekhter’s company, NMS Capital, through the JV with AEW, owns an interest in the Properties and NMS Properties has control over them.

179. The Management Defendants and dozens of other DOE Defendants intentionally entered the Properties and seized control of them.

180. These Defendants lacked permission to enter the Properties; indeed, Plaintiffs repeatedly told them they had no right to be in the buildings and asked them to leave. Even if they had been given permission – they were not – Defendants exceeded it by entering into Plaintiffs’ personal offices, drawers, computers, and other secure spaces in the buildings including server and mail rooms, expelling Plaintiffs from the Properties or locking them in, manhandling Plaintiffs, stealing keys and data, changing locks, shutting down elevators and electronic doors, and even blocking resident and visitor parking.

181. Defendants’ hostile takeover of the Properties caused significant damage to the buildings and to Plaintiffs. Among other things, Defendants:

- a. Stole Plaintiffs’ keys and garage door openers to the buildings and then changed all the locks, forcing Plaintiffs to pay vendors overtime to re-key them once the stand-off had ended;
- b. Hacked Plaintiffs’ computers, overriding them with malicious software, and stole an unknown amount of confidential data, which they refused to return;
- c. Stole papers from Plaintiffs’ offices, and used their printers to produce flyers announcing their takeover of the buildings to the residents;
- d. Went into Plaintiffs’ server rooms, removing cables from the computers and shutting down access to the building, preventing tenants from getting to their cars or using

1 elevators, leading at least one to threaten to move out;

2 e. Intercepted another tenant’s package delivery, preventing the tenant from
3 receiving medicine;

4 f. Unilaterally “cancelled” Plaintiffs’ appointments with prospective tenants
5 who may never return; and

6 g. By blocking the buildings’ entrances and shutting down their elevators,
7 Defendants prevented new tenants from moving in, forcing one to incur additional charges at the
8 hotel where she was staying and the cost of wasted time and travel between her hotel and the
9 Properties.

10 182. Defendants’ conduct was malicious, oppressive, and fraudulent, justifying an award
11 of punitive damages.

12 183. At all relevant times, each Defendant was the agent of each of the other Defendants
13 and was acting within the course and scope of such agency and with the permission of the other
14 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
15 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
16 force and engage in other misconduct.

17 **THIRD CAUSE OF ACTION**

18 *Assault*

19 **(By Plaintiffs Neil Shekhter; Christine Hayworth; Jeniffer Miranda; Sergio Quintana;**
20 **Olena Polender; Abel Serrano; and Leo Villalobos, Against the**
21 **Management Defendants; and DOES 1-50)**

22 184. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
23 herein.

24 185. Defendants touched or threatened to touch the Plaintiffs in a harmful or offensive
25 manner. In particular:

26 a. At 1502 Broadway, Defendant Sanchez and another DOE Defendant “Leo”
27 grabbed Jeniffer Miranda’s arm and dragged her away from a computer she was trying to shut
28 down. Yet another DOE Defendant, a 6’3, 300 lb. security guard, came up behind Ms. Miranda,

1 forcing her to move to a couch where Ms. Hayworth was sitting. Having just seen Sanchez and
2 “Leo” manhandle Ms. Miranda, Ms. Hayworth feared for her own safety if she tried to get past the
3 guard confining her to the office.

4 b. At 1410 5th Street, a DOE Defendant security guard grabbed Shekhter by
5 the shirt, shouting inches from his face for him to leave and using his body to block Shekhter’s
6 access to the building.

7 c. At 829 Broadway, a woman DOE Defendant grabbed NMS Properties’
8 employee Nicole Woolley’s office chair and dragged her away from her desk. Another woman
9 DOE Defendant grabbed Ms. Woolley’s keys. And a third DOE Defendant, a security guard
10 falsely claiming to be a police officer, forced her to leave her office and confined her to the
11 building. A DOE Defendant security guard confined Olena Polender to her office, refusing even
12 to let her use the bathroom. He raised his hands as if to grab or strike Ms. Polender, causing her to
13 scream not to touch her. After Sergio Quintana got into 829 Broadway, one of the DOE
14 Defendant security guards, who appeared to have a gun, locked the door and prevented Mr.
15 Quintana from leaving or moving inside the building. When Abel Serrano tried to prevent
16 Defendants from accessing the building’s servers, a man and woman DOE Defendant grabbed his
17 arms and used their bodies to stop him.

18 d. At 375 N. La Cienega, a DOE Defendant shoved Leo Villalobos away from
19 a computer he was trying to unplug, sending Mr. Villalobos stumbling backward.

20 186. Plaintiffs reasonably believed Defendants would touch them in a harmful or
21 offensive manner, or it reasonably appeared to Plaintiffs that Defendants were about to carry out
22 their threats to touch them. Indeed, in several cases, Defendants did touch Plaintiffs, grabbing
23 them or using their bodies to force Plaintiffs out of the building or into other rooms and then
24 preventing Plaintiffs from leaving.

25 187. Plaintiffs did not consent to Defendants’ conduct. To the contrary, Plaintiffs told
26 Defendants repeatedly not to touch them.

27 188. Plaintiffs were harmed as a result of Defendants’ conduct. Among other things:

28 a. Ms. Hayworth was unable to sleep and suffered flashbacks of a similar

1 traumatic event from her past. She had to talk with a therapist to deal with her anxiety and
2 continues to feel unsafe coming into work.

3 b. Ms. Miranda was badly shaken by Defendants' conduct. She, too, feels
4 unsafe at work; and, because Defendants dressed like normal tenants or applicants, and Defendant
5 Sanchez had threatened to come back as she was leaving, Ms. Miranda worries another invasion may
6 be imminent.

7 c. Mr. Quintana shares the same anxiety. He could not sleep after Defendants'
8 hostile takeover; and, because one of the Defendants appeared to be armed, he felt unable to
9 protect or help his staff effectively.

10 189. Defendants terrorized Plaintiffs, who now need armed guards to protect their
11 offices to feel safe enough to do their jobs.

12 190. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award
13 of punitive damages.

14 191. At all relevant times, each Defendant was the agent of each of the other Defendants
15 and was acting within the course and scope of such agency and with the permission of the other
16 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
17 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
18 force and engage in other misconduct.

19 **FOURTH CAUSE OF ACTION**

20 ***Battery***

21 **(By Plaintiffs Neil Shekhter; Jeniffer Miranda; Abel Serrano; and Leo Villalobos,**
22 **Against the Management Defendants; and DOES 1-50)**

23 192. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
24 herein.

25 193. Defendants intentionally performed acts that resulted in harmful or offensive
26 contact with Plaintiffs. Among other things:

27 a. A DOE Defendant security guard grabbed Shekhter by the shirt and
28 screamed in his face.

1 b. Defendant Sanchez and a DOE Defendant “Leo” grabbed Jeniffer Miranda
2 by the arm and dragged her away from her computer.

3 c. A woman and man DOE Defendant grabbed Abel Serrano and used their
4 bodies to block him from the server room.

5 d. A male DOE Defendant shoved Leo Villalobos away from a computer he
6 was trying to unplug, sending Mr. Villalobos stumbling backward.

7 194. Plaintiffs did not consent to Defendants’ contact. To the contrary, Plaintiffs told
8 Defendants repeatedly not to touch them.

9 195. Defendants’ harmful or offensive contact hurt Plaintiffs.

10 196. Defendants’ conduct was malicious, oppressive, and fraudulent, justifying an award
11 of punitive damages.

12 197. At all relevant times, each Defendant was the agent of each of the other Defendants
13 and was acting within the course and scope of such agency and with the permission of the other
14 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
15 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
16 force and engage in other misconduct.

17 **FIFTH CAUSE OF ACTION**

18 *False Imprisonment*

19 **(By Plaintiffs Christine Hayworth; Jeniffer Miranda; Sergio Quintana; and Olena Polender;**
20 **Against the Management Defendants; and DOES 1-50)**

21 198. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
22 herein.

23 199. Defendants intentionally confined several Plaintiffs, without their consent, to the
24 Properties or offices and other spaces within them. Specifically:

25 200. At 1502 Broadway, Defendant Sanchez, DOE Defendant Leo, and an enormous
26 DOE Defendant security guard dragged Ms. Miranda away from her computer and confined her
27 with Ms. Hayworth in the building. The security guard blocked the door with his body while
28 Sanchez, Leo and DOE Defendant locksmiths changed the locks to the doors. Besides the

1 changed locks, and Sanchez and Leo’s manhandling of Ms. Miranda, the security guard’s
2 enormous size and false claim to be a police officer persuaded Ms. Miranda and Ms. Hayworth
3 that they could not leave. They, in fact, remained confined in the building for several hours.

4 201. At 829 Broadway, various DOE Defendants expelled most NMS Properties
5 employees from the building. One such Defendant, a security guard who falsely claimed to be a
6 police officer, blocked an NMS Properties employee, Nicole Woolley, in her office for
7 approximately 30 minutes while other DOE Defendants tried to hack into her and others’
8 computers. Eventually they expelled Ms. Woolley from the building, leaving Ms. Polender alone
9 inside. They changed the locks, preventing Ms. Polender from leaving and preventing anyone else
10 from coming in to help her. A DOE Defendant security guard blocked Ms. Polender in her office,
11 refusing to let her leave, even to use the bathroom. At one point, he raised his hands as if to grab
12 or strike Ms. Polender, only stopping when she screamed. Later, when the guard temporarily was
13 called away, Ms. Polender let Mr. Quintana into the building. When Defendants realized what
14 happened, they blocked the door and confined Mr. Quintana to the building as well. They
15 prevented Mr. Quintana, like Ms. Polender, even from using the bathroom. A DOE Defendant
16 security guard who appeared to have a gun convinced Mr. Quintana he could not safely leave or
17 move around the building. Defendants confined Ms. Polender in the building for several hours.

18 202. Defendants had no legal right to confine Plaintiffs as they did. The DOE
19 Defendants who claimed to be police officers were lying – after the actual Santa Monica police
20 arrived, one admitted he was “retired,” and the other said he was “off duty,” but conceded he was
21 not with the Santa Monica PD. None of the other Defendants had even this thin veneer of false
22 legitimacy; they are employees of USRG, Greystar, Pravis and presently unknown locksmith and
23 private security firms. With few exceptions, Defendants came into the Properties wearing plain
24 clothes and refused to identify themselves to Plaintiffs. Despite their false claims to the contrary,
25 Defendants did not have a court order giving them ownership or possession of the Properties. The
26 letters or deeds they purported to show Plaintiffs on their cell phones often pertained to other
27 buildings, not the Properties Defendants claimed to own. Regardless, Plaintiffs are experienced
28 real estate professionals who knew that anyone can record a deed on a property at any time,

1 whether they have a right to or not. In short, Defendants' actions were completely unlawful and
2 unjustified.

3 203. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award
4 of punitive damages.

5 204. At all relevant times, each Defendant was the agent of each of the other Defendants
6 and was acting within the course and scope of such agency and with the permission of the other
7 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
8 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
9 force and engage in other misconduct.

10 **SIXTH CAUSE OF ACTION**

11 ***Infliction of Emotional Distress***

12 **(By Plaintiffs Neil Shekhter; Christine Hayworth; Jeniffer Miranda; Nelly Padilla; Sergio**
13 **Quintana; Olena Polender; Abel Serrano; Nader Esmailzadeh; Leo Villalobos;**
14 **and Jeff Paynton, Against All Defendants)**

15 205. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
16 herein.

17 206. Defendants' conduct was extreme and outrageous. Among other things, as set forth
18 above:

19 a. Defendants invaded Plaintiffs' places of work, threatened, and in several
20 cases actually carried out, harmful and offensive contact. In particular, they manhandled Ms.
21 Miranda and Mr. Serrano when these Plaintiffs tried to prevent Defendants' unauthorized
22 computer access. And they roughed up Shekhter when he asked Defendants to identify
23 themselves and explain what they were doing.

24 b. Defendants used locksmiths, security guards posing as police officers, and
25 the threat of physical harm to confine Ms. Hayworth, Ms. Miranda, Ms. Polender, and Mr.
26 Quintana to their offices, refusing to let them leave, even to use the bathroom.

27 c. Defendants ejected several Plaintiffs from their buildings, keeping Ms.
28 Padilla, who was quite ill, out on the sidewalk in the cold for four hours, refusing her access to the

1 bathroom. They also caused Ms. Padilla, who is a single mother, to fear for her job and ability to
2 provide for her child. For hours, Ms. Padilla had to try to calm her 11-year-old son, who like her
3 was panicking that Defendants' conduct had just cost her a job and income on the cusp of the
4 holidays.

5 d. Defendants told Messrs. Esmailzadeh, Villalobos, and Paynton they were
6 fired two days before Thanksgiving. Each suffered loss of appetite, inability to sleep or focus, and
7 nausea as a result of anxiety over losing their jobs and income right before the holidays. In
8 addition, one DOE Defendant shoved Mr. Villalobos to stop him from powering down computers
9 in the building to prevent Defendants' unauthorized access.

10 207. Defendants intended to cause, or recklessly disregarded the risk of causing,
11 emotional distress to Plaintiffs. Throughout the entire ordeal, Defendants screamed at Plaintiffs,
12 in some cases just inches from their faces, rifled through Plaintiffs' personal and work files and
13 computers, surrounded and hovered over Plaintiffs, and used their hands and bodies to herd, grab
14 and block Plaintiffs. Defendants created a hostile, tense, and aggressive environment in which
15 Plaintiffs feared for their safety, but from which Plaintiffs also felt they could not escape.

16 208. Plaintiffs suffered severe emotional distress because of Defendants' conduct. For
17 example, Ms. Hayworth suffered flashbacks, loss of sleep and appetite and had to seek medical
18 attention. Ms. Miranda was badly traumatized by being grabbed repeatedly and threatened by an
19 enormous security guard, then confined for hours to her office. Ms. Polender was extremely
20 distraught at having been confined under guard to her office and physically threatened when she
21 tried to leave or call for help. Mr. Quintana has been unable to sleep and feels traumatized by his
22 inability to effectively help his staff because one of the Defendants guarding him appeared to have
23 a gun. Ms. Mediana was seriously shaken by the ordeal and fear for her staff. She and the rest of
24 the other Plaintiffs now feel unsafe coming into work because Defendants carried out their
25 simultaneous invasion of the Properties in plain clothes, making it appear anyone coming into the
26 offices now could be staging another hostile takeover. And indeed, Defendants threatened to
27 come back again.

28 209. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award

1 of punitive damages.

2 210. At all relevant times, each Defendant was the agent of each of the other Defendants
3 and was acting within the course and scope of such agency and with the permission of the other
4 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
5 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
6 force and engage in other misconduct.

7 **SEVENTH CAUSE OF ACTION**

8 *Conversion*

9 **(By Plaintiff NMS Properties Against All Defendants)**

10 211. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
11 herein.

12 212. NMS Properties has a right to possess the Properties. NMS Properties has a ten-
13 year lease to its office spaces in the buildings. As the manager of the Properties, it also has the
14 right to possess the keys, garage door openers, and files associated with them. NMS Properties
15 also personally owns all the computers and other equipment and supplies in its offices at the
16 Properties.

17 213. Defendants wrongfully dispossessed NMS Properties of its personal property.
18 Among other things, Defendants:

- 19 a. Stole the keys and garage door openers to the Properties;
- 20 b. Hacked into Plaintiffs' computers and stole a presently unknown quantity of
21 confidential data;
- 22 c. Took paper files from Plaintiffs' offices;
- 23 d. Used Plaintiffs' printers to print up reams of flyers announcing their
24 takeover of the Properties to residents; and
- 25 e. Even used Plaintiffs' reserved parking spaces, preventing residents and
26 applicants from parking their cars at the Properties.

27 214. Defendants' conduct damaged Plaintiffs. Among other things, Plaintiffs have had
28 to pay to replace keys and garage door openers, re-key locks, get their computer systems back on-

1 line, investigate and recover the information Defendants stole from Plaintiffs' paper files and
2 computers, replace office equipment and supplies Defendants took or used, and compensate
3 residents who were inconvenienced.

4 215. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award
5 of punitive damages.

6 216. At all relevant times, each Defendant was the agent of each of the other Defendants
7 and was acting within the course and scope of such agency and with the permission of the other
8 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
9 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
10 force and engage in other misconduct.

11 EIGHTH CAUSE OF ACTION

12 *Trespass to Chattels*

13 **(By Plaintiffs Neil Shekhter, NMS Capital, and NMS Properties Against All Defendants)**

14 217. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
15 herein.

16 218. Plaintiffs have a right to possess the Properties. Shekhter owns and controls NMS
17 Capital which, through its interest in the JV, has an ownership interest in the Properties and the
18 right to possess them. Shekhter also owns and controls NMS Properties, which has a ten-year
19 lease to its office spaces in the buildings. As the manager of the Properties, it also has the right to
20 possess the keys, garage door openers, and files associated with them. NMS Properties also
21 personally owns all the computers and other equipment and supplies in its offices at the Properties.

22 219. Defendants wrongfully dispossessed Plaintiffs of their property. Among other
23 things, Defendants:

- 24 a. Stole the keys and garage door openers to the Properties;
- 25 b. Hacked into Plaintiffs' computers and stole a presently unknown quantity of
26 confidential data;
- 27 c. Took paper files from Plaintiffs' offices; and
- 28 d. Used Plaintiffs' printers to print up reams of flyers announcing their

1 takeover of the Properties to residents.

2 220. Defendants acted intentionally. Indeed, they drafted up a written plan – the
3 “Westside Collection Transition Plan” – for dispossessing Plaintiffs of their property.

4 221. Defendants’ conduct was malicious, oppressive, and fraudulent, justifying an award
5 of punitive damages.

6 222. Defendants acted without Plaintiffs’ consent. In fact, Plaintiffs and their employees
7 repeatedly told Defendants they had no right being in the buildings, going through files, using
8 computers, or taking keys. Defendants knew they did not have Plaintiffs’ consent because they
9 resorted on several occasions to physical force and intimidation, as well as hacking, to gain access
10 to Plaintiffs’ property, or prevent Plaintiffs from denying them access.

11 223. Defendants’ conduct damaged Plaintiffs. Among other things, Plaintiffs have had
12 to pay to replace keys and garage door openers, re-key locks, get their computer systems back on-
13 line, investigate and recover the information Defendants stole from Plaintiffs’ paper files and
14 computers, replace office equipment and supplies Defendants took or used, and compensate
15 residents who were inconvenienced.

16 224. At all relevant times, each Defendant was the agent of each of the other Defendants
17 and was acting within the course and scope of such agency and with the permission of the other
18 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
19 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
20 force and engage in other misconduct.

21 **NINTH CAUSE OF ACTION**

22 ***Tortious Interference with Contract***

23 **(By Plaintiff NMS Properties Against All Defendants)**

24 225. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
25 herein.

26 226. Plaintiff NMS Properties has valid contracts with various third parties including:

27 a. Current and prospective tenants of the Properties, which NMS Properties
28 manages;

- 1 b. Vendors who supply services and goods to NMS Properties and the
- 2 Properties it manages and residents it serves;
- 3 c. Employees who provide valuable labor to NMS Properties; and
- 4 d. The individual LLCs with whom NMS Properties has written and oral
- 5 contracts to manage the Properties.

6 227. Defendants knew about these contracts. Part of their written plan for seizing

7 control of the Properties included announcing an end to NMS Properties’ contractual relationship

8 with its tenants and vendors, trying to poach NMS Properties’ employees, and terminating NMS

9 Properties’ contracts with the Properties’ LLCs.

10 228. Defendants’ conduct was intended to induce a breach or disrupt NMS Properties’

11 contracts. Among other things, Defendants:

- 12 a. Turned away prospective tenants and cancelled their meetings with NMS
- 13 Properties;
- 14 b. Inconvenienced and disturbed existing tenants by hindering access to the
- 15 building, intercepting package deliveries, and occupying reserved parking spaces, among other
- 16 things, which caused some tenants to threaten to end their leases;
- 17 c. Prevented planned move-ins by shutting down access to the buildings,
- 18 elevators, and parking and cancelling appointments;
- 19 d. Informed vendors that Defendants were the new owners and managers of
- 20 the buildings; and
- 21 e. Sought to poach NMS Properties’ employees, whom Defendants also
- 22 terrorized, making them feel unsafe and unfocused in their own workplaces, putting them behind
- 23 in their work, and forcing them to spend time recovering from the damage Defendants inflicted
- 24 instead of doing their real jobs.

25 229. Defendants’ conduct harmed NMS Properties, inflicting losses of and disruptions to

26 revenue from current and prospective tenants, deals with vendors, management agreements with

27 the Properties’ LLCs, and productivity of employees.

28 230. Defendants’ conduct was malicious, oppressive, and fraudulent, justifying an award

1 of punitive damages.

2 231. At all relevant times, each Defendant was the agent of each of the other Defendants
3 and was acting within the course and scope of such agency and with the permission of the other
4 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
5 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
6 force and engage in other misconduct.

7 **TENTH CAUSE OF ACTION**

8 *Invasion of Privacy*

9 **(By All Plaintiffs Against All Defendants)**

10 232. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
11 herein.

12 233. Defendants intentionally intruded into Plaintiffs' private affairs. In particular,
13 Plaintiffs used false claims to ownership of the Properties and physical intimidation to obtain
14 computer and account passwords from Plaintiffs. Where Plaintiffs refused to provide their
15 passwords willingly, Defendants hacked into their computers using specialized software to
16 override their technological protections. Defendants also went through Plaintiffs' drawers and
17 paper files. In these ways, Defendants obtained access not only to work-related information, but
18 personal information as well.

19 234. Defendants' intrusion into Plaintiffs' affairs would be highly offensive to a
20 reasonable person. Indeed, it has deeply unsettled Plaintiffs, who worry about the data Defendants
21 stole and what they will do with it.

22 235. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award
23 of punitive damages.

24 236. At all relevant times, each Defendant was the agent of each of the other Defendants
25 and was acting within the course and scope of such agency and with the permission of the other
26 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
27 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
28 force and engage in other misconduct.

1 **ELEVENTH CAUSE OF ACTION**

2 ***Hacking (Penal Code § 502)***

3 **(By All Plaintiffs Against the Management Defendants)**

4 237. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
5 herein.

6 238. The Management Defendants knowingly accessed and, without permission, used
7 Plaintiffs' computers and the data on them. Among other things, Defendants used false claims of
8 a court order, pictures of documents pertaining to other buildings, and physical coercion to obtain
9 passwords to locked computers, and to prevent Plaintiffs from shutting down access to their
10 computers. DOE Defendants from Pravis also used special computers and software to override
11 technological safeguards and gain access to Plaintiffs' computers and servers.

12 239. While accessing Plaintiffs' computers, Defendants knowingly, and without
13 permission, downloaded and copied a presently unknown amount of data. Such data included
14 confidential information pertaining to current and former residents and applicants, and also to
15 NMS Properties' employees, from, among other places, the Yardi software.

16 240. While accessing Plaintiffs' computers, Defendants knowingly, and without
17 permission, directly or by overriding Plaintiffs' systems with specialized software, took control of
18 the Properties' elevators and electronic key fob systems, shutting them down. As a result,
19 residents and staff were unable to access parts of the buildings and planned move-ins were
20 cancelled.

21 241. Plaintiffs have been damaged as a result of Defendants' conduct including, among
22 other things, by having their normal business operations disrupted, having to spend time and
23 money, at premium overtime rates, investigating and recovering from Defendants' computer
24 breaches, and bringing elevator, electronic door lock, and other systems back on-line. Plaintiffs
25 have also been damaged by the loss and misuse of their private, confidential data.

26 242. Defendants' conduct was malicious, oppressive, and fraudulent, justifying an award
27 of punitive damages.

28 243. At all relevant times, each Defendant was the agent of each of the other Defendants

1 and was acting within the course and scope of such agency and with the permission of the other
2 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
3 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
4 force and engage in other misconduct.

5 TWELFTH CAUSE OF ACTION

6 *Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.)*

7 **(By Plaintiffs Neil Shekhter, NMS Capital, and NMS Properties Against All Defendants)**

8 244. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
9 herein.

10 245. Defendants are rival property developers who wish to acquire the Properties at
11 below-market prices, remove Plaintiffs from them and install their own preferred management
12 companies. In this way, Defendants intend to capture the rents from the Properties, make
13 distributions of cash from the Properties' bank accounts to themselves, and ultimately "flip" the
14 Properties at market prices, capturing NMS Capital's rightful share of the proceeds. Knowing
15 ownership, possession and the right to manage the Properties is actively disputed in ongoing
16 litigation and the subject of court orders, Defendants sought to short-circuit the judicial system and
17 take the Properties for themselves by force. Their conduct constitutes unfair competition.

18 246. Among other things, Defendants:

- 19 a. Hacked into Plaintiffs' computer systems, taking control of building
20 systems and stealing data on tenants and Plaintiffs;
- 21 b. Stole keys, garage door openers, and paper files and changed the locks on
22 all the buildings;
- 23 c. Disconnected Plaintiffs' servers and cut off their computer access;
- 24 d. Used Plaintiffs' office equipment to print up flyers announcing to tenants
25 that Plaintiffs no longer owned or controlled the Properties and directing them to make their
26 payments to Defendants;
- 27 e. Caused public disturbances at the Properties calculated to damage
28 Plaintiffs' reputation with existing and prospective tenants and business partners; and

1 f. Recorded deeds to the Properties, clouding title to them.

2 247. Defendants threatened to come back and attempt to seize the Properties again,
3 leaving Plaintiffs unsettled and necessitating armed guards to protect them.

4 248. At all relevant times, each Defendant was the agent of each of the other Defendants
5 and was acting within the course and scope of such agency and with the permission of the other
6 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
7 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
8 force and engage in other misconduct.

9 **THIRTEENTH CAUSE OF ACTION**

10 *Aiding and Abetting*

11 **(By All Plaintiffs Against All Defendants)**

12 249. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
13 herein.

14 250. Defendants knew the Sale was unauthorized and a sham designed to deprive NMS
15 Capital of the benefits of its contract with AEW, as well as its rightful share of the proceeds of any
16 sale of the Properties, and improperly remove NMS Properties as manager of the buildings.

17 251. Defendants also knew their conduct constituted a breach of various duties
18 including, *e.g.*, to refrain from assaulting, battering, and falsely imprisoning Plaintiffs, hacking
19 into Plaintiffs' computers and stealing information from them, and interfering with Plaintiffs'
20 contractual and economic relationships with tenants, vendors and others.

21 252. Defendants nevertheless gave substantial assistance and encouragement to one
22 another to facilitate the sham Sale and breach their duties. For example:

23 a. The Buyer Defendants recorded deeds on the Properties to enable the other
24 Defendants to claim, falsely, to own the buildings and to have the right to take control of them
25 from Plaintiffs.

26 b. AEW facilitated the unauthorized Sale, agreeing to a below-market
27 purchase price, causing the JV to issue loans to the Buyer Defendants to finance the bulk of the
28 purchase price, closing the deal without title insurance, and signing the deeds the Buyer

1 Defendants recorded, all while continuing to assert in separate litigation that the JV (or AEW) still
2 owns the Properties.

3 c. The Management Defendants, both directly and through DOE Defendants
4 including locksmiths, computer technicians, and security guards, attempted to (and did) seize
5 control of the Properties, hack computers, expel Plaintiffs from the buildings or confine them
6 inside, and even directly engaged in verbal and physical attacks on Plaintiffs.

7 d. DOE Defendant security guards used their intimidating physical presence
8 and false claims of being police, brandishing what appeared to be badges and weapons, to enable
9 and prevent interference with other Defendants' misconduct.

10 253. Defendants' conduct, separately considered, constitutes a breach of duties to
11 Plaintiffs. Among other things, unauthorized computer access, assault, battery, false
12 imprisonment and Defendants' other intentionally tortious conduct self-evidently is unlawful.

13 254. At all relevant times, each Defendant was the agent of each of the other Defendants
14 and was acting within the course and scope of such agency and with the permission of the other
15 Defendants. In particular, the Management Defendants are agents of the Buyer Defendants who,
16 in collaboration with AEW, hired them and directed them to seize the Properties from Plaintiffs by
17 force and engage in other misconduct.

18 255. To undo the consequences of Defendants' sham Sale, NMS Capital seeks to rescind
19 and unwind the sale of the Properties by AEW to the Buyer Defendants for more than \$100
20 million below fair market value.

21 **FOURTEENTH CAUSE OF ACTION**

22 ***Civil Conspiracy***

23 **(By All Plaintiffs Against All Defendants)**

24 256. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
25 herein.

26 257. Defendants formed a conspiracy to dispossess Plaintiffs of the Properties and their
27 financial stake in them, disrupt Plaintiffs' business operations and contracts, steal information and
28 files, and terrorize Plaintiffs physically and emotionally.

1 258. The Buyer Defendants and AEW entered into a secret agreement whereby AEW
2 would cause the JV to “sell” the Properties without title insurance and at a steep discount below
3 market prices for comparable properties. The bulk of the purchase price would be financed by
4 loans AEW caused the JV to issue, without the knowledge or approval of its JV partner, NMS
5 Capital. These Defendants intended to conceal the terms of the Sale for as long as possible,
6 depriving NMS Capital of an opportunity to enjoin it, and giving themselves time to complete
7 other phases of the conspiracy, as detailed below.

8 259. Using the covert Sale as a pretext, AEW and the Buyer Defendants planned to
9 quickly seize control of the Properties, expel NMS Properties, and install their own compliant
10 management companies—the Management Defendants. AEW and the Buyer Defendants would
11 then direct the Management Defendants to make distributions to AEW, the Buyer Defendants, or
12 affiliates of both, and use rent proceeds to “service” the debt the Buyer Defendants used to finance
13 their purchase of the Properties. AEW would then argue that NMS Capital is not entitled to any
14 part of this “debt service” as its share of the Properties’ below-market purchase price.

15 260. Defendants drafted up a written plan—the “Westside Collection Transition Plan”—
16 detailing many of the actions Defendants planned to, and in fact did, take in furtherance of this
17 phase of the conspiracy. The Buyer Defendants and AEW began by recording grant deeds against
18 the Properties, falsely claiming to own them. The Management Defendants then used the deeds—
19 or rather pictures of some of them on their cell phones—as a pretext to expel Plaintiffs from the
20 buildings under color of the Buyer Defendants’ claimed ownership.

21 261. Defendants’ execution of their conspiracy resulted, among other things, in
22 Defendants’ assault, battery, and false imprisonment of Plaintiffs, hacking of Plaintiffs’ computers
23 and theft of data stored on them, and massive disruption of Plaintiffs’ business, economic and
24 contractual relationships.

25 262. Meanwhile, in order to persuade the court in *Lincoln Studios* to order NMS Capital
26 to post a \$61.3 million appeal bond, AEW represented in sworn declarations that either it or the JV
27 (or both) still owned the Properties and were entitled to the rents from them. In other words,
28 AEW and the Buyer Defendants each claim ownership of the Properties depending on whichever

1 NMS Capital and its principal Shekhter reposed trust and confidence in AEW including, in
2 particular, Samek and Davidson. AEW, and Samek and Davidson, accepted that trust. The
3 relationship between NMS Capital and AEW, and their respective principals, was by its very
4 nature one of trust and confidence. And, over time, Samek led Shekhter to believe their
5 relationship had evolved from one of purely business interest to one of apparent friendship. As a
6 result, AEW owed duties to NMS Capital, and its principal Shekhter, because the terms of the
7 Joint Venture Agreement gave them near-total control over the JV and therefore the massive
8 investment NMS Capital had made in it. AEW's duties included, among other things, ensuring
9 the Properties were sold, if at all, at a price and on terms that best served the JV and thereby its
10 members, including NMS Capital.

11 276. AEW knowingly and in bad faith breached its fiduciary duties to NMS Capital by
12 doing the things alleged in the preceding Causes of Action and by abusing its control of the JV to
13 diminish Plaintiffs' interest in the JV and misappropriate the JV's sole assets for itself.

14 277. Defendants Samek and Davidson were intimately involved in the JV and AEW's
15 plan to use its control of the JV to secretly misappropriate its assets and deprive NMS Capital and
16 Shekhter of any interest in them. In particular, Samek—with Davidson's approval—contrived to
17 sell the Properties at below-market prices to the Buyer Defendants, using AEW's control over the
18 JV to provide the Buyer Defendants with loans to finance the Sale. Samek—with Davidson's
19 approval—signed the grant deeds purportedly evidencing the Sale, which the Management
20 Defendants used to try to oust NMS Properties from the Properties and take control of the
21 buildings and their finances.

22 278. Because of the magnitude of the Sale, and the risks associated with NMS Capital's
23 pending buy-out offers and the ongoing litigation with AEW and its affiliates, on information and
24 belief, Samek and Davidson could not proceed without Furber's approval. Furber had oversight of
25 all of AEW's operations. Because of the massive potential upside for AEW, on information and
26 belief, Furber approved Samek and Davidson's plan to move forward with the Sale.

27 279. As a result of the foregoing, Plaintiffs have suffered hundreds of millions of dollars
28 in damages, the specific amount of which will be established at trial.

1 buildings and their finances.

2 285. Because of the magnitude of the Sale, and the risks associated with NMS Capital's
3 pending buy-out offers and the ongoing litigation with AEW and its affiliates, on information and
4 belief, Samek and Davidson could not proceed without Furber's approval. Furber had oversight of
5 all of AEW's operations. Because of the massive potential upside for AEW, on information and
6 belief, Furber approved Samek and Davidson's plan to move forward with the Sale.

7 286. To prevent Plaintiffs from discovering and seeking to stop the Sale, Samek, with
8 Davidson's approval, concealed AEW's negotiations with the Buyer Defendants, its intention to
9 consummate the Sale at a price far below market, its use of the JV to finance the Sale, and the
10 terms of the sale agreement.

11 287. As a member of the JV, NMS Capital, and its principal Shekhter, had a right to—
12 and justifiably did—rely on the fact that AEW would not sell the Properties at all, much less on
13 terms that would injure the JV and its members. In particular, Plaintiffs did not—and because of
14 Defendants' concealment could not—act to stop the Sale and prevent or mitigate the damage it has
15 done to them.

16 288. To undo the consequences of Defendants' sham Sale, NMS Capital seeks to rescind
17 and unwind the sale of the Properties by AEW to the Buyer Defendants for more than \$100
18 million below fair market value.

19 289. As a result of the foregoing, Plaintiffs have suffered hundreds of millions of dollars
20 in damages, the specific amount of which will be established at trial.

21 290. In light of, and to punish or deter, Defendants' fraudulent, malicious and oppressive
22 conduct, alleged above, Plaintiffs are entitled to recover exemplary damages.

23 **EIGHTEENTH CAUSE OF ACTION**

24 ***Breach of Contract***

25 **(By Plaintiff NMS Capital Against AEW)**

26 291. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
27 herein.

28 292. NMS Capital complied with all of its obligations under the Joint Venture

1 Agreement except insofar as such compliance was excused or prevented by AEW.

2 293. The Joint Venture Agreement prohibits AEW from taking any act in contravention
3 of the Joint Venture Agreement in various ways, including but not limited to, the breaches
4 identified below:

5 a. By not making or refusing to make any distributions to NMS Capital from
6 the proceeds from the purported sale of the Properties by AEW to the Buyer Defendants;

7 b. By purporting to sell the Properties to the Buyer Defendants without an
8 “approved Business Plan”; and

9 c. By causing the JV to take back \$236.8 million in seller financing (i.e.,
10 loans) to finance the purported sale of the Properties to the Buyer Defendants—without NMS
11 Capital’s knowledge or approval, and without authorization in the Joint Venture Agreement.

12 294. By these breaches, AEW violated its obligations and NMS Capital’s rights under
13 Sections 2, 6, and 8 of the Joint Venture Agreement.

14 295. As a result of the foregoing, NMS Capital has suffered hundreds of millions of
15 dollars in damages, the specific amount of which will be established at trial.

16 **NINETEENTH CAUSE OF ACTION**

17 *Conversion*

18 **(By Plaintiff NMS Capital Against AEW)**

19 296. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
20 herein.

21 297. NMS Capital is the rightful owner of its share of the proceeds from the purported
22 sale of the Properties by AEW to the Buyer Defendants.

23 298. AEW intentionally and substantially interfered with NMS Capital’s property by not
24 distributing to NMS Capital its rightful share of the proceeds from the purported sale of the
25 Properties by AEW to the Buyer Defendants.

26 299. NMS Capital did not consent to AEW’s conduct.

27 300. NMS Capital was harmed by AEW’s conduct.

28 301. AEW's conduct was a substantial factor in causing NMS Capital's harm.

1 302. As a result of the foregoing, NMS Capital has suffered hundreds of millions of
2 dollars in damages, the specific amount of which will be established at trial.

3 **TWENTIETH CAUSE OF ACTION**

4 ***Breach of Contract***

5 **(By Plaintiff NMS Capital Against AEW)**

6 303. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
7 herein.

8 304. NMS Capital complied with all of its obligations under the agreement by which it
9 acquired its 3% interest in 1410 Fifth Street, LLC except insofar as such compliance was excused
10 or prevented by AEW.

11 305. NMS Capital was entitled to receive its 3% share of the proceeds from the sale of
12 the 1410 Property.

13 306. AEW breached its obligations under the agreement by not paying NMS Capital its
14 3% share of the proceeds from the purported sale of the 1410 Property to the Buyer Defendants.

15 307. AEW has no basis to withhold this payment. In fact, AEW has acknowledged
16 NMS Capital's interest by causing 1410 Fifth Street, LLC to issue Schedule K-1 tax forms to
17 NMS Capital showing the 3%.

18 308. As a result of the foregoing, NMS Capital has suffered millions of dollars in
19 damages, the specific amount of which will be established at trial.

20 **TWENTY-FIRST CAUSE OF ACTION**

21 ***Conversion***

22 **(By Plaintiff NMS Capital Against AEW)**

23 309. Plaintiffs incorporate each of the foregoing allegations as though set forth in full
24 herein.

25 310. NMS Capital is the rightful owner of its 3% share of the proceeds from the
26 purported sale of the 1410 Property by AEW to the Buyer Defendants.

27 311. AEW intentionally and substantially interfered with NMS Capital's property by not
28 distributing to NMS Capital its 3% share of the proceeds from the purported sale of the 1410

1 Property by AEW to the Buyer Defendants.

2 312. NMS Capital did not consent to AEW's conduct.

3 313. NMS Capital was harmed by AEW's conduct.

4 314. AEW's conduct was a substantial factor in causing NMS Capital's harm.

5 315. As a result of the foregoing, NMS Capital has suffered millions of dollars in
6 damages, the specific amount of which will be established at trial.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs respectfully pray for the following relief:

9 (1) A judicial declaration that:

10 a) The Buyer Defendants' purported purchase of the Properties from AEW in
11 November 2016, their claims to ownership and possession thereof, and their
12 efforts to terminate NMS Properties as manager of the Properties and to
13 expel NMS Properties from the buildings, are of no effect; and

14 b) The Sale of the Properties by AEW to the Buyer Defendants is invalid and
15 shall be rescinded and unwound in its entirety, with all rights, title and
16 interests in the Properties restored to the joint venture between AEW and
17 NMS;

18 (2) That the Sale of the Properties by AEW to the Buyer Defendants shall be rescinded
19 and unwound in its entirety, with all rights, title and interests in the Properties
20 restored to the joint venture between AEW and NMS; or, alternatively, damages for
21 AEW having sold the Properties to the Buyer Defendants for more than \$100
22 million below fair market value;

23 (3) Compensatory damages in an amount exceeding \$500 million, to be proven at trial;

24 (4) Pre-judgment interest on the damages award at the maximum legal rate;

25 (5) Punitive damages;

26 (6) An injunction pursuant to Bus. & Prof. Code § 17203 prohibiting Defendants' acts
27 of unfair competition; and
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(7) Such other and further relief as the Court deems just and proper.¹

DATED: January __, 2019

MILLER BARONDESS, LLP

By: _____

LOUIS R. MILLER
Attorneys for Plaintiffs

¹ As they are allowed by California law, Plaintiffs will elect their remedy—rescission or damages—before trial.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of all claims so triable.

DATED: January __, 2019

MILLER BARONDESS, LLP

By: _____

LOUIS R. MILLER
Attorneys for Plaintiffs

MILLER BARONDESS, LLP

ATTORNEYS AT LAW

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