

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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PHILIP HUGHES, individually, and derivatively on
behalf of NEREID PROPERTY LLC, S & P 500 RESERVE
LLC, S & P ISLAND PARK LLC, SEAFORD PROPERTY
DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT
LLC, S & P 500 PROPERTY DEVELOPMENT CORP.,
and SUFFOLK PROPERTY 500 LLC,

Index No.:
Date Filed: 6/7/18

Plaintiff,

SUMMONS

-against-

SCOTT MCMANUS, NEREID PROPERTY LLC,
S & P 500 RESERVE LLC, S & P ISLAND PARK LLC,
SEAFORD PROPERTY DEVELOPMENT LLC,
LB PROPERTY DEVELOPMENT LLC,
S & P 500 PROPERTY DEVELOPMENT CORP.,
and SUFFOLK PROPERTY 500 LLC,

Plaintiff designates Nassau
County as the place of trial.

The basis of venue is
Plaintiff's residence.

Defendants,

-and-

NEREID PROPERTY LLC, S & P 500 RESERVE LLC,
S & P ISLAND PARK LLC, SEAFORD PROPERTY
DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT
LLC, S & P 500 PROPERTY DEVELOPMENT CORP.,
and SUFFOLK PROPERTY 500 LLC,

Nominal Defendants on the Derivative claims.

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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve
a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the Plaintiffs' attorney(s) within 20 days after the service of this summons,
exclusive of the date of service (or within 30 days after the service is complete, if this summons
is not personally delivered to you within the State of New York); and in case of your failure to

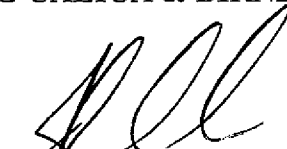
appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York
May 31, 2018

Yours, etc.,

ROSENBERG CALICA & BIRNEY LLP

By: _____


John S. Ciulla, Esq.
Joshua M. Liebman, Esq.

Attorneys for Plaintiff
100 Garden City Plaza, Suite 408
Garden City, New York 11530
(516) 747-7400

Defendants' Addresses:

SCOTT MCMANUS
5 James Street South
East Rockaway, New York 11518

c/o Secretary of State

NEREID PROPERTY LLC
S & P 500 RESERVE LLC
S & P ISLAND PARK, LLC
SEAFORD PROPERTY DEVELOPMENT LLC
LB PROPERTY DEVELOPMENT, LLC
S & P 500 PROPERTY DEVELOPMENT CORP.,
SUFFOLK PROPERTY 500 LLC,

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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PHILIP HUGHES, individually, and derivatively on behalf of NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

SCOTT MCMANUS, NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Defendants,

-and-

NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Nominal Defendants on the Derivative claims.

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Plaintiff, Philip Hughes, suing individually and derivatively on behalf of Nereid Property LLC, S & P 500 Reserve LLC, S & P Island Park, LLC, Seaford Property Development LLC, LB Property Development, LLC, S & P 500 Property Development Corp., and Suffolk Property 500 LLC (the "Companies"), by his attorneys, Rosenberg Calica & Birney LLP, as and for his Verified Complaint, hereby respectfully alleges as follows:

NATURE OF ACTION AND RELIEF SOUGHT

1. In this action, plaintiff, Philip Hughes (“Philip”), individually and derivatively on behalf of the Companies, seeks, *inter alia*, monetary, declaratory, injunctive and other equitable relief against defendant, Scott McManus (“McManus”), based on McManus’ wanton and egregious breach of fiduciary duties, misconduct and self-dealing that has, *inter alia*, resulted in massive waste, mismanagement and misappropriation of the Joint Venture’s assets.

2. Specifically, Philip is seeking to enforce his 50% ownership interest in a joint venture partnership with McManus (the “Joint Venture”) in which they agreed to, among other things, acquire, develop, renovate and sell various homes on the South Shore of Long Island (the “Joint Venture Agreement”). In addition to breaching his fiduciary duties to Philip, McManus has also unlawfully breached the Joint Venture Agreement, notwithstanding his numerous and repeated acknowledgments and admissions thereof, both in writing and orally, and notwithstanding the parties’ well-documented performance under their Joint Venture Agreement over the course of several years.

3. Among other things, upon information and belief, McManus has used the Joint Venture’s bank accounts as his own personal piggy-bank and operated the Joint Venture primarily for his own benefit, in breach of his fiduciary duties, including but not limited to, misappropriating and using Joint Venture funds, to the exclusion of Philip, for non-Joint Venture purposes such as paying for lavish vacations, paying for his personal legal fees, funding his personal business Something Greek, and paying creditors for personal debts. By reason thereof, McManus has deprived Philip of his rightful ownership of the homes acquired through the Joint Venture and his share of profits generated by the sale of the homes. Further, and despite Philip’s repeated demands, McManus has failed and refused to provide an accounting to Philip and has

refused to allow him to inspect the Joint Venture's books and records.

PARTIES

4. At all times hereinafter mentioned, Philip was and still is an individual residing in the County of Nassau.

5. At all times hereinafter mentioned, McManus was and still is an individual residing in the County of Nassau.

6. Upon information and belief, S & P 500 Property Development Corp. ("S & P 500 Property Development") is a domestic corporation duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

7. Under the Joint Venture Agreement, Philip holds a 50% ownership interest in real property located at 3906 Sands Lane, Seaford, New York, which property is owned by S & P 500 Property Development.

8. Upon information and belief, S & P Island Park LLC ("S & P Island Park") is a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

9. Under the Joint Venture Agreement, Philip held a 50% ownership interest in real properties located at 25 Deal Road, Island Park, New York, and 164 Quebec Road, Island Park, New York, which properties were owned by S & P Island Park.

10. Upon information and belief, S & P 500 Reserve LLC ("S & P 500 Reserve") is a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

11. Under the Joint Venture Agreement, Philip holds a 50% ownership interest in real property located at 41 Kildare Road, Island Park, New York, which property is owned by S & P

500 Reserve.

12. Upon information and belief, Nereid Property LLC (“Nereid”) was a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

13. Under the Joint Venture Agreement, Philip held a 50% ownership interest in real properties located at 110 East Shore Drive, Babylon, New York, and 11 Nereid Place, Babylon, New York, which properties were owned by Nereid.

14. Upon information and belief, Seaford Property Development LLC (“Seaford Property”) was a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

15. Under the Joint Venture Agreement, Philip held a 50% ownership interest in real property located at 2472 Cedar Street, Seaford, New York, which property was owned by Seaford Property.

16. Upon information and belief, LB Property Development LLC (“LB Property”) is a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

17. Under the Joint Venture Agreement, Philip holds a 50% ownership interest in real property located at 6 Lancaster Road, Island Park, New York, which property is owned by LB Property.

18. Under the Joint Venture Agreement, Philip held a 50% ownership interest in real property located at 514 West Fulton Street, Long Beach, New York, which property was owned by LB Property.

19. Upon information and belief, Suffolk Property 500 LLC (“Suffolk Property”) is a New York limited liability company duly formed and organized in accordance with the laws of the State of New York with a principal place of business in the County of Nassau.

20. Under the Joint Venture Agreement, Philip holds a 50% ownership interest in real properties located at 818 Venetian Boulevard, Lindenhurst, New York and 745 South 8th Street, Lindenhurst, New York, which properties are owned by Suffolk Property.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. The Formation of the Joint Venture Agreement.

21. Philip and McManus first met over twenty (20) years ago while playing beach volleyball in Long Beach and until recently have remained close friends. Their families were close as well and would often go over to each other’s homes for birthday parties and dinners.

22. Philip is a licensed general contractor within the State of New York and is the owner of a general contracting company known as Tra Fada Contracting Corp. (“Tra Fada”) and had previously renovated the building in West Hempstead, New York where McManus’ personal business, Something Greek, is located.

23. Just prior to Superstorm Sandy, while having dinner one night at McManus’ home, Philip and McManus began to discuss various real estate opportunities including, specifically, a joint venture to acquire and renovate homes so that they could subsequently “flip” them for a profit.

24. McManus introduced the concept of a joint venture partnership between him and Philip whereby Philip would have a 50% ownership interest in various properties located on the South Shore of Long Island.

25. Since McManus’ background was primarily in business and Philip’s was

construction, McManus agreed that his role would be the Joint Venture's "numbers guy" and Philip would handle the general contracting work necessary to renovate and develop the homes.

26. Specifically, McManus agreed to provide the initial capital to fund the purchase of the homes while Philip agreed to handle all facets of construction and renovation.

27. McManus and Philip then agreed that they would be 50/50 partners in the Joint Venture and would share equally in the profits and income resulting from the subsequent sale of the various homes.

28. McManus and Philip began looking at homes to purchase and renovate together within the Long Beach/Lido Beach area.

B. Superstorm Sandy and the Joint Venture's ensuing business opportunities.

29. In or about October 2012, Superstorm Sandy hit the South Shore of Long Island causing major devastation to the entire Long Beach area including McManus' family home.

30. To assist him in repairing his home from the devastation caused by Superstorm Sandy, McManus called his close friend, Philip, who fortunately was highly experienced in the construction business.

31. McManus asked Philip to assist him in repairing his home and Philip happily agreed. Indeed, at no charge to McManus, Philip served as the advisor for the reconstruction of the McManus family home, overseeing the renovation and reconstruction.

32. Upon information and belief, as a result of Superstorm Sandy, among other things, in June 2013 the New York State Governor's Office formed the Office of Storm Recovery in order to provide financial aid and recovery efforts to rebuild homes that were destroyed.

33. Upon information and belief, under New York State's program, the State acquired certain properties within areas devastated by Superstorm Sandy including Long Beach, Island

Park, Lindenhurst, East Rockaway, and Seaford, to name a few, and in conjunction with a company called Paramount Realty USA, auctioned off these properties at reduced prices.

34. Philip and McManus viewed this as a beneficial business opportunity for their Joint Venture. They believed their Joint Venture Agreement was set to take off and their plan came to fruition - they could purchase homes below market value and by using Philip's construction experience and expertise, renovate them to increase their market values, thereby enabling the Joint Venture to sell the properties for a significant profit.

35. Indeed, due to the terrible devastation caused by Superstorm Sandy, there was an increased demand in the renovation and elevation of homes. During this time Philip was approached by several architects and homeowners to oversee the renovation and elevation of homes. However, Philip did not oblige, choosing instead to focus his efforts on growing the Joint Venture.

36. Over the course of the next few weeks and months, Philip and McManus began to look at properties that they could potentially acquire and zeroed in on short sales in Nassau and Suffolk Counties. For example, Philip and McManus looked at a home located at 5 Harmon Street in Long Beach, which they ultimately decided not to purchase.

37. On or about February 18, 2014, and in furtherance of their Joint Venture Agreement, McManus and Philip formed S & P 500 Property Development in order to acquire homes to renovate and sell.

38. Consistent with their Joint Venture Agreement, the ownership structure of S & P 500 Property Development was 50/50, with Philip and McManus each holding a 50% ownership interest.

39. As a 50% owner of S & P 500 Property Development, Philip had a company Visa

credit card in his name and a company business card which listed Philip's contact information under the heading "Engineering/Construction." McManus' contact information was listed on the business card under "Business/Finance."

C. The Joint Venture's Purchase of 5 James Street South, East Rockaway.

40. In or about March 2014, Philip and McManus learned about a short sale of real property located at 5 James Street, East Rockaway (the "James Street Property").

41. Since Philip had the expertise in construction he conducted the due diligence on all of the prospective properties on the Joint Venture's behalf, and advised McManus as to his assessment of the value of each property and ultimately whether the deal was beneficial for the Joint Venture.

42. On March 17, 2014, McManus texted Philip, expressing interest in the James Street Property, one of the homes that was on the due diligence list prepared exclusively by Philip. McManus wanted Philip to look at the property with their broker. McManus explained that their broker, Peter, "just sent [him] a house 5 James st. [sic] In east Rockaway. I think it was on your list from bonnie [sic] it looks familiar. \$89,000."

43. As their interest in the James Street Property increased, they continued to pursue other real estate opportunities and, consistent with their Joint Venture, McManus consulted with and relied upon Philip's knowledge and expertise.

44. On several occasions in 2014, McManus openly and expressly acknowledged the Joint Venture Agreement in writing:

- On 3/20/14 at 4:21 PM McManus wrote to Philip – "Peter said the 1370 Noel court should be worth high 300k's. He wants you to look at it. If we get them down a little could make 75k depending on work needed." [emphasis added];

- On 3/22/14 at 2:28 PM McManus wrote to Philip – “310 Laurelton has a contract but the seller has not signed. We can go see it on Monday at 10 or 11. She said we would have to be willing to go higher than 349k. The other buyer is all cash also” [emphasis added];
- On 4/2/14 at 6:49 PM McManus wrote to Philip – “Ok bank signed contract on james we will close in a few days I think.” [emphasis added];
- On 4/2/14 at 7:13PM McManus wrote to Philip – “Fyi. 300k gone on those 3. Bright and Market is another 375k plus cost to fix all 5. We might have to choose between the last 2 and I hope you can fix houses fast!!! Those will take you 5-6 months. :).” [emphasis added];
- On 4/5/14 at 12:32 PM McManus wrote to Philip – “Whats the deal with 21 Kildare. Did you check the foundation? Should we try to put in a bid?” [emphasis added];
- On 4/8/14 at 5:19 PM, McManus wrote to Philip – “Oh yea talked to chase about a 500k line of credit...” [emphasis added]
- On 7/7/14 at 9:29 AM, McManus wrote to Philip – “Hey 21 Kildare is on the market again. Now at 180k. Skully called me. Do you want to make an offer? Brighton sold BTW.” [emphasis added]

45. On or about November 6, 2014, the Joint Venture closed on the purchase of the James Street Property for \$82,000.

46. Philip has a 50% ownership interest in the James Street Property.

47. Philip spent over \$90,000 of his own money renovating the James Street Property and through his efforts effectively increased the current market value of that property to close to \$400,000.

48. As a result of Philip’s efforts in renovating the James Street Property, the Joint Venture was able to later obtain a \$200,000 equity line of credit from Chase Bank.

49. Moreover, in the wake of his marital difficulties and impending divorce, McManus, with Philip’s permission, moved into the James Street Property and in exchange for doing so McManus agreed to pay Philip a monthly rent of \$700.

50. As further evidence of the parties' Joint Venture Agreement because both Philip and McManus owned the James Street Property, McManus paid this \$700 monthly rent to Philip in order to live there.

D. On behalf of the Joint Venture, Philip and McManus attend the first auction and purchase eight (8) properties acquired by New York State after Superstorm Sandy.

51. In May 2015, Philip and McManus attended the first Paramount Realty USA auction.

52. Prior to attending the auction, Philip conducted the due diligence on the various properties available at the auction, to determine if the renovation and sale of each property would be profitable for the Joint Venture.

53. Philip also composed property data sheets detailing the important characteristics of each property and composed a "star priority" list, rating the most profitable properties on a star system so that he and McManus would know how much to bid on each property. For example, based on his expertise and knowledge, Philip listed certain properties as "5 Star Priority," and these were the properties that were believed to be most profitable and which the Joint Venture would submit the highest bids.

54. Philip's property data sheets and "star priority" list would later be sent to and used by the Joint Venture's architects in preparing the plans for the properties.

55. Prior to the auction, McManus wanted to meet with Philip to review the due diligence on the properties. On 5/14/2015, McManus texted Philip: "You the man!!!! The auction is Monday/Tuesday. We need to conover [go over] [sic] stuff this weekend." [emphasis added]

56. In preparation for the auction, McManus secured a \$200,000 equity line of credit with the James Street Property as collateral. McManus would not have obtained this equity line

of credit had it not been for the renovations completed by Philip at Philip's sole cost and expense.

57. On behalf of the Joint Venture, Philip executed the "Bidder's Affidavit" so that the Joint Venture could participate in the auction. The Bidder's Affidavit represented, among other things, that the "Bidder [Joint Venture] has the financial and non-financial resources necessary to complete the timely acquisition of the Property..."

58. Philip spearheaded the Joint Venture's efforts at the auction.

59. McManus used Philip's list when the Joint Venture purchased the properties.

60. As a direct result of Philip's efforts at the first auction, the Joint Venture acquired properties located at: (a) 11 Nereid Place, Babylon (the "Nereid Property"); (b) 818 Venetian Boulevard, Lindenhurst (the "Venetian Property"); (c) 745 South 8th Street, Lindenhurst (the "8th Street Property"); (d) 2472 Cedar Street, Seaford, New York (the "Cedar Street Property"); and (e) 514 West Fulton Street, Long Beach, New York (the "West Fulton Property").

61. The auction lasted two (2) days and Philip arranged and paid for the hotel room where he and McManus stayed.

62. On or about May 28, 2015, the Joint Venture formed S & P Island Park, S & P 500 Reserve, Nereid, Seaford Property, LB Property, and Suffolk 500 Property, to acquire and own the homes purchased at the auction.

E. Philip obtains a \$200,000 loan so that the Joint Venture could close on the properties purchased at the auction.

63. After the auction and prior to closing on the purchase of the homes, the Joint Venture ran into financial difficulty.

64. The Joint Venture was preparing to close on the properties sometime in July 2015 and needed to ensure that they had the necessary financial means to do so.

65. Accordingly, McManus asked Philip to obtain a loan from Philip's friend, Joe Harkins. In a series of text messages from McManus to Philip between June 16, 2015 and June 23, 2015, McManus acknowledged Philip as his partner and wrote as follows:

- McManus to Philip – June 16, 2015 at 2:18PM: “Elliot small just called. I signed the extension he thinks this is the last one and we will close by the 26th on Sands lane.” [emphasis added]
- McManus to Philip – June 16, 2015 at 5:30PM: “I thought you were coming by to discuss stuff. What happened? Maybe a text or call to your partner. I hope you realize I will be about 1.1 to 1.4 million in debt to pull this off & working every day on This stuff.” [emphasis added]
- McManus to Philip – June 23, 2015 at 7:41PM: Make sure you send that email to Joe tonite!! He is meeting his lawyer tomorrow. CC me so I have his email and he has mine. DON'T FORGET!!!!!!!!!!!!!!”
- McManus to Philip – June 23, 2015 at 9:46PM: “Just write we are looking forba [for] [sic] a loan in the amount of \$400,000. We will repay in 18 months or less. The interest rate would be 12% with 3 points.” [emphasis added]

66. On or about June 28, 2015, Philip obtained a loan from his friend, Joe Harkins, in the amount of \$200,000.

67. On July 21, 2015, McManus texted Philip asking for the money so that the Joint Venture would be able to proceed with scheduling the closings for the properties purchased at the auction, on July 30th. McManus texted Philip: “Hey when can you drop off the check for 200k. I am getting money together this week. Elliot is trying to set up. Closing for the 30th.” [emphasis added]

68. By check dated July 27, 2015, Philip contributed \$200,000 to the Joint Venture.

69. The Joint Venture closed on the purchase of these properties as well as the purchase of 6 Sands Lane, Seaford (the “Sands Lane Property”), in or about July, 2015 at significantly reduced purchase price amounts.

70. After the closing, McManus already began planning for him and Philip in furtherance of the Joint Venture to attend a second auction in November 2015.

71. McManus texted Philip to let him know that the Joint Venture would have to sell at least 4-5 homes in order to have the necessary financial means necessary to purchase more homes at the next auction. On July 30, 2015, McManus wrote to Philip as follows: “Just talked to Jaspan Schlesinger. There will be another auction in Nov. You better work fast we need lots of money and we can avoid most taxes if we sell 4-5 by then. :))” [emphasis added]

F. McManus’ Unauthorized and Improper “Member Draws” from Joint Venture accounts.

72. Upon information and belief, in or about July 27, 2015, without Philip’s knowledge and consent, McManus improperly withdrew funds from the Joint Venture’s accounts for his own personal benefit and financial gain.

73. On July 27, 2015, McManus improperly withdrew \$50,000 from S & P Island Park’s account and, upon information and belief, used such funds for his own personal benefit and financial gain.

74. On July 29, 2015, McManus improperly withdrew over \$126,000 from Nereid’s account and, upon information and belief, used such funds for his own personal benefit and financial gain.

75. On July 29, 2015, McManus improperly withdrew over \$246,000 from Suffolk Property’s account and, upon information and belief, used such funds for his own personal benefit and financial gain.

76. On July 30, 2015, McManus improperly withdrew an additional \$124,000 from Nereid’s account and, upon information and belief, used such funds for his own personal benefit

and financial gain.

77. On July 30, 2015, McManus improperly withdrew over \$51,000 from S & P Island Park's account and, upon information and belief, used such funds for his own personal benefit and financial gain.

78. On July 30, 2015, McManus improperly withdrew over \$28,000 from Seaford Property's account and, upon information and belief, used such funds for his own personal benefit and financial gain.

79. McManus has failed to provide Philip with an accounting as to why the withdrawals were made and how the funds were used.

G. In Furtherance of the Joint Venture Agreement Philip Begins to Renovate the Homes.

80. Since McManus had no construction experience and did not have the local contacts or experience that Philip had, Philip dealt exclusively with the architect, subcontractors, home elevation contractors, environmental/foundation testers, and realtors and buyers for each property.

81. For example, in ordering the elevation certificates for various homes, McManus relied on Philip to determine the order in which the elevation testing was to be completed. In an email on August 10, 2015, McManus wrote to the architect:

“James, Here are the elevation certificates for most of the properties. I will talk to Philip about the order to do them in. Right Now the 3 most important are Long Beach, Deal Rd and 11 Nereid. Kate should have sent all the surveys over & the floor plans if we have them. I will have another batch of elevation certificates for the Suffolk properties in a few days.” [emphasis added]

82. On September 4, 2015, McManus improperly withdrew \$65,000 from LB Property's and S & P Island Park's accounts and, upon information and belief, used such funds for his own personal benefit and financial gain.

83. When it came time to pay the testing company, Philip (along with his wife Kate) consulted with McManus to confirm which of the Companies would be paying for each property.

Their email exchange on September 14, 2015 was as follows:

- Kate and Philip to McManus: “Scott can u let me know the Llc [sic] names of each property so we can pay for each one individually through the correct Llc [sic]. This is for billing for each property that slacker did the testing.” [emphasis added]
- McManus to Kate and Philip: “Kate, Long Beach is Long Beach Property Development LLC, Both Lindenhurst Houses are in Suffolk Property 500 LLC, Both Island Park Houses are in S & P Island Park LLC, Babylon (Nereid) is in Nereid Property LLC, 2456 Cedar lane¹ is in Seaford Property Development LLC, 3906 Sands lane is in S & P 500 Property Development LLC.”

84. In furtherance of the Joint Venture Agreement, Philip renovated the properties. For example, for the West Fulton Street Property, Philip stripped the house down to its studs and spent over \$98,000 of his own funds to pay for labor. Philip spent over \$117,000 of his own funds to pay for the labor on the Nereid Property. In sum, he spent hundreds of thousands of dollars of his own funds to renovate the properties purchased at the auction in furtherance of the Joint Venture.

85. Thereafter, the homes were marketed for sale and in connection therewith Philip executed the listing agreements as the owner of several homes on behalf of the Joint Venture.

86. Philip also dealt directly with the Joint Venture’s real estate broker soliciting and receiving offers and conveying same to McManus. When Philip received an offer from the broker, both he and McManus consulted with each other to determine how best to proceed.

H. Philip and McManus Attend the Second Auction and Purchase Additional Homes on Behalf of the Joint Venture.

87. In November 2015, Philip and McManus attended a second auction to purchase

¹This appears to be a typo on McManus’ part. The property purchased by the Joint Venture was located at 2472 Cedar Street, Seaford.

additional homes in furtherance of the Joint Venture.

88. Just as he did before the first auction, Philip conducted the due diligence on the properties, analyzed the properties' data, prepared his Star Rating list and executed the Bidder's Affidavit on the Joint Venture's behalf.

89. At the second auction, the Joint Venture acquired five (5) additional homes – (a) 41 Kildare Road, Island Park, New York (the “Kildare Property”); (b) 6 Lancaster Road, Island Park, New York (the “Lancaster Property”); (c) 110 East Shore Road, Babylon, New York (the “East Shore Property”); (d) 25 Deal Road, Island Park, New York (the “Deal Property”); and (e) 164 Quebec Road, Island Park, New York (the “Quebec Property”).

90. Philip renovated these homes, spending hundreds of thousands of dollars of his own money for labor.

91. On or about November 16, 2015, McManus improperly withdrew \$75,000 from S & P 500 Reserve's account and, upon information and belief, used such funds for his own personal benefit and financial gain.

I. While the Joint Venture Begins to Sell its Homes it is Suffering Financial Difficulties at the Same Time.

92. Through a series of text messages from February 12, 2016 through March 21, 2016, McManus expressed his concerns to Philip regarding the Joint Venture's financial stability:

- 2/12/16 at 10:43AM, McManus wrote to Philip: “Hey just paid \$8000 on credit card sapphire. We still owe another \$8000. Also paid \$3300 on Home Depot Card. Give me a call on how to manage the credit cards or we may run out of money before we finish LB.” [emphasis added]
- 2/15/16 at 4:54 PM, Philip writes to McManus – “Guy signed on Cedar.” That same date at 4:56 PM, McManus responds – “Sweet. I want to pay the house lifting company right away. We have to get Deal lifted. Who is lifting it?”
- 3/21/16 at 5:34PM, McManus writes to Philip – “The original bill from LI house

lifting. Was 63,900. 3 checks sent 20,000. 11,950. 15,000. Balance is 16,950.”

93. Philip attempted to allay McManus’ concerns by reiterating that he would continue to handle the construction component for the Joint Venture and McManus responded by acknowledging his Joint Venture Agreement with Philip:

- 5/19/16 at 6:07PM, Philip writes to McManus – “Don’t worry I got the house designing, building, marketing, plumbing, and project manager. I think I wear more hats than you, and clock up way way More hours, cupcakes.
- 5/19/16 at 6:13PM, McManus responds to Philip – “You are correct sweetheart. I thought I was just a money guy that was going to make money from house flipping like 2-300,000 a year with my new partner.” [emphasis added]

J. The Joint Venture Begins to Sell Homes and McManus Distributes Profits to Himself to the Exclusion of Philip.

94. On or about April 20, 2016, although the Joint Venture sold the Cedar Street Property for \$105,000, with a net profit of \$58,000 generated by the sale, Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

95. McManus distributed all of the profits from the sale of the Cedar Street Property to himself without making a pro-rata distribution to Philip.

96. Around the same time, the Nereid Property was under contract and in recognizing time was of the essence, McManus emailed Philip on October 14, 2016 telling him that a further delay in closing on this property will cause the Joint Venture to pay more in taxes, a burden which McManus acknowledged due to the Joint Venture would be shared equally 50/50:

“Philip...The buyers for Nereid are close to ready however we may still be weeks or months away from closing depending on you. Also a mid November [sic] to december [sic] closing may cause us to loose [sic] a lot of money in Taxes. I will review with my accountant. We will share equally any tax burden.” [emphasis added]

97. On or about October 19, 2016, although the Joint Venture sold the West Fulton

Property for \$425,000, Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

98. The West Fulton property was purchased for \$233,000 by the Joint Venture, and the net profits generated from the sale of approximately \$139,000 was directly attributable to Philip's efforts in increasing the market value of the home by reason of Philip's renovations.

99. Nevertheless, McManus paid the distributions from the sale of the West Fulton Property to himself without making a pro-rata distribution to Philip.

100. On or about November 14, 2016, although the Joint Venture sold the East Shore Property for \$300,000, double the amount they paid to purchase the property at the auction, Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

101. McManus paid the distributions from the sale of the East Shore property to himself without making a pro-rata distribution to Philip.

102. On or about March 15, 2017, Philip received an offer for the Quebec Property for 140,000, all cash. Philip consulted with McManus who advised that he would let his partner decide on his own:

- 3/15/17 at 5:50 PM, Philip texted McManus: "Have offer 140k Quebec, all cash."
- 3/15/17 at 6:12 PM, McManus responded to Philip: "I heard. It is up to you. We still have a lot of work to do and houses to work on. Or we can hold out for the 150k. I am happy either way. We still have so many houses to fix."

103. Over the course of the next month, Philip and McManus continued to discuss the offer on the Quebec Property and on April 16, 2017 at 8:56 am, McManus texted Philip "Happy Easter partner. Enjoy the weather."

104. On or about July 18, 2017, although the Joint Venture sold the Nereid Property for \$450,000, Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

105. By reason of Philip's renovations, the market value of the home increased almost two-fold and the profits generated from the sale were directly attributed to Philip's efforts.

106. On or about September 28, 2017, although the Joint Venture sold the Quebec Property for \$142,000, Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

107. Philip's extensive renovations to the Quebec Property increased the market value of the property exponentially generating more money in profits for the Joint Venture as a result of the sale.

108. Nevertheless, McManus paid the distributions from the sale of the Quebec Property to himself without making a pro-rata distribution to Philip.

109. Moreover, during the renovation of the Deal Property, the Deal Property's lot was subdivided and a portion of the lot was sold by the Joint Venture for \$25,000 to the owner of the neighboring property. On behalf of the Joint Venture, Philip dealt exclusively with the purchaser in negotiating and finalizing the sale. Nevertheless, Philip never received his 50% portion of this sale.

K. The Joint Venture Continues to Suffer Financial Difficulties and McManus Continues to Freeze Philip Out.

110. Despite the sale of five of the homes in furtherance of the Joint Venture, Philip did not receive a single penny of the profits generated by the sales.

111. Philip confronted McManus about this to which McManus responded by text on

May 9, 2017 at 10:02 AM as follows: “Sounds like you don’t trust me. If that is the case maybe we should not be partners.” [emphasis added]

112. Since money was getting tight and the Joint Venture was facing mounting financial difficulties, McManus and Philip strategized over what to do with the remaining properties the Joint Venture owned including the Venetian Property:

- 10/26/17 at 6:15 PM, McManus wrote to Philip: “Looks like we are stuck with Venetian, no one want to buy at 175...I think it is impossible to make a profit lifting it and we could make more money renting for a year or two...We need to discuss.” [emphasis added]

113. At one point, McManus threatened to find a new partner who can put more capital into the Companies:

- 12/14/17 at 9:48 AM, McManus wrote to Philip: “Call me. The credit cards are getting shut off, we have tax issues with Sands lane, Either we sell something or Jan 1 everything stops & I have to start looking for new partners with money to put in or fire sale properties and move into Lancaster since no work done in 8th st.” [emphasis added]

114. McManus wrote to Philip on February 28, 2018, that their Joint Venture was losing money – “Our company is losing major money by the day.”

115. Despite Philip’s substantial contributions to the Joint Venture, McManus continued to freeze him out of the Joint Venture and deprive him of his rightful 50% share of the profits.

116. On April 12, 2018 at a meeting in Elliot Small, Esq.’s office in Massapequa, McManus informed Philip that the Deal Property, which was in contract, was not likely to close on April 13, 2018 as scheduled.

117. However, despite McManus’ representations and despite the fact that Philip spent over \$115,000 of his own money in substantially renovating the Deal Property, the sale of the

Deal Property closed on April 13, 2018, and Philip did not receive a distribution of any of the profits from the sale much less his 50% share of the profits.

118. McManus distributed all profits to himself to the exclusion of Philip.

119. To date, six (6) of the Joint Venture's homes have been sold and Philip has not received any profit distributions from the sales.

120. In a further effort to freeze Philip out of the Joint Venture, McManus has embarked on an effort to unilaterally liquidate the Joint Venture selling off the Joint Venture's properties at "fire sale" prices. For example, upon information and belief, the Venetian Property is under contract for \$130,000 which is well below its market value.

L. Demand and Futility.

121. Prior to commencing this action, Philip has demanded that McManus cease his wrongful conduct.

122. Moreover, by letter dated April 2, 2018, Philip has demanded that McManus cease his wrongful conduct and that in the event he does not Philip will commence an action individually and on behalf of the Companies.

123. The parties also met for a settlement meeting at the law offices of Elliot Small, Esq. in Massapequa on April 12, 2018, however, McManus continued to improperly refuse to recognize Philip as a 50% partner in the Joint Venture and a 50% owner of the properties acquired by the Joint Venture, and refused to allow Philip to inspect and review the Joint Venture's books and records.

124. Accordingly, any further or additional demand that McManus commence an action on behalf of the Companies to assert the claims made in this action would be futile because, *inter alia*, McManus: (i) has breached and repudiated the very Joint Venture Agreement which this

action seeks to enforce; (ii) has already and steadfastly refused to remedy or correct his wrongful conduct; and (iii) is directly and personally involved in the breaches of fiduciary duty to the Companies and responsible for diverting and/or misappropriating corporate assets for his own personal financial gain and benefit. As such, McManus is self-interested and incapable of making an impartial decision as to whether to bring suit.

FIRST CAUSE OF ACTION
(DIRECT CLAIM- DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)

125. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

126. Philip and McManus entered into a Joint Venture to acquire, renovate, and sell various homes on the South Shore of Long Island, wherein they agreed: (i) to acquire properties and own homes, until such time as they were renovated and sold; (ii) that Philip would have a 50% ownership interest in the Joint Venture and all properties acquired in furtherance thereof; and (iii) that Philip would be entitled to, among other things, receive 50% of the income and profits generated by the sale of the homes.

127. Beginning in and around February 2018 and continuing to date, McManus has wrongfully barred and excluded Philip from the Joint Venture and from its ongoing business and affairs, has wrongfully deprived Philip of his rightful 50% share of the Joint Venture's income and profits, and has otherwise wrongfully refused to recognize Philip's ownership interests in the Joint Venture.

128. A justiciable controversy has arisen between the parties because, among other things, McManus is disavowing and/or breaching the existence of the Joint Venture Agreement, creating uncertainty as to what the parties' respective interests and rights are with respect to the

Joint Venture.

129. Philip has no adequate remedy at law.

130. Therefore, by virtue of the foregoing, Philip is entitled to a judgment declaring, *inter alia*, that: (a) the Joint Venture Agreement between Philip and McManus is a valid and enforceable agreement and that Philip is a member and owner of the Companies; (b) that by reason thereof, Philip has a 50% ownership interest in the Joint Venture; (c) McManus and Philip have joint decision-making authority over all major decisions affecting the Joint Venture, including but not limited to, the prospective sales of the homes that the Companies acquired and own; (d) Philip has a 50% ownership interest in the various properties acquired by the Joint Venture; (e) or, alternatively, Philip is a 50% owner in all of the Companies formed in furtherance of the Joint Venture; and (f) otherwise declaring the rights and relations of the parties.

131. In addition, Philip is entitled to preliminary and permanent injunctive relief, including but not limited to, an order directing McManus to comply with his obligations under the Joint Venture Agreement, including but not limited to, recognizing Philip as a 50% owner of the Joint Venture and the properties acquired by the Joint Venture, with joint-decision making authority over all major decisions affecting the Companies' assets, and restraining and enjoining McManus from engaging in or taking any further actions to distribute profits from the Joint Venture to himself to the exclusion of Philip; from taking any action that requires joint consent; and from otherwise taking any actions which would impair, defeat, interfere with, or adversely affect Philip's rights with respect to the Joint Venture Agreement; and from otherwise acting outside the ordinary course of business with respect to the Joint Venture Agreement.

**SECOND CAUSE OF ACTION
(DIRECT CLAIM – CONSTRUCTIVE TRUST)**

132. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

133. There was and is a fiduciary or confidential relationship between Philip and McManus as partners in the Joint Venture.

134. In acquiring the various properties at issue, it was agreed that the Companies and/or McManus held ownership interest in these properties as nominee for and on behalf of Philip's 50% ownership interest in the properties.

135. Alternatively, such an agreement was implied or inferred from the very transactions themselves.

136. In reliance on this promise, Philip contributed approximately \$800,000 of his own personal funds to pay for the labor and services related to the renovation and construction of the homes on the various properties acquired by the Joint Venture.

137. In addition, because of his experience and expertise as a general contractor Philip has also contributed his effort, skill and knowledge to the renovation and construction of these homes, thereby increasing the value of the Joint Venture's assets.

138. Since Philip had the expertise in construction he conducted the due diligence on all of the prospective properties, on the Joint Venture's behalf, and advised McManus as to his assessment of the value of each property and ultimately whether the deal was beneficial for the Joint Venture.

139. Philip also composed property data sheets detailing the important characteristics of each property and composed a "star priority" list, rating the most profitable properties on a star

system so that he and McManus would know how much to bid on each property. For example, based on his expertise and knowledge, Philip listed certain properties as “5 Star Priority,” and these were the properties that were believed to be most profitable and which the Joint Venture would submit the highest bids.

140. Indeed, it is inconceivable that Philip would permit approximately \$800,000 of his own personal funds and contribute his effort, skill, and knowledge, to be used to acquire and renovate homes on properties in which he would have no ownership interest.

141. On or about March 2018, McManus repudiated that Philip had an ownership interest in the properties at issue.

142. It is against equity and good conscience for McManus through the Companies to retain legal title to the properties at issue, to the exclusion of Philip, and McManus would be unjustly enriched if a constructive trust is not imposed.

143. Accordingly, Philip is entitled to equitable relief and to impose constructive trusts on the real properties acquired in furtherance of the Joint Venture to the extent of his beneficial ownership interest, and declaring that Philip is a 50% owner of said real properties, 50% owner of the Joint Venture, as well as a 50% owner of the Companies, and related relief therein.

THIRD CAUSE OF ACTION
(DIRECT CLAIM – BREACH OF FIDUCIARY DUTY)

144. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

145. At all relevant times, Philip has a 50% ownership interest in the Joint Venture’s properties and Companies.

146. As partners in the Joint Venture, there exists a fiduciary relationship between

McManus and Philip by which McManus owed Philip the highest level of loyalty and fidelity, and was obligated to deal in utmost good faith.

147. McManus owed a fiduciary duty to Philip, to among other things, avoid self-dealing and make full disclosure of all material facts.

148. McManus breached his fiduciary duty, by, among other things, making distributions to himself or on his own behalf, without making commensurate distributions to Philip.

149. Philip has not received any distributions from the Companies.

150. McManus has made distributions to himself, while refusing to make pro-rata distributions to Philip.

151. Philip had a vested right to receive 50% of the profits and income generated by the Companies as a result of the sales of the homes located on the Joint Venture's properties.

152. McManus has improperly and wrongfully deprived Philip of his right to receive 50% of the profits generated by the Companies.

153. In breach of his fiduciary duties, McManus has shut Philip out of the Joint Venture and deprived him of his right 50% share of the Joint Venture's income and profits.

154. In addition, McManus has failed to make full disclosure of material facts affecting the finances and operations of the Companies, including but not limited to, disclosing his use of company funds for non-company purposes, paying the expenses of other entities owned solely by McManus with company funds.

155. By reason of the foregoing breaches of fiduciary duty, Philip is entitled to money damages in an amount to be determined at trial but believed to be no less than \$1,000,000, plus interest at the statutory rate of 9%.

FOURTH CAUSE OF ACTION
(DERIVATIVE CLAIM – BREACH OF FIDUCIARY DUTY)

156. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

157. There exists a fiduciary relationship between McManus and the Companies, by which McManus owed the Companies the highest level of loyalty and fidelity, a duty of care, and was obligated to deal in utmost good faith.

158. McManus breached his fiduciary duties to the Companies, by, inter alia: (i) improperly misappropriating company funds to pay personal expenses, including but not limited to, expenses for his personal businesses Something Greek and Firedepartmentclothing.com; (ii) selling off the Companies' assets – homes – at 'fire sale' prices; (iii) withdrawing monies for his own personal financial benefit and gain, without reimbursement to the Companies; (iv) failing to operate the Companies in good faith and fairness and make full disclosure of all material facts; (v) misappropriating millions of dollars from the Companies for his personal benefit; (vi) concealing those transactions with false book entries such as "Members Draws," and/or by grossly understating the Companies' revenues; and (vii) improperly co-mingling and inter-mingling the Companies' funds between accounts to conceal his misconduct and unlawful transactions.

159. McManus intentionally engaged in a course of conduct by which the Companies' assets were diverted from the Companies into his own pocket.

160. McManus' use of corporate funds for his own personal use and purposes, in his own self-interest, constitutes misappropriation and waste for no valid Company purpose, as the Companies did not benefit from such transactions and/or McManus' self-interested transactions were grossly unfair and unreasonable.

161. McManus improperly applied and misappropriated the Companies' funds to discharge his personal obligations and/or transfer assets without consideration.

162. McManus' misconduct was the product of self-dealing, an abuse of his fiduciary position, was not taken in good faith, and was not in furtherance of the legitimate interests of the Companies.

163. Upon information and belief from 2015 to 2017 McManus made numerous undisclosed and unauthorized withdrawals of the Companies' funds totaling over \$1,100,000, including but not limited to, \$927,000 in "Members Draws," a \$24,000 payment to his personal business Something Greek and a \$9,000 payment to his personal business Firedepartmentclothing.com.

164. By reason of the foregoing breaches of fiduciary duty, the Companies are entitled to compensatory damages in an amount to be determined at trial but believed to be no less than \$1,000,000, plus interest at the statutory rate of 9%.

165. Moreover, by reason of the extraordinary degree of misconduct, McManus' high degree of moral culpability, his wanton dishonesty and conscious disregard for Philip's rights, and/or his reckless conduct, punitive or exemplary damages in an amount to be determined at trial, in order to punish and deter McManus from similar misconduct.

FIFTH CAUSE OF ACTION
(DIRECT CLAIM - BREACH OF CONTRACT)

166. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

167. Pursuant to the Joint Venture Agreement, Philip maintained a 50% ownership interest in the Joint Venture and all properties acquired in furtherance thereof, entitling him to

receive 50% of the income and profits generated by the sale of the Joint Venture's assets.

168. Despite such agreement, Philip has not received any distributions, income or profits from the Joint Venture, and although to date six of the homes have been sold in furtherance of the Joint Venture, Philip has not received any of the profits generated by these sales.

169. Philip has fully complied with the terms and obligations of the Joint Venture Agreement using his effort, skill, knowledge, and financial resources in furtherance of the Joint Venture.

170. McManus' failure to make any distributions to Philip and deprive him of his rightful 50% share of the Joint Venture's profits is a material breach of the parties' Joint Venture Agreement.

171. By reason of McManus' breaches of the Joint Venture Agreement, Philip is entitled to compensatory and exemplary damages in an amount to be determined at trial, but believed to be no less than \$1,000,000.

SIXTH CAUSE OF ACTION
(DIRECT CLAIM - UNJUST ENRICHMENT)

172. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

173. McManus has retained all of the Joint Venture's profits and income from the sale of the properties in derogation of Philip's 50% ownership interest in the properties therein.

174. Moreover, Philip has contributed approximately \$800,000 of his own personal funds to the Joint Venture to pay for the labor and services related to the renovation and construction of the homes acquired in furtherance of the Joint Venture.

175. In addition, because of his experience and expertise as a general contractor Philip has also contributed his effort, skill and knowledge to the renovation and construction of these homes, thereby increasing the value of the Joint Venture's assets.

176. By reason of the foregoing, McManus has been unjustly enriched at Philip's expense.

177. It is against equity and good conscience to permit McManus to retain Philip's 50% share of the net profits.

178. By reason of the foregoing, McManus has been unjustly enriched and is liable to Philip in an amount to be determined at trial but believed to be no less than \$800,000 plus interest, costs, and attorneys' fees.

**SEVENTH CAUSE OF ACTION
(DERIVATIVE CLAIM - UNJUST ENRICHMENT)**

179. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

180. Philip holds a 50% ownership interest in the Joint Venture.

181. McManus unjustly enriched himself by utilizing Joint Venture funds for his own personal benefit, including but not limited to, paying himself exorbitant sums concealed as "Member Draws" on the Companies' books and records, utilizing Joint Venture funds to pay for his own personal expenses having nothing to do with the Companies, making distributions of income and profits to himself and not Philip, and otherwise engaging in wide-ranging misconduct in breach of his duty of care, his duty of loyalty, and his duty of fidelity.

182. It is against equity and good conscience for McManus to be allowed to retain these payments and benefits to the exclusion of the Companies.

183. By reason of the foregoing, the Companies, suing derivatively, are entitled to a judgment directing McManus to disgorge all monies and revenues which belong to the companies in an amount to be determined at trial but believed to be no less than \$1,000,000.

EIGHTH CAUSE OF ACTION
(DIRECT CLAIM - ACCOUNTING)

184. Philip repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth at length herein.

185. Philip has a 50% ownership interest in the Joint Venture, and all properties acquired in furtherance thereof.

186. As partners in the Joint Venture, McManus has a fiduciary duty to account.

187. McManus has sole control over the books and records of each of the Companies.

188. Philip has made numerous demands to inspect the books and records of the Companies, as recently as April 2, 2018 and April 12, 2018.

189. McManus has only provided a very limited inspection of the Companies' books and records for a limited period, and otherwise denied Philip's request to inspect the Companies' books and records.

190. Accordingly, it would be futile for Philip to make the same request.

191. McManus has refused to fully and properly account for the income and expenses of the Companies.

192. Philip has no adequate remedy at law.

193. By virtue of the foregoing, Philip seeks an accounting of all monies, funds, and assets diverted and misappropriated by McManus and upon such accounting, for a money judgment in favor of Philip and against McManus in an amount so determined.

WHEREFORE, Philip Hughes, suing individually and derivatively, respectfully requests a judgment against McManus on all causes of action as follows:

A. On the First Cause of Action, on the direct claim for declaratory judgment and injunctive relief for a judgment declaring, *inter alia*, that: (a) the Joint Venture Agreement between Philip and McManus is a valid and enforceable agreement and that Philip is a member and owner of the Companies; (b) that by reason thereof, Philip has a 50% ownership interest in the Joint Venture; (c) McManus and Philip have joint decision-making authority over all major decisions affecting the Joint Venture, including but not limited to, the prospective sales of the homes that the Companies acquired and own; (d) declaring that Philip has a 50% ownership interest in the various properties acquired by the Joint Venture; (e) or, alternatively, declaring that Philip has a 50% ownership interest in all of the Companies formed in furtherance of the Joint Venture; and (f) otherwise declaring the rights and relations of the parties; and for a preliminary and permanent injunction directing McManus to comply with his obligations under the Joint Venture Agreement, including but not limited to, recognizing Philip as a 50% owner of the Joint Venture and the properties acquired by the Joint Venture, with joint-decision making authority over all major decisions affecting the Companies' assets, and restraining and enjoining McManus from engaging in or taking any further actions to divert profits from the Joint Venture to himself; from taking any action that requires joint consent; and from otherwise taking any actions which would impair, defeat, interfere with, or adversely affect Philip's rights with respect to the Joint Venture Agreement; and from otherwise acting outside the ordinary course of business with respect to the Joint Venture Agreement;

B. On the Second Cause of Action, on the direct claim to impose a constructive trust on the real properties acquired in furtherance of the Joint Venture, declaring that Philip is a 50%

owner of said real properties as well as a 50% owner of the Companies, and related relief therein.

C. On the Third Cause of Action, on the direct claim for breach of fiduciary duty, money damages in an amount to be determined at trial but believed to be no less than \$1,000,000, and for punitive or exemplary damages in an amount to be determined at trial, in order to punish and deter McManus from similar misconduct;

D. On the Fourth Cause of Action, on the derivative claim for breach of fiduciary duty money damages in an amount to be determined at trial but believed to be no less than \$1,000,000, and for punitive or exemplary damages in an amount to be determined at trial, in order to punish and deter McManus from similar misconduct;

E. On the Fifth Cause of Action, on the direct claim for breach of contract, compensatory and exemplary damages in an amount to be determined at trial, but believed to be no less than \$1,000,000;

F. On the Sixth Cause of Action, on the direct claim for unjust enrichment in an amount to be determined at trial but believed to be no less than \$800,000 plus interest, costs, and attorneys' fees;

G. On the Seventh Cause of Action, on the derivative claim for unjust enrichment, for a judgment directing McManus to disgorge all monies and revenues which belong to the companies in an amount to be determined at trial but believed to be no less than \$1,000,000;

H. On the Eighth Cause of Action, on the direct claim for an accounting of all monies, funds, and assets diverted and misappropriated by McManus and upon such accounting, for a money judgment in favor of Philip and against McManus in an amount so determined;

I. Punitive damages;

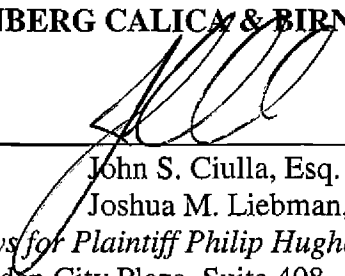
J. An award of attorneys' fees, costs and disbursements of this action;

K. Together with such other, further, and different relief as to the Court may seem just and proper.

Dated: Garden City, New York
May 31, 2018

ROSENBERG CALICA & BIRNEY LLP

By: _____



John S. Ciulla, Esq.
Joshua M. Liebman, Esq.

Attorneys for Plaintiff Philip Hughes
100 Garden City Plaza, Suite 408
Garden City, New York 11530
(516) 747-7400

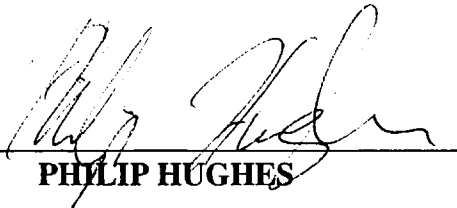
VERIFICATION

STATE OF NEW YORK)

COUNTY OF NASSAU) ss.:

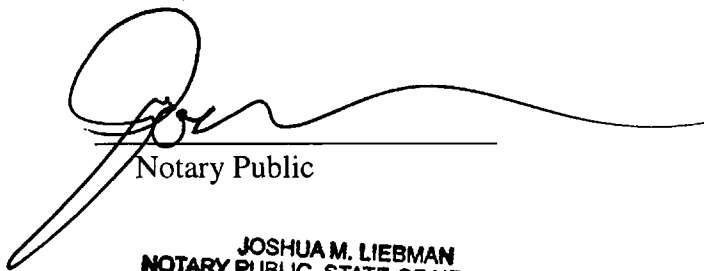
PHILIP HUGHES, being duly sworn, deposes and says:

I am a Plaintiff in the within action. I have read the foregoing Verified Complaint, and know its contents and the same is true of my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.



PHILIP HUGHES

Sworn to before me this
31st day of May, 2018.



Notary Public

JOSHUA M. LIEBMAN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02LI6292851
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES NOVEMBER 12, 2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PHILIP HUGHES, individually, and derivatively on behalf of NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK, LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT, LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Plaintiff,

-against-

SCOTT MCMANUS, NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK, LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT, LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Defendants,

-and-

NEREID PROPERTY LLC, S & P 500 RESERVE LLC, S & P ISLAND PARK, LLC, SEAFORD PROPERTY DEVELOPMENT LLC, LB PROPERTY DEVELOPMENT, LLC, S & P 500 PROPERTY DEVELOPMENT CORP., and SUFFOLK PROPERTY 500 LLC,

Nominal Defendants on the Derivative claims.

SUMMONS AND VERIFIED COMPLAINT

ROSENBERG CALICA & BIRNEY LLP

Attorneys for Plaintiff

Office and Post Office Address, Telephone

100 GARDEN CITY PLAZA, SUITE 408
GARDEN CITY, NEW YORK 11530-3200
(516) 747-7400

To

Signature (Rule 130-1.1-4)

Attorney(s) for

John S. Ciulla

Service of a copy of the within
Dated,

is hereby admitted.

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to
the HON. one of the judges of the within named court at
on at M

Dated,

Yours, etc.

To

ROSENBERG CALICA & BIRNEY LLP

Attorneys for Plaintiff

Attorney(s) for

Office and Post Office Address, Telephone