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30-2019-01050162-CU-SL-CXC - ROA # 2238 - DAVID H. YAMASAKI, Clerk of the Court By O. Lopez, Deputy Clerk.

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Attorneys for Intervening Plaintiffs
Norman Rockmaker, as Trustee of the Norbrite, Inc. Retirement Trust, Alice Noble, as Trustee of the Noble Family Trust dated 11/21/83, Mike Rozenblatt, as Trustee of the Manhattan Revocable Trust Dated 4/16/2013, and Eric Swindeman

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CIVIL COMPLEX CENTER

SALVATION INVESTMENT, LLC,

Plaintiff,

vs.

MO MURRAYFIELD, LLC; TRP MANAGEMENT MURRAYFIELD, LLC; TWINROCK HOLDINGS, LLC; TWINROCK PARTNERS, LLC; TRP FUND VIII, LLC; TRP MANAGEMENT VIII, LLC; TRP MANAGEMENT AZZURRI, LLC; MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES, INC.; WEILAND GOLDEN GOODRICH LLP (previously identified as "WEILAND GOLDEN FRIEDMAN LLP"); SOUTHSIDE VENTURES LLC; LOG HILL PROPERTIES AND CONSULTING LLC; WILLIAM LOBEL; ALEXANDER PHILIPS; MICHAEL MEYER; GREG LOGSDON; ROBERT HILL; PACHULSKI STANG ZIEHL & JONES LLP (previously identified by fictitious name "DOE 1"); MO AZZURRI, LLC (previously identified by fictitious name "DOE 2"); TWINROCK MANAGEMENT, INC. (previously identified by fictitious name "DOE 3"); and DOES 4–100, inclusive,

Defendants,

Lead Case: 30-2019-01050162-CU-SL-CXC

Related to and Consolidated in Part with:
Case No. 30-2019-01056031-CU-FR-CJC

Assigned to: *Hon. Peter J. Wilson*
Dept: *CX-101*

SECOND AMENDED COMPLAINT IN INTERVENTION

JURY TRIAL DEMANDED

Lead Complaint filed:	Feb. 8, 2019
Lead FAC filed:	Aug. 8, 2019
Lead SAC filed:	Jan. 13, 2020
Lead TAC filed:	Aug. 14, 2020
Compl. in Intervention filed:	Sep. 21, 2022
FACI filed:	Nov. 10, 2022
SACI filed:	May 17, 2023

–and–

MO MURRAYFIELD, LLC,

Nominal Defendant.

NORMAN ROCKMAKER, as Trustee of the NORBRITE, INC. RETIREMENT TRUST, ALICE NOBLE, as Trustee of the NOBLE FAMILY TRUST DATED 11/21/83, MIKE ROZENBLATT, as Trustee of the MANHATTAN REVOCABLE TRUST DATED 4/16/2013, and ERIC SWINDEMAN, derivatively on behalf of Nominal Defendant MO MURRAYFIELD LLC

Intervening Plaintiffs,

vs.

TWINROCK PARTNERS, LLC; TWINROCK HOLDINGS, LLC; TRP MANAGEMENT MURRAYFIELD, LLC; TWINROCK MANAGEMENT INC.; ALEXANDER PHILIPS; MICHAEL MEYER; MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES, INC.; SOUTHSIDE VENTURES, LLC; LOG HILL PROPERTIES AND CONSULTING, LLC; GREG LOGSDON; ROBERT HILL; and ROES 1–30, inclusive,

Defendants,

–and–

MO MURRAYFIELD, LLC,

Nominal Defendant.

SECOND AMENDED COMPLAINT IN INTERVENTION

Intervening Plaintiffs Norman Rockmaker, as Trustee of the Norbrite, Inc. Retirement Trust, Alice Noble, as Trustee of the Noble Family Trust dated 11/21/83, Mike Rozenblatt as Trustee of the Manhattan Revocable Trust dated 4/16/2013, and Eric Swindeman (collectively, "**Intervenors**") submitted their First Amended Complaint in Intervention ("FACI") in response to the TwinRock Defendants' (defined below) November 3, 2022 notice of a purported involuntary withdrawal of Intervenors as members of MO Murrayfield LLC. Intervenors submit this Second Amended Complaint in Intervention pursuant to the Court's ruling on Defendant Marcus & Millichap's (defined below) Demurrer to the FACI and the TwinRock Defendants' Motion to Strike Portions of the FACI. Upon personal knowledge as to their own acts and status and upon information and belief as to all other matters, Intervenors allege the following:

I. INTRODUCTION

1. This action arises from a real estate investment that should have never been made. In 2016, Defendants fraudulently induced approximately 30 investors ("**Members**") to invest approximately $4 million in a student housing complex located at 5151 Commercial Drive, Columbia, Missouri ("**Property**" or "**Murrayfield Property**").

2. To purchase the Property, the TwinRock Defendants (defined below) formed Murrayfield, a limited liability company organized in Delaware. Under Murrayfield's Operating Agreement ("**Operating Agreement**"), the TwinRock Defendants would serve as Murrayfield's manager and were responsible for acquiring and overseeing operation of the Property. A true and correct copy of the Operating Agreement is attached hereto as **Exhibit 1**.

3. The TwinRock Defendants were highly incentivized to purchase the Property. Pursuant to the Operating Agreement, the TwinRock Defendants would receive an acquisition fee of $147,000 upon the purchase of the Property and ongoing asset management fees of $73,500 every year. Additionally, the TwinRock Defendants would be entitled to receive a 20% share of the cash flow generated by the Property.

4. To induce the Members to invest in Murrayfield, Defendants made several misrepresentations and omissions about the Property's finances, tenant leases, and the student

housing market in Columbia, Missouri. As a result of these misrepresentations and omissions, the Members were induced to invest in Murrayfield and agree to an inflated purchase price of $14,700,000.

5. In June 2016, the TwinRock Defendants, on behalf of Murrayfield and the Members, purchased the Property for $14,700,000, of which $11,250,000 was funded by a bank loan. However, because the Property and student housing market was not as advertised, the Property could not generate sufficient cash flow to service the debt.

6. Within two years, Murrayfield fell behind on its loan payments and the Property was foreclosed upon. Upon information and belief, at the time of the foreclosure, the Property was appraised at $7,600,000—or $7.1 million less than what Murrayfield paid for the Property less than two years prior. And in March 2018, the Property was sold to the highest bidder for the appraisal price of $7,600,000. Murrayfield lost the Property, and the Members lost their entire capital investment.

7. Today, Murrayfield's only remaining assets are its pending legal claims against Defendants.

II. PARTIES

A. Nominal Defendant

8. Nominal Defendant MO Murrayfield, LLC ("**Murrayfield**" or the "**Company**") is a Delaware limited liability company that does, and at all relevant times herein did, conduct business in Orange County, California. At least one member of Murrayfield is a citizen and resident of the State of California. Murrayfield's principal place of business is, and at all relevant times herein was, 180 Newport Center Drive, Suite 230, Newport Beach, California.

B. Intervening Plaintiffs

9. Intervening Plaintiff Norman Rockmaker is a Trustee of the Norbrite, Inc. Retirement Trust, which presently owns a 4.80% interest in Murrayfield.

10. Intervening Plaintiff Alice Noble is a Trustee of the Noble Family Trust Dated 11/21/83, which presently owns a 3.20% interest in Murrayfield.

11. Intervening Plaintiff Mike Rozenblatt is a Trustee of the Manhattan Revocable Trust

Dated 4/16/2013, which presently owns a 4.80% interest in Murrayfield.

12. Intervening Plaintiff Eric Swindeman is an individual who presently owns a 4.80% interest in Murrayfield.

C. Defendants

13. Defendant TwinRock Partners, LLC ("**TwinRock Partners**") is a Delaware limited liability company that does, and at all relevant times herein did, conduct business in the State of California. At least one member of TwinRock Partners is a citizen and resident of the State of California. Upon information and belief, TwinRock Partners is, and at all relevant times herein was, the managing member of TRP Management, which, in turn, is and at all relevant times herein was, the managing member of Murrayfield. Upon information and belief, Defendants Philips and Meyer are the majority owners of TwinRock Partners.

14. Defendant TwinRock Holdings, LLC ("**TwinRock Holdings**") is a Delaware limited liability company that does, and at all relevant times herein did, conduct business in the State of California. Upon information and belief, at least one member of TwinRock Holdings is a citizen and resident of the State of California.

15. Defendant TRP Management Murrayfield, LLC ("**TRP Management Murrayfield**") is a Delaware limited liability company that does, and at all relevant times herein did, conduct business in the State of California. Upon information and belief, at least one member of TRP Management Murrayfield is a citizen and resident of the State of California. Upon information and belief, TRP Management Murrayfield is, and at all relevant times herein was, the managing member of the Murrayfield.

16. Defendant TwinRock Management Inc. ("**TwinRock Management**"), is a California corporation that does, and at all relevant times herein did, conduct business in the State of California, and has its principal place of business in Orange County, California. Upon information and belief, at least one member of TwinRock Management is a citizen and resident of the State of California. Upon information and belief, TwinRock management took part in managing the Murrayfield Property.

17. Defendant Alexander Philips ("**Philips**") is, and/or at all relevant times herein was,

an individual residing and conducting business in the State of California. Upon information and belief, Philips is, and at all relevant times herein was, Chief Executive Officer of TwinRock Partners, and a Manager of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management.

18. Defendant Michael L. Meyer ("**Meyer**") is, and/or at all relevant times herein was, an individual residing and conducting business in the State of California. Upon information and belief, Meyers is, and at all relevant times herein was, Chairman of TwinRock Partners, and a Manager of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management.

19. Defendant Marcus & Millichap Real Estate Investment Services, Inc. ("**Marcus & Millichap**" or "**Marcus**") is a California corporation that does, and at all relevant times herein did, conduct business in the State of California, and has its principal place of business in Los Angeles County, California.

20. Upon information and belief, Defendant Southside Ventures, LLC ("**Southside Ventures**") is a Missouri limited liability company.

21. Upon information and belief, Defendant Log Hill Properties and Consulting, LLC ("**Log Hill Properties**") is a Missouri limited liability company.

22. Upon information and belief, Defendant Greg Logsdon ("**Logsdon**") is, and/or at all relevant times herein was, an individual and resident of Missouri. Upon information and belief, Logsdon is, and at all relevant times herein was, a principal executive officer and manager of Southside Ventures and Log Hill Properties.

23. Upon information and belief, Defendant Robert Hill ("**Hill**") is, and/or at all relevant times herein was, an individual and resident of Missouri. Upon information and belief, Logsdon is, and at all relevant times herein was, a principal executive officer and manager of each of Southside Ventures and Log Hill Properties.

D. <u>Roe Defendants</u>

24. Except as described herein, Intervenors are ignorant of the true names of defendants sued as Roes 1 through 30, inclusive, under California Code of Civil Procedure section 474 and,

therefore, Intervenors sue these defendants by such fictitious names. Following further investigation and discovery, Intervenors will seek leave of this Court to amend this Complaint in Intervention to allege their true names and capacities when ascertained. These fictitiously named defendants are other members of management of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management, employees, and/or consultants or third parties who were involved in the wrongdoing detailed herein. Upon information and belief, these defendants aided and abetted, and participated with and/or conspired with the named defendants in the wrongful acts and course of conduct or otherwise caused the damages and injuries claimed herein and are responsible in some manner for the acts, occurrences, and events alleged in this Complaint in Intervention.

E. Agency, Concerted Action, Conspiracy

25. Intervenors are informed and believe and thereon allege that at all times herein mentioned, each of the Defendants was the agent, employee, partner and representative of each of the other Defendants, and in doing the things herein alleged, was acting within the authorized course and scope of this agency, employment, partnership, and representation with the full knowledge and consent of the remaining Defendants. Further, each and all of the acts herein alleged as to each of the Defendants was authorized and directed by the remaining Defendants, who ratified, adopted, condoned and approved said acts with full knowledge of the consequences thereof, and memorialized the authority of the agent in a writing subscribed by the principal.

26. Intervenors are informed and believe and thereon allege that each of the Defendants (a) agreed to the tortious acts complained of herein in concert with the other Defendants and pursuant to a common design with them; (b) knew, at all relevant times, that the other Defendants' conduct constituted a breach of duty and gave substantial assistance or encouragement to the other Defendants so to conduct themselves; (c) gave, at all relevant times, substantial assistance to the other Defendants in accomplishing a tortious result and his, her or its own conduct, separately considered, constituted a breach of duty to the Murrayfield; and (d) acted, without limitation, with greed for his, her, or its own financial gain.

27. Intervenors are informed and believe and thereon allege that each of the Defendants

agreed among each other to commit the unlawful acts (or acts by unlawful means) described in this Complaint in Intervention. The desired effect of the conspiracy was to harm and otherwise deprive Murrayfield of its rights at law and in equity as set forth herein. Each of the Defendants herein committed an act in furtherance of the agreement. Injury was caused to Murrayfield by the Defendants as a consequence and each is therefore liable as a joint tortfeasor with the others, for the acts and omissions complained of herein.

F. <u>Alter Ego Allegations</u>

1. <u>The TwinRock Defendants</u>

28. Intervenors are informed and believe and thereon allege that at all times herein mentioned, TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management, were shell companies being used as instrumentalities and conduits for a single venture controlled by Philips and Meyer.

29. Intervenors are informed and believe and thereon allege that at all times herein mentioned, TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management were the alter egos of Philips and Meyer because there exists a unity of interest and ownership between Philips and Meyer on the one hand, and TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management on the other, such that any individuality and separateness between Philips and Meyer on the one hand and TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management on the other, does not exist.

30. Intervenors are informed and believe and thereon allege that at all times herein mentioned, Philips and Meyer exercised complete control and dominance over TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management and, consequently, TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management were mere shells, instrumentalities, and conduits through which Philips and Meyer carry on a single enterprise as part of the association-in-fact enterprise.

31. Intervenors are informed and believe and thereon allege that at all times herein mentioned, Philips and Meyer dominated, influenced and controlled TwinRock Partners, TwinRock

Holdings, TRP Management Murrayfield, and TwinRock Management, as well as the business, property, and affairs of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management.

32. Intervenors are informed and believe and thereon allege that at all times herein mentioned, TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management were created and continued pursuant to a fraudulent plan, scheme, and device conceived and operated by an associate-in-fact enterprise formed by Philips and Meyer, whereby income, revenue and profits of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management were diverted to Philips and Meyer through their positions as Managers, Managing Members, or Directors of such entities.

33. Intervenors are informed and believes and thereon alleges that at all times herein mentioned, TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management were organized by Philips and Meyer as a device to defraud members of Murrayfield of their investment in Murrayfield.

34. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management would, under the circumstances, sanction a fraud and promote injustice in that members of Murrayfield may be unable to realize upon any judgment in Murrayfield's favor.

35. Intervenors are informed and believe and thereon allege that at all times herein mentioned, individuals Philips and Meyer, and entities TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management acted for each other in connection with the conduct herein alleged and that each of them performed the acts complained of herein or breached the duties herein complained of as agents of each other and each is therefore fully liable for the acts of the other.

36. Accordingly, hereinafter, Defendants TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, TwinRock Management, Philips, and Meyer are collectively referred to as the "**TwinRock Defendants**."

2. <u>The Seller Defendants</u>

37. Intervenors are informed and believe and thereon allege that Logsdon and Hill control, dominate and operate Southside Ventures and Log Hill Properties; that the monies of Logsdon, Hill, Southside Ventures, and Log Hill Properties are commingled and intermingled; that there is a unity of ownership interest between them; that the credit of one is used for the credit of the other; that obligations of the former are paid by the latter; that the latter were organized and capitalized for a sum of money insufficient to meet their reasonable requirements; that the latter are instrumentalities, conduits, adjuncts, and alter egos of the former, and vice versa; that all of the same operate as a single enterprise; that each has managed and controlled the other to avoid liability through deceit to defraud creditors; that unless the fiction of the legal separateness of each is from each ignored, great injustice will result and fraud will be sanctioned, all to the irreparable damage and injury of Intervenors. Moreover, each operates as part and parcel of an unincorporated association. Logsdon, Hill, Southside Ventures, and Log Hill Properties is, among other things, a single enterprise and unincorporated association. Each of these Defendants is not only sued herein in his, her, or its individual capacity, and as a member of an unlawful conspiracy, but in his, her or its capacity as a member of said single enterprise and unincorporated association.

38. Accordingly, hereinafter, Defendants Logsdon, Hill, Southside Ventures, and Log Hill Properties are collectively referred to as the "**Seller Defendants**."

III. <u>JURISDICTION AND VENUE</u>

39. This Court has jurisdiction over this action pursuant to the California Constitution, Art. VI, § 10, because this case is a cause not given by statute to other trial courts, as this action is brought pursuant to § 800 of the California Corporations Code to remedy Defendants' breaches of fiduciary duties.

40. The amount in controversy, exclusive of interests and costs, exceeds the jurisdictional minimum of this Court.

41. This Court has general jurisdiction over each Defendant who is a resident of California. Additionally, this Court has specific jurisdiction over each non-resident Defendant because upon information and belief:

a. The violations complained of herein arise from acts that occurred in, emanated from, or were authorized within California, including through the involvement of Defendants or their representatives. Specifically, Intervenors received written and oral solicitations in California from Defendants as part of the tortious conspiracy complained of herein to sell membership interests in Murrayfield, and Intervenors purchased membership interests in Murrayfield in California with the full knowledge of Defendants that Intervenors were in California;

b. Defendants' concerted action involving the solicitation and sale of membership interests in Murrayfield to Intervenors in California has a substantial connection to the claims alleged herein. Defendants purposefully availed themselves of the privilege of conducting business within California and this Judicial District, established sufficient minimum contacts with California and this District such that they should reasonably and fairly anticipated being called into court in California and this Judicial District, and purposefully directed activities at residents of California.

c. Defendants maintain sufficient minimum contacts with California, as directors, officers, or managers of TwinRock Partners, TwinRock Holdings, TRP Management Murrayfield, and TwinRock Management, to render jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

42. Moreover, this Court has already chosen to exercise personal jurisdiction over all of Defendants with respect to the same or substantially the same dispute, as parties to *Salvation Investment, LLC vs. MO Murrayfield LLC*, Case No. 30-2019-01050162-CU-SL-CXC, and/or *West Coast Lending, Inc. vs. TwinRock Partners, LLC*, Case No. 30-2019-01056031-CU-FR-CJC ("**California Actions**"). *See, e.g.*, Notice of Entry of Judgment or Order, *Salvation Investment, LLC*, *supra*, ROA # 1140 (Mar. 19, 2021) (denying the Seller Defendants' Motion to Quash for lack of personal jurisdiction).

43. Venue is proper in this Court because Intervenors bring their claims derivatively on behalf of Murrayfield, which maintains its principal place of business in Orange County, where many of the wrongs alleged herein occurred. Moreover, Murrayfield's Operating Agreement provides that "[a]ny suit involving any dispute or matter arising under this Agreement may be

brought only in the federal and state courts located in Orange County, California. All Members hereby consent to the exercise of personal jurisdiction by any such courts with respect to any such proceeding."

IV. GENERAL ALLEGATIONS

A. Fraud Relating to the Purchase of the Property

44. Upon information and belief, in or around September 2015, the Seller Defendants engaged Marcus & Millichap to broker the sale of the Property. Marcus & Millichap prepared a memorandum for the sale of the Property ("**Offering Memorandum**"). The Offering Memorandum represented, *inter alia*, the Property was "100% leased for the 2015/2016 School Year," supported by a "100% Parental Guarantee," and boasted "Below Market Rents." According to the Offering Memorandum, the Property had a market rent potential of $147,600 (approximately $1.8 million per year) and projected a net operating income of approximately $1 million in the first year.

45. Upon information and belief, on or about October 30, 2015, the TwinRock Defendants submitted an offer to Marcus & Millichap to purchase the Property from the Seller Defendants for $14,250,000 but were outbid by Monarch Investment & Management Group, LLC ("**Monarch**"), another interested buyer.

46. Upon information and belief, on or about December 27, 2015, Monarch withdrew from the sale because its due diligence investigation revealed that the Seller Defendants and/or Marcus & Millichap had made material misrepresentations and omissions about the Property.

47. Upon information and belief, on or about February 1, 2016, the TwinRock Defendants inquired with Marcus & Millichap about the status of the sale of the Property to Monarch, and were informed that Monarch withdrew from the sale and the Property was available again for purchase.

48. Upon information and belief, on or about February 4, 2016, the following events occurred: (1) TwinRock Defendants renewed their offer to purchase the Property and increased their offer price to $14,500,000; after receiving the TwinRock Defendants' offer; (2) Marcus & Millichap directed the TwinRock Defendants to increase their offer price to $14,700,000; (3) the TwinRock Defendants increased their offer to $14,700,000; (4) the Seller Defendants agreed to the TwinRock

Defendants' offer.

49. Upon information and belief, the TwinRock Defendants, Marcus & Millichap, and the Seller Defendants then agreed to work together to solicit capital investments from investors for the purchase and sale of the Property, and agreed to share the benefits from the solicitation, purchase, and sale between them. Those investors would ultimately become the Members of Murrayfield.

50. Upon information and belief, as part of that agreement:

a. the TwinRock Defendants would act as the front for the solicitation of the capital investments, and the proceeds from those investments would be shared among them;

b. the Seller Defendants would manage the Property before and after the sale in a manner to misrepresent the true condition of the Property and ensure benchmarks could be fabricated to justify the inflated purchase price of $14,700,000; and

c. Marcus & Millichap would provide the Seller Defendants' misrepresentations to the TwinRock Defendants, who in turn would provide them to prospective investors.

51. The existence and nature of this agreement were concealed from the Members.

52. On or about March 7, 2016, the TwinRock Defendants executed an agreement to purchase the Property on behalf of TwinRock Holdings (the "**Purchase Agreement**").

53. Upon information and belief, before executing the Purchase Agreement, the TwinRock Defendants became aware of misrepresentations made by Marcus & Millichap and/or the Seller Defendants about the condition of the Property. For example, upon information and belief, in an email dated February 18, 2016, Philips wrote:

> My main issue and yours is we don't get the full truth of facts, which you have stated to me before. Specifically, [the Seller Defendants] are not running any background checks on the parental guarantees. They told me this was the first year they are requiring [parental guarantees], but when we went over the AR report later, there were tenants going into eviction with [parental guarantees], that is amazing. They have the largest delinquency that I have seen for a student housing project. My fear is they are filling up the property with unqualified tenants and we will be punished for it in the first year . . . .

54. Nevertheless, despite those red flags, the TwinRock Defendants proceeded to enter into the Purchase Agreement with the Seller Defendants.

55. Upon information and belief, in light of the red flags, clauses were added to the

Purchase Agreement whereby the Seller Defendants were required to bring the Property up to "80% pre-leased by May 10, 2016 and 90% pre-leased by June 10, 2016" at effective rental rates of $475 per bed.

56. Upon information and belief, because these benchmarks could not be met, the Seller Defendants took various actions to manipulate pre-leasing data to artificially increase occupancy and ensure the transaction would go through. For example, the Seller Defendants entered into new leases that on paper showed a rental rate of $475 per bed, but in reality were discounted below $475 because tenants were given cash rebates and told they would not have to pay rent.

57. Upon information and belief, the Seller Defendants also reduced the standard length of new leases from twelve (12) to ten (10) months, which would lead to vacancy during the summer months, and failed to secure parental guarantees and/or run background checks on the parental guarantors.

58. Upon information and belief, these actions violated the Purchase Agreement, which required the Seller Defendants to "appl[y] the same standards to acceptance of applicants (including credit, referral and background checks) which it ha[d] during its ownership of the Property" and enter into new leases "on Seller's standard lease form."

59. Upon information and belief, the Seller Defendants, Marcus & Millichap, and the TwinRock Defendants concealed the new leases so that there would be no record of receipt of them in the due-diligence file.

60. Upon information and belief, Marcus & Millichap and the TwinRock Defendants knew, or reasonably should have known, that the Seller Defendants were fraudulently entering into new leases that violated the terms of the Purchase Agreement.

61. Upon information and belief, as a result of the new inferior leases, the TwinRock Defendants received a scorecard from the Seller Defendants on or about May 5, 2016, representing that 89.3% of the property was pre-leased for the following school year.

62. Meanwhile, the TwinRock Defendants were actively soliciting investments from the Members and relaying this fraudulent data to them, advertising, for example, "the property is already 90% pre-leased for the upcoming school year."

63. The TwinRock Defendants did not disclose to the Members the existence of the red flags to investors; nor did the TwinRock Defendants disclose their concerns that the Seller Defendants were "not running any background checks on the parental guarantees" and "filling up the property with unqualified tenants."

64. Instead, the TwinRock Defendants perpetuated Marcus & Millichap's and the Seller Defendants' misrepresentations and omissions. The TwinRock Defendants accomplished this by preparing an investment memorandum that would be used to induce the Members to invest in Murrayfield ("**Investment Memorandum**"). The Investment Memorandum, which was dated April 2016, made the following representations about the Property and student housing market in Columbia, Missouri:

a. the trailing twelve month rental revenue was $1,798,513;

b. "Parental guarantees are required on all leases"; and

c. there was "increasing enrollment at the University of Missouri."

Based on these representations, the TwinRock Defendants projected the Members would receive a 16.5% rate of return and an equity multiple of 2.4x. True and correct copies of excerpts from the Investment Memorandum highlighting these representations are attached hereto as **Exhibit 2**.

65. However, these representations were false or misleading. The trailing twelve month rental revenue in April 2016 was <u>not</u> $1,798,513; that amount was purportedly the revenue in 2014. A true and correct copy of an excerpt of Marcus & Millichap's Offering Memorandum highlighting the Property's 2014 rental revenue is attached hereto as **Exhibit 3**. Upon information and belief, the TwinRock Defendants never obtained the Property's actual trailing twelve month rental revenue in April 2016 or intentionally concealed it from the Members.

66. As discussed above, parental guarantees were not required on all leases, and the TwinRock Defendants knew, or reasonably should have known, that they were not required. After all, as early as February 18, 2016, Philips himself observed that the Seller Defendants were not running background checks on the parental guarantees, and that he was amazed that tenants were going into eviction with parental guarantees. "They have the largest delinquency that I have seen for a student housing project," Philips wrote. However, these facts were not shared with the

Members when the TwinRock Defendants were soliciting their investments for Murrayfield.

67. Furthermore, enrollment at the University of Missouri was not increasing. As a result of race-related protests at the University of Missouri that started on September 24, 2015,[1] the University of Missouri had been experiencing a *decline* in enrollment. For example, on March 10, 2016, a month before the TwinRock Defendants began soliciting investments from the Members, the Daily Wire reported, "Following all the embarrassment surrounding the racial justice protests last year, the university is now being forced to cut spending across the board and freeze hiring. The reason: the school's seen an 'unexpected' 20% decline in freshmen enrollment and faces a stunning $32 million deficit."[2] Similarly, on April 26, 2016, the National Review reported that as a result of the protests, "Already, freshman enrollment is down 25 percent."[3]

68. On December 18, 2017, on a recorded conference call with the Members, the TwinRock Defendants admitted they knew that enrollment was declining when one of the members asked:

> I actually have a question for [Philips] and [Meyer] . . . the enrollment at this school is known for a while. I'm curious whether or not there was just a problem in the vetting, did other things happen because the enrollment issue was there and I assume that it was something you considered in evaluating the property.

To which, Meyer responded:

> Yes, we did know we bought this property after that racial incident and that the enrollment was down.

69. Nevertheless, despite their knowledge about the red flags, lack of information, declining enrollment, the TwinRock Defendants described the Property as "undervalued" and a "guaranteed buy low, sell high" investment, and represented that they had "conducted thorough due diligence and fully vetted the Property and its operations."

B. The Purchase and Foreclosure of the Property

70. Ultimately, the TwinRock Defendants raised approximately $4 million from the

[1] https://en.wikipedia.org/wiki/2015–2016_University_of_Missouri_protests.

[2] https://www.dailywire.com/news/backlash-mizzou-major-financial-trouble-after-james-barrett.

[3] https://www.nationalreview.com/2016/04/mizzou-firings-chronicle-campus-crisis.

Members for the purchase of the Property and obtained a bank loan for $11,250,000 that was secured by the Property, and assigned the Purchase Agreement to Murrayfield.

71. On or about June 10, 2016, the TwinRock Defendants purchased the Property on behalf of Murrayfield for $14,700,000 ("**Closing**").

72. After Murrayfield purchased the Property, the Members soon discovered what Philips had correctly predicted (a prediction that he did not share with the Members), the Seller Defendants "fill[ed] up the property with unqualified tenants" and Murrayfield was "punished for it in the first year."

73. Revenue from the Property dropped from approximately $501,000 in the third quarter of 2016 to approximately $158,000 in the third quarter of 2017; and revenue dropped from approximately $415,000 in the fourth quarter of 2016 to $189,000 in the fourth quarter of 2017.

74. Because of the significant decline in revenue, Murrayfield could no longer service the debt on the Property. In early 2018, the Property was foreclosed upon.

75. Upon information and belief, on or about March 21, 2018, the Property appraised for $7,600,000 and was sold in a foreclosure sale to the highest bidder for $7,600,000. The sale price was $7,100,000 less than what Murrayfield had paid for the Property less than two years prior ($14,700,000), a price at which the TwinRock Defendants described the Property as "undervalued."

C. The Management Agreement

76. On or about June 2, 2016, the TwinRock Defendants, on behalf of Murrayfield, entered into a property management agreement with Log Hill Properties, one of the Seller Defendants ("**Management Agreement**"). Under the terms of the agreement, the Seller Defendants would retain control of the management, accounting, bookkeeping, leasing, and reporting of the Property after closing.

77. The TwinRock Defendants did not disclose to the Members that the Seller Defendants would continue to retain control of the management, accounting, bookkeeping, leasing, and reporting of the Property after closing. This arrangement would have dissuaded Members from wanting to invest in the Property because the TwinRock Defendants, who were charged with overseeing and managing the Property, could not do so as long as the Seller Defendants were still in

control.

78. Moreover, this arrangement ensured the Seller Defendants' fraudulent leasing activities would not be discovered as long as the Seller Defendants continued to manage the Property.

79. On November 10, 2016, Log Hill Properties resigned from managing the Property. During the five months it managed the Property, net rental income was consistently between approximately $131,000 and $143,000. But the very month after Log Hill Properties resigned, net rental income dropped to approximately $118,000.

D. TwinRock's Lack of Experience in Student Housing

80. The TwinRock Defendants did not disclose to the Members that they had no experience in managing student-housing when they solicited their investments for Murrayfield. Instead, it was not until the property was already in dire straits that the TwinRock Defendants finally admitted to the investors they had no experience in managing student-housing.

81. On January 4, 2018, in a recorded conference call with the Members, Philips conceded that the TwinRock Defendants were "infants" in the business of student housing. Philips explained that when entering a new space, such as multi-family for example, the TwinRock Defendants "actually had a lot of management issues" and "[i]t took years before we learned the best practices and policies." And that because the TwinRock Defendants had been in the student housing space for only 18 months, they struggled to find a good property manager to manage the Murrayfield Property. "Had we been in this business for five years or three years we would know who to go to right away," Philips said.

E. The Missouri Lawsuit

1. TwinRock's Promise to Return Fees to Murrayfield

82. On December 12, 2017, Philips emailed the Members a draft of the petition that would be filed against the Seller Defendants. The draft petition named two plaintiffs—TwinRock Holdings and Murrayfield—and sought $14,700,000 in damages, the amount of the purchase price. In the email, Philips promised the Members "[t]he initial funding of the legal activities will be funded via the return of all TRP acquisition and asset management fees (~$225K)." True and

1 correct copies of the email and draft petition are attached hereto as **Exhibits 4** and **5**, respectively.

2 83. However, unlike the petition that was ultimately filed, the draft petition that Philips
3 emailed to the Members did not name TwinRock Partners as a plaintiff; nor did the draft petition
4 seek damages based on alleged harm to TwinRock Partners' reputation and business operations; nor
5 did Philips inform the Members that TwinRock Partners would be represented by the same law firm
6 and the TwinRock Defendants intended to keep part of the recovery in the Missouri Lawsuit for
7 themselves.

8 84. On February 16, 2018, the TwinRock Defendants held a conference call with the
9 Members to discuss the litigation. With respect to funding, one of the Members asked:

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> On the cash front, my understanding is you guys put back in the asset management fee, the upfront fees that came to your organization, and that is being added to the cash reserves of the partnership to fund the litigation. Please confirm that, and please tell us how many dollars do we have currently net of open payables in the partnership to fund and be aggressive in this litigation . . . .

14 85. Philips responded there would be approximately $30,000 left in Murrayfield's bank
15 account after payables and that "about 220 [thousand] that came back from our fees to cover the
16 legal." The Member then clarified, "So we have approximately $250,000 currently to fund the legal
17 action?" And Philips confirmed, "Yeah, depending on how much payables we have to satisfy,
18 correct."

19 86. In agreeing to pursue the Missouri Lawsuit, the Members relied on the TwinRock
20 Defendants' promise that TwinRock's acquisition and asset management fees would be returned to
21 Murrayfield and used to pay for the initial costs of the Missouri Lawsuit.

22 **2. <u>The Petition Filed in the Missouri Lawsuit</u>**

23 87. On February 2, 2018, the TwinRock Defendants filed the original Petition in *TwinRock*
24 *Holdings, LLC, et al. v. Southside Ventures, LLC, et al.*, Case No. 18BA-CV00443, in the Circuit
25 Court of Boone County, Missouri ("**Missouri Lawsuit**"). A First Amended Petition was filed on May
26 25, 2018. A Second Amended Petition, which is the operative petition, was filed on January 24, 2019
27 (the "**Petition**"). A true and correct copy of the Petition is attached hereto as **Exhibit 6**.

28 88. The Petition asserts claims on behalf of Murrayfield, TwinRock Partners, and

TwinRock Holdings ("**Missouri Plaintiffs**") against the Seller Defendants and Marcus & Millichap ("**Missouri Defendants**").

89. The Petition includes eight counts, alleging:

a. Marcus & Millichap fraudulently misrepresented the Property;

b. Marcus & Millichap negligently misrepresented the Property;

c. The Seller Defendants breached the Purchase Agreement;

d. The Seller Defendants breached the Management Agreement;

e. The Seller Defendants fraudulently misrepresented the Property;

f. The Seller Defendants negligently misrepresented the Property;

g. Marcus & Millichap and the Seller Defendants conspired to misrepresent the Property; and

h. The Seller Defendants breached fiduciary duties they owed under the Management Agreement.

90. The Petition seeks damages "in the amount of the purchase price of the Property, along with the cost of financing (including interest) associated therewith, plus after debt operating deficits incurred" resulting from the foreclosure of the Property.

91. The Petition also seeks an unspecified amount of damages resulting from harm to the TwinRock Partners' "valuable and hard-earned reputations" and disruption to its "business operations."

92. The Petition prays for a judgment against the Missouri Defendants "in an amount in excess of $50,000,000" and "for punitive damages in an amount to be determined at trial."

93. The Petition was filed by Spencer Fane LLP on behalf of Murrayfield, TwinRock Partners, and TwinRock Holdings, despite a conflict of interest between Murrayfield and the TwinRock entities.

3. <u>The Petition's Failure to Differentiate Between Murrayfield and TwinRock</u>

94. The Petition does not differentiate between Murrayfield, TwinRock Partners, and TwinRock Holdings. Virtually every allegation is made on behalf of all of the Missouri Plaintiffs, regardless of whether the allegation actually applies to all three of Murrayfield, TwinRock Partners,

1 and TwinRock Holdings.

2 95. For example, the Petition alleges that "*Plaintiffs* entered into an Agreement of Sale
3 and Purchase" and "purchased the Property" (emphasis added). This allegation is false because
4 Murrayfield, not TwinRock Partners, entered into the Purchase Agreement and purchased the
5 Property.

6 96. The Petition further alleges that "*Plaintiffs* were damaged in the amount of the
7 purchase price of the Property" (emphasis added). This allegation is also false because only
8 Murrayfield was damaged in the amount of the purchase price of the Property because only
9 Murrayfield purchased the Property for $14,700,000.

10 97. Similarly, the Petition also alleges that "*Plaintiffs'* valuable and hard-earned
11 reputations have been severely damaged," and seeks over $50 million on behalf of all the Missouri
12 Plaintiffs. This $50 million damages claim clearly does not apply to Murrayfield, which did not
13 suffer any reputational damages. However, the Petition does not mention that only the TwinRock
14 Defendants seek this pie-in-the-sky damages claim.

15 98. Upon information and belief, the Petition was intentionally drafted in this fashion to
16 conflate Murrayfield's claims and damages with TwinRock Partners' claims and damages so that
17 the TwinRock Defendants can justify allocating a portion of the recovery to TwinRock Partners and
18 to confer upon TwinRock Partners legal standing to sue the Missouri Defendants—standing that is
19 questionable given that TwinRock Partners was not a party to the Purchase Agreement.

20 **F. TwinRock's Attempt to Misappropriate Murrayfield's Recovery**

21 **1. TwinRock Misleads the Members about the Award in Missouri**

22 99. By filing a Petition that does not differentiate between Murrayfield's claims and
23 damages and TwinRock's claims and damages, the TwinRock Defendants have made it impossible
24 for a judge or mediator to allocate any recovery from the Missouri Defendants between Murrayfield
25 and TwinRock.

26 100. Upon information and belief, the TwinRock Defendants deliberately drafted the
27 Petition in this fashion because they intend to take for themselves a disproportionate share of the
28 recovery from the Missouri Lawsuit. On multiple occasions, the TwinRock Defendants have made

this intent clear.

101. For example, on June 15, 2020, the TwinRock Defendants sent the Members a letter stating, "***if the Court does not allocate the award*** between [Murrayfield] and TwinRock and affiliates, TwinRock agrees to allocate the first awarded and collected amounts to [Murrayfield] up to the amount of [the Members'] Total Capital Commitment. If punitive damages are received, TwinRock agrees that [Murrayfield] will additionally receive 7.5% of punitive damages awarded and collected" (emphasis added). This was the first overt attempt by the TwinRock Defendants to take a disproportionate share of the recovery in the Missouri Lawsuit for themselves.[4]

102. On June 30, 2020, the TwinRock Defendants sent the Members another letter stating, "***if the Court does not allocate the award***, MO Murrayfield and TwinRock will split the collected award after all litigation costs 50/50 until [Murrayfield] receives double the outstanding Membership Interests" (emphasis added). This was the second overt attempt by the TwinRock Defendants to take a disproportionate share of the recovery in the Missouri Lawsuit for themselves.

103. On November 11, 2020, the TwinRock Defendants sent a notice to the Members stating, "***[i]f the Court doesn't specifically allocate the award between [Murrayfield's] claims and TRP's claims***, TRP has proposed that the collected award after all legal costs will be split 50-50 until [Murrayfield] receives two times the original amount of the Outstanding Membership Interest made by the Members and TRP will receive any excess" (emphasis added). This was the third overt attempt by the TwinRock Defendants to take a disproportionate share of the recovery in the Missouri Lawsuit for themselves.

104. On March 24, 2021, the TwinRock Defendants sent the Members another letter, stating that it intended to make a loan to Murrayfield. The TwinRock Defendants provided two sets of loan terms—"Carrot Loan Terms" and "Stick Loan Terms." As discussed below, while both sets of loan terms are extremely unfair to Murrayfield, the Carrot Loan Terms are much better. However, according to the letter, the TwinRock Defendants would only offer the Carrot Loan Terms if the Members agree that "***[i]n the event that the Missouri Litigation is resolved via an***

[4] The first overt attempt was in a notice sent by the TwinRock Defendants on June 1, 2020, described below.

Unallocated Award, 50% of the Unallocated Award shall be directed toward [Murrayfield] and 50% of the Unallocated Award shall be directed toward the applicable TRP Parties, as co-plaintiffs, until the Award Threshold [] has been achieved" (emphasis added). This was the fourth overt attempt by the TwinRock Defendants to take a disproportionate share of the recovery in the Missouri Lawsuit for themselves.

105. In each attempt by the TwinRock Defendants to take a disproportionate share of the recovery, the TwinRock Defendants have made it appear as though whether the recovery is allocated or unallocated is beyond their control. In other words, the TwinRock Defendants have portrayed the "Unallocated Allocated" as a mere possibility.

106. In fact, because the Missouri Lawsuit is being directed and controlled entirely by the TwinRock Defendants, whether the award is allocated or unallocated is entirely within the TwinRock Defendants' control.

107. Discovery will show that the TwinRock Defendants have directed and controlled the Missouri Lawsuit in such a manner to ensure the litigation will be resolved by an "unallocated" award or settlement so the TwinRock Defendants can justify keeping 50% of the award themselves.

108. Upon information and belief, the law firm purporting to represent Murrayfield in Missouri, Spencer Fane LLP, has not advocated for an allocated award because doing so would be adverse to the TwinRock Defendants' interests, and Spencer Fane also represents TwinRock Partners and TwinRock Holdings in the same lawsuit.

2. TwinRock Misleads the Members about Murrayfield's damages

109. To justify their attempt to take a disproportionate share of the recovery in the Missouri Lawsuit, the TwinRock Defendants have misrepresented to the Members the extent of damages actually available to Murrayfield.

110. On several occasions, the TwinRock Defendants have told the Members that Murrayfield is only entitled to damages equal to the amount of the Members' invested capital.

111. For example, in a conference call with the Members in June 2020, one of the members asked how a hypothetical $50 million judgment in the Missouri Lawsuit would be divided between Murrayfield and TwinRock Defendants.

112. Geronimo Perez ("**Perez**"), a partner at Daniels Fine Israel Schonbuch & Lebovits, LLP ("**Daniels Fine Firm**"), the law firm purporting to represent Murrayfield, was attending the call. Perez responded to the member by saying that while he was not "dodg[ing] the question," the subject was "out of [his] purview as counsel or litigation counsel." Perez then deferred to Philips for an answer, even though Philips is not a lawyer and not qualified to advise the Members on the damages to which Murrayfield is legally entitled.

113. Philips told the Members that the $50 million damages figure being sought in the Missouri Lawsuit was based on a damages model prepared for TwinRock and solely relates to TwinRock's reputational damage, which Philips described as TwinRock Partners' inability to get loans and raise capital from other investors. Philips then told the Members that the damages to Murrayfield equaled the loss of the Members' capital investment, and that the Members would be "lucky" to get their equity back.

114. Philips's assertion about the extent of damages available to Murrayfield is incorrect. Under Missouri law, Murrayfield is entitled to recover damages under the benefit-of-the-bargain rule (measured as the difference between the property's value as represented and its true value as of the date of purchase), plus consequential damages, including lost profits. This measurement of damages entitles Murrayfield to much higher damages than what the TwinRock Defendants have suggested.

115. Upon information and belief, both Philips and Perez knew, or reasonably should have known, that Murrayfield is entitled to more than merely the loss of the Members' capital investment. After all, before the TwinRock Partners' $50 million damages claim was added to the Petition, the draft petition sought $14,700,000 in damages, which is the minimum amount of damages Murrayfield should seek.

116. Moreover, the operative Petition in the Missouri Lawsuit alleges damages "*in the amount of the purchase price of the Property*, along with the cost of financing (including interest) associated therewith, plus after debt operating deficits incurred" (emphasis added). Because only Murrayfield paid the "purchase price of the property" and only Murrayfield incurred "the cost of financing" and an "operating deficit," these damages clearly refer to damages suffered by Murrayfield.

117. Yet, despite alleging Murrayfield was damaged by those amounts in the Missouri Lawsuit, the TwinRock Defendants, with the assistance of Daniels Fine Firm, have repeatedly advised the Members that Murrayfield is only entitled to recover the Members' capital investment.

118. For example, Perez never corrected Philips's misrepresentations about Murrayfield's damages, nor did Perez advocate for Murrayfield seeking more damages than the limit artificially set by the TwinRock Defendants. In fact, Perez was careful throughout the call to not provide any opinion about the amount of damages Murrayfield could seek in the Missouri Lawsuit.

119. Following the conference call, on June 23, 2020, a member of Murrayfield called Perez to discuss the extent of Murrayfield's damages. Perez again refused to opine on the amount or extent of Murrayfield's damages. After their call, the member sent Perez an email summarizing their conversation. A true and correct copy of the member's email is attached hereto as **Exhibit 7**. Below is an excerpt from the member's email:

> During our conversation, I asked you [Perez] how much damages MO Murrayfield should be entitled to and you suggested that should be a conversation between Alex [Philips] and the limited partners and that we should follow the agreement. When I clarified my question and asked you how much MO Murrayfield, the LLC, would be entitled to, you stated that you would follow the "damages model" and suggested I talk to Alex. When I told you that it didn't make sense to talk to Alex because of his conflict of interest, you said you couldn't discuss that topic or you'd have to get out of the case. When I asked for your opinion about how much damages MO Murrayfield should be seeking, you said you would need to retain an expert and that it was not an analysis you were asked to do. When I asked you whether you would need to debate with Charles Pulliam, attorney for TwinRock, about the division of any award, you said that you would follow the "damages model."

120. On June 24, 2020, in response to the member's email, Perez did not dispute that Philips had a conflict of interest, nor did Perez provide any information about the extent of Murrayfield's damages. A true and correct copy of Perez's response is attached hereto as **Exhibit 8**. Instead, Perez simply wrote:

> I disagree with your framing of our conversation with respect to a damages model. You asked me to tell you MO Murrayfield's damages. I told you that you should speak with Alex if that was what you wanted and we would need to have a damages evaluation by an expert for MO Murrayfield and that I, as an attorney, would rely on that damages evaluation by the expert.

121. Upon information and belief, the TwinRock Defendants and the Daniels Fine Firm are using the absence of a "damages model" as smoke and mirrors to justify why Murrayfield's attorney cannot advise on the extent of damages Murrayfield is entitled to seek in the Missouri Lawsuit.

122. On August 17, 2020, more than two years after the Missouri Lawsuit was filed, Philips admitted to a member that no damages model had been prepared for Murrayfield and that only a damages model had been prepared for TwinRock.

123. By performing a "damages model" for TwinRock, and not performing a "damages model" for Murrayfield, the TwinRock Defendants can feign ignorance about the true extent of Murrayfield's damages while simultaneously claiming that TwinRock's damages are $50 million.

124. Upon information and belief, no "damages model" has ever been done for Murrayfield, nor has any attorney purporting to represent Murrayfield advocated for Murrayfield recovering more than the Members' invested capital or more than 50% of the award in the Missouri Lawsuit.

125. Rather than give Murrayfield its fair share of the recovery in the Missouri Lawsuit, discovery will show the TwinRock Defendants have attempted to take for themselves as much of the recovery as they can get away with. For example, on August 17, 2020, Meyer sent Philips an email with an attachment showing a table of various recovery scenarios in the Missouri Lawsuit. For each scenario, the table showed **(1)** the hypothetical award; **(2)** 50% of the award going to Murrayfield; **(3)** 35% of the award going to Murrayfield going to "Noteholder(s)" (i.e., the TwinRock Defendants); **(4)** the balance that would go to Murrayfield; and **(5)** the amount that would go to a member who invested $100,000 in Murrayfield. In the body of his email, Meyers wrote, "Alex, attached is based on our current proposal—check my math, especially on the $100,000 investors (***seems too high***)" (emphasis added). True and correct copies of the email and attachment are attached hereto as **Exhibit 9**.

126. When the lawyer representing one of the Members objected to the proposed division, and provided the TwinRock Defendants with Missouri case law indicating that Murrayfield was entitled to more damages than simply the Members' invested capital, the TwinRock Defendants did

not seek advice from *Murrayfield's* attorneys. Instead, on September 2, 2020, Meyer wrote to *TwinRock's* attorney, Charles Pullium ("**Pullium**"). In his email, Meyer asked Pullium, "Is there something in Missouri case law that argues that damages *would actually be limited to the actual out-of-pocket loss* . . . ." A true and correct copy of Meyer's email is attached hereto as **Exhibit 10**.

127. Meyer's email demonstrates the TwinRock Defendants' breach of fiduciary duty to Murrayfield. If the TwinRock Defendants were acting in Murrayfield's best interests, Meyer would have sent an email to *Murrayfield's* attorney, not TwinRock's, and asked *Murrayfield's* attorney why Murrayfield is only seeking to recover the Members' capital investment when Missouri case law indicates Murrayfield is entitled to recover much more.

128. On September 4, 2020, Pullium responded to Meyer's email, and confirmed that Murrayfield is entitled to seek more in damages than simply the Members' invested capital:

> [I]ts true that Murrayfield is entitled to recover damages under the benefit of bargain rule. It can also recover consequential damages, lost profits, punitive. So, yes, I think its correct you can seek the difference between what was paid and what the property was actually worth as set forth by experts (i.e. much less). The consequential damages are the other specific damages you can prove you incurred as a result of the misrepresentation and they are available in addition to benefit of bargain. Lost profits are also recoverable if provable with certainty.

A true and correct copy of Pullium's email is attached hereto as **Exhibit 11**.

129. Based on the foregoing, the TwinRock Defendants know, or reasonably should know, that Murrayfield is entitled to seek more in damages than simply the Members' invested capital.

130. Nevertheless, the attorneys purporting to represent Murrayfield have made it clear that Murrayfield is seeking no more than the Members' invested capital. For example, in an email dated January 15, 2021, Michael Schonbuch ("**Schonbuch**"), an attorney at the Daniels Fine Firm, wrote:

> [W]ith respect to the damages: MO Murrayfield is pursuing all lost money that was invested in the fraudulently marketed and sold property. MO Murrayfield was deceived by the sellers and therefore is entitled to essentially get their money back. The loan was non-recourse so *the money being pursued is what was actually "put up" by the members of the LLC*.

A true and correct copy of Schonbuch's email is attached hereto as **Exhibit 12**.

131. Schonbuch's email, which was sent nearly three years after the Missouri Lawsuit was filed, makes clear that Murrayfield's counsel does not intend to advocate for Murrayfield recovering more than "what was actually 'put up' by the members." Given that significantly more damages are available to Murrayfield under Missouri law, it is concerning that Schonbuch only advocates for the Members "to essentially get their money back."

132. Upon information and belief, the Daniels Fine Firm has not advocated for a greater recovery for Murrayfield because the Daniels Fine Firm is directed and controlled by the TwinRock Defendants, and doing so would be adverse to their interest in maximizing TwinRock's recovery in the Missouri Lawsuit.

133. Upon information and belief, the TwinRock Defendants have conspired with the Daniels Fine Firm to mislead the Members about the amount of damages Murrayfield can seek in the Missouri Lawsuit.

134. The TwinRock Defendants have made it clear they intend to control how the recovery in the Murrayfield Lawsuit gets split between Murrayfield and TwinRock. For example, in an email from Meyer to Schonbuch dated January 15, 2021, Meyer wrote:

> Michael, thanks for the straightforward addressing of the damage issue. Without over-complicating it, the way we see it is that there are two plaintiffs (actually 3—TwinRock Holdings, LLC, MO Murrayfield, LLC and TwinRock Partners, LLC.—you only represent MOM so once any compensation is received it will either be allocated by the court (or in settlement) based on the court's determination of damages to each MOM and TRP; ***if it's not allocated by the court, I suppose it's just a general allocation to the plaintiffs, and that's when us as managing members would split it*** (we've proposed an arrangement with the members, and the members might want more input from your firm in order to get comfortable with the arrangement).

(Emphasis added.) A true and correct copy of Meyer's email is attached hereto as **Exhibit 13**.

135. On January 31, 2021, Meyer sent another email to Schonbuch demonstrating the TwinRock's intent to limit the recovery Murrayfield to the capital the Members invested:

> I've expressed my personal opinion to investors that the amount invested and lost is the easiest amount to prove and the most likely maximum award for MO Murrayfield damages.

A true and correct copy of Meyer's email is attached hereto as **Exhibit 14**.

136. Discovery will show that the TwinRock Defendants have attempted to mislead the

Members about the amount of damages available to Murrayfield so they can justify taking for themselves a disproportionate amount of the recovery in the Missouri Lawsuit.

137. Furthermore, discovery will show that the Daniels Fine Firm has been representing the TwinRock's interests rather than Murrayfield's interests on the issue of what damages Murrayfield is entitled to in the Missouri Lawsuit.

138. For example, in addition to improperly limiting Murrayfield's damages to the Members' lost capital, the TwinRock Defendants have gone even further and have proposed to constrain Murrayfield's recovery by the "*Outstanding* Membership Interests" (emphasis added). But whereas the *original* membership interests in Murrayfield were $4,075,000, the *outstanding* membership interests are only $3,125,000 because two members have been withdrawn.

139. From a legal perspective, however, the *outstanding* membership interests have no bearing or connection to Murrayfield's damages in the Missouri Lawsuit. If any membership interests are relevant to Murrayfield's damages, it would be the *original* membership interests—i.e., the capital that Murrayfield invested in the Property and subsequently lost.

140. By tying Murrayfield's recovery in the Missouri Lawsuit to the outstanding membership interests rather than the original membership interests, the TwinRock Defendants attempt to even further limit Murrayfield's recovery and perpetuate their fraud upon the Members by representing that Murrayfield is only entitled to recover the outstanding Members' loss of investment.

141. Upon information and belief, the Daniels Fine Firm is aware that the TwinRock Defendants have attempted to tie Murrayfield's recovery in the Missouri Lawsuit to the outstanding membership interests and have not objected to those attempts. Advocating for a larger recovery for Murrayfield would after all go against the TwinRock Defendants' interests.

142. Upon information and belief, the Daniels Fine Firm has not genuinely analyzed Murrayfield's damages, or has concealed the results of such an analysis from the Members.

143. On paper, the Daniels Fine Firm has been careful to state they only represent Murrayfield. For example, in an email dated July 3, 2020, Perez wrote:

> Our Firm represents MO Murrayfield LLC and does not and has not represented or

> advised TwinRock Partners in the MO or CA cases. TwinRock Partners is represented by separate counsel, not part of our law firm, in both the MO case and in the CA cases.

A true and correct copy of Perez's email is attached hereto as **Exhibit 15**.

144. Perez's statement, however, is belied by the sworn declaration of the Chief Administrative Officer of TwinRock Partners, Shelley McCullough. In McCullough's sworn declaration, which was submitted on May 26, 2020 by the TwinRock Defendants in the California Actions, McCullough stated:

> The Daniels Fine Firm is also representing TwinRock Partners, TwinRock Holdings and the Company as plaintiffs in the Missouri Action, along with a fourth law firm (Spencer Fane, LLP) which is acting as local counsel in the Missouri Action.

145. McCullough further stated that the "TwinRock Entities" had incurred approximately $185,000 in fees and costs defending the California Actions and approximately $310,000 in fees and costs in connection with the Missouri Action. McCullough explained that "due to COVID 19 pandemic, TwinRock Partners ha[d] suffered a tremendous blow to its income" and that "[h]aving to deal with four separate litigations [wa]s a tremendous drain on the TwinRock Entities' resources." A true and correct copy of McCullough's declaration is attached hereto as **Exhibit 16**.

146. Discovery will show that the Daniels Fine Firm is beholden to the TwinRock Defendants and is breaching its fiduciary duty to Murrayfield at least in part because the TwinRock Defendants pay its legal fees.

3. <u>TwinRock Misleads Members about the Value of Its Claim</u>

147. To justify their attempt to take a disproportionate share of the recovery in the Missouri Lawsuit, the TwinRock Defendants have exaggerated their own damages.

148. On multiple occasions, the TwinRock Defendants' have represented to the Members that they were damaged in the amount of $50 million for harm to their reputation as a result of the Marcus & Millichap's and the Seller Defendants' fraud, as alleged in the Missouri Lawsuit.

149. Upon information and belief, the TwinRock Defendants grossly exaggerate the extent of their reputational damages and are doing so to justify their taking a disproportionate share of the recovery in the Missouri Lawsuit.

150. The TwinRock Defendants' statements also fail to consider how difficult, if not

impossible it will be for them to prove $50 million of damage to their reputation.

151. The TwinRock Defendants know, or reasonably should know, that the amount TwinRock Partners can recover in the Missouri Lawsuit will depend on how difficult it is to prove their claims. The TwinRock Defendants revealed this knowledge when attempting to limit Murrayfield's damages to the amount of the Members' invested capital. As explained by Meyer in his email dated January 31, 2021:

> I've expressed my personal opinion to investors that the amount invested and lost is the easiest amount to prove and the most likely maximum award for MO Murrayfield damages.

A true and correct copy of Meyer's email is attached hereto as **Exhibit 14**.

152. However, unlike Murrayfield's harm, which is direct and concrete—Murrayfield purchased the Property and the lost the Property, along with all of its invested capital—TwinRock Partners' harm to its reputation is indirect, speculative, difficult to quantity, and extremely difficult to prove. Nevertheless, that has not stopped the TwinRock Defendants from attempting to claim at least half the recovery in the Missouri Lawsuit for themselves.

153. Assuming the TwinRock Defendants actually suffered harm to their reputation, the cause of that harm will be very difficult, if not impossible to identify because there are several plausible explanations that have no bearing on the Missouri Defendants.

154. For example, as alleged herein, the TwinRock Defendants:

a. have repeatedly breached their fiduciary duties to the Members;

b. have engaged in fraud by misrepresenting to the Members the extent of Murrayfield's damages;

c. have made numerous false statements in the Missouri Lawsuit in an attempt to misappropriate Murrayfield's recovery from that lawsuit; and

d. have solicited the investment of millions of dollars from private investors for the purchase of student housing, despite not having experience in investing in and managing student housing, and without disclosing their lack of experience.

155. Moreover, several other real estate deals organized by TwinRock Defendants in addition to Murrayfield have resulted in significant losses for investors who entrusted their money

with TwinRock.

156. For example, Intervenors cumulatively invested in at least three other LLCs with TwinRock Partners—MO Azzurri, LLC ("**Azzurri**"), AR Shamrocks ("**Shamrocks**"), LLC, and TRP Fund VIII ("**Fund VIII**"), LLC. All of these investments are the subject of the California Lawsuits and described below and have performed extremely poorly:

a. Azzurri was formed in or around October 2016 to purchase a 138-unit student housing project in Columbia, Missouri ("**Azzurri Property**"). The TwinRock Defendants represented to investors in Azzurri that they would receive a preferred annual return of 8%, but in fact, since 2016, members of Azzurri have only received total distributions equal to approximately 1.5%, far less than the expected return. Moreover, in 2019, 2020, and 2021, the net operating income of the Azzurri Property was insufficient to cover the debt service cost, and in October 2022, the loan secured by the Azzurri Property will convert from interest only to amortizing over 30 years. This will increase the debt service cost significantly and Azzurri, and there is a strong likelihood Azzurri will be unable to service its debt after October 2022. Investors in Azzurri expect they will receive a near-total loss of their investment, and value their interest in Azzurri at no more than 10% of their original investments.

b. Shamrocks was formed in or around November 2015 to purchase a student housing development in Fayetteville, Arkansas ("**Shamrocks Property**"). The TwinRock Defendants represented to investors in Shamrocks that they would receive a preferred annual return of 8%, but in fact, since 2015, members of Shamrocks have received far less than the expected return. On June 1, 2020, TwinRock Partners sent the members of Shamrocks a notice informing them that the Shamrocks Property was negatively cash flowing and that an additional capital contribution or loan would be necessary. On June 8, 2020, TwinRock Partners sent the Shamrocks investors an update and offered to buy out the members' interests in Shamrocks for 30% of their original investment. Members who accepted this offer suffered 70% loss of their capital investment.

c. Fund VIII was formed in or around December 2017 to purchase twelve different properties in Nevada ("**Fund VIII Properties**"). Since purchasing their interests in Fund VIII, members of Fund VIII have received total distributions equal to approximately 54% of their

original investment. Eleven of the twelve Fund VIII Properties have since been liquidated, and members of Fund VIII do not expect the last remaining Fund VIII Property will be sold at a profit after expenses are taken out. As such, members of Fund VIII will likely suffer a 46% loss of their original investment.

157. Because these three investments are completely unrelated to the Murrayfield Property, it will be very difficult for TwinRock Partners to prove in the Missouri Lawsuit that the harm to its reputation resulted from the Murrayfield Property and *not* from its poor track record in other investments.

158. Moreover, as alleged in the California Actions and herein, the TwinRock Defendants have repeatedly breached their fiduciary duties to investors, engaged in fraud, and entered into self-dealing transactions. This alleged misconduct, which is unrelated to the allegations made against the Missouri Defendants, will make it extremely difficult, if not impossible for TwinRock Partners to prove any harm to its reputation was caused by Marcus & Millichap or the Seller Defendants.

4. <u>TwinRock's Questionable Standing in the Missouri Lawsuit.</u>

159. In failing to differentiate between Murrayfield's claims and TwinRock Partners' claims, it appears another objective of the TwinRock Defendants is to confer legal standing on TwinRock Partners to sue Marcus & Millichap and the Seller Defendants—standing that TwinRock Partners might otherwise lack.

160. For example, the Petition alleges that:

> The Transaction and Purchase Agreement were entered into for the primary benefit of TwinRock Partners and the purpose of TwinRock Holdings in entering into the contract was to make a gift to TwinRock Partners and MO Murrayfield or to confer upon TwinRock Partners and MO Murrayfield a right against the Defendants to performance neither due nor supposed nor asserted to be due from TwinRock Holdings to TwinRock Partners and MO Murrayfield, or the performance of the Defendants' obligations under the Purchase Agreement and the Transaction satisfied an actual or supposed or asserted duty of TwinRock Holdings to TwinRock Partners and MO Murrayfield.

This strangely-worded allegation, which was not included in the draft petition sent to the Members, is false. The Purchase Agreement was not entered into for the primary benefit of making a *gift* to TwinRock Partners and MO Murrayfield; nor was the Purchase Agreement entered into "to confer

upon TwinRock Partners . . . a right against the Defendants"; nor did the performance of the Missouri Defendants' obligations under the Purchase Agreement satisfy any duty to TwinRock Partners, who was never a party to the Purchase Agreement.

161. The Petition also falsely alleges that MO Murrayfield is a subsidiary of TwinRock Partners—another allegation that was omitted from the draft petition that was sent to the Members before the lawsuit was filed. This allegation appears to be another attempt by the TwinRock Defendants to confer standing upon TwinRock Partners that it would otherwise lack.

162. By alleging that all of the misconduct by the Missouri Defendants harmed Murrayfield and TwinRock equally, without distinguishing between Murrayfield and TwinRock, the TwinRock Defendants have been able to piggy-back on Murrayfield's standing to sue the Missouri Defendants. In doing so, however, they have also unnecessarily enlarged and complicated the Missouri Lawsuit for Murrayfield, and have prevented Murrayfield from pursuing its own litigation strategy.

G. TwinRock's Self-Dealing Loan to Murrayfield

1. TwinRock's June 1, 2020 Notice

163. On June 1, 2020, the TwinRock Defendants sent the Members a notice stating that the total litigation costs incurred for the Missouri Lawsuit and California Actions was $452,465, of which TwinRock "lent back the Acquisition and Asset Management Fees it had received of $232,608 to cover initial costs of the lawsuit." A true and correct copy of the notice is attached hereto as **Exhibit 17**.

164. The June 1, 2020 notice repudiates the TwinRock Defendants' promise to the Members that its acquisition and asset management fees would be returned to Murrayfield and used to fund the Missouri Lawsuit. On December 12, 2017, and on February 18, 2018, the TwinRock Defendants never referred to those fees as a loan, nor did they state that any portion of those fees would be used to fund the TwinRock Defendants' own litigation costs.

165. The June 1, 2020 notice also informed the Members that within ten days, they were required to invest an additional $1.2 million in Murrayfield to fund the Missouri Lawsuit and California Actions ("Capital Call"). The letter falsely threatened that Members that failed to make

the Capital Call would forfeit any entitlement to unpaid and future returns, profits and voting rights.

166. In the notice, the TwinRock Defendants stated that if not all the Members made the Capital Call, the TwinRock Defendants would lend the shortfall for "10% annual interest and 50% of the award or settlement net of litigation costs made to [Murrayfield]."

167. The TwinRock Defendants also offered to purchase Members' interests in Murrayfield for 10% of their original investment, while disclaiming "we cannot provide details to the case as they can be discoverable, but we are optimistic of a positive outcome."

168. Upon information and belief, the TwinRock Defendants knew that the notice presented the Members with two bad options—either invest more money in Murrayfield or lose all unpaid and future returns, profits and voting rights. This, however, was a false dilemma because the TwinRock Defendants had no right under the Operating Agreement to withdraw members' returns, profits and voting rights based on their refusal to make the Capital Call.

169. Upon information and belief, several members of Murrayfield elected to sell their interests to TwinRock Partners for a meager 10% of their original investment because without having any information about the likelihood of success or potential outcome of the Missouri Lawsuit, and faced with the option of either investing more money with the TwinRock Defendants or losing all unpaid and future returns, profits and voting rights, it was the best option.

170. Upon information and belief, the TwinRock Defendants made this offer to the Members with asymmetric information about the Missouri Lawsuit, and in an attempt to swindle the Members by obtaining their interests in Murrayfield for ten cents on the dollar.

171. The June 1, 2020 notice was the first overt attempt by the TwinRock Defendants to misappropriate part of Murrayfield's recovery in the Missouri Lawsuit. Specifically, the TwinRock Defendants sought to obtain "50% of the award or settlement net of litigation costs made to [Murrayfield]" by effecting a loan to Murrayfield on terms dictated by the TwinRock Defendants.

2. <u>TwinRock's June 15, 2020 Notice</u>

172. On June 15, 2020, the TwinRock Defendants modified the June 1, 2020 notice by informing the Members they would not be required to fund the entire Capital Call all at once. A true and correct copy of the notice is attached hereto as **Exhibit 18**. Instead, the TwinRock

Defendants stated that half of the Capital Call, or $600,000, would be due from the Members on June 20, 2020, and the next $300,000 would be due by October 1, 2020, and the final $300,000 would be due by January 1, 2021.

173. According to the June 15, 2020 notice, the percentage of Murrayfield's litigation proceeds that would be paid to the TwinRock Defendants would depend on the amount lent to Murrayfield:

Loan Amount	Percentage of the Award
$120,000 or less	10%
$121,000–$180,000	20%
$181,000–$240,000	30%
$241,000–$300,000	40%
$301,000	50%

174. With respect to dividing the recovery from the Missouri Lawsuit, the TwinRock Defendants wrote:

> [I]f the Court does not allocate the award between the Company and TwinRock and affiliates, TwinRock agrees to allocate the first awarded and collected amounts to the Company up to the amount of your Total Capital Commitment. If punitive damages are received, TwinRock agrees that the Company will additionally receive 7.5% of punitive damages awarded and collected.

175. The June 15, 2020 notice was the second overt attempt by the TwinRock Defendants to misappropriate part of Murrayfield's recovery in the Missouri Lawsuit. In addition to obtaining a percentage of Murrayfield's recovery by effecting a loan on usurious terms, the TwinRock Defendants sought to limit Murrayfield's damages in the Missouri Lawsuit to the outstanding Members' "Total Capital Commitment," or $3,125,000, and "7.5% of punitive damages awarded and collected."

3. TwinRock's June 30, 2020 Letter

176. In response to TwinRock's June 1, 2020 and June 15, 2020 notices, at least one member objected to the Capital Call because the TwinRock Defendants had no right to issue a mandatory capital call under Murrayfield's Operating Agreement. A true and correct copy of the

1 letter is attached hereto as **Exhibit 19**.

2 177. In response, the TwinRock Defendants sent the Members a letter on June 30, 2020,

3 rescinding the Capital Call and issuing the following proposal instead:

4 a. The litigation costs of the Missouri Lawsuit would be split 50/50 between

5 Murrayfield and TwinRock Partners, which was estimated to be $632,608 to each;

6 b. Murrayfield would be responsible for advancing the legal costs to defend

7 TwinRock Partners in the California Actions, of which $152,716 had been already incurred;

8 c. Murrayfield's litigation costs would be funded by a loan from the Members

9 who would receive 35% of Murrayfield's recovery, after litigation costs are paid;

10 d. If the Members do not participate in the loan, the TwinRock Defendants

11 would fund the entire litigation;

12 e. Murrayfield and TwinRock "will split the collected award after all litigation

13 costs 50/50 until the Company receives double the outstanding Membership Interests";

14 f. Murrayfield's proceeds "will be distributed per section 4.1(b) of the operating

15 agreement Distribution of Cash Flow and Other Cash."

16 178. In the June 30, 2020 letter, for the first time, the TwinRock Defendants made clear

17 their intent to distribute any recovery from the Missouri Lawsuit under section 4.1(b) of

18 Murrayfield's Operating Agreement, which applies to "Cash Flow from Operations." However, the

19 Property was foreclosed upon in March 2018, and there has been no cash flow from operations.

20 179. Section 4.3(a) of the Murrayfield's Operating Agreement applies to liquidation.

21 Apart from Murrayfield's pending legal claims, the company has been entirely liquidated and has

22 no assets. Once its legal claims are resolved, Murrayfield will have no reason for existence and will

23 dissolve.

24 180. Upon information and belief, the TwinRock Defendants intend to distribute

25 Murrayfield's recovery from the Missouri Lawsuit as "Cash Flow from Operations" because under

26 that section, the TwinRock Defendants receive a preferred return and 20% of any distribution made

27 to the Members.

28 181. When Members objected to the TwinRock Defendants' stated intent to distribute any

recovery from the Missouri Lawsuit pursuant to Section 4.1(b), Philips stated in an email dated July 7, 2020, "The operating agreement defines an award as Cash Flow from Operations." This is a misrepresentation because the Operating Agreement does not define how an award from a lawsuit should be distributed. Upon information and belief, the TwinRock Defendants had not consulted with Murrayfield's counsel regarding how to distribute an award from the Missouri Lawsuit before deciding they would distribute it pursuant to Section 4.1(b).

182. The June 30, 2020 letter was the third overt attempt by the TwinRock Defendants to misappropriate part of Murrayfield's recovery in the Missouri Lawsuit. In addition to obtaining a percentage of Murrayfield's recovery by effecting a loan on usurious terms, and then distributing any proceeds as cash flow from operations, the TwinRock Defendants also made clear their intent to divide the award 50/50 between Murrayfield and TwinRock, irrespective of whether TwinRock has any entitlement to such an award. The TwinRock Defendants also placed a cap on the recovery that would be paid to Murrayfield, but place no such cap on the recovery to TwinRock.

4. TwinRock's November 2, 2020 Notice

183. On November 2, 2020, the TwinRock Defendants sent a notice to the Members stating the following topics would be discussed and voted on in a member meeting on November 12, 2020. A true and correct copy of the notice is attached hereto as **Exhibit 20**. According to the notice, the following topics were to be discussed:

a. the litigation costs would be "50-50 split" between Murrayfield and TwinRock, "except that each will be responsible for the costs of their own damages expert";

b. the litigation costs would be financed by a $550,000 loan;

c. the award would first pay "the principal amount advanced, plus 35% of the proceeds of the award that the Company would receive, net of litigation costs for [Murrayfield]";

d. "the collected award after all legal costs will be split 50-50 until the Company receives two times the original amount of the Outstanding Membership Interest made by the Members and TRP will receive any excess"; and

e. Murrayfield's "share of the collected award to be distributed pursuant to Section 4.1 (b) of the Operating Agreement."

184. The letter further indicated that TwinRock Partners was the only member of Murrayfield willing to lend Murrayfield the money.

185. The November 2, 2020 notice was the fourth overt attempt by the TwinRock Defendants to misappropriate part of Murrayfield's recovery in the Missouri Lawsuit and makes clear that TwinRock intended to (1) arbitrarily make Murrayfield pay for 50% of the cost of the litigation, (2) effect a loan to Murrayfield on usurious terms, (3) decide in advance that any award would be split 50-50 with TwinRock Partners, irrespective of whether irrespective of whether TwinRock has any entitlement to such an award, (4) place an arbitrary cap on the amount of recovery Murrayfield can receive, and (5) distribute the award according to the section of Murrayfield's Operating Agreement pertaining to Cash Flow from Operations rather than the section of the Operating Agreement pertaining to liquidation.

5. <u>TwinRock's March 24, 2021 Letter</u>

186. The last communication the TwinRock Defendants sent to the Members regarding the loan it proposes to make to Murrayfield was on March 24, 2021. A true and correct copy of the letter is attached hereto as **Exhibit 21**.

187. The letter proposes a new loan with an unspecified loan amount and new terms (the "**Stick Loan Terms**"):

a. The loan amount will be for the "full litigation cost for both the [Murrayfield] and TwinRock";

b. The first proceeds of the award will go to repay the loan amount;

c. The second proceeds will go to pay the lender participation, which is "the greater of 35% of the award or 3.75x the loan amount"; and

d. How to divide the award between Murrayfield and TwinRock will be decided in the future.

188. The Stick Loan Terms are worse than any of the previous loan terms attempted by the TwinRock Defendants. Under the Stick Loan Terms:

a. Instead of receiving 35% of the award, the TwinRock Defendants will now receive "the greater of 35% of the award or 3.75x the loan amount." And instead of the loan

amounting to half the litigation costs, it amounts to "the full litigation cost for both the LLC and TwinRock," which the letter indicates is $1,100,000.

b. Accordingly, if any award is recovered in the Missouri Lawsuit, the first $1,100,000 of Murrayfield's portion will go to repaying TwinRock Partners for the loan amount. Then, at a minimum, the next $4,125,000 will go to TwinRock Defendants to pay their "lender participation" fee.

c. Then, assuming there are any proceeds left over, Murrayfield will have to fight with the TwinRock Defendants about how much of the award should go to Murrayfield, and how much of the award should go to the TwinRock Defendants. The TwinRock Defendants have repeatedly attempted to claim 50% of the award for themselves.

d. Once this amount is distributed to Murrayfield, the TwinRock Defendants intend to distribute it as "Cash Flow from Operations," which, as discussed above, will give the TwinRock Defendants an additional 20% of the preferred returns and distributions paid to the Members.

189. In the same letter, the TwinRock Defendants also offered the Members an alternative set of loan terms (the "**Carrot Loan Terms**"). Under the Carrot Loan Terms:

a. Instead of the loan amounting to 100% of the litigation costs for Murrayfield and TwinRock, the loan amount would be reduced to 50% of the litigation costs;

b. Instead of TwinRock Partners' lender participation fee equaling the *greater* of 35% of the award or 3.75x the loan amount, the lender participation would be reduced to the *lesser* of "30% of the net collected award up to $5MM and then 20% thereafter" or 2x the loan amount; and

c. The TwinRock Defendants will no longer repudiate their promise to return their acquisition and asset management fees to Murrayfield, because "TRP's Asset Management and Acquisition Fee Loan will be forgiven."

190. However, to obtain the Carrot Loan Terms, all of the Members would have to agree to a "Member Consent" that would release the TwinRock Defendants from all claims,

> known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity [], which any of [the Members] ever had, now have, or hereafter can, shall, or may have against any of [the TwinRock Defendants] for any reason from the beginning of time through the date of this Consent, including, without limitation, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Consent arising out of or relating to this Consent, the Proposed Loan and/or any other transaction and/or relationship by any [TwinRock Defendant], on the one hand, and any [Member], on the other hand.

A true and correct copy of the Member Consent is attached hereto as **Exhibit 22**.

191. The March 24, 2021 letter was the fifth overt attempt by the TwinRock Defendants to misappropriate part of Murrayfield's recovery in the Missouri Lawsuit. Not only does the letter divulge an intent by the TwinRock Defendants to enter into a self-dealing transaction, the letter makes clear the TwinRock Defendants are attempting to coerce the Members into signing a general release by presenting them with Carrot Loan Terms (with the release) or Stick Loan Terms (without the release).

192. Upon information and belief, because the Carrot Loan Terms were not agreed to by all the Members, the TwinRock Defendants intend to effectual (albeit fraudulently) the Stick Loan Terms.

193. Upon information and belief, the TwinRock Defendants never transferred any monies to Murrayfield, and are therefore not entitled to be paid any interest or "lender participation" fees.

194. Moreover, discovery will show the TwinRock Defendants have not been paying Murrayfield's legal fees in the Missouri Lawsuit and thus have no basis for seeking a multiple of Murrayfield's recovery in that lawsuit as part of a "lender participation" fee. Invoices from the Daniels Fine Firm from May to October 2020 indicate that Murrayfield was steadily incurring fees in the Missouri lawsuit, but those fees were not being paid.

195. For example, on October 31, 2020, an invoice from the Daniels Fine Firm showed that Murrayfield had incurred $137,871.73 in fees and costs in the Missouri Lawsuit but that $0.00 had been paid. A true and correct copy of the invoice's first page is attached hereto as **Exhibit 23**.

196. On December 28, 2020, Perez sent an email to the TwinRock Defendants advising them that Murrayfield's outstanding amount in the Missouri Lawsuit was $137,871.73, and that

they were "approaching 1 full year and are still awaiting payment" on the invoice. A true and correct copy of the e-mail is attached hereto as **Exhibit 24**.

197. Over a year later, on January 4, 2021, Perez sent another email to the TwinRock Defendants stating he was following up on his December 28, 2020 email and stating that TwinRock's outstanding balance in the Missouri Lawsuit was "$137K+ as of October 2020." A true and correct copy of the e-mail is attached hereto as **Exhibit 25**.

198. These invoices and emails show that the TwinRock Defendants have not loaned money to Murrayfield to pay Murrayfield's legal fees in the Missouri Lawsuit yet nevertheless intend to take "the greater of 35% of the award or 3.75x the loan amount" in the Missouri Lawsuit.

199. These invoices and emails further show that the Daniels Fine Firm did no work on behalf of Murrayfield in the Missouri Lawsuit between October 31, 2020 and January 4, 2021 and that Murrayfield's interests are not being represented in the Missouri Lawsuit.

200. Based on the Missouri court's online docket, there appears to be only one lawyer, Blake Douglas Smith, a senior associate at Spencer Fane LLP, representing all three plaintiffs—Murrayfield, TwinRock Partners, and TwinRock Holdings—in the Missouri Lawsuit. A true and correct copy of the court's online list of parties and attorneys in the Missouri Lawsuit, as of September 5, 2022, is attached hereto as **Exhibit 26**.

201. The TwinRock Defendants' attempt to take for themselves "the greater of 35% of the award [in the Missouri Lawsuit] or 3.75x the loan amount" is both fraudulent and a breach of their fiduciary duty to the Members.

202. According to the March 24, 2021 notice, the amount of the loan the TwinRock Defendants purported to make to Murrayfield is $1,100,000. However, upon information and belief, the TwinRock Defendants never actually made a loan to Murrayfield for $1,100,000.

203. Moreover, the TwinRock Defendants never received approval from the Members to lend money to Murrayfield on those terms, and neither the Members, nor person acting in Murrayfield's interest, would approve *retroactive* loan terms and give the TwinRock Defendants the first $5,225,000 ($1,100,000 principal plus $4,125,000 lender participation) of its recovery in

the Missouri Lawsuit despite Murrayfield's legal costs in that lawsuit being less than $200,000.[5]

204. Nevertheless, according to the March 24, 2021 notice, the TwinRock Defendants intend to enter into a self-dealing transaction with Murrayfield whereby Murrayfield will agree to:

a. take a $1,100,000 loan from the TwinRock Defendants;

b. use the loan proceeds to pursue TwinRock's $50 million claim in the Missouri Lawsuit and defend TwinRock in the California Actions;

c. pay back the loan amount using Murrayfield's recovery in the Missouri Lawsuit; and

d. pay the TwinRock Defendants a minimum of $4,125,000 as a "lender participation" fee.

H. <u>Ongoing Harm to Murrayfield</u>

205. By failing to distinguish between Murrayfield's claims and damages and TwinRock Partners' claims and damages in the Missouri Lawsuit, the TwinRock Defendants have prevented Murrayfield from pursuing its own litigation strategy in the Missouri Lawsuit.

206. Furthermore, by failing to distinguish between Murrayfield's claims and damages and TwinRock Partners' claims and damages in the Missouri Lawsuit, the TwinRock Defendants ensure that the Missouri Court will not "specifically allocate the award between Murrayfield's claims and TwinRock's claims," thus paving the way for TwinRock Partners to claim a share of the recovery in the Missouri Litigation.

207. On several occasions, the TwinRock Defendants have attempted to take 50% of the recovery in the Missouri Lawsuit for themselves, despite the objections of the Members. The TwinRock Defendants have provided no legal justification for taking that percentage, nor, upon information and belief, have they consulted with Murrayfield's purported counsel about what percentage would be fair to Murrayfield.

208. In addition, by failing to distinguish between Murrayfield's litigation costs and

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[5] This estimate is based on the latest information received by the Members with respect to legal fees and costs billed by the Daniels Fine Firm, and the fact that the local counsel purporting to represent Murrayfield in Missouri withdrew from representing Murrayfield in or around July 2021.

TwinRock Partners' litigation costs, the TwinRock Defendants have caused Murrayfield to incur litigation costs belonging to TwinRock Partners, including the cost of pursing a speculative, pie-in-the-sky $50 million claim for reputational harm.

209. Moreover, by failing to distinguish between Murrayfield's claims and TwinRock Partners' claims, the TwinRock Defendants have forced Murrayfield to engage in prolonged and expensive litigation involving TwinRock's pie-in-the-sky $50 million reputational damages claim.

210. By continuing to control the litigation on behalf of Murrayfield, including any settlement discussions with the defendants in the Missouri Lawsuit, the TwinRock Defendants have, and continue to, deprive Murrayfield from pursuing a litigation strategy and possible settlement in the Missouri Lawsuit that would be Murrayfield's and the Members' best interests.

211. Upon information and belief, the TwinRock Defendants have attempted and/or intend to enter into a global settlement with the Missouri Defendants on behalf of all the Missouri Plaintiffs—Murrayfield, TwinRock Partners, and TwinRock Holdings—in order to obscure the recovery rightly belonging to Murrayfield and pave the way for TwinRock Partners to claim entitlement to a share of the recovery.

212. In light of the TwinRock Defendants' clear and demonstrated conflict of interest, the TwinRock Defendants should not be permitted to direct or control the Missouri Lawsuit on behalf of Murrayfield.

213. The TwinRock Defendants candidly admitted their conflict of interest in a letter dated June 30, 2020 to the Members:

> Please note that TwinRock needs separate counsel, Millsap & Singer, LLC, for the Missouri Lawsuit due to the California lawsuit filed by Salvation Investments, as California legal ethics do not permit MO Murrayfield and TwinRock to share the same counsel.

214. Having separate counsel, however, does not serve any useful purpose if both counsel for Murrayfield and TwinRock Partners are directed and controlled by the same conflicted individuals—namely, Defendant Philips and Defendant Meyers. Discovery will show that Murrayfield's counsel is not seeking the maximum available damages for Murrayfield because Murrayfield's counsel is directed and controlled by the TwinRock Defendants.

215. Moreover, upon information and belief, while Murrayfield was at one point represented by separate counsel in the Missouri Lawsuit, Murrayfield is now being represented by the same counsel as TwinRock Partners and TwinRock Holdings. Based on the Missouri court's online docket, Murrayfield's counsel withdrew from the Missouri Lawsuit on or about July 7, 2021. Since that date, it appears that Murrayfield, TwinRock Partners, and TwinRock Holdings have all been represented by the same law firm, Spencer Fane LLP.

216. Furthermore, upon information and belief, because the TwinRock Defendants have not been paying Murrayfield's legal bills in relation to the Missouri Lawsuit, the Daniels Fine Firm has not performed any work with respect to Murrayfield's claims in the Missouri Lawsuit and thus Murrayfield's interests are not being represented in that lawsuit.

217. Upon information and belief, the TwinRock Defendants have not sought to retain a lawyer on behalf of Murrayfield on a contingency fee basis because doing so would be adverse to the TwinRock Defendants' interests; a contingency fee lawyer would seek to maximize Murrayfield's recovery in the Missouri Lawsuit, which would conflict with the TwinRock Defendants' desire to limit Murrayfield's recovery in the Missouri Lawsuit.

218. Murrayfield's interests in the Missouri Lawsuit are being actively harmed by the TwinRock Defendants. Intervenors seek an injunction ordering that Murrayfield's interests and affairs with respect to the Missouri Lawsuit be directed and controlled by members of Murrayfield who do not have a conflict of interest in Murrayfield's recovery in that lawsuit.

I. Involuntary Withdrawal of Intervenors from Murrayfield

219. In light of the ongoing harm to Murrayfield's interests in the Missouri Lawsuit caused by the TwinRock Defendants, on September 28, 2022, Intervenors applied for a preliminary injunction ordering TRP Management Murrayfield, Murrayfield's manager, to call a meeting of the members of Murrayfield whereby a majority of the Unconflicted Members of Murrayfield (defined as the outstanding members of Murrayfield that are not part of the TwinRock Enterprise) would appoint an Unconflicted Member or committee of Unconflicted Members to serve as Murrayfield's legal representative. The legal representative would have full power of attorney to act on Murrayfield's behalf with respect to any matters relating to Murrayfield's interests in the Missouri Lawsuit.

220. In opposition, the TwinRock Defendants argued that Intervenors' were attempting to rewrite the Operating Agreement and assert control over the Missouri Lawsuit. They further argued that the fact that Intervenors comprise "only 4 of the 11 'unconflicted' members of MO Murrayfield . . . suggests that any injury to the Intervenors is not irreparable."

221. The Court disagreed with the TwinRock Defendants and issued a tentative ruling granting Intervenors' request for a preliminary injunction. As requested by Intervenors, the relief granted included an order requiring the TwinRock Defendants to permit the Unconflicted Members (including Intervenors) to appoint a legal representative to take over management and direction of Murrayfield's claims in the Missouri Lawsuit.

222. However, on November 3, 2022, the day of the hearing and before the Court adopted its tentative ruling, the TwinRock Defendants emailed Intervenors a notice, informing them that they would be withdrawn as members of Murrayfield within ten days—in other words, Intervenors would be withdrawn as members before they could participate in the meeting. A true and correct copy of the email is attached hereto as **Exhibit 27**.

223. By expelling Intervenors from Murrayfield on the very same day that their application for a preliminary injunction was granted, the TwinRock Defendants have attempted to circumvent the Court's order and deprive Intervenors of the relief they obtained.

224. There is no basis for expelling Intervenors under the Operating Agreement. The Operating Agreement provides for involuntary withdrawal of a member "if . . . in the reasonable judgment of the Managing Member, the continued participation of such Member in the Company would be reasonably likely to adversely affect the Company."

225. The TwinRock Defendants justify the involuntary withdrawal by asserting that "[i]n the reasonable judgment of the Managing Member, the continued participation of [Intervenors] would be reasonably likely to adversely affect MO Murrayfield, LLC because of [their Derivative Complaint in Intervention] . . . as well as the detrimental impact they have had on the pending Missouri litigation."

226. The TwinRock Defendants' judgment is not reasonable, particularly in light of the Court's ruling, which, on the contrary, found the *TwinRock Defendants* are adversely affecting

Murrayfield:

a. “Intervenors have presented undisputed evidence that TwinRock Defendants have breached fiduciaries duties owed to Murrayfield”; and

b. “Intervenors have demonstrated Murrayfield has been damaged by TwinRock Defendants’ actions”.

227. Furthermore, the Court’s ruling found that rather than adversely affecting Murrayfield, “Intevenors [*sic*] seek an injunction in order to preserve and protect Murrayfield’s rights and interests in the Missouri Lawsuit and prevent TwinRock from obtaining proceeds due to Murrayfield in that lawsuit.”

228. In conjunction with the purported involuntary withdrawal, the TwinRock Defendants assert that Intervenors are entitled to a withdrawal distribution equal to $0.00. By failing to provide Intervenors with any compensation whatsoever in exchange for their economic interests in Murrayfield, the TwinRock Defendants deprive Intervenors of the rights and benefits to which they are entitled as members of Murrayfield.

V. <u>DEMAND FUTILITY ALLEGATIONS</u>

229. Intervenors file this Complaint in Intervention in their derivative capacity in the right of and for the benefit of Murrayfield and to redress injuries suffered by Murrayfield as a direct result of the wrongful conduct of Defendants.

230. At all times relevant hereto, Intervenors were, have been, and continue to own membership interests in Murrayfield and have standing to file this Derivative Complaint in Intervention pursuant to California Corporations Code sections 316 and/or 800.

231. Intervenors have not made a demand on Murrayfield to investigate and prosecute the wrongdoing alleged herein because any such demand would have been futile. The facts alleged in the preceding paragraphs raise a reasonable doubt that, at a minimum, the TwinRock Defendants, who control the current managing member of Murrayfield are disinterested and independent. Moreover, the TwinRock Defendants have demonstrated in the California Actions that they could not properly exercise independent and disinterested judgment in responding to such a demand.

232. The TwinRock Defendants are incapable a of conducting an independent and

objective investigation into their own wrongdoing in connection with the purchase of the Murrayfield Property and their breaches of fiduciary duty with respect to their direction and control over the Missouri Lawsuit and their attempts to misappropriate Murrayfield's future recovery in that lawsuit.

FIRST DERIVATIVE CAUSE OF ACTION
Violation of California Corporations Code §§ 25504
(Against the TwinRock Defendants)

233. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

234. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

235. Murrayfield offered to sell and did sell membership interests in Murrayfield in California to the Members by means of written and oral communications that included untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading, in violation of California Corporations Code sections 25401. As alleged herein, those misrepresentations and omissions related to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

236. The TwinRock Defendants directly or indirectly control Murrayfield.

237. The TwinRock Defendants comprise executive officers or directors of Murrayfield (or occupy a similar status or perform similar functions), employees of Murrayfield, and/or agents of Murrayfield.

238. The TwinRock Defendants are engaged in the business of effecting transactions in securities in California for the account of others or for their own account, and effected the sale of membership interests in Murrayfield to the Members.

239. Each of the TwinRock Defendants materially aided in the misrepresentations and omissions alleged herein, and had knowledge of and/or reasonable grounds to believe the misrepresentations and omissions were material and misleading to the Members in light of the circumstances under which the statements were made.

240. Each of the TwinRock Defendants had knowledge of and reasonable grounds to

believe in the existence of the facts by which the liability of Murrayfield under California Corporations Code §§ 25401 and 25501 is alleged to exist.

241. Each of the TwinRock Defendants knowingly made, transmitted, caused to be transmitted, delivered, caused to be delivered, or caused to be prepared and disseminated, or materially assisted in the transmission, delivery, or dissemination of the misrepresentations to the Members as alleged herein.

242. As a direct and proximate result thereof, the Members have suffered damages and are entitled to rescission under California Corporations Code sections 25401, 25501, 25504 and 25504.1.

243. Intervenors seek an order from the Court holding the TwinRock Defendants jointly and severally liable to the Members for the consideration the Members paid for their membership interests, plus interest at the legal rate, less the amount of any income the Members received on their membership interests, upon tender of their membership interests in Murrayfield.

SECOND DERIVATIVE CAUSE OF ACTION
Violation of California Corporations Code § 25504.1
(Against all Defendants)

244. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

245. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

246. The TwinRock Defendants offered to sell and did sell membership interests in Murrayfield in California to the Members by means of written and oral communications that included untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading, in violation of California Corporations Code sections 25401. As alleged herein, those misrepresentations and omissions related to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

247. Each of the Defendants materially assisted the TwinRock Defendants in the acts and transactions constituting the violation of Corporations Code section 25401 by the TwinRock Defendants, and did so with the intent to deceive and defraud.

1 248. Each of the Defendants was aware of the misrepresentations and omissions made to
2 the Members, as alleged herein, and conspired with each other to perpetuate those misrepresentations
3 and omissions with the intent of inducing the Members to purchase membership interests in
4 Murrayfield.

5 249. Each of the Defendants was aware the misrepresentations and omissions made to the
6 Members, as alleged herein, would be used to market the Property to the Members, and that the
7 Members would rely on the misrepresentations and omissions in deciding whether to purchase
8 membership interests in Murrayfield.

9 250. Each of the Defendants had knowledge of and/or reasonable grounds to believe the
10 misrepresentations and omissions were material and misleading to the Members in light of the
11 circumstances under which the statements were made.

12 251. Each of the Defendants had knowledge of and reasonable grounds to believe in the
13 existence of the facts by which the liability of the TwinRock Defendants under California
14 Corporations Code §§ 25401 and 25501 is alleged to exist.

15 252. Each of the Defendants knowingly made, transmitted, caused to be transmitted,
16 delivered, caused to be delivered, or caused to be prepared and disseminated, or materially assisted
17 in the transmission, delivery, or dissemination of materially untrue statements and omissions of
18 material fact to the Members.

19 253. As a direct and proximate result thereof, the Members have suffered damages and are
20 entitled to rescission under California Corporations Code sections 25401, 25501 and 25504.1.

21 254. Intervenors seek an order from the Court holding each of the Defendants jointly and
22 severally liable to the Members for the consideration the Members paid for their membership
23 interests, plus interest at the legal rate, less the amount of any income the Members received on their
24 membership interests, upon tender of their membership interests in Murrayfield.

25 **THIRD DERIVATIVE CAUSE OF ACTION**
26 **Fraud – Intentional Misrepresentation**
(Against all Defendants)

27 255. Intervenors incorporate by reference and reallege each and every allegation set forth
28 above as though fully set forth herein.

256. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

257. As alleged herein, each of the Defendants made misrepresentations and omissions of material fact to Murrayfield and the Members relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

258. Each of the Defendants knew that those representations were false when they made them, or made them recklessly and without regard for their truth.

259. Each of the Defendants intended for Murrayfield and the Members to rely on those misrepresentations and omissions in deciding whether to purchase the Property and whether to invest in Murrayfield, an entity formed for the express purpose of purchasing the Property.

260. Murrayfield and the Members reasonably relied on Defendants' representations, having no reason to believe that Defendants would falsely represent or omit material facts relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

261. As a result, the Members invested in Murrayfield without realizing that the purchase price of $14,700,000 was grossly inflated, and Murrayfield purchased the Property for $14,700,000. As a result of purchasing the Property for an inflated price, the Property could not generate sufficient cash flow for Murrayfield to service the debt on the Property, and the Property was foreclosed upon, causing harm to Murrayfield and the Members.

262. Murrayfield's and the Members' reliance on Defendants' intentional misrepresentations and omissions was a substantial factor in causing Murrayfield's and the Members' harm.

263. In committing the acts alleged herein, each of the Defendants are guilty of oppression (despicable conduct that subjected Murrayfield and the Members to cruel and unjust hardship in conscious disregard of Murrayfield's and the Members' rights), fraud (intentional misrepresentations, deceit, and concealment of material facts known to Defendants with the intention to deprive Murrayfield and the Members of money and otherwise cause injury), malice (conduct intended by Defendants to cause injury to Murrayfield and the Members), and authorized ratified, or performed the acts, justifying an award of exemplary and punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish Defendants and to deter similar future

misconduct and to make an example of them to the community.

FOURTH DERIVATIVE CAUSE OF ACTION
Fraud – Negligent Misrepresentation
(Against all Defendants)

264. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

265. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

266. As alleged herein, each of the Defendants made misrepresentations and omissions of material fact to Murrayfield and the Members relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

267. Each of the Defendants had no reasonable grounds for believing the representation was true when they made it.

268. Each of the Defendants intended for Murrayfield and the Members to rely on those misrepresentations and omissions in deciding whether to purchase the Property and whether to invest in Murrayfield, an entity formed for the express purpose of purchasing the Property.

269. Murrayfield and the Members reasonably relied on Defendants' representations, having no reason to believe that Defendants would falsely represent or omit material facts relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

270. As a result, the Members invested in Murrayfield without realizing that the purchase price of $14,700,000 was grossly inflated, and Murrayfield purchased the Property for $14,700,000. As a result of purchasing the Property for an inflated price, the Property could not generate sufficient cash flow for Murrayfield to service the debt on the Property, and the Property was foreclosed upon, causing harm to Murrayfield and the Members.

271. Murrayfield's and the Members' reliance on Defendants' negligent misrepresentations and omissions was a substantial factor in causing Murrayfield's and the Members' harm.

FIFTH DERIVATIVE CAUSE OF ACTION
Fraud – Concealment
(Against Marcus & Millichap and the TwinRock Defendants)

272. Intervenors incorporate by reference and reallege each and every allegation set forth

above as though fully set forth herein.

273. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

274. Marcus & Millichap and each of the TwinRock Defendants was in a fiduciary relationship with Murrayfield and the Members—Marcus & Millichap owing fiduciary duties as the real estate broker, and the TwinRock Defendants owing fiduciary duties as Murrayfield's managing member.

275. As alleged herein, Marcus & Millichap and each of the TwinRock Defendants conspired to intentionally fail to disclose to Murrayfield and the Members the true condition of the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri, or disclosed some facts but intentionally failed to disclose other facts, making the disclosure deceptive.

276. The information Marcus & Millichap and each of the TwinRock Defendants intentionally failed to disclose was known only to them, and neither Murrayfield nor the Members could have discovered those facts.

277. Murrayfield and the Members did not know of the concealed facts.

278. Marcus & Millichap and each of the TwinRock Defendants intended to deceive Murrayfield and the Members by concealing the facts.

279. As a result, the Members invested in Murrayfield without realizing that the purchase price of $14,700,000 was grossly inflated, and Murrayfield purchased the Property for $14,700,000. As a result of purchasing the Property for an inflated price, the Property could not generate sufficient cash flow for Murrayfield to service the debt on the Property, and the Property was foreclosed upon, causing harm to Murrayfield and the Members.

280. Had the omitted facts been disclosed, the Members would not have invested in Murrayfield, and Murrayfield would not have purchased the Property

281. In committing the acts alleged herein, Marcus & Millichap and each of the TwinRock Defendants are guilty of oppression (despicable conduct that subjected Murrayfield and the Members to cruel and unjust hardship in conscious disregard of Murrayfield's and the Members' rights), fraud (intentional misrepresentations, deceit, and concealment of material facts known to Murrayfield with the intention on the part of Marcus & Millichap and each of the TwinRock

Defendants of thereby depriving Murrayfield and the Members of monies and legal rights, including, and otherwise causing injury), malice (conduct intended by Marcus & Millichap and each of the TwinRock Defendants to cause injury to Murrayfield and the Members), and authorized ratified, or performed the acts, justifying an award of exemplary and punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish the Marcus & Millichap and each of the TwinRock Defendants and to deter similar future misconduct and to make an example of them to the community.

SIXTH DERIVATIVE CAUSE OF ACTION
Fraud – False Promise
(Against the TwinRock Defendants)

282. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

283. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

284. When soliciting investments from the Members for the purchase of the Property, the TwinRock Defendants promised to conduct a thorough due diligence investigation prior to consummating the acquisition and to devote time to the business and affairs of Murrayfield as was necessary to acquire, lease, operate, and maintain the Property.

285. The TwinRock Defendants did not intend to perform these promises when they made them.

286. The TwinRock Defendants intended that Murrayfield and the Members rely on these promises in deciding whether to invest in Murrayfield, whose express purpose was to purchase the Property. Specifically, the TwinRock Defendants instructed the Members to "entrust all aspects of due diligence and the decision to consummate the purchase of the Property, as well as other decisions, to [the TwinRock Defendants]," and stated that "Members will be relying entirely on [the TwinRock Defendants] to manage the affairs of [Murrayfield]."

287. Murrayfield and the Members reasonably relied on the TwinRock Defendants' promises.

288. The TwinRock Defendants did not conduct a conduct a thorough due diligence investigation prior to consummating the acquisition and did not devote time to the business and

affairs of Murrayfield as was necessary to acquire, lease, operate, and maintain the Property.

289. As a result, Murrayfield purchased the Property for an inflated price, which in turn could not generate sufficient cash flow for Murrayfield to service the debt on the Property. As a result, the Property was foreclosed upon, causing harm to Murrayfield and the Members.

290. Murrayfield's and the Members' reliance on the TwinRock Defendants' promises was a substantial factor in causing Murrayfield's and the Members' harm.

SEVENTH DERIVATIVE CAUSE OF ACTION
Violation of Civil Code § 1573 – Constructive Fraud
(Against the TwinRock Defendants)

291. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

292. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

293. The TwinRock Defendants owed a fiduciary duty to Murrayfield and the Members as Murrayfield's manager.

294. The TwinRock Defendants acted on Murrayfield's and the Members' behalf in purchasing the Property on behalf of Murrayfield and in marketing the Property as an investment opportunity to the Members.

295. As alleged herein, the TwinRock Defendants knew, or should have known, that Marcus & Millichap and/or the Seller Defendants had misrepresented the Property and that the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri, were not as they represented them to be in the Investment Memorandum that was distributed to the Members to solicit their investments in Murrayfield.

296. The TwinRock Defendants misled Murrayfield and the Members by failing to disclose that Marcus & Millichap and/or the Seller Defendants had misrepresented the Property by providing Murrayfield and the Members with information about the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri that was inaccurate or incomplete.

297. As a result, the Members invested in Murrayfield without realizing that the purchase price of $14,700,000 was grossly inflated, and Murrayfield purchased the Property for $14,700,000. As a result of purchasing the Property for an inflated price, the Property could not generate

sufficient cash flow for Murrayfield to service the debt on the Property, and the Property was foreclosed upon, causing harm to Murrayfield and the Members.

298. The TwinRock Defendants' failure to disclose and provision of inaccurate or incomplete information related to the Property was a substantial factor in causing Murrayfield's and the Members' harm.

299. In committing the acts alleged herein, the TwinRock Defendants are guilty of oppression (despicable conduct that subjected Murrayfield and the Members to cruel and unjust hardship in conscious disregard of Murrayfield's and the Members' rights), fraud (intentional misrepresentations, deceit, and concealment of material facts known to Murrayfield with the intention on the part of the TwinRock Defendants of thereby depriving Murrayfield and the Members of monies and legal rights, including, and otherwise causing injury), malice (conduct intended by the TwinRock Defendants to cause injury to Murrayfield and the Members), and authorized ratified, or performed the acts, justifying an award of exemplary and punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish the TwinRock Defendants and to deter similar future misconduct and to make an example of them to the community.

EIGHTH DERIVATIVE CAUSE OF ACTION
Breach of Fiduciary Duty for Failure to Use Reasonable Care
(Against the TwinRock Defendants)

300. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

301. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

302. The TwinRock Defendants, as the manager of Murrayfield, owed a fiduciary duty to Murrayfield and its Members to use reasonable care.

303. The TwinRock Defendants, acted on Murrayfield's and the Members' behalf in causing Murrayfield to purchase the Property.

304. The TwinRock Defendants failed to act as a reasonably careful manager would have acted under the same or similar circumstances by, *inter alia*, ignoring red flags and failing to conduct thorough due diligence and fully vet the Property.

305. As a result, Murrayfield purchased the Property for an inflated price, and, as a result,

the Property did not generate sufficient cash flow to service the debt. As a result, the Property was foreclosed upon, causing harm to Murrayfield and the Members.

306. As a result, the Members invested in Murrayfield without realizing that the purchase price of $14,700,000 was grossly inflated, and Murrayfield purchased the Property for $14,700,000. As a result of purchasing the Property for an inflated price, the Property could not generate sufficient cash flow for Murrayfield to service the debt on the Property, and the Property was foreclosed upon, causing harm to Murrayfield and the Members.

307. The TwinRock Defendants' failure to conduct thorough due diligence and fully vet the Property was a substantial factor in causing Murrayfield's and the Members' harm.

NINTH DERIVATIVE CAUSE OF ACTION

Breach of Duty of Undivided Loyalty in Connection with Purchasing the Property (Against the TwinRock Defendants)

308. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

309. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

310. The TwinRock Defendants, as the manager of Murrayfield, owed a fiduciary duty of loyalty to Murrayfield and its Members.

311. The TwinRock Defendants knowingly acted against Murrayfield's and the Members' interests in connection with causing Murrayfield to purchase the Property at an inflated price.

312. As alleged herein, the TwinRock Defendants acted on behalf of Marcus & Millichap, the Seller Defendants, and themselves—parties whose interests were adverse to Murrayfield—in connection to soliciting investments from the Members and causing Murrayfield to purchase the Property. Specifically, Marcus & Millichap, each of the Seller Defendants, and each of the TwinRock Defendants stood to gain economically from Murrayfield's purchase of the Property at an inflated price. As a result of these adverse economic incentives, the TwinRock Defendants ignored red flags, and failed to conduct thorough due diligence and fully vet the Property, and made material misrepresentations and omissions about the Property when soliciting investments from the Members.

313. Neither Murrayfield nor the Members gave the TwinRock Defendants informed

consent to the TwinRock Defendants' conduct.

314. As a result, the TwinRock Defendants caused Murrayfield to purchase the Property for an inflated price, which in turn could not generate sufficient cash flow for Murrayfield to service the debt on the Property. As a result, the Property was foreclosed upon, causing harm to Murrayfield and the Members.

315. The TwinRock Defendants' conduct arising from their divided loyalty was a substantial factor in causing Murrayfield's and the Members' harm.

TENTH DERIVATIVE CAUSE OF ACTION
Breach of Duty of Fiduciary Duty in Connection with Murrayfield's Claims against the Seller Defendants and Marcus & Millichap (Against the TwinRock Defendants)

316. The TwinRock Defendants, as the manager of Murrayfield, owed a fiduciary duty of loyalty to Murrayfield and its Members.

317. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

318. The TwinRock Defendants knowingly acted and continue to act against Murrayfield's and the Members' interests in connection with Murrayfield's claims against the Seller Defendants and Marcus & Millichap.

319. The TwinRock Defendants have interests adverse to Murrayfield and the Members, and have acted to further their own interests to the detriment of Murrayfield and the Members. Specifically, the TwinRock Defendants have **(1)** attempted to enter into self-dealing transactions with Murrayfield whereby the TwinRock Defendants will keep for themselves at least 50% of any recovery from the Missouri Lawsuit; **(2)** misled Members about the extent of damages Murrayfield is entitled to seek; **(3)** failed to retain a separate, independent law firm to represent Murrayfield.

320. Neither Murrayfield nor the Members gave the TwinRock Defendants informed consent to the TwinRock Defendants' conduct.

321. Murrayfield's and the Members' interests were harmed, and continue to be harmed.

322. The TwinRock Defendants' conduct in attempting to misappropriate Murrayfield's claims and damages against the Seller Defendants and Marcus & Millichap was, and continues to be, a substantial factor in causing Murrayfield's and the Members' harm.

ELEVENTH DERIVATIVE CAUSE OF ACTION

Breach of Duty of Undivided Loyalty in Connection with TwinRock's Purported Loan to Murrayfield (Against the TwinRock Defendants)

323. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

324. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

325. The TwinRock Defendants, as the manager of Murrayfield, owed a fiduciary duty of loyalty to Murrayfield and its Members.

The TwinRock Defendants knowingly acted against Murrayfield's and the Members' interests in purporting to lend money to Murrayfield on unfair terms.

326. As alleged herein, the TwinRock Defendants have interests adverse to Murrayfield and the Members with respect to the loan purportedly made to Murrayfield, and have acted to further their own interests to the detriment of Murrayfield and the Members. Specifically, the TwinRock Defendants **(1)** purported to agree to loan terms on Murrayfield's behalf whereby Murrayfield borrows money from the TwinRock Defendants in order to pay for the TwinRock Defendants' legal costs in the Missouri Lawsuit and California Actions; **(2)** purported to agree to loan terms on Murrayfield's behalf whereby Murrayfield is obligated to compensate the TwinRock Defendants the greater of 35% of the recovery in the Missouri Lawsuit or 3.75x the loan amount, irrespective of whether or when any principal amounts were actually lent to Murrayfield; **(3)** attempted to coerce the Members into releasing the TwinRock Defendants from all claims by offering better loan terms (the Carrot Terms) than the purported loan terms (the Stick Terms); **(4)** made false and/or misleading representations and omissions about the loan that was purportedly made by Murrayfield; **(5)** made false and/or misleading representations and omissions about the purpose of the loan, Murrayfield's obligation to accept the loan, and Murrayfield's obligation to pay for the TwinRock Defendants' legal costs in the Missouri Lawsuit and California Actions; **(6)** made false and/or misleading representations and omissions about the availability of litigation financing and typical litigation financing terms; and **(7)** intend to fraudulently pay themselves a "lender participation" fee on loan amounts that were never actually loaned to Murrayfield.

327. Neither Murrayfield nor the Members gave the TwinRock Defendants informed consent to borrow money from the TwinRock Defendants under the purported terms.

328. Murrayfield's and the Members' interests in the Missouri Lawsuit have been harmed as a result of the purported funding arrangement, and will be further harmed when the TwinRock Defendants attempt to collect the "lender participation" fee from Murrayfield at the conclusion of the Missouri Lawsuit.

329. The TwinRock Defendants' conduct in purporting to effect a loan to Murrayfield for their own adverse interest was, and continues to be, a substantial factor in causing Murrayfield's and the Members' harm.

TWELFTH DERIVATIVE CAUSE OF ACTION
Anticipatory Breach of Contract
(Against the TwinRock Defendants)

330. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

331. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

332. The Members and the TwinRock Defendants are parties to Murrayfield's Operating Agreement and contractually bound by its terms.

333. The Members did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

334. Section 2.3, Purpose, of the Operating Agreement provides: "The Company is organized to acquire the Property, and to renovate, lease, operate and maintain the Property, however, the Company may, at any time, sell the Property."

335. Section 4.1(b)(1), Distribution of Cash Flow from Operations, of the Operating Agreement refers to cash flow generated by the operations of Murrayfield.

336. Section 4.1(b)(2), Distribution of Cash Flow from Sales, of the Operating Agreement refers to cash flow from the sale of the Property.

337. Section 7.2, Procedure for Winding Up and Dissolution, of the Operating Agreement provides:

> On winding up of the Company, the assets of the Company shall be distributed, first

to creditors of the Company, including Members who are creditors, in satisfaction of the liabilities of the Company, and then, to the Members and the Managing Member in accordance with Section 4.3.

338. Section 4.3, Liquidation and Dissolution, of the Operating Agreement provides:

Upon liquidation of the Company, the assets of the Company to be distributed to the Members, shall be distributed to the Members in accordance with the positive balances in their respective Capital Accounts, after giving effect to all Capital Contributions, distributions, and allocations for all periods.

339. Any recovery from the Missouri Lawsuit is not cash flow from operations or sales.

340. Upon resolution of the Missouri Lawsuit, Murrayfield will be wound up and dissolved, so any recovery from the Missouri Lawsuit is to be distributed to the Members pursuant to Sections 7.2 and 4.3.

341. The TwinRock Defendants have clearly and positively indicated they will not distribute the recovery from the Missouri Lawsuit pursuant to Sections 7.2 and 4.3, and instead intend to distribute the recovery pursuant to section 4.1(b)(1).

342. As a result, the TwinRock Defendants have anticipatorily breached the Operating Agreement.

THIRTEENTH DERIVATIVE CAUSE OF ACTION
Anticipatory Breach of Implied Covenant of Good Faith and Fair Dealing
(Against the TwinRock Defendants)

343. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

344. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

345. The Members and the TwinRock Defendants are parties to Murrayfield's Operating Agreement and contractually bound by its terms.

346. The Members did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

347. All conditions required for the TwinRock Defendants' performance under the Operating Agreement have occurred.

348. The TwinRock Defendants have clearly and positively indicated they do not intend to distribute the recovery from the Missouri Lawsuit pursuant to Sections 7.2 and 4.3 of the Operating

Agreement, and intend to distribute the recovery pursuant to Section 4.1(b)(1) instead.

349. By distributing the recovery in the Missouri Lawsuit pursuant to Section 4.1(b)(1), the TwinRock Defendants prevent the Members from receiving benefits owed to them under the Operating Agreement.

350. By failing to distribute the recovery in the Missouri Lawsuit pursuant to Sections 7.2 and 4.3, the TwinRock Defendants are not acting fairly and in good faith.

351. As a result of the TwinRock Defendants' intended conduct, the TwinRock Defendants have breached the implied covenant of good faith and fair dealing and harmed Members.

FOURTEENTH DERIVATIVE CAUSE OF ACTION
Breach of Implied Duty to Perform with Reasonable Care
(Against the TwinRock Defendants)

352. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

353. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

354. The Members and the TwinRock Defendants are parties to Murrayfield's Operating Agreement and contractually bound by its terms.

355. The Members did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

356. All conditions required for the TwinRock Defendants' performance under the Operating Agreement occurred.

357. As alleged herein, the TwinRock Defendants failed to use reasonable care in acquiring the Property (failing to conduct thorough due diligence and fully vet the Property prior to the Closing) and managing the Property (failing to adequately operate, manage, and lease the Property).

358. As a result of the TwinRock Defendants' failure to use reasonable care, Murrayfield overpaid for the Property and thereafter mismanaged the Property, causing the Property to be foreclosed upon, and causing the Members to lose their entire investment.

FIFTEENTH DERIVATIVE CAUSE OF ACTION
Promissory Estoppel
(Against the TwinRock Defendants)

359. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

360. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

361. The TwinRock Defendants promised to return their acquisition and asset management fees, and that such fees would be used to fund the Missouri Lawsuit on behalf of Murrayfield.

362. The TwinRock Defendants should have reasonably expected their promise to induce Murrayfield to pursue claims against the Missouri Defendants in the Missouri Lawsuit.

363. Murrayfield reasonably relied on the TwinRock Defendants' promise when it decided to pursue claims against the Missouri Defendants in the Missouri Lawsuit.

364. In reliance on the TwinRock Defendants' promise, Murrayfield did not retain a contingency lawyer and, as a result, has incurred fees and indebtedness to law firms the TwinRock Defendants have retained on Murrayfield's behalf.

365. Injustice can be avoided only by enforcement of the TwinRock Defendants' promise.

SIXTEENTH DERIVATIVE CAUSE OF ACTION
Unjust Enrichment
(Against all Defendants)

366. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

367. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

368. Each of the Defendants intentionally and/or recklessly made misrepresentations and omissions of material fact to Murrayfield and the Members relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

369. Each of the Defendants knew that those misrepresentations and omissions were false when they made them, or made them recklessly and without regard for their truth.

370. Each of the Defendants intended for Murrayfield and the Members to rely on those misrepresentations and omissions in deciding whether to purchase the Property and whether to

invest in Murrayfield, an entity formed for the express purpose of purchasing the Property.

371. Murrayfield and the Members reasonably relied on Defendants' representations, having no reason to believe that Defendants would falsely represent or omit material facts relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

372. The Members conferred benefits on each of the Defendants by purchasing membership interests in Murrayfield, and Murrayfield conferred benefits on each of the Defendants by purchasing the Property.

373. Each of the Defendants has knowledge of such benefits, and voluntarily accepted and retained the benefits conferred.

374. Each of the Defendants has been unjustly enriched in retaining the revenues derived from Murrayfield's purchase of the Property.

375. Retention of that money under these circumstances is unjust and inequitable because each of the Defendants misrepresented and failed to disclose material information relating to the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

376. Each of the Defendants' misrepresentations and omissions caused injuries to Murrayfield and the Members because Murrayfield would not have purchased the Property, and the Members would not have invested in Murrayfield, had they known the true condition of the Property's finances, the tenant leases, and the student housing market in Columbia, Missouri.

377. Because Defendants' retention of the non-gratuitous benefits conferred to it by Murrayfield and the Members is unjust and inequitable, Defendants ought to disgorge any profits made in connection with the Murrayfield's purchase of the Property and pay restitution to Murrayfield and the Members for their unjust enrichment.

378. As a direct and proximate result of Defendants' unjust enrichment, Murrayfield and the Members are entitled to restitution or disgorgement in an amount to be proved at trial.

SEVENTEENTH DERIVATIVE CAUSE OF ACTION

Breach of Fiduciary Duty for Failure to Use Reasonable Care in Connection with Involuntarily Withdrawing Intervenors as Members of Murrayfield
(Against the TwinRock Defendants)

379. Intervenors incorporate by reference and reallege each and every allegation set forth

above as though fully set forth herein.

380. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

381. The TwinRock Defendants, as the manager of Murrayfield, owed a fiduciary duty to Murrayfield to use reasonable care.

382. The TwinRock Defendants acted on Murrayfield's behalf in serving as the manager of Murrayfield.

383. The TwinRock Defendants failed to act as a reasonably careful manager would have acted under the same or similar circumstances by purporting to involuntarily withdraw Intervenors as members of Murrayfield, and by providing Intervenors a withdrawal distribution of $0.00 in conjunction with the purported involuntary withdrawal.

384. As a result of the TwinRock Defendants' failure to use reasonable care, the TwinRock Defendants' have exposed Murrayfield to unnecessary litigation and have caused Murrayfield to incur unnecessary legal fees.

385. The TwinRock Defendants' failure to use reasonable care was a substantial factor in causing Murrayfield's harm.

386. In breaching its fiduciary duty to use reasonable care, each of the TwinRock Defendants is guilty of malice (conduct intended by Defendants to cause injury to Murrayfield and the Members), justifying an award of exemplary and punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish the TwinRock Defendants and to deter similar future misconduct and to make an example of them to the community.

EIGHTEENTH DERIVATIVE CAUSE OF ACTION
Breach of Implied Duty to Perform with Reasonable Care in Connection with Involuntarily Withdrawing Intervenors as Members of Murrayfield
(Against the TwinRock Defendants)

387. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

388. Intervenors assert this cause of action derivatively on behalf of Murrayfield.

389. The TwinRock Defendants and the members of Murrayfield are parties to Murrayfield's Operating Agreement and are contractually bound by its terms.

390. The members of Murrayfield did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

391. All conditions required for the TwinRock Defendants' performance under the Operating Agreement occurred.

392. The TwinRock Defendants failed to use reasonable care in purporting to effect an involuntary withdrawal of Intervenors as members of Murrayfield, and in providing Intervenors a withdrawal distribution of $0.00 in conjunction with the purported involuntary withdrawal.

393. As a result of the TwinRock Defendants' failure to use reasonable care, the TwinRock Defendants' have exposed Murrayfield to unnecessary litigation and have caused Murrayfield to incur unnecessary legal fees.

394. In breaching its implied duty to perform with reasonable care, each of the TwinRock Defendants is guilty of malice (conduct intended by Defendants to cause injury to Murrayfield and the Members), justifying an award of exemplary and punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish the TwinRock Defendants and to deter similar future misconduct and to make an example of them to the community.

NINETEENTH DIRECT CAUSE OF ACTION
Breach of Contract for Involuntarily Withdrawing Intervenors as Members of Murrayfield
(Against the TwinRock Defendants)

395. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

396. Intervenors assert this cause of action directly on behalf of themselves.

397. Intervenors and the TwinRock Defendants are parties to Murrayfield's Operating Agreement and contractually bound by its terms.

398. Intervenors did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

399. All conditions required for the TwinRock Defendants' performance under the Operating Agreement have occurred.

400. The TwinRock Defendants breached the Operating Agreement by failing to use reasonable judgement in purporting to involuntarily withdraw Intervenors as members of

Murrayfield, and by providing Intervenors a withdrawal distribution of $0.00 in conjunction with the purported involuntary withdrawal.

401. As a result of the purported involuntary withdrawal of Intervenors, Intervenors have been harmed by, *inter alia*, being deprived of their ability to participate in Murrayfield.

402. The TwinRock Defendants' breach of the Operating Agreement was a substantial factor in causing Intervenors' harm.

TWENTIETH DIRECT CAUSE OF ACTION
Breach of Implied Duty of Good Faith and Fair Dealing for Involuntarily Withdrawing Intervenors as Members of Murrayfield
(Against the TwinRock Defendants)

403. Intervenors incorporate by reference and reallege each and every allegation set forth above as though fully set forth herein.

404. Intervenors assert this cause of action directly on behalf of themselves.

405. Intervenors and the TwinRock Defendants are parties to Murrayfield's Operating Agreement and contractually bound by its terms.

406. Intervenors did all, or substantially all, of the significant things that the Operating Agreement requires them to do.

407. All conditions required for the TwinRock Defendants' performance under the Operating Agreement have occurred.

408. The TwinRock Defendants deprived Intervenors from receiving the benefits to which they are entitled under the Operating Agreement by purporting to effect an involuntary withdrawal of Intervenors as members of Murrayfield, and by providing Intervenors a withdrawal distribution of $0.00 in conjunction with the purported involuntary withdrawal.

409. In so doing, the TwinRock Defendants did not act fairly and in good faith,

410. As a result of the TwinRock Defendants' conduct, Intervenors have been harmed by, *inter alia*, being deprived of their ability to participate in Murrayfield.

RELIEF REQUESTED

WHEREFORE, Intervenors pray for judgment against Defendants as follows:

A. Injunctive Relief

411. For an injunction, restraining and enjoining the TwinRock Enterprise from involuntarily withdrawing Intervenors as members of Murrayfield.

B. Declaratory Relief

412. For an order declaring that the purported involuntary withdrawal of Intervenors as members of Murrayfield was null and void and of no effect.

413. For an order declaring that any purported transaction(s) relating to litigation funding entered into by the TwinRock Defendants on behalf of Murrayfield where the TwinRock Enterprise stood on both sides of the transaction was null and void.

414. For an order declaring that any amounts recovered by Murrayfield in the Missouri Lawsuit do not constitute Cash Flow from Operations under Section 4.1(b)(1) of the Operating Agreement.

415. For an order declaring that neither TwinRock Holdings nor TwinRock Partners was a third-party beneficiary of the Purchase Agreement that was executed by TwinRock Holdings and Seller Defendants, and thereafter assigned by TwinRock Holdings to Murrayfield, and therefore neither TwinRock Holdings nor TwinRock Partners have any entitlement to direct damages recovered in connection with the foreclosure of the Property.

C. Rescission pursuant to Cal. Corp. Code § 25501

416. For an order pursuant to California Corporations Code section 25501, requiring Defendants, and each of them, to pay full restitution to each member of Murrayfield, calculated as the consideration each member paid for their membership interest, plus interest at the legal rate, less the amount of any income received on their membership interest, upon tender of their membership interest.

D. Monetary Relief

417. For actual damages of at least $14,753,273, in the alternative, equitable monetary relief including, without limitation, restitution and disgorgement.

418. For punitive damages in an amount to be determined at trial.

E. Other Relief

419. For an order that this court will retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein or to entertain any suitable application or motion by Intervenors for additional relief within the jurisdiction of this court.

420. For Intervenors' costs of suit, including reasonable attorneys', accountants', consultants', and experts' fees, to the extent permitted by law.

421. For pre- and post-judgment interest at the maximum legal rate.

422. For such and further relief as the Court may deem just and proper.

Dated: May 17, 2023

EDGE, A PROFESSIONAL LAW CORPORATION

By: /s/ Daniel A. Rozenblatt
Daniel A. Rozenblatt (SBN 336058)
Seth W. Wiener (SBN 203747)

Attorneys for Intervening Plaintiffs
Norman Rockmaker, as Trustee of the Norbrite, Inc. Retirement Trust, Alice Noble, as Trustee of the Noble Family Trust dated 11/21/83, Mike Rozenblatt, as Trustee of the Manhattan Revocable Trust Dated 4/16/2013, and Eric Swindeman

DEMAND FOR JURY TRIAL

Intervenors hereby demand a trial by jury on all issues, causes of action, and defenses so triable.

Dated: May 17, 2023

EDGE, A PROFESSIONAL LAW CORPORATION

By: /s/ Daniel A. Rozenblatt

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