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Superior Court of California
Los Angeles

FEB 23 2015

Sherrin Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DWIGHT J. FREENEY,
an individual;
ROOF GROUP LLC,
a California limited liability company;

Plaintiffs,

vs.

BANK OF AMERICA CORPORATION,
a Delaware corporation;
BANK OF AMERICA, NATIONAL
ASSOCIATION,
a nationally chartered banking association;
MICHAEL J. BOCK,
an individual; and
DOES 1-20, inclusive.

Defendants.

Case No. BC 573275

**COMPLAINT FOR MONETARY RELIEF
FOR:**

- 1) **VIOLATION OF THE RACKETEER
INFLUENCED AND CORRUPT
ORGANIZATIONS ACT
(18 U.S.C. §§ 1962(b), (c) & (d));**
- 2) **VIOLATION OF CALIFORNIA
PENAL CODE SECTION 496;**
- 3) **CONSPIRACY TO DEFRAUD;**
- 4) **FRAUDULENT REPRESENTATIONS
AND FALSE PROMISES;**
- 5) **FRAUDULENT CONCEALMENT;**
- 6) **NEGLIGENT
MISREPRESENTATION;**
- 7) **AIDING AND ABETTING
CONVERSION;**
- 8) **BREACH OF FIDUCIARY DUTY;**
- 9) **AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY;**
- 10) **PROFESSIONAL NEGLIGENCE;**
- 11) **NEGLIGENT HIRING,
SUPERVISION AND
RETENTION; and**
- 12) **NEGLIGENT REFERRAL.**

DEMAND FOR JURY TRIAL

COMPLAINT

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1 Plaintiffs Dwight J. Freeney and Roof Group LLC (collectively, “Plaintiffs”), complaining of
2 the above-named Defendants, allege as follows, which allegations are based upon information and
3 belief insofar as they pertain to the Defendants’ identities and conduct:

4 **I. PRELIMINARY STATEMENT.**

5 **A. Overview of the Scheme to Defraud.**

6 1. This is a case of conspiracy, criminal fraud, theft and breach of trust in which the
7 nation’s second largest bank, Bank of America (“BOA”), participated in and aided and abetted a
8 scheme to defraud one of its clients, causing him more than \$20 million in out-of-pocket losses and
9 leading to the closure of his business.

10 2. The plaintiffs in this case are Dwight J. Freeney and his company Roof Group LLC
11 (“Roof Group”). Mr. Freeney is a highly accomplished and well respected NFL player who played
12 the past two seasons for the San Diego Chargers franchise. Prior to joining the Chargers for the
13 2013 season, he played eleven seasons with the Indianapolis Colts. His many achievements as an
14 NFL player include:

- 15 • Seven-time Pro-Bowl selection;
- 16 • Three-time First Team All-Pro;
- 17 • Member 2006 and 2009 AFC Championship Teams;
- 18 • Member 2007 Super Bowl Championship Team; and
- 19 • Chosen to NFL All-Decade Team.

20 3. Mr. Freeney’s company Roof Group owned and operated the *Rolling Stone*
21 *Los Angeles* restaurant, café and lounge (“RSLA”) in the popular Hollywood and Highland complex
22 in Los Angeles. Roof Group had a licensing agreement with *Rolling Stone* Magazine to open several
23 additional theme restaurants in New York and other cities. RSLA was forced to close its doors in
24 February 2013, due to the irreparable financial damage to both the restaurant and Mr. Freeney
25 resulting from the fraudulent scheme described below.

26 4. In January 2010, at the height of his NFL career, and having just played in his second
27 Super Bowl, Mr. Freeney made the fateful decision to entrust management of his finances to BOA’s
28 “Global Wealth & Investment Management Division.” Over the next two years, Mr. Freeney

1 became the victim of an elaborate and malevolent scheme to defraud.

2 5. The scheme was devised and executed by present and former BOA employees acting
3 in concert with several bank outsiders to whom BOA had referred Mr. Freeney. The principal
4 participants in the scheme included Defendant Michael Bock (“BOCK”), a Senior BOA Vice
5 President and the head of Mr. Freeney’s BOA financial advisory team; Eva Weinberg (“Weinberg”),
6 BOCK’s ex-wife and a former BOA employee whom BOA appointed as Mr. Freeney’s principal
7 liaison with the bank; and Michael Stern (“Stern”), Weinberg’s paramour and a notorious financial
8 predator to whom BOA referred Mr. Freeney for financial advisory services.

9 6. Other individuals who participated in the scheme, or aided and abetted it, included:
10 Matthew Liebman, the manager of the Global Wealth & Investment Management branch in
11 Miami Beach; Josephine (Jodi) Del Campo, a BOA Assistant Vice President in Miami Beach;
12 Lester Jaggernauth, one of Stern’s close business associates; Weinberg’s brother, to whom BOA
13 referred Mr. Freeney for insurance consultancy services; and a Florida attorney and his law firm, to
14 whom BOA referred Mr. Freeney for legal services related to RSLA.

15 7. Weinberg, with BOCK and Liebman’s approval and encouragement, became
16 Mr. Freeney’s private banker, financial manager and investment advisor in or about
17 February 2010, even though, as BOA well knew, she was not licensed or qualified to serve in
18 any of these capacities.

19 8. BOA referred Mr. Freeney to Stern, knowing that he already had a lengthy track
20 record of real estate fraud, bribing public officials, forgery, theft and witness tampering. His
21 South Florida real estate empire, which had been built with financing from defrauded investors,
22 mortgage lenders and financial institutions, collapsed in late 2008. In 2009, the year before he was
23 referred by BOA to Mr. Freeney, Stern had filed for personal bankruptcy with declared liabilities in
24 excess of \$65 million and assets valued at *negative* \$2.4 million. At the time BOA introduced Stern
25 to Mr. Freeney, he was a defendant in more than 20 civil lawsuits filed by defrauded investors and
26 lenders, had been held in contempt for willfully violating Bankruptcy Court orders and was subject
27 to arrest pursuant to a court order in one of the civil suits pending against him.

28 9. During the course of the scheme, Stern used the false names “Michael Millar” and

1 “David Michael Millar” to conceal his notorious past. Stern’s use of this false identity, with the
2 knowledge of BOA, enabled him to pose as a successful Miami Beach real estate developer and
3 businessman who purportedly wanted to assist Mr. Freeney with the launch of RSLA and getting his
4 financial affairs in order. Stern burnished this fictitious persona by his use of a private jet that he
5 purportedly owned, but which, in reality, he leased using money stolen from Mr. Freeney as part of
6 the scheme.

7 10. In the course of the scheme, Mr. Freeney was lied to, misled and manipulated and had
8 more than \$8.5 million misappropriated from his BOA accounts by the very bankers and advisors
9 who were responsible for managing his assets, investments and income. The scheme reached
10 virtually every aspect of his financial affairs and involved:

- 11 • Countless fraudulent representations and false promises;
- 12 • The concealment of numerous material facts;
- 13 • Flagrant breaches of fiduciary duty;
- 14 • Theft of Mr. Freeney’s personal funds and conversion of Roof Group’s assets;
- 15 • The purchase of \$55 million in worthless life insurance and the payment of illegal
16 kickbacks in connection therewith;
- 17 • The use of false identities and sham entities;
- 18 • The unauthorized disclosure and use of Mr. Freeney’s personal, financial,
19 tax and account information;
- 20 • Forgery and falsification of documents;
- 21 • Attempted destruction and secreting of evidence;
- 22 • Hundreds of acts of mail, wire, access device and bankruptcy fraud, which are federal
23 felony offenses; and
- 24 • Complicated money laundering transactions to promote and conceal the fraudulent
25 scheme.

26 11. BOA, as an institution, was an integral and indispensable part of the scheme. In fact,
27 there would have been no scheme but for BOA’s recruitment of Mr. Freeney as a client and the
28 involvement of its employees, including BOCK, Liebman, Del Campo and Weinberg. Among

1 other things:

2 (a) BOA introduced Mr. Freeney, who was only 29 at the time, to Stern, knowing
3 him to be a financial predator with a shady past that included personal and corporate bankruptcies,
4 mortgage fraud, theft of loan proceeds, passing worthless checks, bribery, forgery, violation of court
5 orders and witness tampering;

6 (b) BOA introduced Mr. Freeney to Stern as “Michael Millar,” which, as BOA
7 knew, was a false identity Stern had adopted to conceal his past as a bankrupt swindler from
8 Mr. Freeney;

9 (c) BOA used fraudulent representations, false promises and the concealment of
10 material facts to convince Mr. Freeney to become a BOA client, and to induce him to transfer
11 management of his assets, investments and income to BOA;

12 (d) Having fraudulently induced Mr. Freeney to repose his trust and confidence
13 in BOCK and Weinberg, BOA committed numerous flagrant breaches of fiduciary duty, including
14 disclosing Mr. Freeney’s confidential financial and account information to Stern;

15 (e) BOA gave substantial assistance to Weinberg and Stern in their
16 misappropriation of more than \$8.5 million of Mr. Freeney’s funds and their misapplication of more
17 than \$4.5 million of those funds to their own uses and benefit;

18 (f) BOA, acting in concert with Stern and others, committed hundreds of acts of
19 mail, wire and access device fraud; and

20 (g) BOA aided and abetted Weinberg and Stern in laundering millions of dollars
21 in proceeds from the scheme to defraud Mr. Freeney.

22 12. The scheme began in January 2010, when BOCK’s team, of which Weinberg was a
23 member, recruited Mr. Freeney to become a BOA client, and continued even after Weinberg and
24 Stern were arrested by the Federal Bureau of Investigation (“FBI”) in March 2012. It resulted in
25 out-of-pocket losses to Mr. Freeney of more than \$20 million; brought him to the verge of personal
26 bankruptcy; caused the eventual closure of RSLA; and deprived him and his family of the financial
27 security for which he had worked so hard to attain during his thirteen-year NFL career and which
28 was the reason he became a BOA client in the first place.

1 **B. The Criminal Prosecutions.**

2 13. Weinberg and Stern were arrested by the FBI on March 23, 2012, based on
3 information provided by Mr. Freeney and a confidential informant and developed by the FBI with
4 virtually no assistance from BOA. They were arrested on a federal criminal complaint charging
5 them with wire fraud for misappropriating funds from Mr. Freeney. Weinberg was arrested at her
6 residence in Los Angeles; Stern was arrested at Miami International Airport as he was about to board
7 a flight to Los Angeles to rejoin her.

8 14. In May 2012, a grand jury in the Central District of California indicted Stern for wire
9 fraud and obstruction of justice relating to the scheme to defraud Mr. Freeney. In August 2012, the
10 grand jury returned a superseding indictment that added transactional money laundering and access
11 device fraud charges.

12 15. In January 2013, U.S. District Judge Stephen V. Wilson accepted Stern's guilty plea
13 to access device fraud. In pleading guilty, Stern admitted that he had acted "knowingly and with the
14 intent to defraud" Mr. Freeney and Roof Group.

15 16. In October 2013, Judge Wilson sentenced Stern to 60-months imprisonment and
16 three-years supervised release for his role in defrauding Mr. Freeney. In imposing this sentence,
17 Judge Wilson found that "Mr. Stern [is] totally unbelievable"; "[h]e is a person worthy of no
18 credibility"; "[t]he crime is serious, so the sentence is necessary to promote respect for the law and
19 to provide just punishment for the offense"; "[i]t is also necessary to protect the public from further
20 crimes of this defendant"; and "given [his] overall history and the endemic way in which he carried
21 out his scheme against the victim here, there is concern that without a serious sentence, he would be
22 inclined to do this again."

23 17. In June 2013, Judge Wilson accepted Weinberg's guilty plea to an information
24 charging her with being an accessory after the fact to access device fraud. In pleading guilty,
25 Weinberg admitted that she had "assisted STERN with the specific purpose or design to hinder or
26 prevent STERN's apprehension, trial, or punishment," and that "it was reasonably foreseeable to
27 [her] that STERN may have stolen additional funds from other Roof Group, LLC bank accounts,"
28 including "approximately \$2,235,137.97 in unauthorized and fraudulent transfers from

1 Roof Group, LLC's Bank of America account to a Wells Fargo bank account . . . that was
2 controlled by STERN."

3 18. In December 2013, Judge Wilson sentenced Weinberg to six-months imprisonment
4 and three years of supervised release. In imposing sentence, Judge Wilson stated: "[i]t's clear to
5 me . . . she abused a position of trust"; "as criminal fraudsters go, she is pretty sophisticated";
6 "[s]he is an intelligent woman with financial sophistication much beyond the norm"; "she misled
7 [Mr. Freeney] when she introduced him to Stern, who was a major factor in all the mischief of
8 criminal conduct that followed"; "her introduction [of] Freeney to Stern was what set in motion this
9 entire sordid scheme"; "[s]he knew full well what Stern was"; "she engaged in a fraud and therefore
10 deserves the sentence"; and "had the case been further developed [by the prosecutor], it would have
11 been much worse for her."

12 19. Additionally, in September 2012, Stern was charged in an indictment in the Southern
13 District of Florida with conspiracy, mail fraud and aggravated identity theft relating to a \$20 million
14 mortgage fraud scheme that pre-dated his introduction to Mr. Freeney. Although Weinberg was
15 peripherally involved in that scheme, she was not charged.

16 20. In June 2014, Stern pleaded guilty to mail fraud in that case, admitting that he had
17 unlawfully used the names and social security numbers and forged the signatures of an elderly
18 Florida couple (Ivor Rose and Rita Starr) and had diverted loan proceeds to himself, causing them
19 losses of between \$7.0 million and \$20 million. In September 2014, Stern was sentenced in that case
20 by U.S. District Judge William J. Zloch to 96 months imprisonment, to run concurrently with the
21 60-month sentence Judge Wilson had imposed.

22 **C. Mr. Freeney's Pre-Filing Investigation and the BOA Corporate Cover-Up.**

23 21. Prior to the filing of this action, Mr. Freeney, through his counsel, conducted an
24 extensive investigation of BOA's role in the scheme to defraud that included numerous witness
25 interviews; the review of thousands of pages of documents, emails and text messages; the
26 examination of court records in bankruptcy, civil, criminal and administrative matters involving
27 Stern, Weinberg, BOCK and BOA; and Internet and public database searches.

28 22. Additionally, in Weinberg and Stern's criminal cases, Judge Wilson ordered the

1 prosecution to produce all investigative materials to counsel for Mr. Freeney, which resulted in
2 Mr. Freeney obtaining bank, financial and Internet provider records; Weinberg's BOA personnel
3 file; search warrant affidavits and the products of those searches; FBI 302 witness interview reports;
4 Weinberg's statements in proffer sessions with the FBI and U.S. Attorney's Office ("USAO")
5 following her arrest; FBI 1023 forms documenting reports of an FBI confidential source who
6 surreptitiously recorded conversations with Stern; and forensic analysis of available bank and
7 financial records and encrypted computer files.

8 23. In October 2012, Mr. Freeney's counsel, at BOA's request, provided BOA's counsel
9 with a 30-page letter detailing the findings of their investigation to date, accompanied by more than
10 100 exhibits consisting of over 3,000 of pages of supporting documentation. The letter also
11 reiterated prior requests by Mr. Freeney and his accountants for copies of bank and brokerage
12 account records to which Mr. Freeney was entitled in the ordinary course as a BOA client, but which
13 BOA had so far denied him. In addition, the letter requested the opportunity to interview a number
14 of current BOA employees, including BOCK, Liebman and Del Campo, to complete the
15 investigation.

16 24. BOA ignored the October 2012 letter and counsel's requests for documents and the
17 opportunity to interview witnesses for almost a year. In September 2013, therefore, Mr. Freeney's
18 counsel wrote a second letter to BOA. This letter was 86 pages in length and detailed BOA's
19 knowing participation in the scheme to defraud Mr. Freeney and documented his losses from the
20 scheme. It was accompanied by more than 2,000 pages of supporting documentation, including
21 many of the records, reports and witness statements produced to Mr. Freeney in the Weinberg and
22 Stern criminal cases.

23 25. BOA never responded to this second letter in writing; never provided the documents
24 Mr. Freeney, his accountants and his attorneys had repeatedly requested; and never made any
25 employees available for interview. Nor did BOA conduct an internal investigation of the conduct of
26 its employees or Mr. Freeney's grievances, as any responsible corporation would have done under
27 the circumstances. Instead, it sought to minimize its liability for the actions of its employees,
28 engaging in a corporate cover up that included, among other things:

1 (a) Failing to accept any degree of responsibility for Weinberg’s criminal
2 activities or publicly renounce her conduct;

3 (b) Not investigating or renouncing the conduct of any of its current employees,
4 including BOCK, Liebman and Del Campo;

5 (c) Not terminating or taking any disciplinary action against any of its current
6 employees, including BOCK, Liebman and Del Campo;

7 (d) Not investigating the transactions at issue;

8 (e) Not self-reporting to its regulators, including the Office of the Comptroller of
9 Currency and the U.S. State Securities and Exchange Commission, as required by law;

10 (f) Not filing any Suspicious Activity Reports with the U.S. Treasury
11 Department, as required by law;

12 (g) Remaining altogether silent in the criminal proceedings against
13 Weinberg and Stern and doing virtually nothing to assist the FBI, USAO, or Mr. Freeney
14 in those proceedings;

15 (h) Retaining the benefits it had received from the scheme, including
16 fees and commissions;

17 (i) Not returning, and never offering to return, any of the funds Weinberg had
18 embezzled from one of Mr. Freeney’s BOA accounts;

19 (j) Not restoring, and never offering to restore, any of the trading losses
20 Mr. Freeney sustained or commissions BOCK had received from BOA’s unauthorized purchase and
21 sale of securities using Mr. Freeney’s funds;

22 (k) Ignoring requests from Mr. Freeney’s attorneys and accountants for copies of
23 records to which Mr. Freeney was entitled as a BOA client;

24 (l) Ignoring requests from Mr. Freeney personally for copies of such records;

25 (m) Filing false reports exonerating itself with the Financial Industry Regulatory
26 Authority (“FINRA”); and

27 (n) Withholding and failing to produce documents to the FBI and USAO in
28 response to a federal grand jury subpoena.

II. THE PARTIES

26. Plaintiff Dwight J. Freeney is a resident of San Diego County, California.

27. Plaintiff Roof Group LLC (“Roof Group”) is a limited liability company organized and existing under the laws of the State of California with its principal place of business located in Torrance, California.

28. Defendant Bank of America Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Charlotte, North Carolina. Defendant Bank of America, National Association is a federally chartered national banking association headquartered in Charlotte, North Carolina, which is, and at all relevant times was, an indirect, wholly-owned subsidiary of Bank of America Corporation. Unless otherwise, indicated in this Complaint, references to “BOA” are to Bank of America Corporation and Bank of America, National Association.

29. Defendant Michael J. Bock (“BOCK”) is a resident of the State of Florida.

30. Plaintiffs are ignorant of the true names and capacities of the defendants sued as DOES 1 through 20, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained.

31. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times each Defendant was acting as the other’s agent, partner, joint-venturer, co-conspirator and/or co-schemer, and, in committing the wrongful acts and omissions described in this Complaint, were acting within the course and scope of that agency, partnership, joint venture, conspiracy and scheme.

32. Plaintiffs are further informed and believe, and on that basis allege, that at all relevant times Defendants caused, aided, abetted, facilitated, encouraged, authorized, permitted and/or ratified the wrongful acts and omissions described in this Complaint.

III. JURISDICTION AND VENUE.

33. This Court has subject matter jurisdiction over this matter pursuant to California Constitution, Article VI, section 10, in that the amount in controversy exceeds the jurisdictional requirement of this Court.

34. This Court has personal jurisdiction over BOA in this action pursuant to California

1 Code of Civil Procedure section 410.10, in that BOA has offices and branches and does substantial
2 business within the State of California.

3 35. This Court has personal jurisdiction over BOCK in this action pursuant to California
4 Code of Civil Procedure section 410.10, in that he purposefully directed his activities toward,
5 consummated transactions within and/or purposefully availed himself of the privilege of conducting
6 business in the State of California; Plaintiffs' claims against him are related to those activities,
7 transactions and business; and the exercise of personal jurisdiction over him is reasonable and
8 comports with traditional notions of fair play and substantial justice.

9 36. Venue for this matter properly lies within the County of Los Angeles, pursuant to
10 California Code of Civil Procedure sections 395 and 395.5, in that Defendants' liability arises and
11 the injury to Plaintiffs occurred, in whole or in part, in the County of Los Angeles.

12 IV. GENERAL ALLEGATIONS.

13 A. Background

14 1. *Dwight Freeney.*

15 37. Mr. Freeney is an accomplished and highly respected professional athlete. He played
16 college football for Syracuse University, where he was an All-American defensive end. He entered
17 the NFL in 2002 as the Indianapolis Colts' first-round draft pick and played defense for the Colts for
18 eleven seasons. For the last two seasons, he has played for the San Diego Chargers.

19 38. In 2007, Mr. Freeney entered into a six-year contract with the Colts, which, at the
20 time, was one of the largest contracts for a defensive player in NFL history. When Mr. Freeney
21 became a BOA client in February 2010, he still had three years remaining on this contract, which
22 guaranteed him, before taxes, \$8,825,000 for the 2010 season, \$11,420,000 for the 2011 season, and
23 \$14,035,000 for the 2012 season, for a total of \$34,280,000. As is typical with NFL contracts,
24 Mr. Freeney was paid his entire annual salary over the course of the 17 week regular season,
25 between roughly the beginning of September and the first week of the following January.

26 39. When Mr. Freeney became a BOA client in February 2010, he was 29-years-old and
27 had no expertise in financial matters and very limited investment experience. Moreover, during the
28 17-week regular season when Mr. Freeney received his entire annual salary, and in the two months

1 leading up to the start of the season, his time and attention was devoted exclusively to football. As a
2 result, like most professional athletes, he relied upon professional financial managers and investment
3 advisors to manage his assets and income, pay his bills, prepare and file his tax returns and
4 recommend and manage his investments.

5 40. Before becoming a BOA client, Mr. Freeney had a number of bad experiences with
6 prior financial managers and investment advisors, which gave him reason to doubt their honesty and
7 the wisdom of some of the investments they had made on his behalf. As a result, in 2009,
8 Mr. Freeney began searching for a new financial manager/investment advisor. Because of these past
9 problems, Mr. Freeney focused his search on large, well-established financial institutions, having
10 decided not to entrust his financial affairs and future to another small firm that purported to cater to
11 professional athletes.

12 **2. Roof Group and RSLA.**

13 41. Roof Group is a California limited liability company that owned and operated the
14 now-closed RSLA in Hollywood.

15 42. Roof Group was founded in 2009 by two hospitality industry entrepreneurs,
16 Joe Altounian (“Altounian”) and Niall Donnelly (“Donnelly”). In or about September 2009,
17 Roof Group entered into a licensing agreement with *Rolling Stone* Magazine, which granted it the
18 right to construct and operate a *Rolling Stone*-themed restaurant in Los Angeles and an option to do
19 the same in New York and other cities. It also entered into a lease with the real estate company
20 CIM for a 10,400 square foot space in the Hollywood and Highland complex in which to build out
21 the restaurant.

22 43. The build out of RSLA began in late 2009. The general contractor for the build out
23 was Brodin Design. The restaurant opened briefly in November 2010 to host the American Music
24 Awards after-party, and then opened to the public in February 2011.

25 44. Mr. Freeney became a member of Roof Group in or about September 2009, acquiring
26 a 20 percent ownership interest in return for investing approximately \$1.5 million, which was
27 supposed to fund the beginning of the build out of RSLA. At BOA’s urging, he increased his
28 ownership interest to 51 percent, becoming the managing member in May 2010 by committing to

1 invest at least an additional \$1.6 million. Thereafter, also at BOA's urging, he increased his
2 ownership interest to 100 percent, completing the purchases of Altounian and Donnelly's shares in
3 Roof Group in January 2012 for approximately \$1.1 million.

4 45. Mr. Freeney, through Roof Group, invested approximately \$4.2 million of his own
5 money in RSLA in 2010, most of which was intended to pay for completion of the build out, and an
6 additional approximately \$3.7 million in 2011, most of which was intended to fund operating
7 deficits (which, as is now known, were largely caused by Weinberg and Stern's misappropriation
8 of funds in a Roof Group BOA account belonging to Mr. Freeney).

9 46. After the scheme to defraud began to unravel in or about December 2011,
10 Mr. Freeney infused another approximately \$3.4 million of his own money into RSLA in an effort to
11 undo the harm caused by the scheme and to keep the restaurant open. Ultimately, those efforts
12 proved unavailing. Although Roof Group was able to avert bankruptcy, the damage to Mr. Freeney
13 and RSLA financially was too great, and the restaurant was forced to close in February 2013.

14 47. RSLA was more than a financial investment for Mr. Freeney. The opportunity to
15 own and operate a series of theme restaurants associated with the music industry appealed to his
16 desire to own his own business and to promote young, undiscovered music talent. As a result, the
17 collapse of RSLA because of the criminal actions of BOA, a seemingly well-heeled banking
18 institution to which Mr. Freeney had entrusted his financial future, was devastating to him, not only
19 financially, but also emotionally.

20 3. **BOA.**

21 48. BOA is the second largest bank in the nation. It is headquartered in Charlotte,
22 North Carolina, but has offices and branches throughout California.

23 49. In or about January 2009, BOA purchased Merrill Lynch & Co. ("ML") for
24 \$50 billion, and ML was merged into BOA. Prior to this purchase and merger, ML was the third
25 largest investment bank in the nation and operated the nation's largest retail brokerage. Plaintiffs are
26 informed and believe, and on that basis allege, that as a result of the purchase and merger, ML's
27 employees, including its stock brokers and investment advisors, became BOA employees.

28 50. At all relevant times, BOA consisted of five divisions, one of which was its

1 wealth management division. Named “Global Wealth & Investment Management” (“GWIM”),
2 this division provides a full range of financial services to a clientele of high net-worth individuals.

3 51. According to BOA’s promotional materials, GWIM “is the leading provider of
4 comprehensive wealth management and investment services for individuals and businesses” and is
5 “among the largest businesses of its kind in the world.” As a result, BOA claims, GWIM’s financial
6 advisors can provide “tailored solutions to ultra affluent clients, offering both the intimacy of a
7 boutique and the resources of a premier global financial services company,” including “experts in
8 areas such as investment management, concentrated stock management and intergenerational wealth
9 transfer strategies.”

10 52. In recent years, BOA has been a defendant in many high-profile, multi-billion
11 dollar lawsuits, accusing it of having defrauded its clients and customers, including: (a) a record
12 *\$16.7 billion* settlement in August 2014, with the U.S. Department of Justice, to resolve claims that
13 BOA had misled buyers of mortgage-backed securities about the quality of the underlying loans;
14 (b) a *\$2.4 billion* settlement in September 2012, in a securities class-action brought by investors
15 alleging that BOA had misled them relating to its acquisition of ML; and (c) a *\$11.8 billion*
16 settlement in February 2012, in a case brought by 50 state attorney generals challenging BOA’s
17 consumer mortgage practices.

18 53. BOA has also been the subject, in recent years, of a number of enforcement actions
19 by the Federal Industry Regulatory Authority (“FINRA”), a non-government organization that
20 regulates brokerage firms, stock brokers and investment advisors, for failing to supervise and file
21 reports, including: (a) a \$6.0 million fine in October 2014, for failing to establish and enforce
22 supervisory systems for short-selling by its brokers; (b) a \$1.0 million fine in April 2013, for failing
23 to have an adequate supervisory system in place for transactions by its brokers involving non-
24 convertible preferred securities; and (c) a \$500,000 fine in September 2012, for widespread failures
25 between 2005 and 2011 for failing to make filings with FINRA disclosing customer complaints,
26 arbitration claims and broker registrations and terminations.

27 54. In short, Mr. Freeney is not alone: his case is but one of many in which a BOA client
28 trusted his financial future to what he believed was a safe, sound and well-established financial

1 institution, only to have it stolen from him by the very BOA bankers and advisors who were
2 responsible for protecting him.

3 **4. Michael Stern (aka Michael Millar, David Michael Millar).**

4 55. Plaintiffs are informed and believe, and on that basis allege, that Stern grew up in the
5 Miami area, never completed high school, holds no professional licenses and has no formal training
6 in any professional field.

7 56. In the early 2000s, Stern became involved in the construction industry, and then in
8 both residential and commercial real estate development. Between 2003 and 2006, he acquired
9 controlling ownership interests in a number of properties in the Miami and Miami Beach areas.
10 He acquired these interests principally using funds borrowed from banks, mortgage lenders and
11 investors using the properties as security. As later revealed in litigation, in many instances, he
12 obtained this financing by fraud, including the forging and falsifying of title, loan and corporate
13 documents.

14 57. In 2004, Stern was caught paying thousands of dollars in bribes to Miami Beach city
15 officials to obtain demolition and construction permits for properties he was developing. As later
16 publicly reported, in 2003 and 2004, Stern made at least \$110,000 in secret cash payments to three
17 city planning officials. He admitted to bribing the city officials, but received immunity from
18 prosecution by cooperating with the State Attorney's Office and the Florida Department of
19 Law Enforcement. Stern's bribery and work as a government informer were publicly revealed in
20 2008, including in March 2008 articles in the *Miami Herald* and *SunPost*. Three Miami Beach city
21 officials later pleaded guilty to bribery and racketeering charges for accepting illegal payments
22 from Stern, which was reported by the *Miami Herald*. A February 2010 article, for example,
23 highlighted that:

24 Before his 2008 arrest, [Andres] Villarreal accepted more than \$100,000
25 from developer Michael Stern, who sought Villarreal's approval of plans to
26 demolish a historic coral rock house at 900 Collins Ave. to make way for an
office building, prosecutors say.

27 Stern cooperated in the investigation, wearing a wire to gather evidence
28 against Villarreal. In one taped conversation, the pair discussed using fake
receipts or phony loan documents to conceal the payoffs.

1 58. In 2008, Stern began “flipping mortgages” to keep current with his ever increasing
2 loan payment obligations on the properties he had fraudulently acquired. As part of this scheme, he
3 obtained millions of dollars in new mortgages and loans by pledging already over-encumbered
4 properties as security, fraudulently diverting the loan proceeds to himself, and then using a portion
5 of those proceeds to make payments on earlier obtained mortgages and loans. In furtherance of this
6 scheme, he issued hundreds of thousands of dollars in worthless checks, forged documents, made
7 misrepresentations to lenders and investors, and misapplied loan proceeds to himself and his
8 co-schemers.

9 59. This scheme began to unravel in late 2008, when Stern was unable to keep current on
10 some of his payment obligations, resulting in a cascade of foreclosure actions and lawsuits. As
11 reported in a September 2008 *Miami Herald* article:

12 In recent years, Stern has become one of Miami Beach’s most prolific
13 real-estate investors, buying and redeveloping several apartments, condos and a
14 hotel – sometimes by himself, sometimes with partners.

15 His portfolio rests on a stack of three dozen loans totaling nearly
16 \$52 million, county records show. Stern mortgaged his Collins Avenue office
17 condo four times in a 12-day span last May, and he used a liquor license as
18 collateral for a \$225,000 loan, now in default, according to one lawsuit.

19 60. Those who were defrauded by Stern and filed legal actions against him included not
20 only individual investors and small mortgage lenders, but also large financial institutions, such as
21 Citibank, Colonial Bank, Countrywide Home, HSBC Bank, Ocean Bank and U.S. Bank.

22 61. In 2008, ten civil actions were filed against Stern in the Miami-Dade County Circuit
23 Court. In 2009, 25 more lawsuits followed. These lawsuits produced overwhelming evidence of
24 Stern’s fraudulent practices, including, in particular, his issuance of worthless checks; forgery of
25 title, loan and corporate records; falsification of closing documents; and theft of loan proceeds.

26 62. College Health II GP Inc. (“College Health”) and Esther Burstyn-Spero filed a civil
27 action against Stern in March 2008, for his failure to repay \$4.0 million in loans and forging
28 Burstyn-Spero’s signatures on two loan forgiveness documents in 2006 and 2007 (the “*College
Health Case*”). Stern signed a settlement agreement in that case in January 2009, agreeing to repay

1 College Health more than \$6.0 million.

2 63. In the course of the settlement negotiations, Stern admitted to forging
3 Burstyn-Spero's signature on the loan forgiveness documents. This admission was made in the
4 presence of Burstyn-Spero's counsel and Stern's lawyer. In a publicly-filed declaration,
5 Burstyn-Spero's attorney, current Miami-Dade Circuit Court Judge Miguel de la O, attested that
6 "Mr. Stern admitted to me, in the presence of his counsel, that the Subordination Agreement . . . and
7 the Partial Release of Mortgage . . . were not signed by Esther Burstyn Spero," and he further
8 "admitted to me, in the presence of his counsel, that he forged Ms. Spero's name on both documents
9 and filed the documents with the forged signatures."

10 64. In October 2008, Colonial Bank filed a civil action against Stern for failing to repay
11 \$17.8 million in loans that the bank had made to him in 2005 and 2006 (the "*Colonial Bank Case*").
12 In November and December 2008, based on evidence that Stern was wasting and mismanaging
13 corporate assets, the court appointed a receiver over two of his businesses that had been named as
14 defendants, 750 Jefferson Avenue LLC ("750 Jefferson"), which owned apartment buildings in
15 Miami Beach that Stern was attempting to convert into condominiums, and South Beach Atrium,
16 Inc., which owned a three-story commercial complex in Miami Beach that included shops, offices
17 and a nightclub.

18 65. Ivor Rose and Rita Starr ("the Roses"), an elderly Florida couple, were named as
19 co-defendants in the *Colonial Bank Case*. To obtain the \$17.8 million in loans from Colonial Bank,
20 Stern had provided the bank with guarantees purportedly signed by the Roses that pledged many of
21 their properties as security for their guarantees. As was later revealed in litigation, the Roses'
22 signatures on the guarantees had either been forged or fraudulently obtained by Stern.

23 66. In February 2009, Stern and his wife at the time, Layne Harris Stern, filed for
24 personal bankruptcy protection in the Southern District of Florida. In March 2009, Stern placed his
25 real estate holding company, 750 Jefferson, into bankruptcy. In April 2009, he placed another of his
26 companies, Beach Hotel, Inc. ("Beach Hotel"), which owned the Beach Place Hotel in Miami Beach,
27 into bankruptcy.

28 67. In his financial disclosures to the Bankruptcy Court, Stern declared liabilities totaling

1 \$67.1 million and assets totaling *negative* \$2.4 million; that his bank balances totaled *negative*
2 \$22,697; and that he was a defendant in 19 pending civil suits. More than 220 creditors filed claims
3 in Stern's personal bankruptcy alone. The bankruptcies were publicized in the *Miami Herald*, in
4 articles appearing in 2009, 2010 and 2011.

5 68. As the U.S. Trustee would subsequently detail in a publicly filed 27-page pleading,
6 Stern engaged in numerous instances of bankruptcy fraud during the course of his bankruptcy
7 proceedings, including:

8 (a) Disobeying a court order to provide an accounting or the ledger for the
9 so-called "Stern Master Account," through which millions of dollars in proceeds from Stern's
10 businesses passed without being accounted for;

11 (b) Violating numerous court orders requiring the production of documents to the
12 bankruptcy trustee and U.S. Trustee;

13 (c) Not disclosing his ownership of a yacht brokerage in his
14 bankruptcy schedules;

15 (d) Giving false testimony about pawning his wife's jewelry;

16 (e) Giving inconsistent testimony concerning two unsecured and undocumented
17 loans that he had received, one for \$6.5 million and the other for \$1.6 million;

18 (f) Concealing bank account and financial information relating to the
19 Beach Place Hotel;

20 (g) Submitting forged and falsified Certificates of Insurance for the
21 Beach Place Hotel; and

22 (h) Not disclosing transfers to third parties totaling more than \$1.0 million
23 just prior to filing for bankruptcy.

24 69. In May 2009, the receiver for 750 Jefferson in the *Colonial Bank* Case filed for a
25 restraining order against Stern, alleging that Stern had threatened him outside court.

26 70. With his legal problems mounting and creditors and litigants demanding documents
27 and testimony about the state of his financial affairs, Stern fled to Uruguay in May 2009, where he
28 lived with his stepson for several months. Plaintiffs are informed and believe, and on that basis

1 allege, that Stern left the country to evade process and avoid being further examined under oath
2 concerning his real estate dealings and personal finances.

3 71. In or about August 2009, with Stern in Uruguay, Bankruptcy Judge Robert Mark
4 issued an Order of Contempt against him. In his publicly reported order, Judge Mark found that:

5 Mr. Stern has willfully refused to cooperate in the administration of this
6 bankruptcy case which he voluntarily filed and he has willfully, without just
7 cause, failed to comply with several Orders of this Court, including, in particular,
8 the August 7th Order. Mr. Stern's personal interest in the welfare of his stepson
9 in South America, and his most recent claim of a medical problem preventing his
10 return, do not justify his several month absence from the jurisdiction which has
11 caused significant delay in the administration of this case and substantial fees and
12 costs to the Trustee and to creditors.

13 72. Stern's conduct in the bankruptcy proceedings and the allegations of having
14 defrauded investors and lenders were publicized in an August 2009 *Miami Herald* article:

15 Developer Michael Stern – the chief witness in a Miami Beach City Hall
16 bribery probe – has repeatedly refused to return from Uruguay for hearings in his
17 bankruptcy case, prompting a judge to threaten him with arrest.

18 * * *

19 Stern is the owner or co-owner of more than a dozen Miami Beach
20 properties, including the Beach Place Hotel and the coral rock house. But he's
21 been pummeled by a series of foreclosure suits and other claims from lenders,
22 forcing Stern and his wife to seek bankruptcy protection in February.

23 * * *

24 His debts include \$6 million Stern owes to a Miami Beach woman, Esther
25 Burstyn Spero, who filed a lawsuit last year accusing Stern of duping her into
26 real-estate deals with phony mortgages and forged records. Stern agreed to settle
27 the suit without admitting wrongdoing.

28 * * *

Stern's former business partners, Ivor Rose and Rita Starr, have also
accused Stern of fraud, saying Stern secretly arranged a \$4.2 million mortgage on
a Collins Avenue building the three owned together. In court papers, Rose and
Starr said they never received any money from the loan and said their signatures
were forged on loan documents.

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1 73. In December 2009, Stern failed to appear for scheduled depositions and hearings in
2 the *Colonial Bank* Case, instead remaining in Uruguay. In response, the judge in that case found
3 Stern in contempt, ordered him to appear before the Court and issued a Writ of Bodily Attachment,
4 directing the Sheriff of Miami-Dade County to arrest him. (Stern was arrested pursuant to this writ
5 in March 2010. He was released on a \$100,000 surety bond, but was ordered not to leave Miami-
6 Dade County.)

7 74. The *South Florida Business Journal* interviewed Stern and published an article about
8 him in January 2010, just before BOA introduced him to Mr. Freeney as “Michael Millar.” The
9 article detailed his bankruptcies and legal problems, including the issuance of the writ of bodily
10 attachment and the allegations of fraud against him. (The *South Florida Business Journal* did two
11 follow-up articles about Stern’s bankruptcies and legal problems in 2011.)

12 **5. Michael Bock and Eva Weinberg.**

13 75. BOCK has been a stock broker and investment advisor for more than 30 years. He
14 began his career with E.F. Hutton & Company in 1984. He then worked for Lehman Brothers
15 from 1988 to 1994; Prudential from 1994 to 1999; Morgan Stanley from 1999 to 2004; and
16 Smith Barney/Citigroup from 2004 to 2009. BOCK holds Series 3, 7, 63 and 65 licenses,
17 which allow him to buy and sell securities on behalf of his client and give them financial advice.

18 76. Weinberg graduated from Boston University with a degree in finance in 1984. She
19 then attended Hofstra Law School, from which she graduated in 1987, but never practiced law.
20 Weinberg worked for Lehman Brothers in New York as a “money manager” from 1987 to 1995.
21 After moving to South Florida, she worked for Prudential Securities from 1995 to 2000, and for
22 Morgan Stanley from 2000 until 2005. In 2005, Weinberg stopped working in the financial services
23 industry and allowed all of her securities licenses lapse.

24 77. BOCK married Weinberg for the first time in 1998. They divorced in 2006, then
25 remarried later that year. BOCK and Weinberg divorced a second time in or about June 2009.

26 78. BOCK and Weinberg’s relationship with Stern dates back to 2004, when they hired
27 him to build a house for them in Boca Raton. Between in or about July 2004 and February 2009,
28 Weinberg worked for Stern Development, one of Stern’s real estate companies.

1 79. In 2008, BOCK, Weinberg and Weinberg's brother loaned Stern \$350,000, which
2 was secured by a promissory note. The loan was to enable Stern to make payments that were due
3 under the College Health settlement agreement. At Weinberg's urging, her father, mother and
4 brother-in-law also loaned Stern several hundred thousand dollars. In total, BOCK, Weinberg and
5 the Weinberg family loaned Stern approximately \$1.0 million. Plaintiffs are informed and believe,
6 and on that basis allege, that Stern never repaid these loans. Stern later listed BOCK as a creditor in
7 the Beach Hotel bankruptcy in the amount of \$500,000.

8 80. In 2008, BOCK and Weinberg assisted Stern in finding investors for his distressed
9 properties. Among other things, they introduced Stern to two New Jersey investors from whom
10 Stern unsuccessfully sought \$2.25 million in financing in or about October 2008.

11 81. In December 2008, Weinberg began meeting with Ahron Farache, who had
12 previously loaned Stern \$410,000 that he had not repaid. Weinberg met with Farache in an attempt
13 to obtain additional financing for Stern. Weinberg offered to personally guarantee Stern's debt and
14 falsely told Farache that she would be receiving a \$2.0 million signing bonus from a new job.

15 82. Plaintiffs are informed and believe, and on that basis allege, that in or about
16 January 2009, Weinberg and Stern became romantically involved. They were both married at the
17 time, Weinberg to BOCK and Stern to Layne Harris Stern.

18 83. In addition to the loans to Stern, BOCK and Weinberg paid for the caterer at the
19 bar mitzvah of Stern's son in January 2009. When Stern flew to Uruguay following his son's bar
20 mitzvah, Weinberg flew there and stayed with him for two days, purportedly because she and her
21 mother were concerned that Stern was "suicidal." While in Uruguay, Weinberg gave Stern \$1,500.

22 84. With Stern in Uruguay, Weinberg took over management of the Beach Place Hotel,
23 together with Stern's business associate Lester Jaggernauth. Weinberg opened a new bank account
24 to receive the hotel's revenue because its existing accounts had tax liens against them for Stern's
25 failure to pay more than \$63,000 in "resort taxes" to the City of Miami Beach. The U.S. Trustee
26 later reported to the Bankruptcy Court that neither that account nor the deposits to it had been
27 disclosed in the Beach Hotel's bankruptcy schedules and statements.

28 85. In February 2009, Weinberg gave two post-dated checks, each in the amount of

1 \$200,000, to Farache and his wife Monika (“the Faraches”) to guarantee Stern’s debt and forestall
2 them from initiating a collection action against him, which could have exposed his fraudulent real
3 estate dealings. When the Faraches deposited these checks in June 2009, after Stern again failed to
4 repay his debt, they were advised by the bank that the checks had been dishonored because
5 Weinberg had previously closed the bank account upon which they had been drawn. In
6 August 2009, the Faraches filed a suit against Weinberg for passing worthless checks and breach of
7 an oral contract of guarantee, seeking damages in excess of \$1.6 million.

8 86. During 2009, BOCK and Weinberg sought to assist Stern in the *Colonial Bank* Case
9 by pressuring Esther Burstyn-Spero to recant her testimony that Stern had forged her signature on
10 the two loan forgiveness documents. Both BOCK and Weinberg later testified in the *Colonial Bank*
11 Case that they had contacted Burstyn-Spero and her husband, both of whom they knew socially, to
12 urge her to change her testimony.

13 87. Plaintiffs are informed and believe, and on that basis allege, that in or about
14 April 2009, BOCK and Weinberg joined the ML Coral Gables office, becoming employees of BOA.
15 Plaintiffs are further informed and believe, and on that basis allege, that Matthew Liebman was the
16 ML Branch Manager and supervised BOCK and Weinberg.

17 88. BOCK’s titles at the time were Senior Vice President-Wealth Management and
18 Senior Financial Advisor, positions that he still holds with BOA. BOCK was Weinberg’s supervisor
19 and the head of a GWIM financial advisory team that included himself; David Sugarman
20 (“Sugarman”), an Assistant Vice President and Financial Advisor; and Weinberg, who described
21 herself to clients as an “Investment Advisor,” but whose actual title was Investment Associate,
22 which reflected the fact that she lacked the licenses necessary to give investment advice to clients.

23 89. During 2009, BOCK and Weinberg made payments to Stern’s bankruptcy and civil
24 lawyers totaling more than \$25,000.

25 90. Between in or about March and June 2009, Weinberg leased an apartment in the
26 affluent Miami enclave of Fisher Island, moving out of the house she had been living in with BOCK.
27 While living on Fisher Island, she arranged for meetings between Stern and potential purchasers of
28 his distressed real estate holdings.

1 91. In November 2009, Weinberg was deposed in the *Colonial Bank* Case, during which
2 she acknowledged that she, BOCK and her family had loaned Stern nearly \$1.0 million. She also
3 admitted knowledge of Stern's legal problems and bankruptcies.

4 92. In December 2009, BOCK was deposed in the *Colonial Bank* Case, during which he
5 acknowledged that he and Weinberg had loaned Stern money and had attempted to find investors for
6 his real estate holdings. BOCK further stated that he knew that Stern had filed for bankruptcy and
7 had listed BOCK as a creditor.

8 93. Plaintiffs are informed and believe, and on that basis allege, that in or about
9 January 2010, BOCK, Liebman, Sugarman and Weinberg were transferred from the ML office in
10 Coral Gables to the BOA branch in Miami Beach on Brickell Avenue (the "Brickell Avenue
11 Branch").

12 94. As financial advisors, under federal, California and Florida law, BOCK, Liebman and
13 Weinberg owed fiduciary duties to their clients, including: (a) the duty of undivided loyalty; (b) the
14 duty to exercise due care; (c) the duty to make full disclosure; and (d) the duty to maintain client
15 confidences.

16 **6. Weinberg's Brother.**

17 95. Weinberg's brother is a New Jersey resident. He obtained a license to sell life
18 insurance in New Jersey in May 2010, shortly after Mr. Freeney became a BOA client. He obtained
19 a license to sell life insurance in Indiana in June 2010, just so he could receive the commissions from
20 the sale of \$55 million in life insurance to Mr. Freeney. (He thereafter allowed that license to lapse
21 in June 2012.)

22 96. As an insurance advisor, under New Jersey and Indiana law, Weinberg's brother
23 owed fiduciary duties to his clients, including: (a) the duty of undivided loyalty; (b) the duty to
24 disclose all material information concerning the suitability, terms, costs and benefits of the insurance
25 products he was recommending; (c) the duty to provide competent services and advice; and (d) the
26 duty to keep his clients informed of the status of their investments.

27 **7. The Florida Attorney and the Florida Law Firm.**

28 97. At all relevant times, the Florida attorney (the "Florida Attorney") was licensed to

1 practice law in the State of Florida and only in Florida. The Florida law firm (the “Florida Law
2 Firm”), of which he is a partner, is located in Miami.

3 98. The Florida Attorney represented Stern in over 20 civil actions between 2000 and
4 2012. He also represented Weinberg in two civil cases, both of which arose from her relationship
5 with Stern. As a result of his prior representation of Stern in those cases, as well as press reports and
6 other publicly available information about Stern, the Florida Attorney was well aware of Stern’s
7 habitual dishonesty and fraudulent business practices, including his proclivity to lie, issue bad
8 checks, forge others’ signatures, falsify documents and misappropriate investor funds and mortgage
9 proceeds.

10 99. In or about July 2009, the Florida Attorney and the Florida Law Firm both filed
11 claims in Stern’s personal bankruptcy for \$100,000 for unpaid legal fees.

12 100. As an attorney licensed to practice law in the State of Florida, the Florida Attorney
13 was obligated to obey the Florida Rules of Professional Conduct (the “Florida Rules”), which
14 required him to, among other things: (a) disclose material information (Florida Rule 4-1.4); (b) act
15 with care, competence and diligence (Florida Rules 4-1.1 and 4-1.3); (c) communicate with his
16 clients with candor (Florida Rule 4-2.1); and (d) act with loyalty (Florida Rule 4-1.7).

17 101. Plaintiffs are informed and believe, and on that basis allege, that in his representation
18 of Mr. Freeney and Roof Group (described further below), the Florida Attorney was also engaged in
19 the practice of law in California, but without a license, which is a violation of California Business
20 and Professions Code section 6125 and a criminal offense. By practicing law in California, the
21 Florida Attorney and the Florida Law Firm became subject to the ethical rules governing all
22 California lawyers. Those rules are set forth in the California Rules of Professional Conduct
23 (the “California Rules”), and include: (a) the duty to disclose material information (California
24 Rule 3-500); (b) the duty to act with care, competence and diligence (California Rule 3-110(A) and
25 (B)); (c) the duty to communicate with candor (California Rule 5-200); and (d) the duty to act with
26 loyalty (California Rule 3-310(A) and (B)).

27 **B. BOA Recruits Mr. Freeney as a Client.**

28 102. The scheme to defraud Mr. Freeney originated in or about January 2010, when

1 BOCK's team recruited him to become a BOA client. Previously, Sugarman had recruited
2 Mr. Freeney for close to a year to become a BOA client.

3 103. In the course of recruiting Mr. Freeney to become a BOA client, BOA, BOCK and
4 Weinberg made and caused others to make the following false and misleading representations and
5 false promises, among others, to Mr. Freeney, directly and through his friends and associates,
6 including Aaron West:

7 (a) BOCK's team had the qualifications, expertise and experience to competently
8 manage Mr. Freeney's assets, investments and income, when, in fact, they were not true financial
9 managers or planners and their expertise and experience involved principally the purchase and sale
10 of conventional investments, such as publicly traded securities;

11 (b) BOCK's team could and would assist Mr. Freeney in finding new investors or
12 obtaining loan financing for RSLA, when, in fact, they had no such ability or intent;

13 (c) BOCK's team could and would assist Mr. Freeney in disposing of
14 non-performing or otherwise inappropriate investments, such as undeveloped land he owned in
15 North Carolina and investments he had made in two unlisted companies in return for unsecured,
16 interest bearing promissory notes, when, in fact, they had no such ability or intent; and

17 (d) BOCK's team could and would assist Mr. Freeney in obtaining return of a
18 \$1.2 million deposit he had made toward the purchase of a condominium unit in the new W Hotel in
19 South Beach for investment purposes, when, in fact, they had no such ability or intent.

20 104. In the course of recruiting Mr. Freeney to become a BOA client, and continuing
21 throughout the course of the scheme to defraud, BOA, BOCK and Weinberg concealed and caused
22 others to conceal the following material facts, among others, from Mr. Freeney, his business
23 associates and his professional advisors:

24 (a) Weinberg was only a part-time BOA employee;

25 (b) Weinberg was not licensed to give investment advice to clients;

26 (c) Weinberg was unfit and not competent to manage Mr. Freeney's assets,
27 investments, or income;

28 (d) Weinberg had been twice married to and twice divorced from BOCK and they

1 had a tumultuous and at times acrimonious working relationship;

2 (e) Weinberg had a \$1.6 million judgment outstanding against her for having
3 issued \$400,000 in worthless checks to the Faraches to secure Stern's debt to them;

4 (f) The Faraches had served BOA with a petition to garnish Weinberg's
5 wages and savings;

6 (g) Weinberg's deposition testimony in the *Colonial Bank* Case revealed that she
7 had been assisting Stern in committing bankruptcy fraud, finding new victims and intimidating a
8 key witness;

9 (h) BOCK's team had no expertise or experience in the management or operation
10 of a restaurant;

11 (i) BOCK's team had no ability to in maintain the books and records or prepare
12 budgets or financial projections for a restaurant; and

13 (j) BOCK's team had no experience supervising the build-out, staffing, opening,
14 or operations of a restaurant.

15 105. If Mr. Freeney had been advised of the true facts concerning BOA, BOCK and
16 Weinberg at the time, he would never have agreed to become a BOA client or have entrusted
17 management of his assets, investments and income and his future financial security to BOA, BOCK,
18 or Weinberg.

19 **C. BOA Refers Mr. Freeney to "Michael Millar."**

20 106. In the course of recruiting Mr. Freeney, BOA and Weinberg introduced him to
21 "Michael Millar." Mr. Freeney was told that Millar was a wealthy and successful Miami Beach
22 businessman who did consulting work for BOA. He was also told that Millar might be interested in
23 investing in RSLA and could assist Mr. Freeney in disposing of his non-performing and
24 inappropriate existing investments.

25 107. In the course of recruiting Mr. Freeney to become a BOA client, BOA, BOCK and
26 Weinberg made and caused other to make the following false and misleading representations, among
27 others, to Mr. Freeney, directly and through his friends and associates, including Aaron West and
28 Jason Edmonds, concerning Stern:

1 (a) Stern's name was "David Michael Millar," when, in fact, it was
2 Michael Alan Stern;

3 (b) Millar was a wealthy businessman, when, in fact, Stern and his then wife had
4 filed for personal bankruptcy a year earlier with declared liabilities in excess of \$65 million and
5 assets valued at *negative* \$2.4 million;

6 (c) Millar was a successful Miami Beach real estate developer, when, in fact, all
7 of Stern's principal real estate holdings were over-encumbered and in receivership, bankruptcy, or
8 foreclosure;

9 (d) Millar had \$30 million on deposit at BOA, when, in fact, Stern's bankruptcy
10 schedules stated that his bank account balances totaled *negative* \$23,000;

11 (e) Millar was a real estate consultant for BOA, when, in fact, Stern was not and
12 never had been a consultant for BOA;

13 (f) Millar lived in the Bahamas, when, in fact, Stern lived in Miami Beach and
14 was under court order not to leave Miami-Dade County or face arrest;

15 (g) Millar owned a private jet, when, in fact, Stern was leasing a private aircraft
16 with funds misappropriated from Mr. Freeney;

17 (h) Millar was the grandson of pharmaceutical mogul Dr. Phillip Frost, the
18 Chairman of Teva Pharmaceuticals, when, in fact, Dr. Frost was one of Stern's victims, having lost
19 \$1.6 million investing in one of Stern's fraudulent real estate ventures;

20 (i) Millar intended to invest \$7.0 million in RSLA, when, in fact, Stern had
21 neither the means nor the intention to invest one penny in RSLA;

22 (j) Millar could assist in overseeing the build out, staffing and opening of RSLA,
23 when, in fact, Stern saw RSLA not as a viable investment, but as an opportunity to steal from Mr.
24 Freeney; and

25 (k) Millar was a man of his word who wanted nothing more than to show
26 Mr. Freeney how to become a successful business owner, when, in fact, Stern was a notorious
27 swindler and financial predator who was targeting Mr. Freeney as his next prey.

28 108. In the course of recruiting Mr. Freeney to become a BOA client, and throughout the

1 course of the scheme to defraud, BOA, BOCK and Weinberg concealed the following material facts,
2 among others, from Mr. Freeney, his business associates and his professional advisors concerning
3 Stern:

4 (a) Stern and his then wife had declared personal bankruptcy just a year prior to
5 Mr. Freeney becoming a BOA client, with reported debts exceeding \$65 million and assets of a
6 negative value;

7 (b) Stern's real estate assets were over-encumbered, in receivership, in
8 bankruptcy and/or the subject of foreclosure proceedings or other lawsuits;

9 (c) Stern had been found in contempt by the Bankruptcy Court for willfully
10 violating court orders requiring him to produce documents and appear to provide testimony;

11 (d) The U.S. Trustee was opposing Stern's discharge from bankruptcy on the
12 grounds that he had engaged in numerous instances of bankruptcy fraud;

13 (e) Stern was a defendant in more than 20 civil lawsuits brought by defrauded
14 partners, investors, mortgage lenders and financial institutions;

15 (f) Evidence introduced in those lawsuits established that Stern had forged
16 documents, falsified loan applications, misappropriated over \$20 million in loan proceeds, and
17 engaged in witness tampering and intimidation;

18 (g) A writ of bodily attachment had issued for Stern's arrest in one of the
19 Florida lawsuits;

20 (h) Stern had fled to Uruguay to evade process and avoid being deposed, and,
21 while there, cheated his stepson out of a large inheritance;

22 (i) Stern had previously been caught paying over \$100,000 in bribes to
23 Miami Beach city officials;

24 (j) The money Stern was using to lease and operate the private jet that he
25 purportedly owned had been misappropriated from Mr. Freeney's BOA accounts with Weinberg's
26 assistance;

27 (k) Stern had not paid any income taxes in years, notwithstanding having reported
28 in his bankruptcy schedules having earned \$500,000 in both 2007 and 2008.

1 (l) Stern had neither the intent nor the ability to invest any funds in RSLA or
2 attempt to attract other investors to do so; and

3 (m) Stern was addicted to the prescription drug Oxycodone.

4 109. In the course of recruiting Mr. Freeney to become a BOA client, BOA, BOCK and
5 Weinberg concealed and caused others to conceal the following material facts, among others, from
6 Mr. Freeney, his associates and his professional advisors concerning BOCK and Weinberg's
7 relationships with Stern:

8 (a) BOCK, Weinberg and the Weinberg family had loaned more than \$1.0 million
9 to Stern in the past;

10 (b) Stern had not repaid any of those loans;

11 (c) BOCK was listed as a creditor for \$500,000 in one of Stern's bankruptcies;

12 (d) Weinberg had previously worked for one of Stern's companies and managed
13 the Beach Place Hotel for Stern while he was in Uruguay;

14 (e) Both BOCK and Weinberg had previously attempted to find investors for
15 Stern's distressed real estate holdings;

16 (f) BOCK and Weinberg had paid Stern's attorneys in his bankruptcies and civil
17 litigation;

18 (g) BOCK and Weinberg had assisted Stern in the *Colonial Bank Case* by
19 pressuring Esther Burstyn-Spero to recant her testimony that Stern had forged her signature;

20 (h) Both BOCK and Weinberg had been deposed in the *Colonial Bank Case* in
21 which Stern was alleged to have committed fraud involving \$17.8 million in real estate loans;

22 (i) Weinberg had guaranteed Stern's debt to the Farache's by giving them
23 \$400,000 in bad checks; and

24 (j) Weinberg was romantically involved with Stern.

25 110. In addition, Stern (posing as Millar) made the following false and misleading
26 representations and false promises, among others, to Mr. Freeney, directly and through his friends
27 and associates, including Mr. West:

28 (a) His name was "Michael Millar" or "David Michael Millar";

1 (b) He was a wealthy and successful businessman who had made his money in
2 real estate development and the petroleum industry;

3 (c) He was sometimes asked to perform consulting services for BOA;

4 (d) His primary residence was in the Bahamas, but he also had a residence
5 in Florida;

6 (e) He owned a private jet and a yacht;

7 (f) He had the financial resources to invest in, and was interested in investing
8 in, RSLA; and

9 (g) He could and would recover Mr. Freeney's \$1.2 million deposit on the
10 W Hotel condominium unit.

11 111. If Mr. Freeney had been advised of the true facts concerning Stern and BOCK and
12 Weinberg's involvement with Stern, he would never have agreed to become a BOA client or have
13 entrusted management of his assets, investments and income and his future financial security to
14 BOA, BOCK, or Weinberg.

15 **D. Mr. Freeney Becomes a BOA Client and Transfers Management of**
16 **His Assets, Investments and Income to BOA.**

17 112. Mr. Freeney agreed to become a BOA client and transfer management of his assets,
18 investments, income and financial affairs to BOCK's team in or about February 2010. Although at
19 the time Weinberg was a part-time BOA employee who was not licensed to give investment advice,
20 with the approval of BOCK and Liebman, she quickly supplanted Sugarman as Mr. Freeney's
21 principal contact at the bank and became his private banker, financial manager and investment
22 advisor. As Sugarman later told the FBI:

- 23 • "[O]nce he introduced WEINBERG to FREENEY, she wanted to take
24 control of the relationship right away, even though FREENEY was not an
official client yet."
- 25 • "[T]he minute WEINBERG met FREENEY, she just took over."
- 26 • "WEINBERG treated FREENEY's account like her own baby.
27 WEINBERG even went as far as to tell SUGARMAN not to contact or
28 call FREENEY, saying that FREENEY was her guy. WEINBERG said
that she was going to handle all of FREENEY's bill pay, his portfolio,

1 money and the restaurant.”

2 113. Weinberg, as Mr. Freeney’s banker, oversaw the transfer of his assets and
3 investments from his prior financial manager and investment advisor to BOA. The assets,
4 investments and income sources that Mr. Freeney transferred to BOA’s control included:

5 (a) Approximately \$3.0 million in cash;

6 (b) A life insurance annuity worth a little over \$1.5 million;

7 (c) \$1,750,000 invested with CFP Group, Inc. (“CFP”), in the form of loans,
8 which was returning a little more than \$26,000 in monthly interest income;

9 (d) \$1,500,000 invested with Success Trade, Inc. (“Success Trade”), in the form
10 of loans, which was returning approximately \$15,600 in monthly interest income;

11 (e) \$500,000 invested in Advisors Disciplined municipal bonds, which was
12 returning slightly more than \$2,000 in monthly interest income, tax free;

13 (f) \$200,000 invested in an American Realty Capital Trust REIT, which was
14 returning approximately \$1,100 in monthly interest income, tax free;

15 (g) His investment and ownership interest in Roof Group and RSLA;

16 (h) A contract to purchase a condominium unit in the W Hotel pursuant to which
17 he had previously paid a \$1.2 million deposit (the “W Hotel Investment”);

18 (i) 8.5 acres of undeveloped land in Mecklenburg County, North Carolina, which
19 he had purchased for \$1,530,000 in or about December 2004 (the “North Carolina Land
20 Investment”);

21 (j) The three years remaining on his contract with the Colts, which guaranteed
22 him, before taxes, a total of \$34,280,000; and

23 (k) Income tax refunds due him for the 2009 tax year, which totaled over \$1.0
24 million.

25 114. All of these assets, investments and income came under the management and control
26 of BOCK’s team at the Brickell Avenue Branch.

27 115. As part of the management of Mr. Freeney’s assets, investments and income, BOA,
28 BOCK and Weinberg agreed that BOA would handle Mr. Freeney’s bill payments, including

1 payment of his credit card bills, insurance premiums, home mortgage, property taxes, home owners'
2 association dues, car payments, telephone bills and home utility bills.

3 116. BOA, BOCK and Weinberg also agreed that BOA would handle the preparation and
4 filing of Mr. Freeney's federal and state tax returns; provide periodic snapshots of his financial
5 condition; dispose of the North Carolina Land Investment; pursue the return of his deposit with the
6 W Hotel; and research and recommend new investment opportunities.

7 117. BOA, BOCK and Weinberg further agreed to manage his investment in Roof Group,
8 which included handling payments to Brodin Design and other vendors for the build out, the
9 preparation and filing of Roof Group's federal and state tax returns, and finding additional investors
10 and/or loan financing for RSLA so that Mr. Freeney would not be the sole source of funds.

11 118. As a result of BOA becoming Mr. Freeney's new financial manager, all of his bank
12 statements, credit card statements, bills and correspondence regarding his investments, including
13 RSLA, were forwarded to BOCK's team.

14 119. Based on their representations, promises and withholding of material information,
15 Mr. Freeney reposed his trust and confidence in BOA, BOCK and Weinberg to honestly, loyally,
16 competently and diligently do what they had represented and promised, including manage his assets,
17 investment and income; pay his bills; make investment recommendations; give financial advice; and
18 generally protect his financial interests and future. At all relevant times, BOA, BOCK and
19 Weinberg, and each of them, encouraged, assumed and voluntarily accepted such trust and
20 confidence, thereby creating a fiduciary relationship with Mr. Freeney.

21 120. At the urging of BOA, and in reliance upon BOA, BOCK, Weinberg and Stern's
22 misrepresentations, false promises and concealment of material facts, Mr. Freeney authorized Stern
23 (posing as Millar) to work with BOCK's team to, among other things:

- 24 (a) Negotiate the return of his \$1.5 million in loans to Success Trade;
- 25 (b) Negotiate the return of his \$1.75 million in loans to CFP;
- 26 (c) Negotiate the return of his \$1.2 million deposit with the W Hotel;
- 27 (d) Dispose of the North Carolina Land Investment;
- 28 (e) Increase his ownership interest in and control of Roof Group; and

1 (f) Oversee the build out, renegotiate the lease, obtain the liquor license
2 and hire new managers for RSLA.

3 121. Based on these representations, promises and undisclosed facts, Mr. Freeney reposed
4 his trust and confidence in Stern (posing as Millar) to honestly, loyally, competently and diligently
5 do what he had represented and promised. At all relevant times, Stern (posing as Millar)
6 encouraged, accepted and voluntarily assumed such trust and confidence, thereby creating a
7 fiduciary relationship with Mr. Freeney.

8 **E. The Creation of Arms Reach Consulting.**

9 122. A few days after being introduced to Mr. Freeney, Stern directed Jaggernaut to
10 incorporate Arms Reach Consulting LLC (“ARC”) in Delaware and open a business checking
11 account for ARC. As Jaggernaut later stated to the FBI:

- 12 • “[O]ne day, STERN told him that he was going to open a company, and
13 put in it JAGGERNAUTH’s name. JAGGERNAUTH said he didn’t feel
14 good about this at first and was unsure about this, but ultimately, STERN
opened Arm’s Reach Consulting in JAGGERNAUTH’s name.”
- 15 • “[H]e and STERN saw the name, Arm’s Reach Consulting (ARC) from
16 the back of a yacht owned by a VP of Coca Cola JAGGERNAUTH
said that he did not know what ARC did for sure”

17 123. Jaggernaut further stated to the FBI that “STERN told JAGGERNAUTH that he was
18 just using JAGGERNAUTH’s name to open the bank account because of STERN’s bankruptcy.
19 STERN said that he couldn’t have any bank accounts in STERN’s name because the bankruptcy
20 trustee had seized all of STERN’s other bank accounts, so he had to use JAGGERNAUTH’s name to
21 get around this.”

22 124. Plaintiffs are informed and believe, and on that basis allege, that on or about
23 February 18, 2010, BOCK and Weinberg paid an organization called the Incorporating Company
24 LLC to incorporate ARC in Delaware.

25 125. On or about that same day, Stern established two email accounts with Yahoo that he
26 could use to communicate with Mr. Freeney and his associates under the false name David Michael
27 Millar: davidmichaelmillar@yahoo.com and armsreachconsultingllc@yahoo.com.

28 126. On or about February 27, 2010, Jaggernaut opened a business checking account for

1 ARC at Wachovia Bank, which subsequently became a Wells Fargo Bank account when
2 Wells Fargo acquired Wachovia.

3 127. ARC was a sham: it had no assets, employees, clients, or legitimate
4 business operations.

5 128. Plaintiffs are informed and believe, and on that basis allege, that Stern established
6 ARC in furtherance of the scheme to defraud Mr. Freeney, for the sole or primary purpose of
7 concealing his theft and conversion of Mr. Freeney's funds from Mr. Freeney, the Bankruptcy Court,
8 the bankruptcy trustee, the U.S. Trustee, his creditors in his bankruptcy proceedings and the
9 defrauded victims who had sued him. In fact, during the course of the scheme, more than
10 \$2.2 million in funds Weinberg and Stern had misappropriated from a Roof Group BOA account
11 would be laundered through the ARC bank account.

12 **F. BOA Refers Mr. Freeney to Weinberg's Brother.**

13 129. In or about March 2010, BOA advised Mr. Freeney that he should obtain whole life
14 insurance as part of his overall investment portfolio.

15 130. At the time, Mr. Freeney already owned and was making premium payments on a
16 \$10 million life insurance policy issued by Minnesota Mutual Life Insurance Company ("Minnesota
17 Mutual") and a \$3.0 million life insurance policy issued by Lincoln Financial Life Insurance
18 Company ("Lincoln Financial"). BOA was aware of these policies, having received requests for
19 premium payments from Minnesota Mutual and Lincoln Financial.

20 131. In or about March 2010, Weinberg (in her capacity as a BOA employee and agent)
21 introduced Mr. Freeney to her brother. Weinberg falsely represented to Mr. Freeney that her brother
22 had extensive knowledge and experience concerning the purchase of life insurance products for
23 investment purposes. In fact, Weinberg's brother was not even licensed to sell life insurance
24 at the time.

25 132. In or about March 2010, Weinberg's brother offered and agreed to act as
26 Mr. Freeney's advisor in his purchase of suitable whole life insurance for investment purposes,
27 concealing from Mr. Freeney his lack of qualifications, expertise and experience in the purchase of
28 life insurance products generally and for investment purposes specifically.

1 133. BOA, Weinberg and Weinberg's brother encouraged and convinced Mr. Freeney to
2 purchase up to \$60 million in whole life insurance, claiming that this was a suitable, prudent and
3 beneficial long-term investment for him. Trusting in the honesty, loyalty, competence and candor of
4 BOA, Weinberg and Weinberg's brother, Mr. Freeney accepted their recommendations and agreed
5 that they should select the insurance policies to be purchased and complete the purchases on his
6 behalf.

7 134. Unbeknownst to Mr. Freeney, Weinberg and her brother had agreed to split the
8 commissions from Mr. Freeney's purchase of the life insurance policies, which would be a
9 substantial payment given the amount of insurance involved.

10 135. Weinberg and her brother used a senior life insurance agent who was a friend of
11 their father to find insurance companies willing to issue \$60 million in whole life insurance to
12 Mr. Freeney. Weinberg and her brother instructed the senior life insurance agent to structure the
13 purchase of the life insurance to include multiple policies, rather than a single, high-dollar policy.

14 136. Because a single policy would have had a higher cash surrender value, it would have
15 been a much better investment for Mr. Freeney. Plaintiffs are informed and believe, and on that
16 basis allege, that Weinberg and her brother instructed the senior life insurance agent to obtain
17 multiple policies for the sole or primary purpose of maximizing the sales commissions Weinberg's
18 brother would receive, and thus the amount of money he could kick back to Weinberg.

19 137. Based on these representations and undisclosed facts, Mr. Freeney reposed his trust
20 and confidence in BOA, Weinberg and Weinberg's brother to honestly, loyally, competently and
21 diligently advise, counsel and assist him in the purchase of as much as \$60 million in life insurance
22 for investment purposes. At all relevant times, BOA, Weinberg and Weinberg's brother, and each of
23 them, encouraged, accepted and voluntarily assumed such trust and confidence, thereby creating a
24 fiduciary relationship with Mr. Freeney relating to the purchase of such insurance.

25 **G. BOA Refers Mr. Freeney to the Florida Attorney and the Florida Law Firm.**

26 138. Toward the end of March 2010, BOA, Weinberg and Stern referred Mr. Freeney to
27 the Florida Attorney and the Florida Law Firm for legal advice and services relating to Roof Group
28 and RSLA. The Florida Attorney met Mr. Freeney for the first time on or about March 24, 2010, at

1 or en route to a meeting in the Bahamas that included Weinberg, Stern (posing as Millar) and
2 Jaggernauth to discuss certain issues relating to Roof Group and RSLA.

3 139. In that meeting, and in subsequent communications with Mr. Freeney, the Florida
4 Attorney was careful not to reveal that Millar's true name was Michael Stern, and made statements
5 and withheld information that created the false and misleading impression that Stern was, in fact, a
6 wealthy and successful businessman; that both Weinberg and Stern were professionals whom
7 Mr. Freeney could trust; and that both Weinberg and Stern had Mr. Freeney's best interests at
8 heart and wanted to protect him from those around him who would attempt to cheat or take unfair
9 advantage of him.

10 140. BOA, Weinberg, Stern (posing as Millar) and the Florida Attorney made the
11 following false and misleading representations, among others, to Mr. Freeney, directly and through
12 his friends and associates, to induce Mr. Freeney to retain the Florida Attorney:

13 (a) The Florida Attorney had the expertise and experience to competently provide
14 legal advice and services to Roof Group and RSLA, notwithstanding that Roof Group was a
15 California limited liability company, RSLA was located in Los Angeles and neither of them had any
16 ongoing connections to Florida;

17 (b) The Florida Attorney could be trusted to provide loyal services and candid
18 legal advice to Mr. Freeney regarding Roof Group, RSLA and related legal matters; and

19 (c) The Florida Attorney had no conflicts of interest arising from any past
20 attorney-client relationship with Millar.

21 141. Additionally, BOA, Weinberg, Stern (posing as Millar) and the Florida Attorney
22 concealed and caused others to conceal the following material facts, among others, from Mr.
23 Freeney and his friends and associates concerning the Florida Attorney's relationships with Stern
24 and Weinberg:

25 (a) The Florida Attorney had represented Stern in 20 or more civil lawsuits prior
26 to being introduced to Mr. Freeney, in which Stern had been sued for fraud, issuing NSF checks,
27 misappropriating loan proceeds and forging signatures on loan and related documents;

28 (b) In the *College Health* Case, the Florida attorney had negotiated a settlement

1 agreement that, within three months of signing, Stern sought to invalidate based on false claims that
2 he had been coerced into signing it by threats against his life;

3 (c) The Florida Attorney was representing Weinberg in two civil lawsuits in
4 which she was sued for writing NSF checks totaling more than \$400,000 and failing to pay a house
5 painter;

6 (d) The Florida Attorney had prepared a promissory note securing a \$350,000
7 loan from BOCK, Weinberg and Weinberg's brother to Stern, which Stern had never repaid;

8 (e) The Florida Attorney was present at a meeting in or about August 2009, at
9 which Stern admitted that he had forged the signature of Esther Burstyn-Spero to two loan
10 forgiveness documents;

11 (f) Stern had failed to pay at least \$100,000 in legal fees to the Florida Attorney
12 and the Florida Law Firm;

13 (g) The Florida Attorney and the Florida Law Firm had filed creditor claims in
14 Stern's bankruptcy in or about July 2009 for the \$100,000 that they were owed;

15 (h) The Florida Attorney had inserted a clause in a retainer agreement that he had
16 sent to Mr. Freeney for his signature, which stated that Mr. Freeney "appoints Arms Reach
17 Consulting LLC . . . ('ARC') as [his] agent to communicate and deal directly with the Firm on the
18 Client's behalf," and, "[u]nless otherwise instructed by the Client in writing, the Firm will take
19 direction from ARC";

20 (i) The Florida Attorney and Florida Law Firm could not ethically represent
21 Mr. Freeney because they had a disqualifying conflict of interest as a result of their past
22 representation of Stern, what they knew about Stern's dishonest character and fraudulent and illegal
23 practices from that representation, and the aforementioned clause agreeing to take their direction
24 from ARC; and

25 (j) The Florida Attorney and Florida Law Firm could not ethically represent
26 Mr. Freeney because they had a disqualifying conflict of interest as a result of their present
27 representation of Weinberg and what they knew about Weinberg's legal problems and current
28 situation at BOA.

1 142. Based upon these false and misleading representations and undisclosed facts,
2 Mr. Freeney agreed to retain the Florida Attorney in or about April 2010, to revise the Roof Group
3 Operating Agreement to increase his ownership interest in and control of Roof Group and to
4 negotiate with Altounian and Donnelly to purchase their interests in Roof Group.

5 143. Based on the foregoing representations and undisclosed facts concerning the Florida
6 Attorney, Mr. Freeney reposed his trust and confidence in BOA, Weinberg, Stern (posing as Millar),
7 the Florida Attorney and the Florida Law Firm to act honestly, loyally, competently and diligently in
8 providing legal advice and services concerning the ownership, control and management of
9 Roof Group and RSLA. At all relevant times, BOA, Weinberg, Stern, the Florida Attorney and the
10 Florida Law Firm, and each of them, encouraged, accepted and voluntarily assumed such trust and
11 confidence, thereby creating a fiduciary relationship with Mr. Freeney relating to those matters.

12 **H. Embezzlement of Funds from Mr. Freeney's BOA Personal Account.**

13 144. Between in or about March 2010 and June 2010, Weinberg (acting in her capacity as
14 a BOA employee and agent) misappropriated over \$160,000 from one of Mr. Freeney's BOA
15 accounts, personally directing that the funds be wire transferred to ARC without Mr. Freeney's
16 knowledge or authorization.

17 145. All of the stated justifications Weinberg gave internally at the bank for these transfers
18 were false and misleading. None of the funds transferred to the ARC bank account were used for the
19 purposes stated by Weinberg or to otherwise benefit Mr. Freeney. Instead, they were all used by
20 Stern for his personal benefit and as seed money for the scheme to defraud.

21 146. BOA, BOCK and Liebman were, at the very least, negligent in permitting Weinberg
22 to embezzle these funds.

23 **I. BOA's Unauthorized Purchases and Sales of Securities.**

24 147. Plaintiffs are informed and believe, and on that basis allege, that between in or about
25 February 2010 and April 2010, BOCK (acting in his capacity as a BOA employee and agent)
26 purchased approximately \$890,000 in securities on behalf of Mr. Freeney, which resulted in
27 BOCK receiving large commissions. These purchases were made without Mr. Freeney's knowledge
28 or authorization.

1 148. Plaintiffs are informed and believe, and on that basis allege, that on or about
2 June 11, 2010, BOCK (acting in his capacity as a BOA employee and agent) directed that almost all
3 of these securities be sold, which resulted in a loss to Mr. Freeney in excess of \$45,000. These sales
4 were made without Mr. Freeney's knowledge or authorization.

5 149. Plaintiffs are informed and believe, and on that basis allege, that at about the time
6 BOCK sold these securities, Weinberg was planning to leave BOA and she and Stern were preparing
7 to relocate the scheme to defraud from Florida to California. The proceeds from the securities sales,
8 which totaled approximately \$840,000, were initially deposited to one of Mr. Freeney's BOA
9 personal accounts. As Weinberg was leaving BOA, they were then transferred to accounts outside
10 of BOA that were controlled by Weinberg and Stern (as discussed below), and thereafter converted
11 to their personal benefit and use.

12 **J. Stern's Use of a Private Jet in Furtherance of the Scheme to Defraud.**

13 150. During the relevant time period, Stern (posing as Millar) flew in a private jet,
14 N900JF, which he claimed to own. Stern allowed Mr. Freeney to use the jet and only pay for the
15 cost of fuel, purportedly as a token of his friendship and generosity. Stern paid professional pilots
16 Edward Rennia and Dana Messier to fly the plane.

17 151. Stern's purported ownership of his own jet was an integral part of the scheme to
18 defraud: it served to outwardly validate his success and affluence as well as to ingratiate himself to
19 Mr. Freeney, who had to fly frequently and appreciated the use of a private aircraft for only the cost
20 of the fuel. In fact, Weinberg had made a point of representing to Mr. Freeney and his friends and
21 associates that Millar owned his own jet when introducing Stern to them.

22 152. In reality, Stern did not own this aircraft, and had no money of his own with which
23 to purchase or operate it. Instead, he used money misappropriated from a Roof Group BOA account
24 to lease and maintain the plane and to pay the pilots to fly it. As a further part of this charade,
25 Stern asked the pilots to lie to Mr. Freeney and tell him that Millar owned the jet, should
26 Mr. Freeney ever ask.

27 153. Between in or about June 2010 and October 2011, Stern used approximately
28 \$750,000 in funds misappropriated from a Roof Group BOA account to lease the plane, to pay for its

1 maintenance and hangar fees, to pay the pilots' salaries and expenses, and toward its purchase in the
2 name of ARC.

3 154. In the course of the scheme to defraud, BOA, Weinberg and Stern made and caused
4 others to make the following false representations, among others, to Mr. Freeney and his friends and
5 associates concerning the jet aircraft: (a) Stern (posing at Millar) owned it; and (b) when he used it,
6 Mr. Freeney only paid for the cost of the jet fuel.

7 155. In the course of the scheme to defraud, BOA, Weinberg and Stern concealed and
8 caused others to conceal the following material facts, among others, from Mr. Freeney concerning
9 the aircraft:

10 (a) James Pelky, not Stern, owned it and was only leasing it to Stern and ARC;

11 (b) Stern was using funds misappropriated from Mr. Freeney and Roof Group to
12 pay to lease the aircraft;

13 (c) Stern was also using funds misappropriated from Mr. Freeney and Roof
14 Group to pay to maintain the aircraft, pay the hangar fees and pay the salaries and expenses of
15 Rennia and Messier to fly it; and

16 (d) Over \$200,000 of the money Stern paid Pelky to lease the aircraft, all of
17 which were funds misappropriated from Mr. Freeney and Roof Group, had been applied towards
18 ARC's purchase of the aircraft.

19 **K. BOA, Weinberg and Weinberg's Brother Fraudulently Induce Mr. Freeney to**
20 **Purchase \$55 Million in Worthless Life Insurance.**

21 156. In or about July and August 2010, BOA, Weinberg and Weinberg's brother
22 fraudulently induced Mr. Freeney to purchase whole life insurance policies from three insurance
23 companies with a total face value of \$55 million. Plaintiffs are informed and believe, and on that
24 basis allege, that BOA, Weinberg and Weinberg's brother selected these policies because the sales
25 commissions paid by the insurance companies ranged from 80 percent to 90 percent of the first-
26 year's premiums, which was a higher percentage than other available policies would have paid.

27 157. The three policies that Mr. Freeney purchased required him to pay approximately
28 \$500,000 in premiums each year until the policies "matured" far in the future. If Mr. Freeney

1 stopped paying premiums before the maturity date, the policies would lapse, and if he did not
2 surrender them before they lapsed, they would become worthless. Moreover, the policies had no cash
3 surrender value until the third year after their issuance, and then their surrender value would be only
4 a fraction of the amount that Mr. Freeney had paid by that time in annual premiums.

5 158. In the course of the scheme to defraud, BOA, Weinberg and Weinberg's brother
6 made and caused others to make the following false and misleading representations, among others,
7 to Mr. Freeney to induce him to purchase the three policies and pay the approximately \$500,000 in
8 first-year premiums:

9 (a) Weinberg's expertise and experience as Mr. Freeney's financial manager and
10 investment advisor included the purchase of insurance products for investment purposes, when, in
11 fact, she had little or no expertise or experience in the analysis and selection of such insurance
12 products;

13 (b) Weinberg's brother had substantial expertise and experience in the analysis,
14 selection and purchase of insurance products for investment purposes, when, in fact, he had little or
15 no such expertise or experience;

16 (c) It was in Mr. Freeney's financial interests, and consistent with his financial
17 objectives, to purchase \$55 million in whole life insurance, when, in fact, it was contrary to his
18 financial interests and objectives to purchase such a large amount of life insurance, considering that:
19 (i) he already owned \$13 million in life insurance policies, which was more than enough life
20 insurance coverage for someone of his age and with his relatively limited financial responsibilities;
21 (ii) he had just turned 30 years of age, was single, was in good health and his financial objective was
22 growth rather than estate planning, (iii) because professional football players, on average, retire by
23 age 32, it was unlikely he would be able to continue to make the premium payments of
24 approximately \$500,000 per year for enough years for the policies to have a sizeable cash surrender
25 value; and

26 (d) BOA, Weinberg and Weinberg's brother had selected the three policies
27 because they offered the best value compared to other available whole life policies, when, in fact,
28 they had selected the three policies for the sole or primary purpose of maximizing the commissions

1 Weinberg's brother would receive from their sale.

2 159. In the course of the scheme to defraud, BOA, Weinberg and Weinberg's brother also
3 concealed and caused others to conceal the following material facts, among others, from
4 Mr. Freeney to induce him to purchase the three policies and pay the approximately \$500,000 in
5 first-year premiums:

6 (a) Weinberg was not qualified or licensed to sell life insurance and had little or
7 no expertise or experience in the purchase of insurance products for investment purposes;

8 (b) Weinberg's brother had only become licensed to sell life insurance in or about
9 May 2010, and only become licensed to sell life insurance in Indiana in or about June 2010, and then
10 only so he could sell life insurance to Mr. Freeney;

11 (c) The policies were particularly unsuitable for Mr. Freeney, considering that he
12 already owned two life insurance policies with face values totaling \$13 million;

13 (d) Even if some form of additional life insurance was suitable, other life
14 insurance products were readily available that were less expensive and better suited to Mr. Freeney's
15 insurance needs;

16 (e) Weinberg and her brother planned that he would kick back to Weinberg
17 approximately half of the commissions he received from the sale of the policies;

18 (f) As a result of this kickback agreement, Weinberg had a serious conflict of
19 interest in acting as Mr. Freeney's financial manager and investment advisor in the purchase of the
20 policies;

21 (g) Weinberg and her brother had structured the transaction based on the amount
22 of commissions her brother would receive, rather than on the prices, surrender values and other costs
23 and benefits of the policies;

24 (h) To prevent the policies from lapsing, Mr. Freeney would have to pay
25 premiums totaling approximately \$500,000 per year for a period of 15 years;

26 (i) Weinberg and her brother intended to allow the policies to lapse after the first
27 year, unless further premium payments would produce additional commissions that they could
28 split; and

1 (j) The policies would have no cash surrender value and would be worthless if
2 they were allowed to lapse after the first year.

3 160. In or about June 2010, BOA, Weinberg and Weinberg's brother caused Mr. Freeney
4 to pay a total of approximately \$510,000 in first year premiums to the three insurance companies.

5 161. Of this amount, the insurance companies paid a total of approximately \$450,000
6 in commissions, 99 percent of which was paid to Weinberg's brother. Upon receiving those
7 commission payments, Weinberg's brother paid kickbacks totaling in excess of \$200,000 to
8 Weinberg.

9 162. The policies lapsed in or about September 2011 and October 2011. The policies had
10 no cash surrender value and became entirely worthless when they lapsed. BOA, Weinberg and
11 Weinberg's brother concealed from Mr. Freeney that the policies had lapsed and become worthless.

12 163. Plaintiffs are informed and believe, and on that basis allege, that BOA, Weinberg and
13 Weinberg's brother did not make the 2011 premium payments on behalf of Mr. Freeney, and instead
14 allowed the policies to lapse, when they learned that further premium payments would not result in
15 additional commission payments to Weinberg's brother.

16 **L. BOA, Weinberg and Stern Assume Management Control of RSLA.**

17 164. Beginning in or about March 2010, BOA, Weinberg and Stern (posing as Millar)
18 made and caused others to make the following false and misleading representations and false
19 promises, among others, to Mr. Freeney to induce him to agree for them to assume management
20 control of RSLA and Weinberg to become the de facto Chief Financial Officer ("CFO") of
21 Roof Group:

22 (a) Millar intended to invest \$7.0 million in Roof Group, when, in fact, Stern had
23 neither the funds nor the intention to invest in Roof Group;

24 (b) Millar would oversee the build out of RSLA, including payments to
25 Brodin Design, when, in fact, Stern had no intention to oversee the build out beyond using it as an
26 opportunity to misappropriate funds from Mr. Freeney and Roof Group;

27 (c) Millar would assist in obtaining the liquor license for the restaurant, when,
28 in fact, Stern had neither the ability nor the intention to obtain a liquor license from the State of

1 California for RSLA;

2 (d) Weinberg (acting in her capacity as a BOA employee and agent) would handle
3 the bill payments for RSLA, when, in fact, Weinberg intended to pay only those bills that absolutely
4 needed to be paid, and only when she could not delay their payment further;

5 (e) Weinberg (acting in her capacity as a BOA employee and agent) and Stern
6 (posing as Millar) together would renegotiate the unfavorable terms in the lease with CIM, when, in
7 fact, neither intended to renegotiate the lease terms;

8 (f) Weinberg (acting in her capacity as a BOA employee and agent) would
9 implement cost and accounting controls for RSLA, when, in fact, Weinberg lacked the skills,
10 knowledge and experience to implement such controls, and, in fact, made sure that no such controls
11 were ever implemented at RSLA; and

12 (g) Weinberg and Millar's only interest was to make sure RSLA succeeded and to
13 protect Mr. Freeney from those around him who would seek to cheat or take unfair advantage of
14 him, when, in fact, their sole or primary interest in RSLA was to use it as a vehicle for
15 misappropriating and converting funds in a Roof Group BOA account and to conceal and disguise
16 those thefts from Mr. Freeney and others.

17 165. To induce Mr. Freeney to agree for BOA, Weinberg and Stern to assume
18 management control of RSLA's operations and finances, and for Weinberg to become the de facto
19 CFO of Roof Group, BOA, Weinberg and Stern (posing as Millar) concealed and caused others to
20 conceal the following material facts, among others, from Mr. Freeney, his associates and his
21 professional advisors:

22 (a) Weinberg and Stern were using RSLA as a vehicle for misappropriating and
23 converting funds from a Roof Group BOA account and to conceal and disguise those thefts from
24 Mr. Freeney and others;

25 (b) Weinberg rarely, if ever, paid vendor bills on time;

26 (c) Stern was in bankruptcy and entirely without the financial means to
27 invest in RSLA;

28 (d) Stern's sole or primary interest in overseeing the build out of RSLA was to be

1 able to continue to misappropriate funds from Mr. Freeney and Roof Group undetected;

2 (e) Weinberg was not paying RSLA's federal and state payroll taxes;

3 (f) Weinberg was not paying RSLA's California sales taxes;

4 (g) Weinberg was not timely paying RSLA staff and management, and when she
5 paid them, she was not paying them the correct amounts they were owed;

6 (h) Weinberg had not obtained adequate general liability and other insurance
7 for RSLA;

8 (i) Weinberg was not maintaining anything resembling a set of books and
9 records for RSLA;

10 (j) Weinberg was not preparing financial reports or statements for RSLA;

11 (k) Weinberg was not preparing budgets or projections for RSLA;

12 (l) Weinberg and Stern were not engaged in discussions with CIM to renegotiate
13 the lease terms; and

14 (m) Stern was not in the process of obtaining a liquor license for RSLA.

15 166. Based on the foregoing representations, promises and undisclosed facts, Mr. Freeney
16 and Roof Group reposed their trust and confidence in BOA, Weinberg and Stern (posing as Millar)
17 to act honestly, loyally, competently and diligently in overseeing and managing the build-out,
18 staffing, opening, operations and finances of RSLA. At all relevant times, BOA, Weinberg and
19 Stern, and each of them, encouraged, accepted and voluntarily assumed that trust and confidence,
20 thereby creating a fiduciary relationship with Mr. Freeney and Roof Group relating to such matters.

21 **M. The Needless Buy Outs of Altounian and Donnelly's Interests in Roof Group.**

22 167. After Mr. Freeney became a BOA client, BOA, Weinberg and Stern (posing as
23 Millar) urged him to purchase Joe Altounian and Niall Donnelly's interests in Roof Group. They
24 advised Mr. Freeney that he needed to acquire Altounian and Donnelly's interests so that Millar
25 could invest in Roof Group and become Mr. Freeney's new partner in RSLA, and because Altounian
26 had been caught misusing company funds. Stern (posing as Millar) offered to negotiate these buy
27 outs. Having been lead to believe by BOA, Weinberg and Stern (posing as Millar) that Millar was
28 preparing to invest several million dollars in Roof Group, was acting to protect Mr. Freeney's

1 investment in RSLA, and had substantial experience and success in negotiating such matters,
2 Mr. Freeney authorized Stern (posing as Millar) to undertake the negotiations with the assistance of
3 the Florida Attorney and Law Firm.

4 168. Although Mr. Freeney remained the sole source of financing for the build out and
5 operations of RSLA – Altounian and Donnelly having invested none of their own money in the
6 venture – Stern and the Florida Attorney negotiated agreements with Altounian and Donnelly
7 whereby Mr. Freeney was required to pay them more than \$1.1 million for their interests in
8 Roof Group. BOA, Weinberg, Stern and the Florida Attorney convinced Mr. Freeney to sign these
9 agreements and pay this money, notwithstanding that the restaurant had yet to open, had no liquor
10 license, had dwindling capital and had not been reliably valued.

11 169. Mr. Freeney signed the agreement to purchase Altounian’s shares in Roof Group in or
12 about November 2010, agreeing to pay Altounian \$325,000 for his 24.5 percent interest in
13 Roof Group. Mr. Freeney completed making payments to Altounian pursuant to this agreement in or
14 about November 2011.

15 170. Mr. Freeney signed the agreement to purchase Donnelly’s shares in Roof Group in or
16 about May 2011, agreeing to pay Donnelly \$550,000 for his 24.5 percent interest in Roof Group.
17 Mr. Freeney completed making payments to Donnelly pursuant to this agreement in or about
18 January 2012.

19 171. The Florida Attorney billed, and Mr. Freeney paid him, approximately \$140,000 in
20 legal fees for assisting Stern in negotiating these agreements.

21 172. In convincing Mr. Freeney to agree to purchase Altounian and Donnelly’s interests in
22 Roof Group for these amounts, BOA, Weinberg, Stern and the Florida Attorney concealed and
23 caused others to conceal the following material facts, among others, from Mr. Freeney:

24 (a) RSLA was critically underfunded, burning through cash and at risk of
25 defaulting on various obligations. Accordingly, without Mr. Freeney’s continued capital
26 contributions to Roof Group, Altounian and Donnelly’s shares in the company were
27 effectively worthless;

28 (b) As members of a limited liability company, Altounian and Donnelly were

1 responsible for losses in proportion to their ownership interests (24.5 percent each). Based on
2 RSLA's significant operating losses and the fact that neither Altounian nor Donnelly were
3 contributing any cash to Roof Group, their capital accounts were negative at the time of the buy outs,
4 which would have reduced the value of their shares to zero or close thereto;

5 (c) There was no valuable premium or other significant intangible value
6 associated with Mr. Freeney's purchase of Altounian and Donnelly's shares in Roof Group
7 (such as minimizing their participation in the operations, management, or direction of RSLA)
8 to justify paying them \$1.1 million for their shares. To the contrary, at the time Mr. Freeney agreed
9 to purchase their shares, their roles in RSLA had diminished to the point of insignificance; and

10 (d) Plaintiffs are informed and believe, and on that basis allege, that Weinberg
11 and Stern's sole or primary motivation for convincing Mr. Freeney to pay \$1.1 million to buy out
12 Altounian and Donnelly was to oust them from the day-to-day operations of RSLA to prevent them
13 from discovering that Weinberg and Stern were using RSLA to misappropriate funds from
14 Mr. Freeney and Roof Group.

15 **N. The Hiring and Termination of Sal and Stacy Feli.**

16 173. The ouster of Altounian and Donnelly from daily involvement in the build out,
17 management and operations of RSLA required Mr. Freeney to find a new Director of Operations to
18 open and operate the restaurant. While falsely holding himself out as Mr. Freeney's new partner in
19 RSLA and a major investor in Roof Group, in or about May 2010, Stern (posing as Millar) signed a
20 "Term Sheet" on behalf of Roof Group with Salvatore ("Sal") Feli, his wife Stacy Feli and their
21 company SalandStacy Corp., to "manage and operate" RSLA.

22 174. Stern (posing as Millar) and the Florida Attorney negotiated the Term Sheet with
23 the Felis and their attorney. Stern signed the Term Sheet as "David M. Millar" on behalf of
24 Roof Group, without any written or other express corporate authorization. The Term Sheet outlined
25 a five-year arrangement between Roof Group and the Felis that Roof Group could not afford. It
26 provided, among other things, that:

27 (a) The Felis would be paid a fee of \$350,000 per year for each of the five years;

28 (b) They would also receive housing, rental car and health care

1 allowances totaling \$70,000;

2 (c) They would also receive two percent of the gross revenue of RSLA;

3 (d) They could only be terminated for cause, and, if so terminated, they would be
4 entitled to six months of severance pay, or \$175,000;

5 (e) They were to receive a two percent ownership interest in Roof Group if
6 certain conditions were satisfied; and

7 (f) The parties would undertake to negotiate a long-form contract within
8 the next 30 days.

9 175. In entering into the Term Sheet, Stern, together with BOA, Weinberg and the
10 Florida Attorney, concealed and caused others to conceal the following material facts, among others,
11 from Mr. Freeney:

12 (a) David M. Millar was a false name;

13 (b) Roof Group could not afford to pay the Felis the compensation outlined in
14 the Term Sheet;

15 (c) Plaintiffs are informed and believe, and on that basis allege, that Sal Feli's
16 compensation under the Term Sheet was well above the industry standard for a Director of
17 Operations with his limited qualifications, experience and track record; and

18 (d) Plaintiffs are informed and believe, and on that basis allege, that Stern's sole
19 or primary motivation in hiring the Felis was his belief that they would be easier to manipulate and
20 less of a threat to uncover the scheme to defraud than Altounian and Donnelly, both of whom
21 disliked and distrusted Stern deeply.

22 176. After learning of what Stern had done, Mr. Freeney's legal counsel sought to reduce
23 the Felis' compensation package in the course of negotiating the long-form contract. When the Felis
24 appeared to balk at any such reduction, in December 2010, Roof Group terminated their services.

25 177. The decision to terminate the Felis' services was made at the insistence of Weinberg,
26 who had begun her campaign to have the Felis fired in or about September 2010, shortly after
27 Sal Feli recommended having an outside accounting firm perform an audit of RSLA's finances.

28 178. In insisting that Mr. Freeney must terminate the Felis, Weinberg concealed and

1 caused others to conceal the following material facts, among others, from Mr. Freeney:

2 (a) Plaintiffs are informed and believe, and on that basis allege, that Stern had
3 hired the Felis, and agreed on behalf of Roof Group to pay them excessive compensation, because he
4 believed that they would be easier to manipulate and less of a threat to uncover the scheme to
5 defraud than Altounian and Donnelly;

6 (b) Plaintiffs are informed and believe, and on that basis allege, that Weinberg's
7 sole or primary motivation for insisting that Mr. Freeney terminate the Felis' services was her
8 concern that they would uncover her and Stern's use of RSLA as a vehicle for misappropriating and
9 converting funds belonging to Mr. Freeney and Roof Group; and

10 (c) Weinberg had ignored Mr. Freeney's instruction to pay the Felis the severance
11 pay they had requested.

12 179. In or about April 2011, the Felis filed suit against Roof Group, Mr. Freeney,
13 Mr. West, Millar, Weinberg and others (the "*Feli Case*"). The Felis' complaint alleged claims for
14 breach of contract, fraud, conversion, breach of fiduciary duty, tortious interference with contract
15 and an accounting. The Felis sought \$5.0 million in damages. All of these claims arose from Stern
16 and Weinberg's conduct in the hiring and termination of the Felis.

17 180. Roof Group and Mr. Freeney vigorously defended against the allegations in the
18 *Feli Case*. In or about August 2012, the court dismissed the fraud, conversion, breach of fiduciary
19 duty and accounting claims against Mr. Freeney, Mr. West and Roof Group as being legally
20 insufficient. In December 2012, the case settled shortly before trial was to commence. Mr. Freeney
21 and Roof Group paid more than \$825,000 in defending and settling the *Feli Case*.

22 181. At all relevant times, Mr. Freeney and Roof Group reposed their trust and confidence
23 in BOA, Weinberg and Stern to act honestly, loyally, competently and diligently in the hiring and
24 termination of the Felis. At all relevant times, BOA, Weinberg and Stern, and each of them,
25 encouraged, accepted and voluntarily assumed that trust and confidence, thereby creating a fiduciary
26 relationship with Mr. Freeney and Roof Group relating to such matters.

27 **O. Opening of the BOA Roof Group Account.**

28 182. Plaintiffs are informed and believe, and on that basis allege, that in or about late

1 May 2010, Weinberg (acting in her capacity as a BOA employee and agent) prevailed upon
2 Josephine (Jodi) Del Campo, a BOA Assistant Vice President and Weinberg's friend, to open a BOA
3 business checking account in the name of Roof Group (the "BOA Roof Group account"). Plaintiffs
4 are further informed and believe, and on that basis allege, that Del Campo opened the account
5 without the required documentation, internal authorization, or due diligence.

6 183. In opening the BOA Roof Group account, BOA and Weinberg falsely represented to
7 Mr. Freeney that it was only a temporary account needed to pay invoices associated with the RSLA
8 build out until permanent accounts could be opened in Los Angeles. As a result, Mr. Freeney only
9 authorized BOA to transfer \$200,000 from his BOA personal accounts to the BOA Roof Group
10 account. This authorization was given in a notarized writing and was the only authorization
11 Mr. Freeney gave BOA and Weinberg to transfer funds to this account.

12 184. Del Campo later made the following statements to the FBI concerning her opening of
13 the BOA Roof Group account:

- 14 • "DEL CAMPO remembered setting up the bank account for Roof Group
15 LLC at Bank of America for DWIGHT FREENEY. DEL CAMPO said
16 that EVA WEINBERG came to her while WEINBERG was still employed
at Merrill Lynch Bank of America (MBOA) in Miami, Florida."
- 17 • "[S]he remembered that Weinberg went to her in person to ask her to open
18 this particular account. DEL CAMPO said that it was not a phone call,
19 nor was it a conversation in passing that she had with WEINBERG to
request to open this account."
- 20 • "Weinberg had a conversation with her about the restaurant and how this
21 account would be used to conduct the business transactions of the
restaurant."
- 22 • "[B]ecause this was a new account, there was a standard 90 day security
23 hold on the account, to make sure that no fraudulent activity was occurring
within the account."
- 24 • "[F]rom her perspective, it seemed that WEINBERG was doing online
25 banking, because after the account was set up, WEINBERG would call
26 DEL CAMPO to request that the holds on electronic payments she was
attempting to make would be taken off. DEL CAMPO said that this was a
27 feature of the 90 day security hold on the account."
- 28 • "[T]he password and information could have been emailed to

1 [Del Campo], which she would then give directly to the Financial Advisor,
2 in this case WEINBERG”

- 3 • “FREENEY was not involved with the setup of the bank account.”

4 185. Plaintiffs are informed and believe, and on that basis allege, that after opening the
5 BOA Roof Group account, Weinberg (acting in her capacity as a BOA employee and agent) gave
6 Stern confidential account access information, including the pass code, for this account. Plaintiffs
7 are further informed and believe, and on that basis allege, that Weinberg gave Stern this highly
8 confidential information so that he could access the BOA Roof Group account remotely online and
9 transfer funds to and from it without Mr. Freeney’s knowledge or authorization.

10 186. Plaintiffs are informed and believe, and on that basis allege, that Del Campo ignored
11 concerns expressed by other BOA departments that the account opening documentation for the
12 BOA Roof Group account was not sufficient or in order.

13 187. Plaintiffs are informed and believe, and on that basis allege, that after BOA opened
14 the BOA Roof Group account, Weinberg asked Del Campo from time-to-time to remove the 90 day
15 security hold on wire transfers from the account. These security overrides concerned wire transfer
16 requests initiated by Stern online, using the confidential account access information that BOA and
17 Weinberg had provided to him.

18 188. In opening the BOA Roof Group account, BOA, Weinberg and Del Campo
19 concealed and caused others to conceal the following material facts, among others, from
20 Mr. Freeney and Roof Group:

21 (a) The account was not a temporary account, and it remained open and active
22 long after operating, payroll and tax accounts for RSLA were opened in Los Angeles at the
23 Larchmont Branch of Wells Fargo Bank;

24 (b) The purpose of the account was to conceal the proceeds of the scheme to
25 defraud from Mr. Freeney, the Bankruptcy Court, the bankruptcy trustee, the U.S. Trustee, creditors
26 in Stern’s bankruptcies and the plaintiffs in the many civil actions pending against Stern;

27 (c) At the time the account was opened, Mr. Freeney lacked the necessary
28 corporate authority to open the account on behalf of Roof Group;

1 (d) The account was opened, and was allowed to remain open, without the
2 documentation, authorization, or due diligence ordinarily required to open such an account, and
3 despite concerns expressed internally at BOA about those irregularities;

4 (e) Weinberg had kept the existence of the account secret from RSLA's
5 management, accountants and consultants; and

6 (f) Weinberg had given Stern the confidential account access information to
7 enable him to access the account online and transfer funds to and from it without Mr. Freeney's
8 knowledge or authorization.

9 **P. Opening of the Citibank Accounts.**

10 189. In or about June 2010, Weinberg (acting in her capacity as a BOA employee and
11 agent) opened two accounts at a Citibank branch in Miami Beach in the name of Mr. Freeney. She
12 opened the accounts by presenting a power of attorney form purportedly signed by Mr. Freeney. In
13 or about July 2010, Weinberg added herself as a signatory to these accounts.

14 190. Plaintiffs are informed and believe, and on that basis allege, that Weinberg (acting in
15 her capacity as a BOA employee and agent) gave Stern the confidential account access information,
16 including the pass codes, for the Citibank accounts. Plaintiffs are further informed and believe, and
17 on that basis allege, that Weinberg gave Stern this highly confidential information so that he could
18 access the Citibank accounts remotely online and transfer funds to, from and between them without
19 Mr. Freeney's knowledge or authorization.

20 191. In a June 2012 post-arrest interview by the FBI and USAO, Weinberg made the
21 following statements concerning the opening of the Citibank accounts:

- 22 • "[S]he opened [the Citibank] account in Miami Beach. Only she and
23 FREENEY were on the account, no one else."
- 24 • "STERN got access to the Citigold account sometime in early June or
25 perhaps July [2010]."
- 26 • "[I]t's possible that she could have provided FREENEY's personal
27 information to STERN to open the online banking, but STERN already
28 had FREENEY's credit card numbers and his social security account
numbers. STERN knew almost everything about FREENEY."

1 **Q. Creation of Global Wealth Management.**

2 192. Plaintiffs are informed and believe, and on that basis allege, that after Mr. Freeney
3 became a BOA client in February 2010, BOCK and Weinberg began making plans for Weinberg to
4 leave BOA, start her own company and take Mr. Freeney with her as a client. BOCK (acting in his
5 capacity as a BOA employee and agent) encouraged Weinberg to move to California and form a new
6 company with a name similar to “Global Wealth and Investment Management.”

7 193. In publicly filed court papers in her and BOCK’s divorce proceedings, Weinberg
8 stated in August 2010 that:

- 9 • “The Mother’s relocation to Los Angeles was carefully planned with
10 major input from the Father [BOCK] as the Mother is a stock broker and
11 was working for Merrill Lynch in Florida with [BOCK]. The Mother
12 previously gave [BOCK] her entire client base during their marriage so
13 that he could maintain her four million dollar portfolio . . . [BOCK]
14 encouraged the Mother once she went back to work at Merrill Lynch to
15 service her largest client [Mr. Freeney/Roof Group] who reside in
16 Los Angeles, California.”
- 17 • “[BOCK] was also instrumental in the Mother’s resignation from
18 Meryll [sic] Lynch and start-up of her own company because he
19 stressed to her that relocating to Los Angeles would be good for her
20 business as there are great business opportunities to be found there.”
- 21 • “In fact [BOCK] repeatedly stated that he would likely move to
22 Los Angeles as well as there were good business opportunities for him
23 there as well. He further told her that because he is a stock broker at
24 Merrill Lynch, he can work out of any office so he would be in
25 Los Angeles, California at least once a month.”
- 26 • “[BOCK] also helped the Mother design her business plan /strategize the
27 Mother’s future business goals for her in California.”
- 28 • The Mother will lose this major client, which [BOCK] encouraged her to
take, if she is unable to physically move to California.”
- “[T]he Mother has signed a contract with Global Wealth Management to
be the Head Portfolio Manager for a high-profile client, which if unable to
move will cause her to lose the only employment she has now.”

194. BOCK did not dispute any of these statements in the responsive papers he
filed in the divorce proceedings.

195. On or about June 2, 2010, Weinberg (in her capacity as a BOA employee

1 and agent) incorporated Global Wealth Management, LLC (“GWM”) in Delaware.

2 196. On or about June 2, 2010, Weinberg (in her capacity as a BOA employee and agent)
3 opened a business checking account in GWM’s name at the Larchmont Branch of Wells Fargo Bank
4 in Los Angeles.

5 197. On or about June 9, 2010, Weinberg signed a lease for a “virtual office” in the name
6 of GWM at 8484 Wilshire Boulevard, contracting for telephone answering and mail receiving,
7 sorting and forwarding services. From in or about June 2010 forward, Weinberg gave the
8 8484 Wilshire address as GWM’s office address. She also directed that all of Mr. Freeney’s mail,
9 including his weekly paychecks from the Colts during the NFL season, be sent to that address.

10 198. GWM was a sham entity: it had no assets, employees, or legitimate business
11 operations, and no clients aside from Mr. Freeney.

12 199. Plaintiffs are informed and believe, and on that basis allege, that BOCK and
13 Weinberg selected the name “Global Wealth Management” because it was the same as or
14 remarkably similar to GWIM, and they wanted to create the false impression that Weinberg was still
15 affiliated with BOA. Plaintiffs are further informed and believe, and on that basis allege, that BOA
16 was well aware of Weinberg’s creation of GWM.

17 200. In creating GWM, BOA, BOCK and Weinberg concealed and caused others to
18 conceal the following material facts, among others, from Mr. Freeney: (a) GWM was not the same
19 as GWIM and was not a division of BOA; (b) GWM was a sham entity created to promote and
20 conceal the scheme to defraud; (c) GWM had no employees and Mr. Freeney was its only client; and
21 (d) Stern had access to all of Mr. Freeney’s mail that was being forwarded to the 8484 Wilshire
22 address.

23 **R. BOA, BOCK, Weinberg and Stern Relocate the Scheme from Miami to**
24 **Los Angeles.**

25 201. Because of their escalating legal problems in Florida, in or about June 2010,
26 Weinberg and Stern made plans to move from Miami Beach to Los Angeles, from where they could
27 (and did) continue to carry out the scheme to defraud Mr. Freeney.

28 202. In or about June 2010, Weinberg leased a house in the Hancock Park neighborhood of

1 Los Angeles for \$8,250 per month (the “Hancock Park house”). In the lease application forms, she
2 represented that she would be living at the house with her three children and “Michael Stern,”
3 her “Fiancé.”

4 203. In the lease application, Weinberg falsely represented that since April 2009, she had
5 been employed as a “Financial consultant” at “Merrill Lynch Wealth Management” earning “8,000”
6 per month in “comm + salary”; that Stern lived at 2 Harriman Drive, Sands Point, N.Y. 11576; that
7 he had been employed by “ARC Consulting” from “5/96 – present,” earning “\$25,000” per month;
8 and that his supervisor was Lester Jaggernauth, who was also listed as one of Stern’s personal
9 references as was Weinberg’s brother.

10 204. Plaintiffs are informed and believe, and on that basis allege, that Weinberg and Stern
11 moved into the Hancock Park house in or about mid-June 2010.

12 205. Plaintiffs are informed and believe, and on that basis allege, that the Hancock Park
13 house quickly became Weinberg and Stern’s new base of operations. Weinberg and Stern
14 maintained a room in the house in which Stern hid whenever anyone would come to the door, to
15 conceal the fact that he and Weinberg were living together. Plaintiffs are also informed and believe,
16 and on that basis allege, that this room was where Stern kept the computers that he used to access
17 Mr. Freeney’s accounts online and transfer funds to and from them without Mr. Freeney’s
18 knowledge or authorization.

19 206. On or about June 10, 2010, soon after Weinberg signed the lease for the Hancock
20 Park house, she faxed a short handwritten note to BOA resigning from the bank. Weinberg’s
21 resignation became effective in July 2010.

22 207. BOA, BOCK and Liebman concealed Weinberg’s resignation from Mr. Freeney.
23 Mr. Freeney was never formally or informally notified by BOA, BOCK, or Liebman of Weinberg’s
24 resignation and departure. Nor did BOA, BOCK, or Liebman make any effort to transition him to
25 another investment advisor, ensure that his funds were safe, secure and protect his confidential
26 financial information, or see that his continuing financial management needs were being met.

27 208. Plaintiffs are informed and believe, and on that basis allege, that BOA, BOCK and
28 Liebman never conducted an exit interview of Weinberg, documented why she was leaving, inquired

1 what she would be doing, or required her to sign a non-disclosure agreement of any kind.

2 209. Both Mr. Freeney and Roof Group remained clients of BOA after Weinberg's
3 departure. As a result, BOA and BOCK continued to owe fiduciary duties and the duty of due care
4 to Mr. Freeney and Roof Group. In addition, BOA remained under a legal obligation to monitor and
5 file Suspicious Activity Reports with the federal government of any suspicious activity involving
6 Mr. Freeney's personal accounts or the BOA Roof Group account.

7 210. Plaintiffs are informed and believe, and on that basis allege, that following
8 Weinberg's resignation from BOA in July 2010, BOA, BOCK and Liebman permitted Weinberg to
9 continue to function as Mr. Freeney's private banker, financial manager and investment advisor, as if
10 she was still employed by and an agent of BOA. Furthermore, BOA, BOCK and Liebman never
11 warned Mr. Freeney that Weinberg was not licensed to give investment advice, or that she lacked the
12 expertise, qualifications and experience to manage his personal finances or serve as the de facto
13 CFO of RSLA.

14 211. In connection with her moving to Los Angeles, Weinberg and BOCK agreed, as part
15 of their Martial Settlement Agreement, how to allocate funds received from Stern as repayment of
16 their loans to him. Their agreement, entered into on or about February 2011, provided: "In the
17 event [Weinberg] recovers any money from Michael Stern or others arising from the money loaned
18 to Michael Stern, [BOCK] shall receive the first One Hundred Thousand Dollars (\$100,000.00).
19 The balance shall be split between the parties."

20 212. BOA, BOCK and Weinberg concealed the existence of this agreement, as well as
21 their relationship to Stern and each other, from Mr. Freeney.

22 **S. Fraudulent and Unauthorized Transfers to and from the**
23 **BOA Roof Group Account.**

24 213. Plaintiffs are informed and believe, and on that basis allege, that between in or about
25 June 2010 and October 2011, Weinberg, as Mr. Freeney's financial manager, deposited
26 approximately *\$15.7 million* to his Citibank accounts. These deposits consisted mostly of Mr.
27 Freeney's weekly paychecks from the Colts during the 2010 and 2011 NFL seasons.

28 214. Pursuant to Weinberg's instructions, the checks were sent by the Colts to GWM at the

1 8484 Wilshire address. Weinberg would then deposit them at the Citibank branch across the street.

2 215. Deposits to the Citibank accounts also included Mr. Freeney's income tax refunds,
3 which exceeded \$1.0 million for 2010, and proceeds from the liquidation of his existing investments
4 (discussed below).

5 216. Plaintiffs are informed and believe, and on that basis allege, that notwithstanding
6 Weinberg's departure from the bank, BOA, BOCK and Liebman allowed Weinberg to continue to
7 access and manage Mr. Freeney and Roof Group's accounts at BOA, as if she was still employed by
8 and agent of BOA.

9 217. During this same time period, Stern, using the confidential account information
10 provided by BOA and Weinberg, accessed Mr. Freeney's Citibank accounts online to wire transfer
11 approximately **\$9.3 million** to the BOA Roof Group account. He also wire transferred \$80,000 to
12 GWM directly. These transfers constituted the misappropriation and conversion of funds belonging
13 to Mr. Freeney.

14 218. During this same time period, Stern, using the confidential account information
15 provided by BOA and Weinberg, accessed the BOA Roof Group account online hundreds of times to
16 make the following wire transfers, among others:

- 17 (a) 147 wire transfers to ARC totaling more than \$2.2 million;
- 18 (b) Five wire transfers to GWM totaling more than \$320,000;
- 19 (c) 78 wire transfers totaling approximately \$750,000 to lease and pay expenses
20 relating to the private jet;
- 21 (d) Seven wire transfers totaling more than \$90,000 to pay the rent on the
22 Hancock Park house;
- 23 (e) 79 wire transfers totaling more than \$5.0 million to continue to fund the
24 build out and operations of RSLA, to keep the scheme operating and from being discovered; and
- 25 (f) 13 wire transfers totaling \$88,000 for other unauthorized purposes.

26 219. Altogether, BOA executed wire transfers totaling approximately **\$8.5 million** from
27 the BOA Roof Group account in furtherance of, to promote and to conceal the scheme to defraud.
28 All of these transfers constituted the misappropriation and conversion of funds belonging to

1 Mr. Freeney and Roof Group.

2 220. The cost of these fraudulent and unauthorized wire transfers totaled in excess of
3 \$8,000 and was charged to Mr. Freeney and Roof Group.

4 221. Plaintiffs are informed and believe, and on that basis allege, that Weinberg and Stern
5 frequently used RSLA to conceal and disguise the actual purpose of the wire transfers Stern was
6 initiating on an almost daily basis from the BOA Roof Group account to ARC. In particular, they
7 would often include a false notation in the wiring instructions they sent BOA online, falsely
8 indicating that the transfer was RSLA related. The following are several such examples:

9

Date of Wire	Amount	Stated Justification
11/18/2010	\$76,540	"Rolling Stone Construction"
01/18/2011	\$39,450	"Kevin McReary"
01/28/2011	\$39,400	"Kevin McReary Settlement"
02/02/2011	\$68,465	"Kevin McReary Sai"
04/14/2011	\$25,000	"Niall Donnally"
05/09/2011	\$31,000	"Settlement Nial Donnelly"
06/03/2011	\$26,000	"Rsla Nial Donnelly"
09/26/2011	\$26,740	"Niall Donnelly"

16

17 222. Plaintiffs are informed and believe, and on that basis allege, that, in fact, none of the
18 funds transferred in these transactions were used for the purposes stated, or otherwise to benefit
19 Mr. Freeney or Roof Group. Kevin McVearry (misspelled "McReary") was the original Director of
20 Operations for RSLA, who was terminated at Weinberg and Stern's insistence in 2010. He was paid
21 \$38,000 in settlement from the BOA Roof Group account; he never received any payments from
22 ARC. Niall Donnelly was paid \$550,000 by Mr. Freeney for his interest in RSLA between
23 May 2010 and January 2012. None of those funds originated from ARC, and none of them were
24 paid on the dates listed above. Similarly, ARC paid none of the construction costs associated with
25 the build out of RSLA.

26 223. In a June 2012 post-arrest interview by the FBI and USAO, Weinberg made the
27 following statements concerning the movement of funds between and amongst the Citibank, BOA
28 and ARC accounts:

- 1 • “WEINBERG said that it was STERN who was making the transfers from
2 FREENEY’s Citibank account to the BOA Roof Group account.”
- 3 • “STERN had access to all of FREENEY’s accounts. Furthermore, he was
4 the one doing the transactions in these accounts. Specifically,
5 WEINBERG said that STERN was involved with FREENEY’s accounts
6 and had access and was the one wiring money in and out of the accounts.”
- 7 • “STERN would sometimes be doing a wire and there would be a security
8 hold on the account and STERN would ask WEINBERG to call DEL
9 CAMPO to release the wire. WEINBERG said that she basically
10 mechanically checked with DEL CAMPO about the wire.”
- 11 • “[S]he never looked at the Roof Group bank statements WEINBERG
12 said that she didn’t even believe that the statements existed.”
- 13 • “[S]he didn’t think that FREENEY knew that STERN was doing his
14 personal billpay.”

11 **T. Liquidation of Mr. Freeney’s Existing Investments to Generate**
12 **Additional Funds to Misappropriate.**

13 224. Plaintiffs are informed and believe, and on that basis allege, that to successfully
14 misappropriate and convert the hundreds of thousands of dollars of Mr. Freeney’s funds that
15 Weinberg and Stern did each month without raising suspicions, it was necessary that they have
16 sufficient funds under their control, above the amounts they were stealing, to continue to pay
17 Mr. Freeney’s monthly living and personal expenses and the costs associated with the build out
18 and operations of RSLA.

19 225. Accordingly, beginning in or about March 2010, BOA, BOCK, Weinberg and Stern
20 began liquidating all of Mr. Freeney’s existing investments to free up additional funds to
21 misappropriate.

22 1. ***Advisors Disciplined.***

23 226. In or about March 2010, BOA, BOCK and Weinberg sold Mr. Freeney’s
24 Advisors Disciplined municipal bonds for approximately \$490,000. The proceeds were deposited to
25 Mr. Freeney’s BOA personal accounts. BOA, BOCK and Liebman subsequently permitted
26 Weinberg to embezzle approximately \$161,000 of those funds by transferring them to ARC without
27 Mr. Freeney’s authorization.

28 ///

1 **2. *Success Trade.***

2 227. In or about March 2010, BOA, Weinberg and Stern began negotiating with
3 Success Trade for the return of Mr. Freeney's \$1.5 million in principal. In or about September 2010,
4 Success Trade returned \$441,000 to Mr. Freeney, which was deposited by Weinberg into the
5 Citibank accounts. During the course of the next month, a total of approximately \$720,000 of the
6 funds in the Citibank accounts were wire transferred to the BOA Roof Group account. During this
7 same time period, BOA executed wire transfers of approximately \$190,000 of those funds from the
8 BOA Roof Group account to ARC.

9 **3. *CFP.***

10 228. In or about May 2010, BOA, Weinberg and Stern began negotiating with CFP for the
11 return of Mr. Freeney's \$1.75 million in principal. Between in or about September 2010 and
12 February 2012, Mr. Freeney received approximately \$1.6 million from CFP in several separate
13 payments. All of these funds, with the exception of \$20,000, were deposited to the Citibank
14 accounts. A portion of the \$1.6 million was then wire transferred over time to ARC, to GWM, to
15 pay expenses related to the private jet and to pay Stern's personal debts.

16 229. The agreement that BOA, Weinberg and Stern negotiated with CFP discounted
17 significantly the amount of principal CFP was required to return to Mr. Freeney. As a result of this
18 agreement, Mr. Freeney lost a total of approximately \$260,000 in unreturned principal and
19 unrealized interest income.

20 **4. *Pacific Life Annuity.***

21 230. In or about June 2010, BOA, BOCK and Weinberg caused Mr. Freeney to surrender
22 his Pacific Life annuity, which had a cash value of approximately \$1.5 million. Because Mr.
23 Freeney surrendered the annuity early, he had to pay a penalty of approximately \$50,000.

24 231. The proceeds from the surrender of the annuity were deposited by Weinberg to the
25 Citibank accounts. Over the next month, \$850,000 was wire transferred from these accounts to
26 the BOA Roof Group account. In this same time period, BOA executed wire transfers from the
27 BOA Roof Group account of approximately \$87,000 to ARC, \$69,000 to pay expenses related to
28 the private jet and another approximately \$21,000 to pay Stern's personal debts and expenses.

1 **5. *American Realty.***

2 232. In or about April 2011, BOA, BOCK and Weinberg liquidated Mr. Freeney's
3 investment in American Realty, which resulted in \$195,000 in proceeds that Weinberg deposited to
4 the Citibank accounts. During the course of the next month, approximately \$178,000 was wire
5 transferred from these accounts to the BOA Roof Group account. From there, Stern wire transferred
6 a total of \$154,000 in thirteen separate wirings to ARC and another approximately \$29,000 for
7 expenses related to the private jet.

8 **U. The Snap Advances Transactions.**

9 233. Plaintiffs are informed and believe, and on that basis allege, that by in or about
10 August 2011, BOA, BOCK, Weinberg and Stern had liquidated almost all of Mr. Freeney's
11 investments that could be redeemed, and depleted almost all of his available cash. As a result,
12 Weinberg and Stern had no money remaining with which to pay Mr. Freeney's living and personal
13 expenses and continue to fund the operations of RSLA, while at the same time misappropriating the
14 funds that they needed to maintain their own extravagant lifestyles.

15 234. To keep RSLA afloat and the scheme to defraud from being discovered, in or about
16 August 2011, Weinberg negotiated a \$300,000 credit facility for Roof Group from a small factoring
17 company in Queens, New York named Snap Advances. The credit facility was secured by
18 RSLA's credit card receivables and personally guaranteed by Mr. Freeney, who, at Weinberg's
19 urging, agreed to pledge his guaranteed income under his Colts contract as security for his
20 personal guarantee.

21 235. Under the factoring agreement, in return for the \$300,000 credit facility, Mr. Freeney
22 was required to repay Snap Advances a total of \$435,000, which equated to 45 percent interest
23 per year.

24 236. At the time, Mr. Freeney was in training camp and had no real opportunity to
25 question whether or why RSLA needed this credit facility.

26 237. In or about September 2011, Weinberg negotiated a second such credit facility from
27 Snap Advances to Roof Group under the same terms. This time, the credit facility was for
28 \$150,000, and the factoring agreement required Mr. Freeney to pay Snap Advances a total of

1 approximately \$220,000.

2 238. Mr. Freeney did not complete repaying Snap Advances, with interest, until in or about
3 September 2012. Altogether, these transactions required him to pay approximately \$215,000 in
4 interest and costs.

5 239. In convincing Mr. Freeney to agree to the terms of the two Snap Advances factoring
6 agreements, Weinberg concealed and caused others to conceal the following material facts, among
7 others, from Mr. Freeney:

8 (a) The credit facilities were only necessary because BOA, BOCK, Weinberg and
9 Stern had depleted almost all of Mr. Freeney's available cash and liquid assets;

10 (b) If Roof Group defaulted on the credit facilities, Mr. Freeney could lose more
11 than \$25 million in guaranteed salary under his Colts contract;

12 (c) Mr. Freeney was paying interest at the shocking rate of 45 percent per annum
13 for the two credit facilities; and

14 (d) Weinberg and Stern were planning to (and did) misappropriate a portion of the
15 advances RSLA received under the factoring agreements.

16 **V. The W Hotel Investment.**

17 240. In or about January 2006, Mr. Freeney, on the advice of a former financial manager,
18 entered into a Purchase and Sale Agreement with 2201 Collins Fee LLC ("2201 Collins") to
19 purchase a penthouse condominium unit in the new W Hotel to be constructed in South Beach. The
20 purchase price was \$6.0 million. As required by the contract, Mr. Freeney made a deposit of 20
21 percent of the purchase price, or \$1.2 million. The balance would be due within 10 days of
22 notification of completion of construction, which was to occur no later than December 31, 2010. If
23 Mr. Freeney was unable to close at that time, the contract provided that 25 percent of his deposit
24 (\$300,000) would be returned to him and that the remaining amount (\$900,000) would be forfeited
25 as liquidated damages.

26 241. Mr. Freeney entered into this contract primarily for investment purposes. Under the
27 contract, the W Hotel would rent his unit for him when he was not using it, and he would receive the
28 rental payments, less management fees.

1 242. In June 2009, Mr. Freeney received notice that construction had been completed
2 ahead of schedule, and that he needed to pay the remaining \$4.8 million of the purchase price
3 to close on his purchase. It emerged, however, that 2201 Collins was not able to convey
4 marketable title at that time, and that there were a number of other irregularities in the manner in
5 which the developer had marketed the project, escrowed deposited amounts and amended the
6 purchase agreement.

7 243. Subsequently, Mr. Freeney retained a Miami lawyer to represent him in resolving
8 these issues with the developer. At the time Mr. Freeney became a BOA client in February 2010,
9 the matter was still unresolved, but, as a result of negotiations between Mr. Freeney's lawyer
10 and 2201 Collins, the developer had preliminarily agreed to: (a) reduce the purchase price of
11 Mr. Freeney's unit to \$5.4 million; (b) apply the full amount of the \$1.2 million deposit toward the
12 purchase of a lesser unit for \$1.75 million; or (c) return \$450,000 of Mr. Freeney's deposit.

13 244. In recruiting Mr. Freeney to become a BOA client, BOA, Weinberg and Stern (posing
14 as Millar) promised to intervene in this transaction, to assist Mr. Freeney in either obtaining the
15 financing to complete the purchase of his unit or to negotiate return of his \$1.2 million deposit.

16 245. Plaintiffs are informed and believe, and on that basis allege, that these promises were
17 false. In fact, after Mr. Freeney became a BOA client, BOA, Weinberg and Stern did virtually
18 nothing to help Mr. Freeney close on the purchase of the unit or obtain return of his deposit. As a
19 result of their inaction, Mr. Freeney never completed the purchase of the unit and remained without
20 use of any portion of the \$1.2 million deposit held by 2201 Collins until recently.

21 246. Based on these promises, Mr. Freeney had reposed his trust and confidence in BOA,
22 Weinberg and Stern to act honestly, loyally, competently and diligently in obtaining the return of his
23 \$1.2 million deposit. At all relevant times, BOA, Weinberg and Stern, and each of them,
24 encouraged, accepted and voluntarily assumed such trust and confidence, thereby creating a
25 fiduciary relationship with Mr. Freeney relating to this matter.

26 **W. The North Carolina Land Investment.**

27 247. In or about December 2004, Mr. Freeney, on the advice of a former financial
28 manager, purchased 8.5 acres of undeveloped lakefront land in Mecklenburg County,

1 North Carolina. The property is located outside of Charlotte, North Carolina and is part of a
2 development known as the Sanctuary at Lake Wylie. Mr. Freeney still owns this land, which
3 remains undeveloped.

4 248. Mr. Freeney paid \$1,530,000 for the land, which he purchased for investment
5 purposes. The purchase was financed by a mortgage loan from First Charter Bank, which later
6 merged with Fifth Third Bank. The Fifth Third mortgage was extended in January 2008, and again
7 in January 2010. Mr. Freeney repaid the mortgage in full in December 2013.

8 249. At the time Mr. Freeney became a BOA client in February 2010, he was making
9 mortgage payments of approximately \$9,500 per month to Fifth Third Bank. Because
10 North Carolina is not an antideficiency state, a reasonably competent financial manager would have
11 advised Mr. Freeney that his best (if not only) option was to sell the property as soon as possible to
12 stop his ongoing and mounting losses.

13 250. In recruiting Mr. Freeney to become a BOA client, BOA, Weinberg and Stern (posing
14 as Millar) advised Mr. Freeney (correctly) that the investment was a losing proposition and promised
15 to dispose of it for him. Based on this promise, BOA and Weinberg convinced Mr. Freeney to give
16 Stern (posing as Millar) written authorization to negotiate a workout of the existing mortgage with
17 Fifth Third Bank on his behalf, which Mr. Freeney did.

18 251. Plaintiffs are informed and believe, and on that basis allege, that BOA, Weinberg and
19 Stern's promises to dispose of the property were false. In fact, after Mr. Freeney became a BOA
20 client, BOA, Weinberg and Stern did virtually nothing toward disposing of the property or
21 negotiating a loan modification with Fifth Third Bank. As a result, Mr. Freeney was required to
22 continue to make the monthly mortgage payments over the next three years, which totaled more than
23 \$430,000, as well as pay property taxes totaling more than \$18,000, while the value of the land
24 continued to decline.

25 252. In addition, although BOA was responsible for Mr. Freeney's bill payments, it failed
26 to pay the quarterly homeowner association ("HOA") dues on his behalf, which eventually led to the
27 HOA foreclosing on the property. As a consequence, Mr. Freeney had to pay the HOA over \$12,000
28 and more than \$5,500 in attorney's fees and costs to reacquire the property.

1 253. Based on the foregoing promises, Mr. Freeney had reposed his trust and confidence in
2 BOA, Weinberg and Stern to act honestly, loyally, competently and diligently in disposing of the
3 North Carolina Land Investment for the greatest value reasonably obtainable. At all relevant times,
4 BOA, Weinberg and Stern, and each of them, encouraged, accepted and voluntarily assumed that
5 trust and confidence, thereby creating a fiduciary relationship with Mr. Freeney relating to
6 disposition of the North Carolina Land Investment.

7 **X. Efforts at Cover Up and to Obstruct Justice.**

8 254. Beginning in or about late-2011, BOA, Weinberg and Stern, aided and abetted
9 by others, engaged in the following acts, among others, to conceal and cover up their
10 involvement in the scheme to defraud Mr. Freeney.

11 **1. Weinberg and Stern Secretly Marry.**

12 255. Weinberg and Stern were secretly married in Los Angeles on or about
13 February 25, 2011.

14 256. Weinberg and Stern recorded their Marriage License and Certificate as confidential.
15 Although Weinberg would tell the FBI following her arrest that she believed Stern had previously
16 legally changed his last name to “David Michael Millar,” the marriage license listed Stern’s name as
17 “Michael Alan Stern,” and further indicated that Weinberg had elected to change her name to
18 “Eva Danielle Stern.”

19 257. At the time they wed, Stern was still married to Layne Harris Stern. (They were not
20 divorced until two years later, in April 2012.)

21 258. Plaintiffs are informed and believe, and on that basis allege, that this marriage was a
22 sham. In fact, Stern secretly wed Weinberg, while still married to Layne Harris Stern, so Weinberg
23 could assert the spousal and marital communication privileges to refuse to testify against Stern in the
24 Florida bankruptcy proceedings and in the various lawsuits pending against him in Florida, or in the
25 event the scheme to defraud Mr. Freeney was discovered and Stern was sued or criminally
26 prosecuted as a result.

27 **2. Efforts to Misdirect Scrutiny.**

28 259. Plaintiffs are informed and believe, and on that basis allege, that in or about

1 November 2011, Weinberg and Stern became concerned that Mr. Freeney had discovered their fraud
2 and that they were under investigation by federal authorities. In an effort to conceal their criminal
3 activities, they attempted to misdirect scrutiny away from themselves by falsely accusing others,
4 including, in particular, Mr. Freeney's friend and business associate Aaron West, of having stolen
5 from Mr. Freeney.

6 260. In or about November 2011, Stern composed a letter on his computer, "To whom it
7 may concern," falsely claiming that he "did make cash deposits to the account of Aaron Oneil
8 West"; that Mr. West "had asked to borrow funds that would be reimbursed by Roof Group"; and
9 that "monies were also given to Aaron west [sic] in hand in cash" The letter was recovered
10 from Stern's computer by the FBI following his arrest.

11 261. During this same period, Weinberg viciously slandered Mr. West to RSLA managers
12 and staff and to Mr. Freeney's mother, falsely accusing him of stealing from Mr. Freeney and
13 seeking to blame him for RSLA's deteriorating financial condition.

14 262. Plaintiffs are informed and believe, and on that basis allege, that Weinberg and Stern
15 also attempted to misdirect scrutiny by creating fictitious account statements to show Mr. Freeney.
16 In or about December 2011, Weinberg and Stern paid an accountant to prepare phony account
17 statements for Mr. Freeney that Weinberg could show to him. The phony statements purported to
18 have been issued by Global Wealth Management, listed Weinberg as the Senior Vice President of
19 GWM, and falsely reported that Mr. Freeney still had over \$1.3 million in cash on deposit and
20 owned assets valued at close to \$14 million.

21 **3. *Creation of False and Forged Documents.***

22 263. In or about November 2011, Stern composed a false exculpatory statement on his
23 computer that he fraudulently backdated to August 3, 2010. The letter was purportedly authored by
24 Mr. Freeney. In it, Stern had Mr. Freeney "agree[ing] to pay the cost per hour plus fuel and pilot
25 expenses [of the private jet] to Arms Reach Consulting or its suppliers," and that the "fees will be
26 paid by Roof Group LLC." This letter was also recovered by the FBI from Stern's computer
27 following his arrest.

28 264. In or about December 2011, Stern composed a letter on his computer that included a

1 confession of sorts. Plaintiffs are informed and believe, and on that basis allege, that Stern created
2 this document for Weinberg to use to exonerate herself should she be arrested by federal authorities.
3 The letter was addressed, “To whom it may concern,” and was prepared on or about
4 December 21, 2011. In it, Stern admitted that, “I have been using the name or I have been known as
5 or under the A/K/A David Michael Millar, Michael Millar”; that “[f]rom day one I was transferring
6 funds and taking monies that did not belong to me”; and that “I took those funds without anyone’s
7 knowledge and transferred funds without the knowledge and or consent of the owner of the account
8 or his financial advisors.”

9 265. Plaintiffs are informed and believe, and on that basis allege, that sometime between in
10 or about December 2011 and March 2012, Stern fabricated a “Business Management Engagement
11 Letter” purportedly between GWM and Mr. Freeney (the “Forged Engagement Letter”).
12 The document was fraudulently backdated to June 11, 2010, the day after Weinberg sent her
13 resignation note to BOA. The document purported to be signed by Mr. Freeney, but either Stern
14 forged Mr. Freeney’s signature to it or obtained his signature fraudulently.

15 266. The document recited the terms of a supposed agreement by which Mr. Freeney was
16 to pay GWM five percent of his total assets annually, including five percent of the value of
17 Roof Group, in return for GWM managing his finances. No such agreement existed. In fact, in a
18 telephone conversation that the FBI recorded between Mr. Freeney and Weinberg on or about
19 December 16, 2011, Weinberg admitted that “you don’t owe me anything.”

20 267. This telephone conversation followed Mr. Freeney’s receipt earlier that day of an
21 anonymous fax, which stated, in part:

- 22 • “You signed an asset management contract. The contract was signed by
23 yourself in June 2010, however, [Weinberg] was managing them since
24 February 2010. The contract was signed by you”
- 25 • “You will be provided with an additional copy of all agreements you
26 signed including the authorizations”
- 27 • “The total fees are \$2,731,375. Without the bill pay”

28 268. Plaintiffs are informed and believe, and on that basis allege, that Weinberg and Stern
sent this fax and that this was the first time the existence of an “asset management contract” between

1 Mr. Freeney and GWM was mentioned to him. Moreover, although the anonymous fax stated that
2 “[y]ou will be provided with an additional copy of all agreements you signed,” no such agreements
3 were ever sent to Mr. Freeney by Weinberg or anyone else. In fact, Mr. Freeney first saw the Forged
4 Engagement Letter in or about April 2012, when the FBI showed it to him, following the arrests of
5 Weinberg and Stern in March 2012.

6 **4. *The Attempted Destruction and Secreting of Evidence.***

7 269. Plaintiffs are informed and believe, and on that basis allege, that in or about
8 March 2012, Stern returned to Miami to collect money that he was owed and needed, now that he
9 had exhausted Mr. Freeney’s available cash and liquid assets. While there, he had a number of
10 conversations with an associate who was actually a paid Confidential Informant (“CI”) working with
11 the FBI. (Some of those conversations were surreptitiously recorded by the CI and others were
12 documented by the FBI in Forms 1023.)

13 270. On or about March 17, 2012, Stern told the CI that he had intercepted a letter from
14 the FBI intended for Mr. Freeney, indicating that an investigation was underway. Stern advised the
15 CI that he was able to intercept the letter because all of Mr. Freeney’s mail was being forwarded to
16 Weinberg’s office in California.

17 271. On or about March 18, 2012, Stern admitted to the CI that he had used the name
18 “David Michael Millar” in his dealings with Mr. Freeney. He also told the CI that he was
19 considering leaving the country because of the FBI investigation.

20 272. On or about March 21, 2012, Stern instructed the CI to fly from Miami to
21 Los Angeles to destroy the hard drive of a laptop computer that had been left in a SUV parked at
22 Los Angeles International Airport, which contained evidence incriminating of him and Weinberg.
23 Stern described to the CI how he could locate the car, gave him the keys to the car and gave him
24 money to buy a plane ticket to Los Angeles. Stern also instructed the CI to retrieve documents from
25 the SUV and a box of documents from Weinberg’s home and destroy them as well. Later, Stern told
26 the CI that Weinberg had already taken care of the box of documents.

27 273. The CI flew to Los Angeles that same day, March 21, 2012. Based on the
28 information provided by the CI, the FBI recovered the laptop from the SUV.

1 274. On March 23, 2012, Stern was driven to Miami International Airport by Carl Brown,
2 another business associate, to catch a flight to Los Angeles to reunite with Weinberg.

3 275. En route to the airport, Stern and Brown stopped at a check cashing store where Stern
4 unsuccessfully attempted to cash a Colts check made payable to Mr. Freeney, which was dated
5 February 7, 2012, and in the amount of \$31,785.

6 276. Before arriving at the airport, Stern and Brown also stopped at the house Brown was
7 living in, which Stern owned and was renovating. As Brown would tell the FBI, Stern was carrying
8 “a bag full of paperwork with him,” and he “witnessed STERN get up on a ladder and put the
9 paperwork inside the ceiling trusses that were exposed due to drywall cutout in the ceiling.” Brown
10 stated that he “held the plastic bag while STERN took paperwork from inside the bag and placed it
11 between the trusses,” and then “STERN told BROWN to have the ceiling covered up as soon as
12 possible.”

13 277. The FBI later recovered the “paperwork” Stern had stashed between the ceiling
14 trusses. The documents recovered included a different version of the Forged Engagement Letter;
15 exemplars of Mr. Freeney’s signature; and a series of forged and fraudulent documents that
16 purportedly authorized Citibank to transfer funds to the BOA Roof Group account in 2010 and 2011.

17 **5. Weinberg and Stern’s Arrests.**

18 278. Stern was arrested on March 23, 2012, at Miami International Airport, as he was
19 about to board a flight to Los Angeles. At the time, he had on his person the check from the Colts to
20 Mr. Freeney for \$31,785; another check from the NFL Players Association to one of Mr. Freeney’s
21 companies for \$2,270.52; a BOA Visa card in Mr. Freeney’s name; temporary checks for a newly
22 opened account at First Bank in Beverly Hills; and a number of documents relating to the scheme,
23 including multiple copies of the other version of the Forged Engagement Letter and handwritten
24 notes and materials printed from the Internet that Stern apparently used to draft the Forged
25 Engagement Letter.

26 279. Weinberg was arrested at her residence in Los Angeles on the same day,
27 March 23, 2012.

28 ///

1 **6. *Post-Arrest False Statements.***

2 280. In an interview by the FBI on March 23, 2012, the day of her arrest, Weinberg falsely
3 stated, among other things, that:

- 4 (a) Aaron West had introduced Mr. Freeney to Stern;
5 (b) She was afraid of Mr. West because he had threatened her life;
6 (c) Mr. Freeney paid a consulting fee to ARC, recalling one payment
7 of \$100,000;
8 (d) She and Stern had become romantically involved only at the end of 2010;
9 (e) She first discovered that Stern was not divorced from his prior wife soon
10 after they were married; and
11 (f) She had told Mr. West in December 2011 about Stern's unauthorized use
12 of a Roof Group credit card.

13 281. While detained following his arrest, Stern sent Weinberg a letter dated May 15, 2012.
14 Disguised as a suicide note, the letter outlined for Weinberg the false exculpatory story she should
15 tell the prosecutor when next interviewed. Amidst expressions of regret and sorrow, Stern wrote
16 that:

- 17 • "Aaron [West] made the call to the bank and got me the passcodes on a
18 recorded call. He also instructed me to wire money on hundreds of
occasions not only to others but to him as well."
19 • "You must try and remember how it all started as Aaron introduced me to
20 Dwight not you."
21 • "I spoke to [Dwight at his hotel] and discussed his financials on Feb 2010.
22 He advised me about his investments and I tried to stop him from putting
in additional monies until I checked things out. He agreed and I started
23 working on taking the DF restaurant and the studio under control."
24 • "It was always my belief that the contract between Global Wealth and DF
could protect me."

25 282. In an interview with the FBI and the prosecutor on or about May 17, 2012,
26 Weinberg falsely stated, among other things, that:

- 27 (a) She only referred to Stern as "Mike" or "Michael" to Mr. Freeney,
28 never as Millar;

- 1 (b) She had “never worked side-by-side with Stern” prior to meeting Mr. Freeney;
- 2 (c) Stern had legally changed his name to “David Michael Millar” in Trinidad, in
- 3 an effort to “start over”;
- 4 (d) She had discussed her leaving BOA with Mr. Freeney, and had described her
- 5 compensation requirements to him;
- 6 (e) She and Freeney had discussed the Forged Engagement Letter previously;
- 7 (f) She “never really took her fees from Freeney”;
- 8 (g) She never accessed Mr. Freeney’s bank accounts online and did not know
- 9 their balances; and
- 10 (h) She did not know that \$2.2 million had been transferred from the
- 11 BOA Roof Group account to ARC until she and Stern were arrested.

12 283. In a third interview with the FBI and the USAO on or about June 5, 2012, Weinberg

13 was more forthcoming, but still falsely stated, among other things, that:

- 14 (a) Mr. Freeney knew that Stern was doing the bill pay for RSLA;
- 15 (b) It was Stern and Freeney who had decided to open the BOA Roof Group
- 16 account, not her;
- 17 (c) She never saw statements for the BOA Roof Group account, never checked
- 18 the account balances and did not know that the account was still open and;
- 19 (d) When, in December 2011, she discovered that Stern had used a Roof Group
- 20 credit card without authorization to pay personal expenses, she did not tell anyone because she
- 21 wanted “to give Stern the benefit of clearing things up.”

22 **Y. Mr. Freeney’s Discovery of Weinberg and Stern’s Thefts.**

23 284. Previously, in or about November 2011, Mr. Freeney became concerned that

24 Weinberg was misusing funds in the RSLA bank accounts at Wells Fargo Bank that had been

25 opened in June 2010. However, it was not until shortly before Weinberg and Stern’s arrests on

26 March 23, 2012, when he was shown account statements for the BOA Roof Group account that the

27 FBI had subpoenaed from BOA, that he first learned of Weinberg and Stern’s misappropriations

28 from that account.

1 285. In or about April 2012, Mr. Freeney retained counsel to investigate BOA's role in the
2 scheme to defraud. As noted earlier, counsel thereafter conducted an extensive investigation to
3 determine the amount and disposition of funds stolen from Mr. Freeney, and the nature and extent of
4 the losses he and Roof Group had suffered as a result of the scheme. Counsel, however, were
5 hampered in their investigation by BOA's lack of cooperation, including, in particular, its refusal to
6 produce account records and other relevant documents that counsel, Mr. Freeney's accountants and
7 Mr. Freeney himself had repeatedly requested. Moreover, BOA never offered a justification for its
8 refusal to produce these records, which, for the most part, were documents that Mr. Freeney was
9 entitled to receive as a BOA client.

10 286. Meanwhile, at Mr. Freeney's direction, counsel shared with BOA, both in writing,
11 and verbally, the findings, analysis and conclusions of their pre-filing investigation, along with more
12 than 5,000 pages of relevant documents. In response, BOA provided no information of value.

13 **Z. BOA's Cover Up of Its Employees' Criminal Activities.**

14 287. At all relevant times, the federal law known as the Bank Secrecy Act, Title 31,
15 United States Code, section 5311, *et seq.*, required BOA to file a Suspicious Activity Report
16 ("SAR") with the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Department of
17 the Treasury whenever it suspected fraud, money laundering, or other criminal activity involving any
18 of its clients, clients' accounts, or employees and agents. The regulations promulgated under this
19 law explain that the types of "suspicious activity" that trigger the filing requirement include:
20 (a) apparent bogus business accounts; (b) abnormal transactions based on a customer's history;
21 and (c) multiple transactions for amounts smaller than \$10,000, seemingly designed to avoid
22 reporting requirements.

23 288. Plaintiffs are informed and believe, and on that basis allege, that notwithstanding the
24 hundreds of suspicious wire transfers of more than \$17 million into and out of the BOA Roof Group
25 account during 2010 and 2011, BOA *never* filed a SAR with FinCEN relating to any of those
26 banking transactions. Plaintiffs are further informed and believe, and on that basis allege, that
27 notwithstanding the apparent criminal activities of BOCK, Weinberg and Stern involving
28 Mr. Freeney and Roof Group's BOA accounts, and Weinberg and Stern's publicly reported arrests

1 and prosecutions, BOA *never* filed a SAR with FinCEN concerning their activities.

2 289. At all relevant times, BOA was under mandatory reporting requirements to FINRA.
3 More specifically, when BOA hires a stock broker, an investment advisor, or an associate, it is
4 required to file a Form U4 with FINRA, disclosing information about the new hire, including any
5 pending or prior criminal, regulatory, or civil actions; customer complaints; adverse employment
6 actions; or financial problems, such as bankruptcies or unsatisfied judgments. BOA is also under a
7 continuing duty to file an updated Form U4 whenever it becomes aware of any such events involving
8 its stock brokers, investment advisors, or associates. Additionally, BOA is required to file a
9 Form U5 with FINRA when a stock broker, investment advisor, or associate ends his or her
10 employment.

11 290. Plaintiffs are informed and believe, and on that basis allege, that BOA violated
12 its FINRA reporting obligations by deliberately delaying the filing of a Form U4 reporting
13 Mr. Freeney's complaints of wrongdoing against BOCK, Liebman and Del Campo made two years
14 earlier. Plaintiffs are further informed and believe, and on that basis allege, that BOA only reported
15 Mr. Freeney's allegations to FINRA recently and only because it anticipated the filing of this lawsuit
16 and those allegations becoming public as a result.

17 291. Plaintiffs are also informed and believe, and on that basis allege, that the updated
18 Forms U4 BOA filed for BOCK, Liebman, Del Campo and Weinberg were in furtherance of its
19 efforts to cover up the criminal activities of its present and former employees and its failure to
20 responsibly address those activities. In particular, Plaintiffs are informed and believe, and on that
21 basis allege, that these updated forms were false and misleading in that they reported that BOA had
22 investigated Mr. Freeney's allegations, and that it had determined that the allegations were
23 "unfounded and without merit," when, in fact, BOA conducted no meaningful investigation of
24 Mr. Freeney's allegations and altogether ignored the voluminous evidence of its present and former
25 employees' criminal conduct that Mr. Freeney had previously shared with BOA.

26 **AA. Mitigation of Losses.**

27 ***1. The Closure of RSLA.***

28 292. Following the discovery of the scheme to defraud, Mr. Freeney invested another

1 approximately \$3.4 million in RSLA in 2012, in an effort to save the restaurant from bankruptcy and
2 turn it around. The \$3.4 million was used to fund further operating losses; pay bills that BOA and
3 Weinberg had failed to pay; settle lawsuits arising from BOA and Weinberg's failure to pay vendors
4 and RSLA employees; pay sales and payroll taxes that BOA and Weinberg also failed to pay and the
5 interest and penalties that were imposed for their failure to timely pay those taxes; bring in new
6 management and accountants; and retain a top hospitality expert to evaluate RSLA's continuing
7 viability and make recommendations to turn it around, if feasible.

8 293. Ultimately, Mr. Freeney's efforts to save RSLA proved unavailing. As a result of the
9 financial, operational and reputational harm caused by the scheme to defraud, the restaurant had
10 been sustaining heavy losses and could not continue to operate without a massive capital infusion.
11 Mr. Freeney was in no position to make a further investment of that magnitude and extensive efforts
12 to attract new investors proved unsuccessful.

13 294. RSLA was forced to close in February 2013, at a further cost to Mr. Freeney of
14 \$1.1 million and the loss of 68 jobs. The closure of RSLA, and the additional funds that
15 Mr. Freeney spent to mitigate his losses from that closure, were the natural, reasonable and
16 proximate result of the wrongful acts of Defendants and their co-schemers.

17 **2. *Settlement of the W Hotel Dispute.***

18 295. In or about May 2013, Mr. Freeney retained new counsel in Florida to assist him in
19 negotiating with 2201 Collins for return of his deposit. In or about July 2014, 2201 Collins agreed to
20 return \$575,000 of Mr. Freeney's \$1.2 million deposit. Because of BOA's broken promise to obtain
21 return of Mr. Freeney's deposit in 2010, at the very least, Mr. Freeney has been without the use of
22 the funds he eventually recovered for four years.

23 **3. *Repayment of the North Carolina Loan.***

24 296. In or about December 2013, Mr. Freeney repaid the Fifth Third Bank mortgage on the
25 North Carolina property at a cost to him of over \$1.4 million. Mr. Freeney is currently seeking to
26 sell the property. The market value of this land, however, has continued to plummet over the past
27 five years, since Mr. Freeney became a BOA client, such that any future sale of the property will be
28 at only a fraction of the price Mr. Freeney would have received in 2010, when BOA promised to

1 dispose of this investment for him.

2 **BB. The Tolling Agreements.**

3 297. Prior to the filing of this action, the parties entered into a series of tolling agreements,
4 whereby they agreed that the statute of limitations for the claims asserted in this complaint were
5 tolled during the period September 19, 2013 through and including January 30, 2015.

6 **FIRST CAUSE OF ACTION**

7 **(Civil RICO in Violation of**

8 **Title 18, United States Code, Sections 1962(c) and 1964(c))**

9 **(By Plaintiffs Freeney and Roof Group Against**

10 **Defendants BOA and DOES 1-20)**

11 298. This Cause of Action is not premised upon and does not encompass any transactions
12 in any of Mr. Freeney's BOA personal accounts, including, without limitation, the unauthorized
13 purchase and sale of securities. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 297
14 of this Complaint as if fully alleged herein.

15 299. Title 18, United States Code, section 1962(c) provides, in relevant part, that "[i]t shall
16 be unlawful for any person employed by or associated with any enterprise . . . to conduct or
17 participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of
18 racketeering activity."

19 300. Title 18, United States Code, section 1961(4) defines the term "enterprise" to include
20 "any individual, partnership, or other legal entity, and any . . . group of individuals associated in fact
21 although not a legal entity."

22 301. Title 18, United States Code, section 1964(c), provides, in relevant part, that "[a]ny
23 person injured in his business or property by reason of a violation of section 1962 of this chapter
24 may sue thereafter . . . and shall recover threefold the damages he sustains and the cost of the suit,
25 including a reasonable attorney's fee"

26 **A. The "Criminal Enterprise."**

27 302. At all relevant times, Mr. Freeney and Roof Group were each a "person" within the
28 meaning of Title 18, United States Code, sections 1961(3) and 1964(c).

1 303. At all relevant times, BOA, Weinberg, GWM, Stern, ARC, Jaggernauth, Weinberg's
2 brother, the Florida Attorney, the Florida Law Firm and DOES 1-20 were each a "person" within the
3 meaning of Title 18, United States Code, section 1961(3).

4 304. At all relevant times, BOA, Weinberg, GWM, Stern, ARC, Jaggernauth, Weinberg's
5 brother, the Florida Attorney, the Florida Law Firm and DOES 1-20 were a group of persons
6 associated for the common purpose of devising, carrying out and aiding and abetting the scheme to
7 defraud Mr. Freeney, and constituted an association-in-fact enterprise within the meaning of
8 Title 18, United States Code, section 1961(4) (the "Criminal Enterprise").

9 305. At all relevant times, the Criminal Enterprise was engaged in, and its activities
10 affected, interstate commerce.

11 **B. The Racketeering Acts.**

12 306. Beginning in or about January 2010, and continuing until the present, BOA and
13 DOES 1-20, together with Weinberg, GWM, Stern, ARC, Jaggernauth, Weinberg's brother, the
14 Florida Attorney and the Florida Law Firm, being employed by or associated with the Criminal
15 Enterprise, conducted and participated in the conduct of the affairs of the Criminal Enterprise,
16 directly and indirectly, through the pattern of racketeering activity described below, in violation of
17 Title 18, United States Code, section 1962(c).

18 **1. Mail Fraud.**

19 307. On or about the dates set forth below, in Los Angeles County and elsewhere, BOA and
20 DOES 1-20, together with Weinberg, GWM, Stern, ARC, Jaggernauth, Weinberg's brother, the
21 Florida Attorney and the Florida Law Firm, and each of them, knowingly and with intent to defraud,
22 devised, participated in and aided and abetted a scheme or artifice to defraud Mr. Freeney and
23 Roof Group and to obtain money and property from them by means of false and fraudulent
24 pretenses, representations and promises and the concealment of material facts, and, for purposes of
25 carrying out such scheme or artifice, caused the following items, among others, to be sent and
26 delivered through the U.S. mail, in violation of Title 18, United States Code, sections 1341 and 2:

27 ///

28 ///

Racketeering Act	Date	Description of Mailing
1.A	Feb. 2010	V. Brown & Co. mails Mr. Freeney's books and records to BOA at Weinberg's request.
1.B	Jun. 18, 2010	BOA mails signature cards for the BOA Roof Group account to Weinberg at her request.
1.C	Jun. 23, 2010	Weinberg mails application to first insurance company on behalf of Mr. Freeney for a \$20 million life insurance policy.
1.D	Jul. 1, 2010	Weinberg mails application to second insurance company on behalf of Mr. Freeney for a \$15 million life insurance policy.
1.E	Jul. 1, 2010	Weinberg mails application to third insurance company on behalf of Mr. Freeney for a \$20 million life insurance policy.
1.F	Aug. 3, 2010	GWM mails instructions to the Indianapolis Colts to send Mr. Freeney's paychecks to GWM's office in California.
1.G	Sep. 19, 2010	Colts mail Mr. Freeney's paycheck in the amount of \$226,902.58 to GWM in accordance with Weinberg's direction.
1.H	Sep. 26, 2010	Colts mail Mr. Freeney's paycheck in the amount of \$252,203.88 to GWM in accordance with Weinberg's direction.
1.I	Oct. 24, 2010	Colts mail Mr. Freeney's paycheck in the amount of \$302,951.09 to GWM in accordance with Weinberg's direction.
1.J	Nov. 7, 2010	Colts mail Mr. Freeney's paycheck in the amount of \$303,128.93 to GWM in accordance with Weinberg's direction.
1.K	Oct. 2, 2011	Colts mail Mr. Freeney's paycheck in the amount of \$398,449.20 to GWM in accordance with Weinberg's direction.
1.L	Oct. 9, 2011	Colts mail Mr. Freeney's paycheck in the amount of \$392,916.06 to GWM in accordance with Weinberg's direction.
1.M	Feb. 8, 2012	Colts mail Mr. Freeney's paycheck in the amount of \$31,785 to GWM in accordance with Weinberg's direction (which is later found on Stern's person when he is arrested on March 23, 2012).

2. Wire Fraud.

308. On or about the dates set forth below, in the County of Los Angeles and elsewhere, BOA and DOES 1-20, together with Weinberg, GWM, Stern, ARC, Jaggernauth, Weinberg's brother, the Florida Attorney and the Florida Law Firm, and each of them, knowingly and with intent to defraud, devised, participated in and aided and abetted a scheme and artifice to defraud Mr. Freeney and Roof Group and to obtain money and property from them by means of false and fraudulent pretenses, representations and promises and the concealment of material facts, and, for purposes of carrying out such scheme or artifice, caused the following transmissions by wire or radio communication in interstate commerce, among others, in violation of Title 18, United States Code, sections 1343 and 2:

Racketeering Act	Date	Description of Wire Transmission
2.A	Feb. 12, 2010	Stern, posing as "David Michael Millar," sends text message from Florida to Mr. West in California stating that his email address is davidmichaelmillar@yahoo.com
2.B	Feb. 12, 2010	Stern, posing as "David Michael Millar" and using the email address amsreachconsultingllc@yahoo.com, sends email from Florida to Mr. Freeney in Indiana encouraging him to increase his ownership interest in Roof Group and RSLA.
2.C	May 12, 2010	The Florida Attorney sends email from Florida to Mr. Freeney in Indianapolis, copying Weinberg and "David Millar," attaching two invoices for the Florida Attorney's legal services and asking "Michael" to review and approve the invoices.
2.D	May 31, 2010	Stern, posing as "David Millar" and using the email address amsreachconsultingllc@yahoo.com, sends email from Florida to CFP in Virginia demanding repayment of Mr. Freeney's loans to CFP.
2.E	Jul. 30, 2010	Del Campo sends an email from Florida to BOA's Wealth Management Banking Support office in Arizona requesting that they remove the security hold on the BOA Roof Group account.
2.F	Aug. 2, 2010	Weinberg sends an email from California to Del Campo in Florida asking her to ensure that wire transfers from the BOA Roof Group account are processed.
2.G	Aug. 25, 2010	Stern, posing as "David Millar" and using the email address amsreachconsultingllc@yahoo.com, sends email from Florida to Mr. West in California requesting that Mr. West not sign the Term Sheet with the Felis and that Stern be allowed to continue negotiating with the Felis.
2.H	Sep. 21, 2010	Citibank credits deposit of Mr. Freeney's Colts paycheck for \$300,633.78 in California to account in Florida.
2.I	Oct. 7, 2010	Citibank credits deposit of Mr. Freeney's Colts paycheck for \$562,657.61 in California to account in Florida.
2.J	Oct. 21, 2010	Citibank credits deposit of Mr. Freeney's Colts paycheck for \$598,311.70 in California to account in Florida.
2.K	Mar. 24, 2011	Stern, posing as "David Millar" and using the email address amsreachconsultingllc@yahoo.com, sends email from California to the Florida Attorney in Florida, and to Mr. West providing a status report on his negotiations to purchase Donnelly's ownership interest in Roof Group on behalf of Mr. Freeney.
2.L	Mar. 28, 2011	Weinberg sends a fax from California to her tax accountant in New York with false financial information to use in preparing Mr. Freeney's 2010 income tax returns.
2.M	Apr. 1, 2011	Weinberg sends fax from California to her tax accountant in New York with additional false financial information to use in preparing Mr. Freeney's 2010 income tax returns.

Racketeering Act	Date	Description of Wire Transmission
2.N	Aug. 10, 2011	Pursuant to Weinberg's instructions, Snap Advances wire transfers \$300,000 advance from account in New York to Roof Group account at Wells Fargo Bank in California.
2.O	Sep. 19, 2011	Weinberg sends fax from California to Mr. Freeney in Indiana requesting Mr. Freeney's signature to approve second Snap Advances credit facility.
2.P	Sep. 20, 2011	Weinberg sends fax from California to Snap Advances in New York with signed Continuing Payment Guarantee for Mr. Freeney to pay \$222,000 to Snap Advances for \$150,000 advance for RSLA.
2.Q	Sep. 20, 2011	Pursuant to Weinberg's instructions, Snap Advances wire transfers \$150,000 advance from account in New York to Roof Group account at Wells Fargo Bank in California.
2.R	Oct. 12, 2011	Citibank credits deposit of Mr. Freeney's Colts paycheck for \$392,916.06 in California to account in Florida.
2.S	Oct. 19, 2011	Citibank credits deposit of Mr. Freeney's Colts paycheck for \$392,315.27 in California to account in Florida.
2.T	Dec. 16, 2011	Stern and Weinberg send anonymous fax from California to Mr. Freeney in Indiana falsely claiming that Mr. Freeney had signed an "asset management contact" with GWM in June 2010.
2.U	Jan. 17, 2012	Weinberg sends email from California to Mr. Freeney in Indiana with wiring instructions for final payment to Donnelly pursuant to Membership Interest Purchase and Sale Agreement.
2.V	Jan. 30, 2012	Weinberg sends fax from California to CFP in Virginia advising CFP that its final payment is due to Mr. Freeney and threatening legal action if payment is not made.
2.W	Mar. 2, 2012	Weinberg sends email from California to Mr. Freeney in Indiana confirming that all the CFP funds have been received.

3. Access Device Fraud.

309. During the periods set forth below, in Los Angeles County and elsewhere, BOA and DOES 1-20, together with Weinberg and Stern, and each of them, knowingly, with intent to defraud and without authorization, used or aided and abetted the use of one or more access devices within the meaning of Title 18, United States Code, section 1029(e)(1) and (e)(3), including, without limitation, codes, account numbers, personal identification numbers and other means of account access, which conduct affected interstate commerce.

310. By such conduct, Weinberg and Stern obtained something of value aggregating to \$1,000 or more during a one-year period, in violation of Title 18, United States Code, sections 1029(a)(2) and 2, as described below:

Racketeering Act	Time Period	Unauthorized Access Device Use
3.A	Jun 29, 2010 – Jun. 28, 2011	Stern accesses Mr. Freeney's Citibank account online using confidential account information provided by BOA, and, without authorization, initiates 94 wire transfers totaling \$8,458,295 to the BOA Roof Group account.
3.B	Jun 30, 2011 – Oct. 18, 2011	Stern accesses Mr. Freeney's Citibank account online using confidential account information provided by BOA, and, without authorization, initiates 29 wire transfers totaling \$632,957 to the BOA Roof Group account.
3.C	Jun. 18, 2010 – Jun. 17, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 104 wire transfers totaling \$1,935,851 to ARC.
3.D	Jun. 21, 2011 – Oct. 18, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 36 wire transfers totaling \$299,287 to ARC.
3.E	May 28, 2010 – May 13, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 66 wire transfers totaling \$4,873,203 to fund the build out of RSLA.
3.F	May 31, 2011 – Oct. 31, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 13 wire transfers totaling \$161,437 to fund RSLA operating deficits.
3.G	Nov. 12, 2010 – Sep. 14, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates five wire transfers totaling \$322,000 to GWM.
3.H	Jun. 18, 2010 – May 31, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 64 wire transfers totaling \$677,743 to pay costs associated with the leasing and operation of the private jet.
3.I	Jun. 21, 2011 – Oct. 14, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates 14 wire transfers totaling \$75,120 to pay costs associated with the leasing and operation of the private jet.
3.J	Jun. 21, 2010 – Jul. 2, 2010	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates two wire transfers totaling \$15,000 to pay to charter a yacht.

Racketeering Act	Time Period	Unauthorized Access Device Use
3.K	Jun. 21, 2010 – Oct. 12, 2010	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates three wire transfers totaling \$17,000 to pay his gambling debts.
3.L	Jan. 18, 2011 – Oct 3, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates seven wire transfers totaling \$89,115 to pay rent on the Hancock Park house.
3.M	Aug. 18, 2010 – Jan. 20, 2011	Stern accesses the BOA Roof Group account online using confidential account information provided by BOA, and, without authorization, initiates eight wire transfers totaling \$55,810 to pay his business associates and personal expenses.

4. Transactional Money Laundering

311. On or about the dates set forth below, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, knowingly engaged in, attempted to engage in, caused and aided and abetted the following monetary transactions in criminally derived property, among others, of a value greater than \$10,000, which property was derived from Specified Unlawful Activity as defined below and which monetary transactions were in or affected interstate commerce and were by, through, or to a financial institution, in violation of Title 18, United States Code, sections 1957 and 2.

312. As used in this Complaint, “Specified Unlawful Activity” means: mail fraud, in violation of Title 18, United States Code, section 1341; wire fraud, in violation of Title 18, United States Code, section 1343; interstate transportation of money obtained by fraud, in violation of Title 18, United States Code, section 21314; and bankruptcy fraud, in violation of Title 18, United States Code, section 152.

Racketeering Act	Date	Description of Monetary Transaction
4.A	Jun. 18, 2010	BOA executes a wire transfer for \$13,480 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.
4.B	Jul. 13, 2010	BOA executes a wire transfer for \$250,000 in criminally derived property from Mr. Freeney’s Citibank account to the BOA Roof Group account.

Racketeering Act	Date	Description of Monetary Transaction
4.C	Jul. 16, 2010	BOA executes a wire transfer for \$15,470 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.
4.D	Aug. 10, 2010	BOA executes a wire transfer for \$247,162 in criminally derived property from the BOA Roof Group account to pay Brodin Design for build out of RSLA.
4.E	Aug. 19, 2010	BOA executes a wire transfer for \$21,520 in criminally derived property from the BOA Roof Group account to pay Dynamic Aviation for expenses related to the operation of the private jet.
4.F	Nov. 16, 2010	BOA executes a wire transfer for \$64,500 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.
4.G	Nov. 18, 2010	BOA executes a wire transfer for \$76,540 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.
4.H	Dec. 16, 2010	BOA executes a wire transfer for \$26,000 in criminally derived property from the BOA Roof Group account to pay Rennia for expenses related to the private jet.
4.I	Jan. 18, 2011	BOA executes a wire transfer for \$17,820 in criminally derived property from the BOA Roof Group account to pay rent on the Hancock Park house.
4.J	Feb. 1, 2011	BOA executes a wire transfer for \$26,000 in criminally derived property from the BOA Roof Group account to pay Rennia for expenses related to the private jet.
4.K	Feb. 28, 2011	BOA executes a wire transfer for \$353,374 in criminally derived property from the BOA Roof Group account to fund RSLA operating deficits.
4.L	May 31, 2011	BOA executes a wire transfer for \$45,260 in criminally derived property from the BOA Roof Group account to fund RSLA operating deficits.
4.M	Oct. 14, 2011	BOA executes a wire transfer for \$15,000 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.
4.N	Oct. 18, 2011	BOA executes a wire transfer for \$20,000 in criminally derived property from the BOA Roof Group account to the ARC account at Wells Fargo Bank.

5. Promotional Money Laundering.

313. On or about the dates set forth below, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, knowingly conducted, attempted to conduct, aided and abetted the conduct of and conspired to conduct the following financial transactions, among others, that affected interstate commerce or involved the use of a financial institution that was engaged in or

the activities of which affected interstate commerce, in violation of Title 18, United States Code, section 1956(a)(1)(A).

314. BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, conducted, attempted to conduct, aided and abetted the conduct of and conspired to conduct these transactions, knowing that the transactions involved the proceeds of some form of unlawful activity constituting a felony under federal or state law, though not necessarily which form, and with the intent to promote the carrying on of Specified Unlawful Activity, as described further below:

Racketeering Act	Time Period	Financial Transactions	Promotion
5.A	May 28, 2010 – Feb. 17, 2011	BOA executes 33 wire transfers totaling \$2,776,942 in proceeds of Specified Unlawful Activity from BOA Roof Group account to Brodin Design.	Created and maintained false appearance that Stern (posing as Millar) could be trusted to competently supervise RSLA build out and afforded Stern and Weinberg opportunity to misappropriate monies belonging to Mr. Freeney undetected.
5.B	May 31, 2010 – Oct. 31, 2011	BOA executes 46 wire transfers totaling \$1,480,227 in proceeds of Specified Unlawful Activity from BOA Roof Group account to pay for RSLA operations.	Created and maintained false appearance that Stern (posing as Millar) could be trusted to competently supervise RSLA build out and afforded Stern and Weinberg opportunity to misappropriate monies belonging to Mr. Freeney undetected.
5.C	Jul. 14, 2010 – Oct. 14, 2011	BOA executes 16 wire transfers totaling \$130,410 in proceeds of Specified Unlawful Activity from BOA Roof Group account to Dynamic Aviation to pay to lease and operate private jet.	Created and maintained false appearance that Stern (posing as Millar) owned a private jet, was a successful and wealthy businessman and was allowing Mr. Freeney to use the jet for only the cost of fuel.
5.D	Jun. 18, 2010 – Dec. 7, 2010	BOA executes 60 wire transfers totaling \$599,858 in proceeds of Specified Unlawful Activity from BOA Roof Group account to Rennia to pay to lease and for Rennia to pilot private jet.	Created and maintained false appearance that Stern (posing as Millar) owned a private jet, was a successful and wealthy businessman and was allowing Mr. Freeney to use the jet for only the cost of fuel.

Racketeering Act	Time Period	Financial Transactions	Promotion
5.E	Jun. 22, 2010	BOA executes wire transfer for \$16,475 in proceeds of Specified Unlawful Activity from BOA Roof Group account to Aviation Management to pay expenses associated with private jet.	Created and maintained false appearance that Stern (posing as Millar) owned a private jet, was a successful and wealthy businessman and was allowing Mr. Freeney to use the jet for only the cost of fuel.
5.F	Jul. 26, 2010	BOA executes wire transfer for \$6,120 in proceeds of Specified Unlawful Activity from BOA Roof Group account to JMI Aviation Inc. to pay expenses associated with private jet.	Created and maintained false appearance that Stern (posing as Millar) owned a private jet, was a successful and wealthy businessman and was allowing Mr. Freeney to use the jet for only the cost of fuel.
5.G	Jun. 21, 2010 – Jul. 2, 2010	BOA executes two wire transfers totaling \$15,000 in proceeds of Specified Unlawful Activity from BOA Roof Group account to pay for chartered yacht.	Created and maintained false appearance that Stern (posing as Millar) owned a private yacht and was a successful and wealthy businessman.
5.H	Jan. 18, 2011 – Oct 3, 2011	BOA executes seven wire transfers totaling \$89,115 in proceeds of Specified Unlawful Activity from BOA Roof Group account to pay rent on Hancock Park house.	Created and maintained false appearance that Weinberg was a successful financial manager and investment advisor and provided a base of operations for Stern and Weinberg to continue to carry out the scheme to defraud.

6. Concealment Money Laundering.

315. On or about the dates set forth below, in Los Angeles County and elsewhere, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, conducted, attempted to conduct, aided and abetted the conduct of and conspired to conduct the following financial transactions, among others, that affected interstate commerce or involved the use of a financial institution that was engaged in or the activities of which affected interstate commerce, in violation of Title 18, United States Code, section 1956(a)(1)(B).

316. BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, conducted, attempted to conduct, aided and abetted the conduct of and conspired to conduct these transactions knowing that they involved the proceeds of some form of unlawful activity

constituting a felony under federal or state law, though not necessarily which form, and knowing that they were designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds of Specified Unlawful Activity, as described further below:

Racketeering Act	Time Period	Financial Transactions	Concealment
6.A	Jun. 29, 2010 – Oct. 18, 2011	Stern causes Citibank to execute 123 wire transfers totaling \$9,143,870 from Mr. Freeney’s Citibank accounts to the BOA Roof Group account.	Concealed and disguised Stern and ARC’s ownership and control of misappropriated funds from Mr. Freeney, courts, trustees, creditors and other fraud victims.
6.B	Jun. 18, 2010 – Oct. 18, 2011	BOA executes 140 wire transfer totaling \$2,235,183 from BOA Roof Group account to ARC account at Wells Fargo Bank.	Concealed and disguised Stern and ARC’s ownership and control of misappropriated funds from Mr. Freeney, courts, trustees, creditors and other fraud victims.
6.C	Nov. 12, 2010 – Sep. 14, 2011	BOA executes five wire transfer totaling \$322,000 from BOA Roof Group account to GWM at Wells Fargo Bank.	Concealed and disguised Weinberg and GWM’s ownership and control of funds misappropriated from Mr. Freeney.

7. Obstruction of Justice.

317. Plaintiffs are informed and believe, and on that basis allege, that in or about December 2012, the FBI, USAO and a federal grand jury sitting in the Central District of California began a criminal investigation of the activities of Weinberg and others relating to the scheme to defraud Mr. Freeney (the “Criminal Investigation”).

318. On or about March 22, 2012, the United States filed a Criminal Complaint against Weinberg and Stern in the Central District of California, in the case entitled, *United States v. Eva D. Weinberg and Michael A. Stern*, Case No. 12-0694M, charging them with wire fraud.

319. On or about March 23, 2012, the FBI arrested Weinberg and Stern on the charges in the Criminal Complaint.

320. On or about May 25, 2012, a grand jury in the Central District of California returned an Indictment against Stern in the case entitled, *United States v. Michael A. Stern*, Case No. 12-508(A)-SVW, charging Stern with wire fraud and obstruction of justice.

321. On or about August 31, 2012, a grand jury in the Central District of California returned a First Superseding Indictment in the criminal case against Stern, charging him with wire fraud, access device fraud, transactional money laundering and obstruction of justice.

322. On or about the dates set forth below, in Los Angeles County and elsewhere, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of them, knowingly and corruptly engaged in and aided and abetted the following endeavors to obstruct, impede and influence the due administration of justice in the Criminal Investigation and the criminal cases against Weinberg and Stern, in violation of Title 18, United States Code, sections 1503 and 2, as described below:

Racketeering Act	Date	Description of Obstruction of Justice
7.A	Dec. 16, 2011	Weinberg and Stern send an anonymous fax to Mr. Freeney's home, in which they falsely claim that Mr. Freeney had signed an "asset management contact" in June 2010.
7.B	Dec. 2011	Weinberg and Stern pay an accountant to prepare phony GWM account statements that Weinberg can show Mr. Freeney.
7.C	Dec. 2011 – Mar. 2012	Stern creates the Forged Engagement Letter and fraudulently backdates it to June 11, 2010.
7.D	Mar. 2012 – Aug. 2012	Plaintiffs are informed and believe, and on that basis allege, that BOA withholds documents required to be produced by a grand jury subpoena.
7.E	Mar. 20 & 21, 2012	Stern arranges for the CI to fly from Miami to Los Angeles to destroy the hard drive of a computer and documents containing evidence incriminating of Stern and Weinberg.
7.F	Mar. 22, 2012	Stern places "paperwork" in the ceiling trusses of a house that he was renovating, including the second version of the Forged Engagement Letter and forged and fabricated wire transfer authorizations, and instructs his associate to cover them with drywall as soon as possible.
7.G	Mar. 23, 2012	Weinberg makes false and misleading statements to the FBI and USAO.
7.H	May 15, 2012	Stern sends a letter, while detained at the Metropolitan Detention Center in Los Angeles, to Weinberg, suggesting a false exculpatory story for her to tell the prosecutor when she is next interviewed by the FBI and USAO.
7.I	May 17, 2012	Weinberg makes false and misleading statements to the FBI and USAO.

8. Injury to Business and Property.

323. By reason of the foregoing violations of Title 18, United States Code,

1 section 1962(c), Mr. Freeney and Roof Group have been injured in their business and property in an
2 amount to be determined at trial, but estimated to be in excess of \$20 million, in the following
3 respects, among others:

4 (a) Losses due to theft and misapplication of Mr. Freeney and
5 Roof Group's funds;

6 (b) Losses from fraud involving the funding of the RSLA build out, its
7 operations and its closure;

8 (c) Losses from the needless purchases of Altounian and Donnelly's
9 interests in Roof Group;

10 (d) Losses from having to defend against and the settlement of the Felis'
11 \$5.0 million lawsuit;

12 (e) Losses from the purchase of \$55 million in unsuitable and worthless
13 life insurance;

14 (f) Losses from the liquidation of assets used to generate additional funds to
15 misappropriate; and

16 (g) Losses from false and unfulfilled promises involving the W Hotel and
17 North Carolina Land Investments.

18 **SECOND CAUSE OF ACTION**

19 **(For Civil RICO Conspiracy in Violation of**

20 **Title 18, United States Code, Sections 1962(d) and 1964(c))**

21 **(By Plaintiffs Freeney and Roof Group Against**

22 **Defendants BOA and DOES 1-20)**

23 324. This Cause of Action is not premised upon and does not encompass any transactions
24 in any of Mr. Freeney's BOA personal accounts, including, without limitation, the unauthorized
25 purchase and sale of securities. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 323
26 of this Complaint as if fully alleged herein.

27 325. Title 18, United States Code, section 1962(d) provides, in relevant part, that "[i]t shall
28 be unlawful for any person to conspire to violate any of the provisions of subsections . . . (b) or (c) of

1 this section [1962].”

2 326. Beginning in or about January 2010, and continuing until the present, in the County
3 of Los Angeles and elsewhere, BOA and DOES 1-20, together with Weinberg, GWM, Stern, ARC,
4 Jaggernauth, Weinberg’s brother, the Florida Attorney and the Florida Law Firm, and each of them,
5 knowingly and willfully conspired and agreed to violate Title 18, United States Code, section
6 1962(c), by conducting the affairs and participating in the conduct of the affairs of the Criminal
7 Enterprise, directly and indirectly, through the pattern of racketeering activity described in the
8 First Cause of Action, in violation of Title 18, United States Code, section 1962(d).

9 327. By reason of the foregoing violation of Title 18, United States Code, section 1962(d),
10 Mr. Freeney and Roof Group have been injured in their business and property in an amount to be
11 determined at trial, but estimated to be in excess of \$20 million, as further described in the
12 First Cause of Action.

13 **THIRD CAUSE OF ACTION**
14 **(For Civil RICO in Violation of**
15 **Title 18, United States Code, Sections 1962(b) and 1964(c))**
16 **(By Plaintiffs Freeney and Roof Group Against**
17 **Defendants BOA and DOES 1-20)**

18 328. This Cause of Action is not premised upon and does not encompass any transactions
19 in any of Mr. Freeney’s BOA personal accounts, including, without limitation, the unauthorized
20 purchase and sale of securities. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 327
21 of this Complaint as if fully alleged herein.

22 329. Title 18, United States Code, section 1962(b) provides, in relevant part, that “[i]t shall
23 be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain,
24 directly or indirectly, any interest in or control of any enterprise”

25 **A. The “Victim Enterprise.”**

26 330. At all relevant times, Mr. Freeney, in his capacity as a professional athlete, and
27 Roof Group, as the owner and operator of RSLA, were a group of persons associated together for
28 the common purpose of generating legitimate income, revenue and profits, and constituted an

1 association-in-fact enterprise within the meaning of Title 18, United States Code, section 1961(4)
2 (the “Victim Enterprise”).

3 331. At all relevant times, the Victim Enterprise was engaged in, and its activities affected,
4 interstate commerce.

5 **B. The Racketeering Acts.**

6 332. Beginning in or about January 2010, and continuing until at least March 2012, in
7 Los Angeles County and elsewhere, BOA and DOES 1-20, together with Weinberg, GWM, Stern,
8 ARC, Jaggernauth, the Florida Attorney and the Florida Law Firm, and each of them, acquired and
9 maintained, directly and indirectly, an interest in and/or control of the Victim Enterprise through the
10 pattern of racketeering activity described in the First Cause of Action, in violation of Title 18,
11 United States Code, section 1962(b). That racketeering activity included the above described acts of
12 mail fraud, wire fraud, access device fraud, transactional money laundering, promotional money
13 laundering and concealment money laundering.

14 **C. Injury to Business and Property.**

15 333. By reason of the foregoing violation of Title 18, United States Code, section 1962(b),
16 Mr. Freeney and Roof Group have been injured in their business and property in an amount to be
17 determined at trial, but estimated to be in excess of \$20 million, as further described in the
18 First Cause of Action.

19 **FOURTH CAUSE OF ACTION**

20 **(For Civil RICO in Violation of**

21 **Title 18, United States Code, Sections 1962(c) and 1964(c))**

22 **(By Plaintiffs Freeney and Roof Group Against**

23 **Defendants BOA and DOES 1-20)**

24 334. This Cause of Action is not premised upon and does not encompass any transactions
25 in any of Mr. Freeney’s BOA personal accounts, including, without limitation, the unauthorized
26 purchase and sale of securities. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 333
27 of this Complaint as if fully alleged herein.

28 335. Beginning in or about January 2010, and continuing until at least in or about

1 March 2012, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of
2 them, being associated with the Victim Enterprise, conducted and participated in the conduct of the
3 affairs of the Victim Enterprise, directly and indirectly, through the pattern of racketeering activity
4 described in the First Cause of Action, in violation of Title 18, United States Code, section 1962(c).

5 336. By reason of the foregoing violation of Title 18, United States Code, section 1962(c),
6 Mr. Freeney and Roof Group were injured in their business and property in an amount to be
7 determined at trial, but estimated to be in excess of \$20 million, as further described in the
8 First Cause of Action.

9 **FIFTH CAUSE OF ACTION**
10 **(For Civil RICO Conspiracy in Violation of**
11 **Title 18, United States Code, Sections 1962(d) and 1964(c))**
12 **(By Plaintiffs Freeney and Roof Group Against**
13 **Defendants BOA and DOES 1-20)**

14 337. This Cause of Action is not premised upon and does not encompass any transactions
15 in any of Mr. Freeney's BOA personal accounts, including, without limitation, the unauthorized
16 purchase and sale of securities. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 336
17 of this Complaint as if fully alleged herein.

18 338. Beginning in or about January 2010, and continuing through at least in or about
19 March 2012, BOA and DOES 1-20, together with Weinberg, GWM, Stern and ARC, and each of
20 them, knowingly and willfully conspired and agreed to: (a) violate Title 18, United States Code,
21 section 1962(b), by acquiring and maintaining, directly and indirectly, an interest in or control of the
22 Victim Enterprise through the pattern of racketeering activity described in the First Cause of Action;
23 and (b) violate Title 18, United States Code, section 1962(c), by being employed by or associated
24 with the Victim Enterprise, and conducting and participating in the conduct of the affairs of the
25 Victim Enterprise, directly and indirectly, through the pattern of racketeering activity described in
26 the First Cause of Action.

27 339. By reason of the foregoing violation of Title 18, United States Code, section 1962(d),
28 Mr. Freeney and Roof Group were injured in their business and property in an amount to be

1 determined at trial, but estimated to be in excess of \$20 million, as further described in the
2 First Cause of Action.

3 **SIXTH CAUSE OF ACTION**
4 **(For Violation of California Penal Code section 496)**
5 **(By Plaintiffs Freeney and Roof Group Against**
6 **Defendants BOA, BOCK and DOES 1-20)**

7 340. This Cause of Action is not premised upon and does not encompass any transactions
8 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
9 paragraphs 1 through 338 of this Complaint as if fully alleged herein.

10 341. California Penal Code section 496(c) provides, in relevant part, that "[a]ny person
11 who has been injured by a violation of subdivision (a) . . . may bring on action for three times the
12 amount of the actual damages, if any, sustained by the plaintiff, cost of suit, and reasonable
13 attorney's fees."

14 342. California Penal Code section 496(a) provides, in relevant part, that "[e]very person
15 who receives any property that has been stolen or that has been obtained in any manner constituting
16 theft . . . knowing the property to be so stolen or obtained, or who conceals, . . . withholds, or aids in
17 concealing . . . or withholding any property from the owner, knowing the property to be so stolen or
18 obtained, [is guilty of a criminal offense]."

19 343. California Penal Code section 484 defines "theft" to include: (a) theft by trick, which
20 involves obtaining possession of another's property with his consent by fraud and deceit; (b) theft by
21 false pretenses, which involves obtaining possession and ownership of another's property by false or
22 fraudulent representations or promise; and (c) theft by embezzlement, which involves converting
23 another's property that has been entrusted to one's care.

24 344. Between in or about September 2010 and January 2011, and between in or about
25 September 2011 and February 2012, at Weinberg's direction, Mr. Freeney's paychecks from the
26 Colts were sent to GWM at the 8484 Wilshire address. Weinberg then deposited those checks at the
27 Citibank branch across the street, to be credited to Mr. Freeney's Citibank accounts. All of the
28 deposited funds belonged to and were the property of Mr. Freeney.

1 345. Thereafter, Stern initiated wire transfers online, typically from Los Angeles, using the
2 confidential access information provided by BOA and Weinberg, to transfer Mr. Freeney's funds:
3 (a) from the Citibank accounts to the BOA Roof Group account and GWM; and (b) from the BOA
4 Roof Group account to, among others, ARC, GWM, Pelky, Rennia, the landlord of the Hancock
5 Park house, the holders of Stern's gambling debts and various persons involved in the build out and
6 operations of RSLA.

7 346. All of the funds that Stern caused to be transferred from the Citibank accounts to the
8 BOA Roof Group account were stolen and obtained by theft from Mr. Freeney in that:

9 (a) Weinberg and Stern obtained possession of the funds in the Citibank accounts
10 through fraud and deceit, knowing that the funds belonged to Mr. Freeney and intending to deprive
11 him of their use permanently;

12 (b) Weinberg and Stern knowingly and intentionally caused Mr. Freeney to
13 transfer possession and ownership of the funds in the Citibank accounts to them in reliance upon
14 false and fraudulent representations and pretenses; and/or

15 (c) Weinberg was entrusted with care of the funds in the Citibank accounts, and,
16 together with Stern, fraudulently converted them to her and Stern's personal benefit, intending to
17 deprive Mr. Freeney of their use.

18 347. Beginning in or about June 2010, and continuing until at least October 2011, BOA
19 and DOES 1-20 received the stolen funds transferred from the Citibank accounts and deposited them
20 to the BOA Roof Group account, knowing that the funds had been stolen and obtained by theft, in
21 violation of California Penal Code section 496(a).

22 348. Beginning in or about June 2010, and continuing until at least October 2011, BOA
23 and DOES 1-20, having received the stolen funds transferred from the Citibank accounts, thereafter
24 knowingly concealed, withheld and aided and abetted the concealment and withholding of those
25 funds by, among other things, executing the fraudulent and unauthorized wire transfers described in
26 this Complaint, in further violation of California Penal Code section 496(a).

27 349. As a direct and proximate result of these violations of California Penal Code section
28 496(a), Mr. Freeney and Roof Group have been injured in an amount to be determined at trial, but

1 estimated to be in excess of \$8.5 million.

2 **SEVENTH CAUSE OF ACTION**

3 **(For Conspiracy to Defraud)**

4 **(By Plaintiffs Freeney and Roof Group Against**

5 **Defendants BOA, BOCK and DOES 1-20)**

6 350. This Cause of Action is not premised upon and does not encompass any transactions
7 in any of Mr. Freeney's BOA personal accounts, including. Otherwise, Plaintiffs repeat and reallege
8 paragraphs 1 through 349 of this Complaint as if fully alleged herein.

9 **A. Formation and Operation of the Conspiracy.**

10 351. Beginning in or about January 2010, and continuing until the present, BOA, BOCK
11 and DOES 1-20, together with Weinberg, GWM, Stern, ARC, Jaggernaut, Weinberg's brother, the
12 Florida Attorney and the Florida Law Firm, and each of them, conspired and agreed to:

13 (a) Make misrepresentations to Mr. Freeney and Roof Group, directly and
14 through Mr. Freeney's friends, family and associates, regarding important facts, knowing that the
15 representations were false or misleading, and intending that Mr. Freeney and Roof Group would
16 rely upon them;

17 (b) Make false promises to Mr. Freeney and Roof Group, directly and through
18 Mr. Freeney's friends, family and associates, regarding important matters, with no intention of
19 performing those promises, and intending that Mr. Freeney and Roof Group would rely upon
20 them; and

21 (c) Conceal and withhold from Mr. Freeney and Roof Group important facts that
22 Defendants had a duty to disclose to them, knowingly and with the intent to deceive them.

23 352. Mr. Freeney and Roof Group acted reasonably in relying upon these false and
24 misleading representations, false promises and undisclosed facts in, among other things:

25 (a) Becoming BOA clients;

26 (b) Transferring management and control of Mr. Freeney's assets and investments
27 to BOA, BOCK and BOCK's team;

28 (c) Authorizing BOA, BOCK and Weinberg to manage Mr. Freeney's income,

1 including his salary from the Colts, and to pay his bills;

2 (d) Trusting BOA to obtain return of Mr. Freeney's \$1.2 million deposit with
3 2201 Collins, and to dispose of the North Carolina Land Investment;

4 (e) Entrusting management of the build out, opening, operations and finances of
5 RSLA to BOA, Weinberg and Stern (posing as Millar);

6 (f) Retaining and paying the Florida Attorney more than \$140,000 to negotiate
7 and document the purchases of Altounian and Donnelly's interests in Roof Group;

8 (g) Agreeing to purchase Altounian and Donnelly's interests in Roof Group for
9 more than \$1.1 million;

10 (h) Agreeing to purchase \$55 million in unsuitable and worthless life insurance;

11 (i) Agreeing to hire the Felis under the terms set forth in the Term Sheet and then
12 terminating their services seven months later;

13 (j) Agreeing to borrow \$450,000 from Snap Advances at an effective annual
14 interest rate of 45 percent;

15 (k) Authorizing Stern (posing as Millar) to negotiate return of Mr. Freeney's
16 investments in Success Trade and CFP; and

17 (l) Accepting Stern's offer (posing as Millar) to use his private jet for only the
18 cost of the fuel.

19 **B. Wrongful Acts in Furtherance of the Conspiracy.**

20 353. On or about the dates indicated below, BOA, BOCK and DOES 1-20, together with
21 Weinberg, GWM, Stern, ARC, Jaggernaut, Weinberg's brother, the Florida Attorney and the
22 Florida Law Firm, and each of them, committed, caused and aided and abetted the following
23 wrongful acts, among others, in furtherance of and to accomplish the objectives of the conspiracy:

24 Act No. 1: On or about January 19, 2010, Weinberg (in her capacity as a BOA employee
25 and agent) sent a text message to Mr. West requesting the W Hotel contract so BOA's "consultant"
26 could review it.

27 Act No. 2: On or about January 24, 2010, Weinberg (in her capacity as a BOA employee
28 and agent) sent a text message to Mr. West stating that BOA's "real estate consultant" would help

1 resolve Mr. Freeney's issues with the W Hotel.

2 Act No. 3: On or about February 2, 2010, Mr. West met with the BOCK team at the
3 Brickell Avenue Branch to discuss Mr. Freeney's financial situation and needs and how BOA could
4 assist him, during which BOCK and Weinberg made the following false and misleading
5 representations, among others: (a) the BOCK team had the qualifications, expertise and experience
6 to competently manage Mr. Freeney's assets, investments and income; (b) the BOCK team could
7 and would assist Mr. Freeney in finding new investors and/or obtaining loan financing for his
8 business ventures, including RSLA; (c) the BOCK team could and would assist Mr. Freeney in
9 disposing of his non-performing and under-performing investments, including the North Carolina
10 Land Investment; and (d) the BOCK team could and would assist Mr. Freeney in obtaining return of
11 his \$1.2 million deposit with 2201 Collins.

12 Act No. 4: On or about February 5, 2010, Weinberg (acting in her capacity as a BOA
13 employee and agent) sent an email to V. Brown & Co. requesting copies of all of Mr. Freeney's
14 financial records.

15 Act No. 5: On or about February 5, 2010, Weinberg (acting in their capacity as a BOA
16 employee and agent) and Stern (posing as Millar) met with Mr. West and others at a restaurant in
17 Miami Beach, at which Stern was introduced as "Michael Millar." Weinberg made the following
18 misrepresentations, among others: (a) Millar was a wealthy real estate developer; (b) Millar was a
19 real estate consultant for BOA; (c) Millar had \$30 million on deposit with BOA; (d) Millar owned a
20 private plane; (e) Millar lived in the Bahamas; and (f) Millar was the grandson of pharmaceutical
21 mogul Dr. Phillip Frost, the Chairman of Teva Pharmaceuticals; and Stern (posing as Millar) made
22 the following misrepresentations, among others: (a) he would obtain financing for RSLA; and (b) he
23 would recover all of Mr. Freeney's investment in the W Hotel.

24 Act No. 6: On or about February 6, 2010, Stern (posing as Millar) met with Mr. West and
25 others in Miami Beach, during which Stern made the following misrepresentations, among others:
26 (a) he lived in the Bahamas; (b) he also had a home in Florida; (c) he owned a private plane; and
27 (d) he would obtain funding for RSLA.

28 Act No. 7: On or about February 9, 2010 Stern (posing as Millar) sent a text message to

1 Mr. West, stating, "I am certain that I can get Merrill boa [sic] to guarantee [Mr. Freeney] a
2 minimum of 10 percent return on investment with no risk."

3 Act No. 8: On or about February 10, 2010, Weinberg (acting in her capacity as a BOA
4 employee and agent) sent a text message to Mr. West, stating, "Michael wants Dwight to understand
5 that we will do everything possible to protect him."

6 Act No. 9: On or about February 10, 2010, Stern (posing as Millar) sent a text message to
7 Mr. West, falsely representing that he owned a yacht that Mr. Freeney could use.

8 Act No. 10: On or about February 10, 2010, Weinberg (acting in her capacity as a
9 BOA employee and agent) sent a text message to Mr. West, falsely stating that Stern's full name was
10 "David Michael Millar."

11 Act No. 11: On or about February 11, 2010, Weinberg (acting in her capacity as a BOA
12 employee and agent) and Stern (posing as Millar) participated in a telephonic conference with
13 Mr. Freeney and Mr. West during which they discussed transferring control of Mr. Freeney's assets
14 and investments to BOA.

15 Act No. 12: On or about February 11, 2010, Mr. Freeney met with Weinberg (acting in her
16 capacity as a BOA employee and agent) at the Brickell Avenue Branch and completed paperwork to
17 begin transferring his assets and investments to BOA's control.

18 Act No. 13: On or about February 12, 2010, Stern (posing as Millar) sent a text message to
19 Mr. West, stating that his email address was "Davidmichaelmillar@yahoo.com," and asking
20 Mr. West not to share it with anyone at "Merrill."

21 Act No. 14: On or about February 16, 2010, Weinberg (acting in her capacity as a BOA
22 employee and agent) had a telephonic conference with V. Brown & Co to arrange for the transfer of
23 control of Mr. Freeney's assets and investments to BOA, as well as responsibility for paying Mr.
24 Freeney's bills.

25 Act No. 15: On or about February 17, 2010, BOA emailed Mr. Freeney a form letter
26 for him to sign, authorizing the Colts to mail his paychecks to BOA for deposit to his BOA account.

27 Act No. 16: On or about February 17, 2010, Mr. Freeney authorized transfer of his
28 assets and investments to BOA's control.

1 Act No. 17: On or about February 18, 2010, Stern and Jaggernauth incorporated
2 ARC in Delaware.

3 Act No. 18: On or about February 18, 2010, BOCK and Weinberg paid the fees for
4 incorporating ARC in Delaware.

5 Act No. 19: On or about February 18, 2010, Stern and Jaggernauth established two email
6 accounts with Yahoo for use in communicating with Mr. Freeney: davidmichaelmillar@yahoo.com
7 and armsreachconsultingllc@yahoo.com.

8 Act No. 20: On or about February 27, 2010, Stern and Jaggernauth opened a business
9 checking account for ARC at Wachovia Bank.

10 Act No. 21: On or about March 8, 2010, Stern (posing as Millar) sent an email to
11 V. Brown & Co. requesting their file on the North Carolina Land Investment, and stating,
12 “I am trying to get it sold” and “every day that goes by is costing Dwight money!!!!”

13 Act No. 22: On or about March 9, 2010, Stern (posing as Millar) sent a text message to
14 Mr. West, stating, “I am going to make it so you guys will never have to work again within 4 years.
15 If Dwight understands and gives me the reins it will be done. I assure you and guarantee you
16 it will be done.”

17 Act No. 23: On or about March 16, 2010, Stern (posing as Millar) sent an email to
18 Mr. Freeney, stating, among other things, that “you will never be without money as I will make sure
19 that this never happens”; “I am never going to allow you to even speak to people who are interested
20 in only . . . how to take your money”; “I will recover the funds for you to the best of my ability
21 and i [sic] assure you that there is no one better at doing it”; “I am prepared to help you but it has to
22 be my way”; and “I am happy to deliver you to the promised land but i [sic] need unequivocal
23 trust and approval.”

24 Act No. 24: In or about March 2010, Weinberg (acting in her capacity as a BOA
25 employee and agent) assumed management control of Roof Group and RSLA’s finances and became
26 the de facto CFO of RSLA.

27 Act No. 25: In or about March 2010, BOA referred Mr. Freeney to Weinberg’s brother and
28 encouraged Mr. Freeney to purchase life insurance for investment purposes from him.

1 Act No. 26: In or about March 2010, Weinberg (acting in her capacity as a BOA employee
2 and agent) and her brother made the following misrepresentations, among others, to Mr. Freeney:

3 (a) Weinberg's brother was licensed to sell life insurance and had extensive knowledge and
4 experience in the purchase and sale of life insurance products for investment purposes; and (b) the
5 purchase of \$60 million in whole life insurance was a suitable, prudent and beneficial long-term
6 investment for Mr. Freeney.

7 Act No. 27: In or about March 2010, Weinberg (acting in her capacity as a BOA employee
8 and agent) and her brother used a senior life insurance agent who was a friend of their father to find
9 insurance companies willing to issue \$60 million in whole life insurance policies to Mr. Freeney.

10 Act No. 28: In or about March 2010, Weinberg (acting in her capacity as a BOA employee
11 and agent) and her brother instructed the senior life insurance agent to structure the purchase of life
12 insurance for Mr. Freeney to include multiple policies, rather than in a single, high-dollar policy.

13 Act No. 29: In or about March 2010, Weinberg (acting in her capacity as a BOA employee
14 and agent) and her brother agreed to split the commissions resulting from the sale of the \$60 million
15 in life insurance to Mr. Freeney.

16 Act No. 30: In or about March 2010, BOCK and Weinberg (acting in her capacity as
17 a BOA employee and agent) sold Mr. Freeney's Advisors Disciplined municipal bonds for
18 approximately \$490,000, and the resulting funds were deposited to one of Mr. Freeney's
19 BOA accounts.

20 Act No. 31: In or about March 2010, Weinberg (acting in her capacity as a BOA employee
21 and agent) and Stern (posing as Millar) began negotiating with Success Trade for the return of
22 Mr. Freeney's \$1.5 million in principal.

23 Act No. 32: On or about March 23, 2010, Mr. Freeney, Mr. West and others flew from
24 Florida to the Bahamas on the private jet to attend a meeting called by Stern (posing as Millar)
25 concerning Roof Group and RSLA.

26 Act No. 33: On or about March 24, 2010, Weinberg (acting in her capacity as a BOA
27 employee and agent), Stern (posing as Millar), Jaggernauth and the Florida Attorney participated in a
28 meeting in the Bahamas with Mr. Freeney, Mr. West and others during which Weinberg and Stern

1 urged Mr. Freeney to retain the Florida Attorney and his law firm to amend Roof Group's Operating
2 Agreement to increase his ownership and control of Roof Group.

3 Act No. 34: On or about March 25, 2010, the Florida Attorney sent an email to
4 Mr. Freeney, Weinberg and Stern (referred to as "Michael"), thanking them for bringing him into the
5 "circle of trust," and requesting certain documents relating to Roof Group and RSLA.

6 Act No. 35: On or about March 29, 2010, the Florida Attorney emailed Mr. Freeney and
7 offered to assist him with recovering his investment in the W. Hotel, stating, "I'm an expert in real
8 estate law and handle disputes with developers and condominiums on a regular basis," and "make
9 sure you let me see any and all documents that you signed, including the contract to purchase, sooner
10 rather than latter [sic]."

11 Act No. 36: In or about April 2010, Weinberg (acting in her capacity as a BOA employee
12 and agent) and Stern directed the Florida Attorney to include a provision in the retainer agreement
13 purporting to authorize the Florida Attorney to take direction from ARC.

14 Act No. 37: In or about April 2010, the Florida Attorney drafted a retainer agreement
15 that included a clause purporting to authorize him to take direction from ARC.

16 Act No. 38: On or about April 28, 2010, Weinberg (acting in her capacity as a BOA
17 employee and agent) met with Mr. Freeney and the senior life insurance agent at Mr. Freeney's
18 home in Indiana and completed applications for several life insurance policies.

19 Act No. 39: In or about May 2010, Mr. Freeney, at the urging of Weinberg (acting in her
20 capacity as a BOA employee and agent), Stern (posing as Millar) and the Florida Attorney, signed an
21 Amended and Restated Limited Liability Company Operating Agreement for Roof Group, drafted
22 by the Florida Attorney and the Florida Law Firm, increasing Mr. Freeney's ownership interest in
23 Roof Group to 51 percent, decreasing Altounian and Donnelly's combined ownership interests to
24 49 percent, and obligating Mr. Freeney to make an additional \$1.6 million capital contribution to
25 Roof Group and to "further contribute such funds as are necessary to cover the costs incurred in
26 opening the Rolling Stone Café Lounge."

27 Act No. 40: On or about May 12, 2010, the Florida Attorney sent an email to Mr. Freeney,
28 Weinberg and "David Millar" attaching two invoices for the Florida Attorney's legal services and

1 asking “Michael” to review and approve the invoices.

2 Act No. 41: On or about May 13, 2010, Stern (posing as Millar) emailed the Felis,
3 describing himself as a consultant hired by Mr. Freeney and Mr. West, and offering the Felis a
4 compensation package to manage RSLA that included a combined base salary of \$300,000 and one
5 percent of RSLA’s gross revenue.

6 Act No. 42: On or about May 17, 2010, Weinberg (acting in her capacity as a BOA
7 employee and agent) and her brother caused a letter to be mailed to a life insurance company falsely
8 identifying Weinberg as Mr. Freeney’s “attorney” and Weinberg’s brother as Mr. Freeney’s
9 “investment and financial advisor.”

10 Act No. 43: On or about May 20, 2010, Stern signed the Term Sheet with the Felis as
11 “David M. Millar” on behalf of Roof Group, without any written or other express
12 corporate authorization.

13 Act No. 44: In or about May 2010, Weinberg (acting in her capacity as a BOA employee
14 and agent) and Stern (posing as Millar) began negotiating with CFP for the return of Mr. Freeney’s
15 \$1.75 million investment.

16 Act No. 45: In or about late May 2010, Weinberg (acting in her capacity as a BOA
17 employee and agent) asked Del Campo to open a business checking account for Roof Group.

18 Act No. 46: In or about late May 2010, Weinberg (acting in her capacity as a BOA
19 employee and agent) told Mr. Freeney that the BOA Roof Group account was only a temporary
20 account needed to pay invoices associated with the RSLA build out until permanent accounts could
21 be opened in Los Angeles.

22 Act No. 47: On or about May 28, 2010, BOA wire transferred \$200,000 from the BOA
23 Roof Group account to pay for expenses related to the RSLA build out.

24 Act No. 48: Beginning in or about late May 2010, and continuing until in or about
25 October 2011, Mr. Freeney and Roof Group were charged \$8,050 in wire transfer charges for the
26 322 fraudulent and unauthorized wire transfers made from the BOA Roof Group account.

27 Act No. 49: Beginning in or about late May 2010, BOCK encouraged Weinberg to move
28 to Los Angeles, create a company with a name similar to GWIM and take Mr. Freeney with her

1 as a client.

2 Act No. 50: On or about June 1, 2010, Weinberg leased the Hancock Park house for
3 \$8,250 per month, representing in the lease application forms that she would be living at the house
4 with her three children and “Michael Stern,” her “Fiancé.”

5 Act No. 51: On or about June 2, 2010, Weinberg (in her capacity as a BOA employee
6 and agent) incorporated Global Wealth Management, LLC (“GWM”) in Delaware.

7 Act No. 52: On or about June 2, 2010, Weinberg (in her capacity as a BOA employee and
8 agent) opened a business checking account in GWM’s name at the Larchmont Branch of
9 Wells Fargo Bank in Los Angeles.

10 Act No. 53: On or about June 9, 2010, Weinberg (in her capacity as a BOA employee and
11 agent) signed a lease for a “virtual office” in the name of GWM at 8484 Wilshire Boulevard,
12 contracting for telephone answering and mail receiving, sorting and forwarding services.

13 Act No. 54: On or about June 10, 2010, Weinberg (in her capacity as a BOA employee
14 and agent) faxed a short handwritten note to BOA resigning her position at the bank.

15 Act No. 55: In or about June 2010, Weinberg (in her capacity as a BOA employee and
16 agent) opened two accounts at a Citibank branch in Miami Beach in the name of Mr. Freeney.

17 Act No. 56: In or about June 2010, BOCK and Weinberg (in her capacity as a BOA
18 employee and agent) caused Mr. Freeney to surrender his Pacific Life annuity, which had a cash
19 value of approximately \$1.5 million, and deposited the proceeds to Mr. Freeney’s Citibank accounts.

20 Act No. 57: In or about mid-June 2010, Weinberg and Stern moved into the Hancock Park
21 house and made it their new base of operations for continuing to carry out the scheme to defraud
22 Mr. Freeney.

23 Act No. 58: On or about June 18, 2010, Weinberg (in her capacity as a BOA employee
24 and agent) requested that Del Campo mail signature cards for the BOA Roof Group account to
25 her in California.

26 Act No. 59: On or about June 21, 2010, BOA executed a wire transfer of \$5,000 from the
27 BOA Roof Group account to pay one of Stern’s gambling debts.

28 Act No. 60: On or about June 21, 2010 BOA executed a wire transfer of \$5,000 from the

1 BOA Roof Group account to pay for Stern's use of a private yacht.

2 Act No. 61: On or about June 22, 2010, BOA executed a wire transferred of \$16,300 from
3 the BOA Roof Group account to Dynamic Aviation, to pay expenses associated with the operation of
4 the private jet.

5 Act No. 62: On or about June 23, 2010, Weinberg (in her capacity as a BOA employee
6 and agent) and her brother mailed an application and a check for \$186,850 to a life insurance
7 company for the purchase of a \$20 million life insurance policy on Mr. Freeney's behalf.

8 Act No. 63: On or about June 29, 2010, Stern caused Citibank to execute a wire transfer of
9 \$250,000 from one of Mr. Freeney's Citibank accounts to the BOA Roof Group account.

10 Act No. 64: In or about July 2010, Weinberg added herself as a signatory to Mr. Freeney's
11 Citibank accounts.

12 Act No. 65: In or about July 2010, Weinberg and her brother mailed an application and a
13 check for \$141,200 to a second life insurance company to purchase a \$15 million life insurance
14 policy on Mr. Freeney's behalf.

15 Act No. 66: On or about July 27, 2010, BOA executed a wire transfer of \$8,250 from the
16 BOA Roof Group account to pay one of Stern's business associates.

17 Act No. 67: On or about July 30, 2010, Del Campo exchanged emails and participated in
18 telephonic conferences with BOA's Wealth Management Banking Support office and other
19 departments at BOA to remove the security hold on the BOA Roof Group account.

20 Act No. 68: On or about August 2, 2010, Weinberg sent an email to Del Campo asking her
21 to ensure that wire transfers from the BOA Roof Group account are processed.

22 Act No. 69: On or about August 3, 2010, Weinberg and GWM mailed instructions to the
23 Indianapolis Colts to forward Mr. Freeney's paychecks to GWM's offices.

24 Act No. 70: In or about August 2010, Weinberg and her brother mailed an application and
25 a check for \$181,300 to a third life insurance company to purchase a \$20 million life insurance
26 policy on Mr. Freeney's behalf.

27 Act No. 71: On or about August 17, 2010, Weinberg's brother deposited a check for
28 \$101,000 in GWM's account at Wells Fargo Bank, which represented the first installment of the

1 kickback he had agreed to pay Weinberg in connection with Mr. Freeney's purchase of \$55 million
2 in life insurance policies.

3 Act No. 72: On or about August 19, 2010, BOA executed a wire transfer of \$21,520 from
4 the BOA Roof Group account to Edward Rennia, to pay to lease and operate the private jet.

5 Act No. 73: On or about August 23, 2010, Weinberg's brother deposited a check for
6 \$123,906 in GWM's account at Wells Fargo Bank, which represented the second installment of the
7 kickback he had agreed to pay Weinberg.

8 Act No. 74: On or about August 25, 2010, Stern (posing as Millar) sent an email to
9 Mr. West requesting that he not sign the Term Sheet with the Felis and that Stern be allowed to
10 continue negotiating with the Felis.

11 Act No. 75: On or about August 25, 2010, Stern (posing as Millar) sent a six-page letter to
12 Mr. Freeney, accusing the Felis, Mr. West and others of acting contrary to Mr. Freeney's interest,
13 and stating, among other things, that "you need to tell Aaron that he must work with me whether he
14 likes it or not"; "he does not have the experience of dealing with what he is currently trying to
15 handle"; "I would love to be partners with you on so many levels and I believe we make a great
16 team"; "please understand my consistent hesitation in the finance side because of how heavily
17 Aaron's involvment [sic] is"; and "I want to invest in YOU AND YOUR DREAM."

18 Act No. 76: On or about September 21, 2010, Weinberg deposited Mr. Freeney's
19 paycheck from the Colts at the Citibank branch across the street from the 8484 Wilshire address.

20 Act No. 77: In or about November 2010, Mr. Freeney, at the urging of Weinberg, Stern
21 (posing as Millar) and the Florida Attorney, signed a Purchase and Sale Agreement, drafted by the
22 Florida Attorney, agreeing to purchase Altounian's shares of Roof Group for \$325,000.

23 Act No. 78: On or about November 10, 2010, Weinberg sent an email to Mr. Freeney
24 complaining about the Felis, stating, among other things, "[f]or months I have sat back and watched
25 Sal and Stacy act solely in their own best interests with absolutely no regard to the 'team'"; "[t]hey
26 have cost the project in excess of \$700,00 and think only of how they can angle things to the
27 detriment of the project"; "[t]hey are self-serving and show absolutely no regard for Aaron or
28 anyone else"; and "I have nothing personal against Sal except to the extent that he can harm you."

1 Act No. 79: On or about November 12, 2010, BOA executed a wire transfer of \$25,000
2 from the BOA Roof Group account to GWM.

3 Act No. 80: On or about December 1, 2010, Weinberg sent an email to Roof Group's
4 accountant and legal counsel stating that "Michael Millar" was acting as a "troubleshooter" and had
5 "no official capacity" with Roof Group when he signed the Term Sheet.

6 Act No. 81: On or about December 22, 2010, at Weinberg's insistence, Roof Group
7 terminated the Felis' services.

8 Act No. 82: On or about January 18, 2011, BOA executed a wire transfer of \$17,820 from
9 the BOA Roof Group account to pay for rent on the Hancock Park house.

10 Act No. 83: On or about February 16, 2011, Weinberg sent an email to Mr. West stating,
11 "You cannot unilaterally approve changes that require any more expenditures. Dwight is bleeding
12 money. What do I need to show you that helps you grasp this."

13 Act No. 84: On or about February 25, 2011, Weinberg and Stern secretly married in
14 Los Angeles, although Stern was still married to Layne Harris Stern.

15 Act No. 85: On or about March 14, 2011, BOCK and Weinberg entered into a First
16 Amendment to Martial Settlement Agreement, which stated, in part: "In the event [Weinberg]
17 recovers any money from Michael Stern or others arising from the money loaned to Michael Stern,
18 [BOCK] shall receive the first One Hundred Thousand Dollars (\$100,000.00). The balance shall be
19 split between the parties."

20 Act No. 86: On or about March 24, 2011, Stern (posing as Millar) sent an email to the
21 Florida Attorney, Weinberg and Mr. West providing a status report on his negotiations for the
22 purchase of Donnelly's ownership interest in Roof Group.

23 Act No. 87: On or about March 28, 2011, and again on or about April 1, 2011, Weinberg
24 sent a fax to her tax accountant in New York with false financial information to use in preparing
25 Mr. Freeney's 2010 income tax returns.

26 Act No. 88: In or about April 2011, BOCK and Weinberg (acting in her capacity as a BOA
27 employee and agent) liquidated Mr. Freeney's investment in American Realty, which resulted in
28 \$195,000 in proceeds that Weinberg deposited to Mr. Freeney's Citibank accounts.

1 Act No. 89: In or about May 2011, Mr. Freeney, at the urging of Weinberg, Stern (posing
2 as Millar) and the Florida Attorney, signed a Membership Interest Purchase and Sale Agreement to
3 purchase Donnelly's shares for \$550,000.

4 Act No. 90: In or about August 2011, Weinberg negotiated with Snap Advances for a
5 \$300,000 credit facility for Roof Group, which required Mr. Freeney to repay Snap Advances a total
6 of \$435,000.

7 Act No. 91: In or about September 2011, Weinberg negotiated with Snap Advances
8 for a second credit facility for \$150,000, which required Mr. Freeney to repay Snap Advances a
9 total of \$220,000.

10 Act No. 92: In or about November 2011, Mr. Freeney, on the advice of Weinberg, Stern
11 (posing as Millar) and the Florida Attorney, completed the purchase of Altounian's shares of
12 Roof Group.

13 Act No. 93: In or about December 2011, Weinberg and Stern paid an accountant to
14 prepare phony account statements that Weinberg could show Mr. Freeney, which purported to have
15 been issued by GWM, listed Weinberg as the Senior Vice President of GWM and falsely reported
16 that Mr. Freeney still had over \$1.3 million in cash on deposit and owned assets valued at close to
17 \$14 million.

18 Act No. 94: Sometimes between in or about December 2011 and in or about March 2012,
19 Stern created the Forged Engagement Letter purportedly between GWM and Mr. Freeney, which
20 Stern fraudulently backdated to June 11, 2010.

21 Act No. 95: In or about January 2012, Mr. Freeney, on the advice of Weinberg and the
22 Florida Attorney, completed the purchase of Donnelly's shares of Roof Group, becoming the
23 100 percent owner of the company.

24 Act No. 96: On or about March 23, 2012, on the way to Miami International Airport to
25 catch a flight to Los Angeles to reunite with Weinberg, Stern stopped at a check cashing store where
26 he unsuccessfully attempted to cash a Colts paycheck to Mr. Freeney for \$31,785.

27 Act No. 97: On or about March 23, 2012, on the way to the airport, Stern stopped at a
28 house he was renovating and hid "paperwork" in the ceiling trusses, including the other version of

1 the Forged Engagement Letter; exemplars of Mr. Freeney's signature; and a series of forged and
2 fabricated authorizations for Citibank to transfer funds to the BOA Roof Group account.

3 Act No. 98: On or about March 23, 2012, Stern, having been arrested at Miami
4 International Airport as he was about to board a flight to Los Angeles to reunite with Weinberg,
5 was found to be carrying on his person the paycheck from the Colts to Mr. Freeney for \$31,785;
6 another check from the NFL Players Association to one of Mr. Freeney's companies for \$2,270.52;
7 a BOA Visa card in Mr. Freeney's name; a check book of temporary checks for First Bank in
8 Beverly Hills; multiple copies of the other version of the Forged Engagement Letter; and
9 handwritten notes and materials printed from the Internet that Stern had apparently used to draft
10 the Forged Engagement Letter.

11 Act No. 99: On or about September 13, 2013, Mr. Freeney made the final payment to
12 Snap Advances in the amount of \$131,985, as repayment of the advances made to Roof Group in
13 August and September 2010.

14 Act No. 100: On or about December 30, 2013, Mr. Freeney made a \$100,000 payment to
15 the Felis pursuant to the Settlement Agreement in the *Feli* Case.

16 Act No. 101: On or about May 29, 2014, BOA filed U4 Forms with FINRA for BOCK,
17 Liebman, Del Campo and Weinberg, falsely representing that it had conducted an investigation of
18 Mr. Freeney's allegations against them, and further falsely representing that it had found that his
19 allegations were "unfounded and without merit."

20 Act No. 102: On or about September 10, 2014, Mr. Freeney made a \$30,000 payment to the
21 Felis pursuant to the Settlement Agreement in the *Feli* Case.

22 Act No. 103: On or about October 10, 2014, Weinberg filed with the Court a copy of the
23 Forged Engagement Letter in the case entitled, *Dwight Freeney v. Eva Weinberg, et al.*, United
24 States District Court for the Central District of California, Case No. 2:14-cv-5245 MMM-RZ, in
25 support of a motion seeking to compel arbitration of Mr. Freeney's claims that Weinberg and others
26 had fraudulently sold him the \$55 million in worthless life insurance.

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1 **C. Resulting Damages.**

2 354. As a direct and proximate result of the conspiracy to defraud, Mr. Freeney and
3 Roof Group were damaged in an amount to be determined at trial, but which is estimated to be in
4 excess of \$20 million, as further described in the First Cause of Action.

5 355. In engaging in the wrongful conduct described in this Cause of Action, Defendants,
6 and each of them, acted fraudulently, oppressively, maliciously and with a willful and conscious
7 disregard of Plaintiffs' rights. Accordingly, Plaintiffs are entitled to exemplary and punitive
8 damages pursuant to California Civil Code section 3294.

9 **EIGHTH CAUSE OF ACTION**
10 **(For Fraudulent Representations and False Promises)**
11 **(By Plaintiffs Freeney and Roof Group Against**
12 **Defendants BOA, BOCK and DOES 1-20)**

13 356. This Cause of Action is not premised upon and does not encompass any transactions
14 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
15 paragraphs 1 through 355 of this Complaint as if fully alleged herein.

16 357. Beginning in or about January 2010, and continuing until at least in or about
17 March 2012, BOA, BOCK and DOES 1-20, and each of them, made and caused others to make the
18 following fraudulent representations and false promises, among others, to Mr. Freeney, directly and
19 through his family, friends and associates, and to Roof Group, knowing that they were false and with
20 the intention that Mr. Freeney and Roof Group would rely upon them:

21 ***Recruitment of Mr. Freeney to Become a BOA Client.***

22 (1) BOCK's team had the expertise, qualifications and experience to competently
23 manage Mr. Freeney's assets and income

24 (2) BOCK's team could and would assist Mr. Freeney in finding new investors and/or
25 obtaining loan financing for RSLA;

26 (3) BOCK's team could and would assist Mr. Freeney in disposing of his non-performing
27 and under-performing investments, such as the North Carolina Land Investment;

28 (4) BOCK's team could and would assist Mr. Freeney in obtaining return of his

1 \$1.2 million deposit with the W Hotel.

2 ***Referral of Mr. Freeney to “Michael Millar.”***

3 (5) Stern’s name was “David Michael Millar”;

4 (6) Millar was a wealthy businessman;

5 (7) Millar was a successful Miami Beach real estate developer;

6 (8) Millar had \$30 million on deposit at BOA;

7 (9) Millar was a real estate consultant for BOA;

8 (10) Millar lived in the Bahamas;

9 (11) Millar owned a private jet;

10 (12) Millar was the grandson of pharmaceutical mogul Dr. Phillip Frost, the Chairman of
11 Teva Pharmaceuticals;

12 (13) Millar intended to invest \$7.0 million in RSLA;

13 (14) Millar could and would assist in managing the build out, staffing and opening
14 of RSLA;

15 (15) Millar was a man of his word who wanted nothing more than to show Mr. Freeney
16 how to become a successful business owner.

17 ***Referral of Mr. Freeney to Weinberg’s Brother.***

18 (16) Weinberg’s brother had extensive knowledge and experience in the purchase of
19 life insurance products for investment purposes;

20 (17) Purchasing \$60 million in whole life insurance was a suitable, prudent and beneficial
21 long-term investment for Mr. Freeney;

22 ***Referral of Mr. Freeney to the Florida Attorney and Florida Law Firm***

23 (18) The Florida Attorney had the expertise and experience to competently provide legal
24 advice and services to Roof Group, a California limited liability company, and RSLA, a business
25 located in Los Angeles with no connections to Florida;

26 (19) The Florida Attorney could be trusted to provide loyal services and candid legal
27 advice to Mr. Freeney regarding Roof Group, RSLA and related legal matters;

28 (20) The Florida Attorney had no conflicts of interest arising from any past or present

1 attorney-client relationship with Stern or Weinberg;

2 ***Stern's Use of a Private Jet.***

3 (21) Stern owned the private jet, N900JF;

4 (22) When using the private jet, Mr. Freeney was only paying for the cost of the fuel;

5 (23) Stern or ARC paid professional pilots Edward Rennia and Dana Messier to fly
6 the private jet;

7 (24) Stern or ARC paid the maintenance costs and hangar fees for the private jet;

8 ***Mr. Freeney's Purchase of \$55 Million in Worthless Life Insurance.***

9 (25) Weinberg's expertise and experience as Mr. Freeney's financial manager and
10 investment advisor included the purchase of insurance products for investment purposes;

11 (26) Weinberg's brother had substantial expertise and experience in the analysis, selection
12 and purchase of insurance products for investment purposes;

13 (27) It was in Mr. Freeney's financial interests, and consistent with his financial
14 objectives, to purchase \$55 million in whole life insurance;

15 (28) BOA, Weinberg and Weinberg's brother had selected the three policies they were
16 recommending Mr. Freeney purchase because they offered the best value to Mr. Freeney compared
17 to other available whole life policies;

18 ***Roof Group and RSLA.***

19 (29) Millar was prepared to invest \$7.0 million dollars in RSLA once Mr. Freeney had
20 acquired Altounian and Donnelly's ownership interests in Roof Group;

21 (30) Millar would oversee he build out of RSLA and had the skills, expertise and
22 experience to do so;

23 (31) Millar would assist in obtaining the liquor license for RSLA and had the skills,
24 expertise and experience to do so;

25 (32) Weinberg and Millar together would renegotiate the unfavorable lease terms
26 with CIM;

27 (33) BOA and Weinberg would handle the bill payments for RSLA;

28 (34) BOA and Weinberg would develop and implement cost and accounting controls

1 for RSLA;

2 (35) Millar had authority to bind Roof Group to the Term Sheet between Roof Group
3 and the Felis;

4 ***The Opening of the BOA Roof Group Account.***

5 (36) The BOA Roof Group account was only a temporary account needed to pay invoices
6 associated with the RSLA build out until permanent accounts could be opened in Los Angeles;

7 ***The W. Hotel Investment.***

8 (37) BOA, BOCK, Weinberg and Stern (posing as Millar) would intervene in the W Hotel
9 Investment, by either obtaining financing to complete the purchase of Mr. Freeney's condominium
10 unit or negotiating the return of his \$1.2 million investment;

11 ***The North Carolina Land Investment.***

12 (38) BOA, BOCK, Weinberg and Stern would assist Mr. Freeney in disposing of the
13 North Carolina Land Investment;

14 ***Cover Up and Obstruction of Justice.***

15 (39) Mr. West was stealing from Mr. Freeney and was responsible for RSLA's
16 deteriorating financial condition;

17 (40) Mr. Freeney had entered into a "asset management contract" with GWM in
18 June 2010; and

19 (41) Weinberg had not taken any fees from Mr. Freeney.

20 358. As a direct and proximate result of Defendants' fraudulent representations and false
21 promises, Mr. Freeney and Roof Group were damaged in an amount to be determined at trial, but
22 which is estimated to be in excess of \$20 million.

23 359. BOA and BOCK are liable for all of Weinberg's fraudulent representations and false
24 promises to Mr. Freeney and Roof Group following her resignation from BOA in or about July 2010,
25 for each of the following reasons, among others:

26 (a) Weinberg continued to act as BOA's actual or ostensible agent after her
27 resignation in matters involving Mr. Freeney and Roof Group;

28 (b) BOA adopted and ratified Weinberg's conduct as its actual or ostensible agent

1 in matters involving Mr. Freeney and Roof Group after her resignation; and

2 (c) BOA and BOCK, and each of them, created a situation that afforded
3 Weinberg the opportunity to continue to make fraudulent representations and false promises to
4 Mr. Freeney and Roof Group, and they realized or should have realized the likelihood that Weinberg
5 would avail herself of that opportunity following her resignation.

6 360. In engaging in the wrongful conduct described in this Cause of Action, Defendants
7 acted fraudulently, oppressively, maliciously and with a willful and conscious disregard of Plaintiffs'
8 rights. Accordingly, Plaintiffs are entitled to exemplary and punitive damages pursuant to
9 California Civil Code section 3294.

10 **NINTH CAUSE OF ACTION**

11 **(For Fraudulent Concealment)**

12 **(By Plaintiffs Mr. Freeney and Roof Group Against**

13 **Defendants BOA, BOCK and DOES 1-20)**

14 361. This Cause of Action is not premised upon and does not encompass any transactions
15 in any of Mr. Freeney's Personal accounts. Otherwise, Plaintiffs repeat and reallege paragraphs 1
16 through 359 of this Complaint as if fully alleged herein.

17 362. At all relevant times, BOA, BOCK and DOES 1-20, and each of them, owed
18 Mr. Freeney and Roof Group a duty of disclosure by virtue of the existence of one or more of the
19 following circumstances:

20 (a) Defendants, and each of them, were in a fiduciary relationship with
21 Mr. Freeney;

22 (b) To the extent Defendants made any disclosures to Mr. Freeney, they disclosed
23 only some facts, but intentionally withheld other facts, making the disclosures misleading;

24 (c) Defendants intentionally failed to disclose important facts to Mr. Freeney that
25 were known to Defendants, and which Mr. Freeney could not have discovered on his own; and

26 (d) Defendants actively concealed important facts from Mr. Freeney or acted to
27 prevent him from discovering such facts.

28 363. Beginning in or about January 2010, and until at least in or about March 2012, BOA,

1 BOCK and DOES 1-20 intentionally concealed, withheld and failed to disclose the following facts,
2 with the intent to deceive Mr. Freeney and Roof Group:

3 ***Recruitment of Mr. Freeney.***

- 4 (1) Weinberg was only a part-time BOA employee;
- 5 (2) Weinberg was not licensed to give investment advice to clients;
- 6 (3) Weinberg was unfit and not competent to manage Mr. Freeney's assets,
7 investments and income;
- 8 (4) Weinberg had been twice married to and twice divorced from BOCK and they had a
9 tumultuous and at times acrimonious working relationship;
- 10 (5) BOCK was listed as a creditor for \$500,000 in one of Stern's bankruptcies;
- 11 (6) Weinberg was romantically involved with Stern;
- 12 (7) Weinberg had a \$1.6 million judgment outstanding against her for having issued
13 \$400,000 in worthless checks to the Faraches to secure Stern's debt to them;
- 14 (8) The Faraches had served BOA with a petition to garnish Weinberg's
15 wages and savings;
- 16 (9) Weinberg's deposition testimony in the *Colonial Bank* Case revealed that she
17 had been assisting Stern in committing bankruptcy fraud, finding new victims and intimidating a
18 key witness;
- 19 (10) Weinberg had no expertise or experience in the management or operations
20 of a restaurant;
- 21 (11) Weinberg had no ability to maintain the books and records or prepare budgets or
22 financial projections for a restaurant;
- 23 (12) Weinberg had no experience supervising the build out, staffing, opening, or
24 operations of a restaurant;

25 ***Referral of Mr. Freeney to "Michael Millar."***

- 26 (13) Stern and his then wife had declared personal bankruptcy just a year prior to
27 Mr. Freeney becoming a BOA client, with reported debts exceeding \$65 million and assets of a
28 negative value;

1 (14) Stern's real estate assets were over-encumbered, in receivership, in bankruptcy and/or
2 the subject of foreclosure proceedings or other lawsuits;

3 (15) Stern had been found in contempt by the Bankruptcy Court for willfully violating
4 court orders requiring him to produce documents and appear to provide testimony;

5 (16) The U.S. Trustee was opposing Stern's discharge from bankruptcy on the grounds
6 that he had engaged in numerous instances of bankruptcy fraud;

7 (17) Stern was a defendant in more than 20 civil lawsuits brought by defrauded partners,
8 investors, mortgage lenders and financial institutions;

9 (18) Evidence introduced in those lawsuits established that Stern had forged documents,
10 falsified loan applications, misappropriated over \$20 million in loan proceeds, and engaged in
11 witness tampering and intimidation;

12 (19) A writ of bodily attachment had issued for Stern's arrest in the *Colonial Bank Case*;

13 (20) Stern had fled to Uruguay to evade process and avoid being deposed, and, while
14 there, cheated his stepson out of a large inheritance;

15 (21) Stern had previously been caught paying over \$100,000 in bribes to
16 Miami Beach city officials;

17 (22) The money Stern was using to lease and operate the private jet that he purportedly
18 owned had been misappropriated from Mr. Freeney and Roof Group's BOA accounts with
19 Weinberg's assistance;

20 (23) Stern had not paid any income taxes in years, notwithstanding having reported in his
21 bankruptcy schedules having earned \$500,000 in both 2007 and 2008.

22 (24) Stern had neither the intent nor the means to invest any funds in RSLA or the ability
23 to attract other investors;

24 (25) Stern was addicted to the prescription drug Oxycodone;

25 ***The Creation of ARC.***

26 (26) Stern and Jaggernauth created ARC and opened the ARC bank account within days of
27 being introduced to Mr. Freeney

28 (27) ARC was a sham entity created to promote and conceal the scheme to defraud;

1 (28) Stern created ARC for the sole or primary purpose of concealing his theft and
2 conversion of Mr. Freeney's funds from Mr. Freeney, the Bankruptcy Court, the bankruptcy trustee,
3 the U.S. Trustee, his creditors in the bankruptcy proceedings and defrauded victims who had
4 sued him;

5 (29) During the course of the scheme, more than \$2.2 million in funds misappropriated
6 from the BOA Roof Group account would be laundered through the ARC bank account;

7 ***Referral of Mr. Freeney to Weinberg's Brother.***

8 (30) Weinberg and her brother had agreed to split the commissions from Mr. Freeney's
9 purchase of the \$55 million in life insurance policies;

10 (31) Weinberg and her brother had instructed a senior life insurance agent to structure the
11 purchase of life insurance for Mr. Freeney to include multiple policies to maximize the sales
12 commissions Weinberg's brother would receive, rather than in a single, high-dollar policy, which
13 would have had a higher cash surrender value;

14 ***Referral of Mr. Freeney to the Florida Attorney and the Florida Law Firm.***

15 (32) The Florida Attorney had represented Stern in 20 or more civil lawsuits prior to being
16 introduced to Mr. Freeney in which Stern had been sued for fraud, theft, issuing NSF checks and
17 forging others' signatures;

18 (33) In the *College Health* Case, the Florida attorney had negotiated a settlement that,
19 within three months of signing, Stern sought to void based on false claims that he had been coerced
20 into signing it by threats against his life;

21 (34) The Florida Attorney was representing Weinberg in two civil lawsuits in which she
22 was sued for writing NSF checks totaling \$400,000 and failing to pay a house painter;

23 (35) The Florida Attorney had prepared a promissory note securing a \$350,000 loan from
24 BOCK, Weinberg and Weinberg's brother to Stern, which Stern had never repaid;

25 (36) The Florida Attorney was present at a meeting in or about August 2009, at
26 which Stern admitted that he had forged the signature of Esther Burstyn-Spero to two loan
27 forgiveness documents;

28 (37) Stern had failed to pay at least \$100,000 in legal fees that he owed to the Florida

1 Attorney and the Florida Law Firm;

2 (38) The Florida Attorney and the Florida Law Firm had filed creditor claims in Stern's
3 bankruptcy in or about July 2009 for the \$100,000 that they were owed;

4 (39) The Florida Attorney had inserted a clause in a retainer agreement that he had
5 sent to Mr. Freeney for his signature, which stated that Mr. Freeney "appoints Arms Reach
6 Consulting LLC . . . as [his] agent to communicate and deal directly with the Firm on the Client's
7 behalf," and, "[u]nless otherwise instructed by the Client in writing, the Firm will take direction
8 from ARC";

9 (40) The Florida Attorney and Florida Law Firm could not ethically represent Mr. Freeney
10 because they had a disqualifying conflict of interest as a result of their past representation of Stern
11 and what they knew about Stern's dishonest character and fraudulent and illegal activities as a result
12 of that representation;

13 (41) The Florida Attorney and Florida Law Firm could not ethically represent Mr. Freeney
14 because they had a disqualifying conflict of interest as a result of their present representation of
15 Weinberg and what they knew about Weinberg's legal problems and current situation at BOA;

16 ***Stern's Use of a Private Jet.***

17 (42) James Pelky, not Stern, owned the private jet and Pelky was only leasing it to
18 Stern and ARC;

19 (43) Stern was using funds misappropriated from Mr. Freeney and Roof Group's BOA
20 accounts to pay to lease the aircraft;

21 (44) Stern was also using funds misappropriated from Mr. Freeney and Roof Group's
22 BOA accounts to pay to maintain the aircraft, pay the hangar fees and pay the salaries and expenses
23 of the pilots Rennia and Messier;

24 (45) Over \$200,000 of the money Stern paid Pelky to lease the aircraft had been applied
25 towards ARC's purchase of the aircraft;

26 ***Mr. Freeney's Purchase of \$55 Million in Worthless Life Insurance.***

27 (46) Weinberg was not qualified or licensed to sell life insurance and had little or no
28 expertise or experience in the purchase of insurance products for investment purposes;

1 (47) Weinberg's brother had only become a licensed insurance agent in or about
2 May 2010, and had only become a licensed insurance agent in Indiana in or about June 2010, and
3 then only to sell life insurance to Mr. Freeney;

4 (48) The policies that Weinberg and her brother recommended to Mr. Freeney were
5 unsuitable, considering that Mr. Freeney already owned two life insurance policies with face values
6 totaling \$13 million;

7 (49) Even if some form of additional life insurance was suitable, other life insurance
8 products were readily available that were less expensive and better suited to Mr. Freeney's
9 insurance needs;

10 (50) Weinberg and her brother planned that he would kick back to Weinberg
11 approximately half of the commissions he received from the sale of the policies;

12 (51) As a result of this kickback agreement, Weinberg had a serious conflict of interest in
13 acting as Mr. Freeney's financial manager and investment advisor in the purchase of the policies;

14 (52) Weinberg and her brother had structured the transaction based on the amount of
15 commissions her brother would receive, rather than on the prices, surrender values and other costs
16 and benefits of the policies;

17 (53) To prevent the policies from lapsing, Mr. Freeney would have to pay premiums
18 totaling approximately \$500,000 per year for a period of 15 years;

19 (54) Weinberg and her brother intended to allow the policies to lapse after the first year,
20 unless further premium payments would generate additional commissions that they could split;

21 (55) The policies would have no cash surrender value and would be worthless if they were
22 allowed to lapse after the first year;

23 (56) Weinberg and her brother allowed the policies lapse in or about September 2011 and
24 October 2011, as a result of which, the policies had no cash surrender value and became worthless;

25 ***Roof Group and RSLA.***

26 (57) Weinberg and Stern were using RSLA as a vehicle for misappropriating and
27 converting funds in the BOA Roof Group account and to conceal and disguise those thefts from
28 Mr. Freeney and others;

1 (58) Weinberg rarely, if ever, paid vendor bills on time;

2 (59) Stern was in bankruptcy and entirely without the financial means to

3 invest in RSLA;

4 (60) Stern's sole or primary interest in overseeing the build out of RSLA was to be able to

5 continue to misappropriate funds from Mr. Freeney and Roof Group undetected;

6 (61) Weinberg was not paying RSLA's federal and state payroll taxes.

7 (62) Weinberg was not paying RSLA's California sales taxes;

8 (63) Weinberg was not timely paying RSLA staff and management, and when she paid

9 them, she was not paying them the correct amounts they were owed;

10 (64) BOA and Weinberg had not obtained adequate general liability and other

11 insurance for RSLA;

12 (65) Weinberg was not maintaining anything resembling a set of books and

13 records for RSLA;

14 (66) Weinberg was not preparing financial reports or statements for RSLA;

15 (67) Weinberg was not preparing budgets or projections for RSLA;

16 (68) Weinberg and Stern were not engaged in discussions with CIM to renegotiate

17 the lease terms;

18 (69) Stern was not attempting to obtain a liquor license for RSLA;

19 (70) Without Mr. Freeney's continued capital contributions to Roof Group, Altounian and

20 Donnelly's shares in the company were effectively worthless;

21 (71) As members of a limited liability corporation, Altounian and Donnelly were

22 responsible for losses in proportion to their ownership interests;

23 (72) Based on RSLA's significant operating losses and the fact that neither Altounian

24 nor Donnelly were contributing any cash to Roof Group, their capital accounts were negative at

25 the time of the buy outs, which would have reduced the value of their shares to zero or close thereto;

26 (73) There was no valuable premium or other significant intangible value associated with

27 Mr. Freeney's purchase of Altounian and Donnelly's Roof Group shares (such as minimizing their

28 participation in the operations, management, or direction of RSLA) to justify paying them

1 \$1.1 million for those shares;

2 (74) Weinberg and Stern's sole or primary motivation for convincing Mr. Freeney
3 to pay \$1.1 million to buy out Altounian and Donnelly was to oust them from the day-to-day
4 operations of RSLA, to prevent them from discovering that Weinberg and Stern were using RSLA as
5 a vehicle to misappropriate and convert funds in the BOA Roof Group account and to conceal and
6 disguise those thefts from Mr. Freeney and others;

7 (75) Roof Group could not afford to pay the Felis the compensation negotiated by
8 Stern and specified in the Term Sheet;

9 (76) Sal Feli's compensation under the Term Sheet was well above the industry standard
10 for a Director of Operations with his limited qualifications, experience and track record;

11 (77) Stern's sole or primary motivation in hiring the Felis was his belief that they would
12 be easier to manipulate and less of a threat to uncover the scheme to defraud than Altounian and
13 Donnelly;

14 (78) After the Felis were terminated, in or about February 2012, Weinberg failed to make
15 the severance payment to the Felis that Mr. Freeney had directed her to make;

16 ***The Opening of the BOA Roof Group Account.***

17 (79) The BOA Roof Group account remained open and active long after operating, payroll
18 and tax accounts for RSLA were opened at Wells Fargo Bank;

19 (80) The purpose of the BOA Roof Group account was to conceal the proceeds of the
20 scheme to defraud from Mr. Freeney, RSLA management, the Bankruptcy Court, the bankruptcy
21 trustee, the U.S. Trustee, the creditors in Stern's bankruptcies; and the plaintiffs in the many civil
22 actions pending against Stern;

23 (81) At the time the BOA Roof Group account was opened, Mr. Freeney lacked the
24 necessary corporate authority to open the account on behalf of Roof Group;

25 (82) The BOA Roof Group account was opened, and was allowed to remain open, without
26 the documentation, authorization, or due diligence, ordinarily required to open such an account, and
27 despite concerns expressed internally at BOA regarding those irregularities;

28 (83) Weinberg kept the existence of the BOA Roof Group account secret from RSLA's

1 management, accountants and consultants;

2 (84) Weinberg had given Stern the confidential account access information for the BOA
3 Roof Group account to enable him to access the account remotely online and transfer funds to and
4 from it without Mr. Freeney's knowledge or authorization;

5 ***The Opening of the Citibank Accounts.***

6 (85) Weinberg had given Stern the confidential account access information to the
7 Citibank accounts to enable him to access the accounts remotely online and transfer funds to,
8 from and between them without Mr. Freeney's knowledge or authorization;

9 ***The Creation of GWM.***

10 (86) GWM was not the same as GWIM and was not a division of BOA;
11 (87) GWM was a sham entity created to promote and conceal the scheme to defraud;
12 (88) GWM had no employees and Mr. Freeney was its only client;
13 (89) Stern had access to all of Mr. Freeney's mail that was being forwarded to GWM at
14 the 8484 Wilshire address;

15 ***Relocation of the Scheme from Miami to Los Angeles.***

16 (90) Weinberg and Stern lived together in the Hancock Park house;
17 (91) Weinberg and Stern were using the Hancock Park house as a base of operations and
18 maintained a room in the house where Stern hid whenever people came to the door and in which
19 Stern kept the computers that he used to access Mr. Freeney's accounts online and transfer funds to
20 and from them without Mr. Freeney's knowledge or authorization;

21 (92) Weinberg resigned from BOA effective July 2012;
22 (93) Weinberg and Stern were secretly married in Los Angeles on or about
23 February 25, 2011;

24 (94) Weinberg and Stern's marriage license listed Stern's name as "Michael Alan Stern,"
25 and further indicated that Weinberg had elected to change her name to "Eva Danielle Stern";

26 (95) BOCK and Weinberg had agreed, as part of their Martial Settlement Agreement, that
27 BOCK would receive the first \$100,000 of loan funds repaid by Stern and would split an additional
28 amounts repaid;

1 ***Fraudulent and Unauthorized Transfers to and from the BOA Roof Group Account.***

2 (96) Stern used the confidential account information provided by BOA and Weinberg to
3 access Mr. Freeney's Citibank accounts online to wire transfer approximately \$9.3 million to the
4 BOA Roof Group account;

5 (97) Stern used the confidential account information provided by BOA and Weinberg to
6 access the BOA Roof Group account to make over 300 unauthorized wire transfers;

7 (98) BOA executed wire transfers totaling approximately \$8.5 million from the BOA
8 Roof Group account in furtherance of, to promote and to conceal the scheme to defraud;

9 ***Liquidation of Mr. Freeney's Existing Investments.***

10 (99) A large portion of the \$441,000 that Success Trade returned to Mr. Freeney in or
11 about September 2010 was eventually transferred to the ARC account at Wells Fargo Bank;

12 (100) A large portion of the \$1.6 million that CFP returned to Mr. Freeney between in or
13 about September 2010 and February 2012 was eventually transferred to ARC, to GWM, to pay for
14 expenses related to the private jet and to pay Stern's personal debts and expenses;

15 (101) A large portion of the \$1.5 million that resulted from the surrender of Mr. Freeney's
16 Pacific Life annuity was eventually transferred to ARC, to pay for expenses related to the private jet
17 and to pay Stern's personal debts and expenses;

18 (102) A large portion of the \$195,000 that resulted from the liquidation of Mr. Freeney's
19 investment in American Realty was eventually transferred to ARC, to pay for expenses related to the
20 private jet;

21 ***Snap Advances.***

22 (103) The Snap Advances credit facilities, totaling \$450,000, were only necessary because
23 BOA, BOCK, Weinberg and Stern had depleted almost all of Mr. Freeney's available cash and
24 liquid assets;

25 (104) If Roof Group defaulted on the Snap Advances credit facilities, Mr. Freeney stood to
26 lose more than \$25 million in guaranteed salary under his Colts contract;

27 (105) Mr. Freeney was paying interest at the rate of 45 percent per annum;

28 (106) Weinberg and Stern were planning to (and did) misappropriate a portion of the

1 advances RSLA received from Snap Advances.

2 364. All of these facts, and each of them, were important in that they would have
3 influenced a reasonable person's judgment or conduct, or Defendants knew that their disclosure was
4 likely to have influenced Mr. Freeney and Roof Group's judgment or conduct.

5 365. Mr. Freeney and Roof Group would have acted differently if they had known of the
6 undisclosed facts.

7 366. As a direct and proximate result of Defendants' concealment, withholding and failure
8 to disclose these facts, Mr. Freeney and Roof Group were damaged in an amount to be determined at
9 trial, but which is estimated to be in excess of \$20 million.

10 367. BOA and BOCK are liable for all of Weinberg's acts of concealment following her
11 resignation from BOA in or about July 2010, for each of the following reasons, among others:

12 (a) Weinberg continued to act as BOA's actual or ostensible agent after her
13 resignation in matters involving Mr. Freeney and Roof Group;

14 (b) BOA adopted and ratified Weinberg's conduct as its actual or ostensible agent
15 in matters involving Mr. Freeney and Roof Group after her resignation; and

16 (c) BOA and BOCK, and each of them, created a situation that afforded
17 Weinberg the opportunity to continue to conceal material facts from Mr. Freeney and Roof Group,
18 and they realized or should have realized the likelihood that Weinberg would avail herself of that
19 opportunity following her resignation.

20 368. In engaging in the wrongful conduct described in this Cause of Action, Defendants
21 acted fraudulently, oppressively, maliciously and with a willful disregard of Plaintiffs' rights.
22 Accordingly, Plaintiffs are entitled to exemplary and punitive damages pursuant to California Civil
23 Code section 3294.

24 **TENTH CAUSE OF ACTION**

25 **(For Negligent Misrepresentation)**

26 **(By Plaintiffs Freeney and Roof Group Against**

27 **Defendants BOA, BOCK and DOES 1-20)**

28 369. This Cause of Action is not premised upon and does not encompass any transactions

1 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
2 paragraphs 1 through 368 of this Complaint as if fully alleged herein.

3 370. Beginning in or about February 2010, and continuing until at least in or about
4 March 2012, BOA, BOCK and DOES 1-20, and each of them, made and caused others to make
5 the following false representations concerning important facts, intending that Mr. Freeney and
6 Roof Group would rely upon those representations, but without reasonable grounds for believing
7 the representations to be true:

- 8 (a) Stern's name was "Michael Millar" or "David Michael Millar";
- 9 (b) Stern was a wealthy and successful real estate developer and businessman;
- 10 (c) Stern owned a private jet;
- 11 (d) Stern owned a private yacht;
- 12 (e) Stern was a consultant for BOA;
- 13 (f) Stern had \$30 million on deposit at BOA;
- 14 (g) Stern was the grandson of pharmaceutical mogul Dr. Phillip Frost, the
15 Chairman of Teva Pharmaceuticals; and
- 16 (h) Stern had the financial wherewithal to invest \$7.0 million in RSLA.

17 371. Mr. Freeney and Roof Group reasonably relied upon these false representations.

18 372. As a direct and proximate result of these false representations, Mr. Freeney and
19 Roof Group were damaged in an amount to be determined at trial, but which is estimated to be in
20 excess of \$20 million.

21 373. BOA and BOCK are liable for all of Weinberg's misrepresentations to Mr. Freeney
22 and Roof Group following her resignation from BOA in or about July 2010, for each of the
23 following reasons, among others:

- 24 (a) Weinberg continued to act as BOA's actual or ostensible agent after her
25 resignation in matters involving Mr. Freeney and Roof Group;
- 26 (b) BOA adopted and ratified Weinberg's conduct as its actual or ostensible agent
27 in matters involving Mr. Freeney and Roof Group after her resignation; and
- 28 (c) BOA and BOCK, and each of them, created a situation that afforded

1 Weinberg the opportunity to continue to make misrepresentations to Mr. Freeney and Roof Group,
2 and they realized or should have realized the likelihood that Weinberg would avail herself of the
3 opportunity following her resignation.

4 **ELEVENTH CAUSE OF ACTION**
5 **(For Aiding and Abetting Conversion)**
6 **(By Plaintiff Freeney and Roof Group Against**
7 **Defendants BOA and DOES 1-20)**

8 374. This Cause of Action is not premised upon and does not encompass any transactions
9 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
10 paragraphs 1 through 373 of this Complaint as if fully alleged herein.

11 375. At all relevant times, Mr. Freeney owned all of the funds that were deposited to the
12 Citibank accounts, and all of the funds that were transferred from the Citibank accounts to the
13 BOA Roof Group account.

14 376. At all relevant times, Mr. Freeney and Roof Group owned all of the funds that
15 were deposited to the BOA Roof Group account and all of the funds that were transferred from
16 that account.

17 377. Beginning in or about June 2010, and continuing until at least in or about
18 October 2011, Weinberg and Stern:

19 (a) Converted all of the funds that were deposited to the Citibank accounts and
20 all of the funds transferred from the Citibank accounts to the BOA Roof Group account and GWM,
21 having interfered with Mr. Freeney's lawful rights and ownership interests in those funds by,
22 among other things, wrongfully exercising dominion and control over those funds and preventing
23 Mr. Freeney from gaining access to them; and

24 (b) Converted all of the funds in the BOA Roof Group account, all of the funds
25 transferred from that account to ARC and GWM, and all the funds transferred from that account to
26 fund the build out and operations of RSLA, lease and operate the private jet, charter a private yacht,
27 pay rent for the Hancock Park house, satisfy Stern's gambling debts and pay Stern's other personal
28 expenses, having interfered with Mr. Freeney and Roof Group's lawful rights and ownership

1 interests in those funds by, among other things, wrongfully exercising dominion and control over
2 those funds and preventing Mr. Freeney and Roof Group from gaining access to them.

3 378. As a direct and proximate result of these conversions, Mr. Freeney and Roof Group
4 were damaged in an amount to be determined at trial, but which is estimated to be in excess of
5 \$8.5 million.

6 379. BOA and DOES 1-20, and each of them, aided and abetted Weinberg and Stern in
7 committing these conversions by giving substantial assistance and encouragement to them, knowing
8 that Weinberg and Stern's conduct constituted breaches of their fiduciary and other legal duties to
9 Mr. Freeney and Roof Group.

10 380. BOA and DOES 1-20, and each of them, also aided and abetted Weinberg and Stern
11 in committing these conversions by giving substantial assistance to Weinberg and Stern toward
12 accomplishing the conversions, which conduct by Defendants constituted breaches of Defendants'
13 fiduciary and other legal duties to Mr. Freeney and Roof Group.

14 381. Pursuant to California Civil Code section 3336, Mr. Freeney and Roof Group are
15 entitled to fair compensation for the time and money they expended in pursuing the return and
16 recovery of their converted funds.

17 382. In engaging in this wrongful conduct described in this Cause of Action, Defendants
18 acted fraudulently, oppressively, maliciously and with a willful and conscious disregard of Plaintiffs'
19 rights. Accordingly, Plaintiffs are entitled to exemplary and punitive damages pursuant to California
20 Civil Code section 3294.

21 **TWELFTH CAUSE OF ACTION**

22 **(For Breach of Fiduciary Duty)**

23 **(By Plaintiffs Freeney and Roof Group Against**

24 **Defendants BOA, BOCK and DOES 1-20)**

25 383. This Cause of Action is not premised upon and does not encompass any transactions
26 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
27 paragraphs 1 through 382 of this Complaint as if fully alleged herein.

28 384. During the relevant times hereto, BOA, BOCK and DOES 1-20 owed Mr. Freeney

1 certain fiduciary duties, including: (a) the duty of undivided loyalty; (b) the duty to exercise due
2 care; (c) the duty to make full disclosure; and (d) the duty to maintain client confidences.

3 385. Beginning in or about January 2010, and continuing until at least March 2012, BOA,
4 BOCK and DOES 1-20, and each of them, breached their fiduciary duties to Mr. Freeney by, among
5 other things:

6 (a) Making the fraudulent representations and false promises described in the
7 Eighth Cause of Action;

8 (b) Concealing, withholding and failing to disclose the material facts described in
9 the Ninth Cause of Action;

10 (c) Introducing Mr. Freeney, who had virtually no first-hand business or
11 investment experience, to Stern, knowing that Stern was a bankrupt financial predator who was on
12 the prowl for new victims;

13 (d) Placing Weinberg in charge of managing Mr. Freeney's assets, investments,
14 income and financial affairs, including his cash savings, business ventures and guaranteed income
15 under his Colts contract, knowing that she was not licensed to give investment advice and lacked the
16 skills, learning, expertise and experience necessary to perform such services competently;

17 (e) Improperly delegating their duties and responsibilities as Mr. Freeney's
18 banker, broker, financial manager and investment advisor to Stern, who was not licensed or
19 otherwise qualified to perform any of these functions;

20 (f) Opening the BOA Roof Group account without required documentation,
21 internal authorization, or appropriate due diligence, and then allowing Weinberg and Stern to
22 misappropriate and launder several million dollars of Mr. Freeney and Roof Group's funds using
23 that account over a 16-month period;

24 (g) Disclosing Mr. Freeney's confidential personal and financial information to
25 Stern, including his social security number, date of birth, home address, credit card numbers, tax
26 returns, Colts contract and account and credit card information;

27 (h) Disclosing to Stern confidential account access information for
28 Mr. Freeney's Citibank accounts and the BOA Roof Group account;

1 (i) Referring Mr. Freeney to the Florida Attorney to assist in negotiating and
2 documenting the buy outs of Altounian and Donnelly without first (or ever) disclosing the Florida
3 Attorney's actual conflicts of interest in representing Mr. Freeney and Roof Group based on the
4 Florida Attorney's past and current representations of Stern and Weinberg and the fact that he and
5 the Florida Law Firm were listed as creditors in Stern's bankruptcies in the amount of \$100,000;

6 (j) Convincing Mr. Freeney to liquidate the Pacific Life annuity, which had a
7 cash value of approximately \$1.5 million, at a cost to him of approximately \$50,000, for the sole or
8 primary purpose of freeing up additional funds for Weinberg and Stern to misappropriate;

9 (k) Convincing Mr. Freeney to authorize Stern (posing as Millar) to negotiate the
10 return of Mr. Freeney's \$1.5 million investment in Success Trade, when, as BOA and BOCK knew
11 or should have known, Stern's sole or primary goal in those negotiations was to free up additional
12 funds for him and Weinberg to misappropriate;

13 (l) Convincing Mr. Freeney to authorize Stern (posing as Millar) to negotiate the
14 return of Mr. Freeney's \$1.75 million investment in CFP, when, as BOA and BOCK knew or should
15 have known, Stern's sole or primary goal in those negotiations was to free up additional funds for
16 him and Weinberg to misappropriate;

17 (m) Failing to pay the quarterly HOA dues on the North Carolina Land
18 Investment, as a result of which the HOA foreclosed on the property and Mr. Freeney was required
19 to retain North Carolina counsel to unwind the foreclosure;

20 (n) Allowing Weinberg and Stern to misappropriate and convert funds in the
21 BOA Roof Group account; and

22 (o) When Weinberg abruptly resigned her position at the bank, making no effort
23 to transition Mr. Freeney to a qualified investment advisor, ensure that his funds were safe, protect
24 and secure his confidential personal and financial information, or make sure that his financial
25 management needs were being met.

26 386. As a direct and proximate result of these breaches of fiduciary duty, Mr. Freeney and
27 Roof Group were damaged in an amount to be determined at trial, but which is estimated to be in
28 excess of \$20 million.

387. In engaging in the wrongful conduct described in this Cause of Action, Defendants acted fraudulently, oppressively, maliciously and with a willful and conscious disregard of Plaintiffs' rights. Accordingly, Plaintiffs are entitled to exemplary and punitive damages pursuant to California Civil Code section 3294.

THIRTEENTH CAUSE OF ACTION
(For Aiding and Abetting Breach of Fiduciary Duty)
(By Plaintiffs Freeney and Roof Group Against
Defendants BOA, BOCK and DOES 1-20)

388. This Cause of Action is not premised upon and does not encompass any transactions in any of Mr. Freney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 386 of this Complaint as if fully alleged herein.

389. After resigning her position at BOA in or about July 2010, and continuing until at least in or about March 2012, Weinberg, as Mr. Freeney's financial manager, investment advisor and the de facto CFO of Roof Group, owed Mr. Freeney and Roof Group certain fiduciary duties, including: (a) the duty of undivided loyalty; (b) the duty to exercise due care; (c) the duty to make full disclosure; and (d) the duty to maintain client confidences.

390. Beginning in or about January 2010, and continuing until at least in or about March 2012, Stern, as someone in whom Mr. Freeney and Roof Group reposed their trust and confidence, owed Mr. Freeney and Roof Group certain fiduciary duties, including: (a) the duty of undivided loyalty; (b) the duty to exercise due care; (c) the duty to make full disclosure; and (d) the duty to maintain client confidences.

391. Beginning in or about March 2010, and continuing until at least in or about March 2012, Weinberg's brother, having assumed the role of Mr. Freeney's insurance advisor and broker, owed Mr. Freeney certain fiduciary duties, including: (a) the duty of undivided loyalty; (b) the duty to disclose all material information concerning the suitability, terms, costs and benefits of the insurance products he was recommending; (c) the duty to provide competent services and advice; and (d) the duty to keep his clients informed of the status of their investments.

392. Beginning in or about March 2010, and continuing until at least in or about

1 March 2012, the Florida Attorney and the Florida Law Firm, having been retained as counsel for
2 Mr. Freeney and Roof Group, owed Mr. Freeney and Roof Group certain fiduciary duties, including:
3 (a) the duty of undivided loyalty; (b) the duty to disclose all material information relevant to their
4 representation of Mr. Freeney and Roof Group; (c) the duty to provide competent legal services and
5 advice; and (d) the duty to keep the client informed of the status of the matters for which they had
6 been retained.

7 393. Beginning in or about January 2010, and continuing until at least in or about
8 March 2012, BOA, BOCK and DOES 1-20, and each of them, aided and abetted Weinberg, Stern,
9 Weinberg's brother, the Florida Attorney and the Florida Law Firm, and each of them, in breaching
10 their fiduciary duties to Mr. Freeney and Roof Group by giving substantial assistance and
11 encouragement to each of them, knowing that the conduct of each of them constituted a breach of
12 their fiduciary and other legal duties to Mr. Freeney and Roof Group.

13 394. Beginning in or about January 2010, and continuing until at least in or about
14 March 2012, BOA, BOCK and DOES 1-20, and each of them, also aided and abetted Weinberg,
15 Stern, Weinberg's brother, the Florida Attorney and the Florida Law Firm, and each of them, in
16 breaching their fiduciary duties to Mr. Freeney and Roof Group by giving substantial assistance and
17 encouragement to each of them in breaching their fiduciary duties to Mr. Freeney and Roof Group,
18 which conduct by Defendants constituted breaches of Defendants' fiduciary and other legal duties to
19 Mr. Freeney and Roof Group.

20 395. As a direct and proximate result of Defendants aiding and abetting these breaches of
21 fiduciary duty, Mr. Freeney and Roof Group were damaged in an amount to be determined at trial,
22 but which is estimated to be in excess of \$20 million.

23 396. In engaging in the wrongful conduct described in this Cause of Action, Defendants
24 acted fraudulently, oppressively, maliciously and with a willful and conscious disregard of Plaintiffs'
25 rights. Accordingly, Plaintiffs are entitled to exemplary and punitive damages pursuant to California
26 Civil Code section 3294.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **(For Professional Negligence)**

3 **(By Plaintiffs Freeney and Roof Group Against**

4 **Defendants BOA, BOCK and DOES 1-20)**

5 397. This Cause of Action is not premised upon and does not encompass any transactions
6 in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege
7 paragraphs 1 through 396 of this Complaint as if fully alleged herein.

8 398. During the relevant time period, BOA, BOCK and DOES 1-20, and each of them,
9 owed Mr. Freeney and Roof Group a duty to use such skills, learning, prudence and diligence as a
10 reasonable professional would use under like circumstances (the "duty of due care").

11 399. Beginning in or about January 2010, and continuing until at least in or about
12 March 2012, BOA, BOCK and DOES 1-20, and each of them, breached this duty of due care to
13 Mr. Freeney and Roof Group by committing the acts and omissions and engaging in the conduct
14 described in this Complaint.

15 400. As a direct and proximate result of these breaches of the duty of due care,
16 Mr. Freeney and Roof Group were damaged in an amount to be determined at trial, but which
17 is estimated to be in excess of \$20 million.

18 401. BOA and BOCK are liable for all of Weinberg's negligent acts and omissions that
19 caused harm to Mr. Freeney and Roof Group following her resignation from BOA in or about
20 July 2010, for each of the following reasons, among others:

21 (a) Weinberg continued to act as BOA's actual or ostensible agent after her
22 resignation in matters involving Mr. Freeney and Roof Group;

23 (b) BOA adopted and ratified Weinberg's conduct as its actual or ostensible agent
24 in matters involving Mr. Freeney and Roof Group after her resignation; and

25 (c) BOA is liable for all of the harm that Mr. Freeney and Roof Group suffered
26 after Weinberg's resignation that was a reasonably foreseeable consequence of her negligent acts
27 and omissions while employed by BOA.

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FIFTEENTH CAUSE OF ACTION
(For Negligent Hiring, Supervision and Retention)
(By Plaintiff Freeney Against
Defendants BOA and DOES 1-20)

402. This Cause of Action is not premised upon and does not encompass any transactions in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 401 of this Complaint as if fully alleged herein.

403. For the reasons described in this Complaint, at all relevant times, BOCK, Liebman, Del Campo and Weinberg, and each of them, were unfit and incompetent to perform the services for which they were hired, including, without limitation, serving as Mr. Freeney's bankers, brokers, financial managers and investment advisors.

404. BOA and DOES 1-20 knew, or should have known, that BOCK, Liebman, Del Campo and Weinberg were unfit and incompetent to perform these services and that their unfitness and incompetence created particular risks to Mr. Freeney and to the safety and security of his assets, investments and income that he had entrusted to their management and care.

405. As a direct and proximate result of BOCK, Liebman, Del Campo and Weinberg's unfitness and incompetence, Mr. Freeney was damaged in an amount to be determined at trial, but which is estimated to be in excess of \$20 million.

SIXTEENTH CAUSE OF ACTION
(For Negligent Referral)
(By Plaintiffs Freeney and Roof Group Against
Defendants BOA and DOES 1-20)

406. This Cause of Action is not premised upon and does not encompass any transactions in any of Mr. Freeney's BOA personal accounts. Otherwise, Plaintiffs repeat and reallege paragraphs 1 through 405 of this Complaint as if fully alleged herein.

407. At all relevant times, BOA and DOES 1-20 owed Mr. Freeney and Roof Group the duty to exercise reasonable care when referring the services of others to them, including: (a) the duty to communicate only accurate information about the skills, qualifications, experience and

1 professional reputation of the person being referred; (b) the duty to ensure that the person being
2 referred is competent, qualified and trustworthy; and (c) the duty to disclose all known relevant facts
3 and reliable information about the person being referred.

4 408. For the reasons described in this Complaint, BOA and DOES 1-20, and each of them,
5 breached this duty when they referred Mr. Freeney and Roof Group to Weinberg (after she had
6 resigned her position at BOA), Stern (posing as Millar), Weinberg's brother and the Florida Attorney
7 and the Florida Law Firm.

8 409. As a direct and proximate result of these negligent referrals, Mr. Freeney and
9 Roof Group were damaged in an amount to be determined at trial, but which is estimated to be in
10 excess of \$20 million.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

13 **As to the First Cause of Action for Civil RICO – Criminal Enterprise:**

- 14 1. For compensatory and special damages;
- 15 2. For the trebling of those damages;
- 16 3. For punitive and exemplary damages; and
- 17 4. For Plaintiffs' reasonable attorney's fees.

18 **As to the Second Cause of Action RICO Conspiracy – Criminal Enterprise:**

- 19 1. For compensatory and special damages;
- 20 2. For the trebling of those damages;
- 21 3. For punitive and exemplary damages; and
- 22 4. For Plaintiffs' reasonable attorney's fees.

23 **As to the Third Cause of Action for Civil RICO – Victim Enterprise:**

- 24 1. For compensatory and special damages;
- 25 2. For the trebling of those damages;
- 26 3. For punitive and exemplary damages; and
- 27 4. For Plaintiffs' reasonable attorney's fees.

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1 **As to the Fourth Cause of Action for Civil RICO – Victim Enterprise:**

- 2 1. For compensatory and special damages;
- 3 2. For the trebling of those damages;
- 4 3. For punitive and exemplary damages; and
- 5 4. For Plaintiffs’ reasonable attorney’s fees.

6 **As to the Fifth Cause of Action for RICO Conspiracy – Victim Enterprise:**

- 7 1. For compensatory and special damages;
- 8 2. For the trebling of those damages;
- 9 3. For punitive and exemplary damages; and
- 10 4. For Plaintiffs’ reasonable attorney’s fees.

11 **As to the Sixth Cause of Action for Violation of California Penal Code Section 496:**

- 12 1. For compensatory and special damages;
- 13 2. For the trebling of those damages; and
- 14 3. For Plaintiffs’ reasonable attorney’s fees.

15 **As to the Seventh Cause of Action for Conspiracy to Defraud:**

- 16 1. For compensatory and special damages; and
- 17 2. For punitive and exemplary damages.

18 **As to the Eighth Cause of Action for Fraudulent Representations and False Promises:**

- 19 1. For compensatory and special damages; and
- 20 2. For punitive and exemplary damages.

21 **As to the Ninth Cause of Action for Fraudulent Concealment:**

- 22 1. For compensatory and special damages; and
- 23 2. For punitive and exemplary damages.

24 **As to the Tenth Cause of Action for Negligent Misrepresentation:**

- 25 1. For compensatory and special damages.

26 **As to the Eleventh Cause of Action for Aiding and Abetting Conversion:**

- 27 1. The value of the funds converted with interest from that time; or
- 28 2. An amount sufficient to compensate Mr. Freeney and Roof Group for the losses that

1 were the natural, reasonable and proximate result of Defendants' wrongful acts;

2 3. For punitive and exemplary damages; and

3 4. Fair compensation for the time and money Mr. Freeney and Roof Group have
4 expended in pursuing the return and recovery of their converted funds.

5 **As to the Twelfth Cause of Action for Breach of Fiduciary Duty:**

6 1. For compensatory and special damages;

7 2. For compounding of prejudgment interest; and

8 3. For punitive and exemplary damages.

9 **As to the Thirteenth Cause of Action for Aiding and Abetting Breach of Fiduciary Duty:**

10 1. For compensatory and special damages;

11 2. For compounding of prejudgment interest; and

12 3. For punitive and exemplary damages.

13 **As to the Fourteenth Cause of Action for Professional Negligence:**

14 1. For compensatory and special damages.

15 **As to the Fifteenth Cause of Action for Negligent Hiring, Supervision and Retention:**

16 1. For compensatory and special damages.

17 **As to the Sixteenth Cause of Action for Negligent Referral:**

18 1. For compensatory and special damages.

19 **For All Causes of Action:**

20 1. For prejudgment interest at the maximum rate permitted by law;

21 2. For costs of suit; and

22 3. For such other and further relief as the Court may deem just and proper.

23 Dated: February 23, 2015

ISAACS FRIEDBERG & LABATON LLP

24
25 By: 

JEFFREY B. ISAACS, ESQ.

26
27 *Attorneys for Plaintiffs Dwight J. Freeney and*
28 *Roof Group LLC*

DEMAND FOR JURY TRIAL

Plaintiffs Dwight J. Freeney and Roof Group LLC hereby request a jury trial on all issues properly triable to a jury.

Dated: February 23, 2015

ISAACS FRIEDBERG & LABATON LLP

By: 

JEFFREY B. ISAACS, ESQ.

*Attorneys for Plaintiffs Dwight J. Freeney and
Roof Group LLC*