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OPINION, U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT (MARCH 21, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOEL DOUGLAS;
STEVEN FOWLER; JAMES LEWIS,

Plaintiffs-Appellants,

v.

DAVID HIRSHON; LOSU LLC,

Defendants-Appellees.

BIRCH POINT STORAGE LLC; SCOTT LALUMIERE; MICHAEL LYDEN; SHAWN LYDEN; RUSSELL OAKES; WAYNE LEWIS; ANDRE BELLUCCI; DAVID JONES; ROBERT BURGESS; ANDROSCOGGIN SAVINGS BANK; BANGOR SAVINGS BANK; CAMDEN NATIONAL BANK; DAVID CLARKE; MILK STREET CAPITAL LLC; MECAP, LLC, d/b/a Milk Street Capital LLC; COASTAL REALTY CAPITAL, LLC, d/b/a Maine Capital Group, LLC; MAINE CAPITAL GROUP, LLC; LH HOUSING, LLC; TTJR, LLC; F.O. BAILEY REAL ESTATE; BLR CAPITAL, LLC; ERIC HOLSAPPLE; MACHIAS SAVINGS BANK; JOHN DOE NUMBER I; JOHN DOE NUMBER II; JOHN DOE NUMBER III; JOHN DOE NUMBER IV,

Defendants.

No. 22-1483

Appeal from the United States District Court
for the District of Maine
[Hon. Jon D. Levy, U.S. District Judge]

Before: GELPI, LYNCH, and
THOMPSON, Circuit Judges.

LYNCH, Circuit Judge.

Joel Douglas, Steven Fowler, and James Lewis sued twenty-six defendants, alleging several inter-related schemes to defraud the plaintiffs of real estate in Maine. Among other claims, the complaint asserts that, in connection with these schemes, a subset of the defendants participated in a conspiracy in violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. §§ 1961-1968, and that this conspiracy injured the plaintiffs.

The district court dismissed the RICO conspiracy claim against two of the defendants, David Hirshon and LOSU, LLC ("LOSU"), and denied a motion from the plaintiffs seeking limited discovery from Hirshon. *See Douglas v. Lalumiere*, No. 20-cv-00227, 2021 WL 4470399, at *4-5 (D. Me. Sept. 29, 2021). The plaintiffs appeal, contending that the district court erred in (1) concluding that the complaint fails to state a RICO claim against Hirshon and LOSU, (2) declining to consider certain materials outside the complaint in ruling on the motion to dismiss, and (3) denying the plaintiffs discovery. We find no error and affirm the district court's well-reasoned decision.

I.

Because this appeal follows a dismissal for failure to state a claim, "we accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the pleader's favor." *Roe v. Lynch*, 997 F.3d 80, 82 (1st Cir. 2021) (quoting *Lee v. Conagra Brands, Inc.*, 958 F.3d 70, 74 (1st Cir. 2020)).

The plaintiffs filed the original complaint in this action, which included thirteen counts against twenty-four defendants, on June 24, 2020, in the U.S. District Court for the District of Maine. Neither Hirshon nor LOSU was named in this complaint. The plaintiffs filed the operative amended complaint ("the complaint") on September 15, 2020. In addition to adding new allegations, claims, and exhibits, this amended pleading introduced Hirshon and LOSU as defendants on two counts: Count IV (a RICO conspiracy claim) and Count XVII (a state law unjust enrichment claim).[1] The RICO claim alleges that Hirshon, LOSU, and other defendants conspired to violate 18 U.S.C. § 1962(a) by investing funds obtained through alleged fraud schemes into efforts to defraud additional victims. The unjust enrichment claim asserts that Hirshon, LOSU, and other defendants unjustly benefited by defrauding Douglas and Fowler.

The complaint alleges three interrelated fraudulent schemes to deprive the plaintiffs and others of real

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[1] The complaint does not actually list LOSU among the defendants for Count IV, but the allegations included in support of the claim do refer to LOSU. The district court construed the complaint as seeking to bring a claim against LOSU, *see Douglas*, 2021 WL 4470399, at *3 n.3, and, in the interest of completeness, we do so as well.

estate in Maine.[2] At least the first two of these schemes were allegedly spearheaded by defendant Scott Lalumiere.

As the district court summarized, in the first alleged scheme,

> Lalumiere, funded by various banks and private lenders, fraudulently induced several vulnerable individuals, including [p]laintiffs [Douglas and Fowler], who lacked access to conventional credit, to enter into unfavorable lease/buy-back agreements. Under the terms of the agreements, the title of the victim's property would be transferred to a corporate entity controlled by Lalumiere with the victim, as the lessee, retaining a purchase option. The Lalumiere-controlled entity would subsequently mortgage the property to banks and private lenders, and, when the entity defaulted on its loan, the mortgagees foreclosed on the property, frustrating the victim's option to purchase.

Douglas, 2021 WL 4470399, at *1. Properties allegedly targeted in this scheme include 75 Queen Street, Gorham, and 661 Allen Avenue, Portland, at the time owned by plaintiffs Douglas and Fowler, respectively, as well as 36 Settler Road, South Portland, then owned by a nonplaintiff, Christina Davis. The complaint asserts that the participants in this scheme repeatedly used the mail or wires to facilitate the fraud.

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[2] In characterizing the complaint's allegations, we do not express any view as to whether the complaint states a claim against any defendant other than Hirshon or LOSU.

In the second alleged scheme, Fowler agreed with Lalumiere that Fowler would perform renovations at several properties at a discounted rate and in exchange be given the option to purchase the properties after completing the work and the authority to rent out the properties in the meantime. Lalumiere then defaulted on the properties' mortgages, preventing Fowler from exercising his purchase option.

In the third alleged scheme, multiple defendants agreed to pay off a defaulted mortgage on a property owned by Lewis and to lend him funds for improvements in exchange for his transferring the title to the property to a corporation and making certain payments. Following the title transfer, those defendants refused to make the promised loans and foreclosed on the property.

The complaint's description of these schemes says very little about Hirshon or LOSU. Indeed, in their principal brief, the plaintiffs describe as "accurate[]" the district court's statement that "[t]he [c]omplaint contains scant details regarding Hirshon's and LOSU's participation in Lalumiere's schemes." *Id.* at *2. The complaint alleges that Hirshon "is a person residing in Freeport[,] Maine," and LOSU "is a Maine corporation doing business in the State of Maine," but does not otherwise provide any background information on Hirshon or LOSU. For instance, the complaint does not even identify Hirshon's occupation or LOSU's line of business. With respect to the RICO count, the complaint alleges that Hirshon and LOSU "knew about the fraud committed by the [RICO e]nterprise because of their participation in the transactions for 661 Allen Avenue and 75 Queen Street," and that they, alongside other defendants, "realized the proceeds" of the schemes.

In addition, the complaint includes as an attachment an affidavit dated January 27, 2020, sworn out by Davis (the nonplaintiff victim of the alleged fraud involving 36 Settler Road) and recorded with the county registry of deeds, regarding the transactions involving 36 Settler Road. In the affidavit, Davis states "[o]n information and belief" that, after Davis entered a lease/buy-back agreement with a Lalumiere-controlled corporation in 2012, the corporation granted a mortgage on the property to LOSU in March 2019, and that "LOSU . . . had actual notice" of Davis's lease /buy-back agreement when it accepted the mortgage. Outside of these statements, the complaint does not describe the nature, timing, or extent of Hirshon's or LOSU's alleged participation in the schemes.[3]

Various subgroups of defendants filed separate motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure ("Rule") 12(b) (6). Hirshon and LOSU jointly filed such a motion on November 23, 2020, arguing, inter alia, that the complaint fails to plausibly allege that they knowingly joined any RICO conspiracy or that they received any benefit from the plaintiffs, as necessary to state an unjust enrichment claim.

The plaintiffs filed a memorandum in opposition to the motion to dismiss that relied heavily on a set of

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[3] A paragraph supporting the unjust enrichment claim alleges: "LOSU[,] . . . Hirshon, . . . and [other defendants] extraction [sic] of equity from the homes at 661 Allen Avenue and 57 [sic] Queen Street when . . . Douglas and . . . Fowler paid the underlying obligations on the property unjustly enriched the organization. . . . " On appeal, the plaintiffs do not cite this allegation or argue that it clarifies Hirshon's or LOSU's alleged participation in the schemes for purposes of the RICO claim.

attached documents not referenced in or attached to the complaint. They never moved to amend the complaint to incorporate these documents. On the same day, the plaintiffs also filed a motion seeking limited discovery from Hirshon before the court ruled on the motion to dismiss, asserting that such discovery would allow them to cure any deficiencies in their pleading. Hirshon opposed this motion.[4]

The district court granted the motion to dismiss and denied the motion for limited discovery in a written opinion issued September 29, 2021. *See Douglas*, 2021 WL 4470399, at *4-5. It reasoned that the complaint fails to plausibly allege either that Hirshon or LOSU knowingly joined a RICO conspiracy or that the plaintiffs conferred any benefit on Hirshon or LOSU, as necessary to state a claim for unjust enrichment under Maine law. *See id.* at *3-4, *4 n.5. The court also concluded that the complaint's allegations fall too far short of the plausibility and particularity requirements of Rules 8 and 9(b) to justify any discovery under this court's precedents. *See id.* at *5.

Hirshon and LOSU then moved for final judgment on the plaintiffs' claims against them under Rule 54(b). The district court granted the motion,[5] *see Douglas v.*

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[4] A magistrate judge denied the discovery motion without prejudice and recommended that the district court consider it alongside the motion to dismiss. After further briefing on the issue from both sides, the district court construed the magistrate judge's order denying the motion as "a deferral of action on the motion," and addressed the merits of the discovery and dismissal motions together. *Douglas*, 2021 WL 4470399, at *1 n.2.

[5] The plaintiffs opposed the motion for final judgment, but on appeal they do not mount any challenge to the district court's

Lalumiere, No. 20-cv-00227, 2022 WL 2047698, at *3 (D. Me. June 7, 2022), and this timely appeal followed.

II.

The plaintiffs argue that the district court erred in (1) holding that the complaint fails to plausibly allege that Hirshon or LOSU knowingly joined a RICO conspiracy, (2) declining to consider documents outside the complaint in ruling on the motion to dismiss the RICO claim, and (3) denying the motion for limited discovery with respect to the RICO allegations.[6] We address, and reject, each argument in turn.

A.

We review a district court's grant of a motion to dismiss for failure to state a claim de novo. *E.g.*, *Legal Sea Foods, LLC v. Strathmore Ins. Co.*, 36 F.4th 29, 34 (1st Cir. 2022). The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although "[w]e 'accept as true the complaint's well-pleaded factual allegations' and 'draw all reasonable inferences in favor of the non-

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decision to grant the motion independent of their challenges to its decision to deny discovery and dismiss their claims.

[6] The plaintiffs do not address their unjust enrichment claim on appeal, thereby waiving any argument with respect to that count. *See*, *e.g.*, *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

moving party,'" *Cheng v. Neumann*, 51 F.4th 438, 443 (1st Cir. 2022) (quoting *McKee v. Cosby*, 874 F.3d 54, 59 (1st Cir. 2017)), we do not credit "'conclusory legal allegations' [or] factual allegations that are 'too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture,'" *Legal Sea Foods*, 36 F.4th at 33 (citation omitted) (first quoting *Cardigan Mountain Sch. v. N.H. Ins. Co.*, 787 F.3d 82, 84 (1st Cir. 2015); and then quoting *SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010) (en banc)).[7]

The criminal RICO statute, 18 U.S.C. § 1962, "prohibits certain conduct involving a 'pattern of racketeering activity.'" *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006) (quoting 18 U.S.C. § 1962). Racketeering activity is defined "to include a host of so-called predicate acts," including acts that would be indictable as mail or wire fraud. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 647 (2008); *see* 18 U.S.C. § 1961(1) (defining "racketeering activity"); *id.* §§ 1341, 1343 (defining mail and wire fraud). Subsection (a) of § 1962 provides:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering

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[7] The district court reasoned that, because the plaintiffs' RICO claims are based on alleged predicate acts of mail and wire fraud, their complaint "must [also] satisfy the [heightened] particularity requirements of Rule 9(b)." *Douglas*, 2021 WL 4470399, at *3 (quoting *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997)). Under that standard, the complaint "must state the time, place and content of the alleged mail and wire communications perpetrating that fraud." *Ahmed*, 118 F.3d at 889. Because the complaint fails to meet even the ordinary plausibility standard, we need not separately address issues related to Rule 9.

> activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(a). Subsection (d) makes it "unlawful for any person to conspire to violate any of the provisions of subsection (a)." *Id.* § 1962(d). In order "[t]o prove a RICO conspiracy . . . , the [plaintiff] must show that 'the defendant knowingly joined the conspiracy, agreeing with one or more coconspirators to further [the] endeavor, which, if completed, would satisfy all the elements of a substantive [RICO] offense.'" *United States v. Velazquez-Fontanez*, 6 F.4th 205, 212 (1st Cir. 2021) (third and fourth alterations in original) (internal quotation marks omitted) (quoting *United States v. Rodriguez-Torres*, 939 F.3d 16, 23 (1st Cir. 2019)). The RICO statute's civil component, 18 U.S.C. § 1964, provides a cause of action to "[a]ny person injured in his business or property by reason of a violation of [the criminal RICO provisions]." 18 U.S.C. § 1964(c).

Count IV of the complaint asserts that Hirshon and LOSU, together with numerous other defendants, participated in a RICO conspiracy to violate § 1962 (a) by investing funds obtained through the alleged fraud schemes into efforts to defraud additional victims. To state a claim on this count with respect to Hirshon and LOSU, the complaint must plausibly allege, among other things, that they knowingly joined the purported RICO conspiracy. *See Velazquez-Fontanez*, 6 F.4th at

212. We agree with the district court that the complaint fails to do so.

As the district court observed, the complaint "contains scant details regarding Hirshon's and LOSU's participation" in the alleged conspiracy. *Douglas*, 2021 WL 4470399, at *2. On appeal, the plaintiffs direct our attention essentially to three statements in the complaint or its exhibits. First, in a paragraph describing the alleged "role[s]" of various defendants in the purported conspiracy, the complaint states that "LOSU LLC, David Hirshon, [and other defendants] realized the proceeds [of the real estate transactions]." Second, the complaint states that Hirshon and LOSU "knew about the fraud committed by the [RICO e]nterprise because of their participation in the transactions for 661 Allen Avenue and 75 Queen Street." Third, the Davis affidavit attached to the complaint states "[o]n information and belief" that a corporation controlled by Lalumiere granted a mortgage on the property at 36 Settler Road to LOSU in March 2019 and that "LOSU . . . had actual notice" of Davis's lease/buy-back agreement with that corporation at that time.

The conclusory assertion that Hirshon and LOSU "knew about the fraud . . . because of their participation in the transactions for 661 Allen Avenue and 75 Queen Street" is "too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture." *Legal Sea Foods*, 36 F.4th at 33 (quoting *Tambone*, 597 F.3d at 442). The complaint alleges a complex series of transactions, many of which—such as a titleholder's taking out a mortgage on a property—are unremarkable. No inference can reasonably be

drawn from the mere fact of these transactions that those involved knowingly participated in fraud.[8]

Stripping out this conclusory statement, the remaining allegations against Hirshon and LOSU assert that they in some unspecified way participated in transactions involving 661 Allen Avenue and 75 Queen Street; that they in some unspecified way benefitted financially from Lalumiere's transactions; and that LOSU acquired a mortgage on a different property, 36 Settler Road, from a corporation controlled by Lalumiere while having notice that the corporation had entered into a lease/buy-back agreement with Davis. These sparse allegations fall well short of "plausibly narrat[ing] a claim for relief." *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 55 (1st Cir. 2012). We cannot "draw [a] reasonable inference that the defendant[s are] liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. None of the allegations is remotely inconsistent with the conclusion that Hirshon and LOSU are ordinary lenders or providers of services related to real estate transactions that operate in the area of Maine where the alleged fraud took place. "The plausibility standard is not akin to a

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[8] The plaintiffs contend that it was sufficient for them simply to allege knowledge on the part of Hirshon and LOSU without supporting facts because Rule 9 allows plaintiffs to plead "knowledge . . . generally." But the Supreme Court has made clear that "'generally' is a relative term," and that, "[i]n the context of Rule 9, it is to be compared to the particularity requirement applicable to fraud or mistake." *Iqbal*, 556 U.S. at 686 (quoting Fed. R. Civ. P. 9(b)). It "excuses a party from pleading [knowledge] under an elevated pleading standard," but it does not allow a party to rest on conclusory allegations that do not satisfy the basic plausibility standard. *Id.*; *see id.* at 686-87; *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 58 (1st Cir. 2012).

'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). The plaintiffs have not met this standard.

Because the plaintiffs' allegations do not support a reasonable inference that Hirshon or LOSU knowingly joined the alleged RICO conspiracy, the district court properly concluded that the complaint fails to state a claim against these defendants.

B.

The plaintiffs argue that, even if the complaint itself fails to state a claim, the district court erred by refusing, when ruling on Hirshon and LOSU's motion to dismiss, to consider additional documents attached to the plaintiffs' memorandum opposing the motion. They contend that these attachments—which were not attached to or referenced in the complaint, and which include, for example, mortgage documents related to the properties involved in the alleged fraud schemes, ostensibly retrieved from county registries of deeds—fill any gaps in the complaint's allegations. The district court refused to consider these documents because they were not included in the plaintiffs' complaint. *Douglas*, 2021 WL 4470399, at *4.

In ruling on a motion to dismiss for failure to state a claim, "a court ordinarily may only consider facts alleged in the complaint and exhibits attached thereto, or else convert the motion into one for summary judgment."[9] *Freeman v. Town of Hudson*, 714 F.3d 29, 35-

[9] The plaintiffs do not argue that the district court should have converted the motion into one for summary judgment in order to consider the attachments.

36 (1st Cir. 2013) (citation omitted). "Under certain 'narrow exceptions'"—including for "documents the authenticity of which are not disputed by the parties" and "official public records"—"some extrinsic documents may be considered without converting a motion to dismiss into a motion for summary judgment." *Id.* at 36 (quoting *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993)). The plaintiffs argue that the attachments to their memorandum opposing the motion to dismiss fall into these "narrow exceptions."

This court has not decided the standard of review applicable to a district court's refusal to consider documents external to a complaint in ruling on a Rule 12(b) (6) motion, *see id.* at 36 n.5 (declining to decide whether review is de novo or for abuse of discretion); *Lab. Rels. Div. of Constr. Indus. of Mass., Inc. v. Healey*, 844 F.3d 318, 331 (1st Cir. 2016) (same), but the plaintiffs concede that an abuse of discretion standard applies, so we proceed on that assumption, *cf. Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) (holding that a "district court's decision to incorporate by reference documents into [a] complaint shall be reviewed for an abuse of discretion"). We note also that the plaintiffs do not develop any argument or cite any authority holding that considering external documents is mandatory—rather than within the district court's discretion—if those documents fall into one of the "narrow exceptions" the plaintiffs invoke. *Cf.*, *e.g.*, *Healey*, 844 F.3d at 331 (explaining that a court "may" consider external documents within the exceptions); *Freeman*, 714 F.3d at 36 (same); *cf. also Davis*, 691 F.3d at 1159 ("Our relevant case law has recognized consistently that [a] district court may, but

is not required to incorporate documents by reference.").

We see no abuse of discretion in the district court's refusal to consider the attachments. The plaintiffs did not articulate to the district court any reason why it could or should consider the attachments in ruling on the motion to dismiss. *Cf. Diulus v. Am. Express Travel Related Servs. Co.*, 823 F. App'x 843, 847 (11th Cir. 2020) (unpublished decision) (finding no abuse of discretion where district court did not take judicial notice of materials sua sponte); *River Farm Realty Tr. v. Farm Fam. Cas. Ins. Co.*, 943 F.3d 27, 41 n.21 (1st Cir. 2019) (treating argument not made to district court as waived). The plaintiffs do not dispute Hirshon and LOSU's observation that, in litigating the motion before the district court, they did not cite the exceptions on which they now rely. Their opposition memorandum simply noted that various exhibits were attached, and cited those attachments without any discussion of why doing so would be permissible.[10] Precedent emphasizes that the exceptions the plaintiffs seek to invoke are "narrow," and the district court did not abuse its discretion by declining to maneuver the attachments into those exceptions without assistance from the plaintiffs. *Freeman*, 714 F.3d at 36

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[10] The district court heard oral argument on the motion to dismiss; the record does not contain any transcript of this argument, but the plaintiffs do not claim to have raised the exceptions they now invoke during that proceeding. The plaintiffs did assert in a footnote in their memorandum opposing Hirshon and LOSU's motion for final judgment that the district court could have considered one of the attachments as a public record. But this memorandum was filed after the district court ruled on the motion to dismiss, and the plaintiffs did not move the district court to reconsider the dismissal.

(quoting *Watterson*, 987 F.2d at 3); *see id.* at 37 (treating as waived any argument that a document fit into the "narrow exceptions" because the party advancing the document failed to make such an argument).

Further, the plaintiffs have offered no persuasive reason why the attachments could not have been submitted with the complaint or included in a proposed amended complaint. *See Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 483 (6th Cir. 2020) ("If plaintiffs believe that they need to supplement their complaint with additional facts to withstand . . . a motion to dismiss[ ], they have a readily available tool: a motion to amend the complaint under Rule 15."); *Zomolosky v. Kullman*, 640 F. App'x 212, 218 n.2 (3d Cir. 2016) (unpublished decision) (finding no abuse of discretion where district court declined to take judicial notice of SEC filings that plaintiff had been "free to include" in complaint). The plaintiffs respond that "[t]he [complaint] was lengthy and already had numerous attachments without trying to anticipate how it might be defended." But while a complaint need not anticipate every possible defense a defendant might raise, *see*, *e.g.*, *Jones v. Bock*, 549 U.S. 199, 211-12 (2007), it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" as to each defendant, *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The district court merely held the plaintiffs to that burden, and we follow its lead. *See Trans-Spec Truck Serv., Inc. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) (explaining that, in reviewing a dismissal under Rule 12(b) (6), this court "review[s] only those documents actually considered by the district court . . . unless we

are persuaded that [the district court] erred in declining to consider the proffered documents").

C.

In the end, this appeal turns on whether the district court abused its discretion by denying "limited discovery" against Hirshon before dismissing the plaintiffs' claims. This court has identified two circumstances in which a district court considering a motion to dismiss under Rule 12(b) (6) might appropriately permit limited discovery. This case does not fall into either category.

First, a line of cases beginning with *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir. 1987), recognizes that, where a complaint "specifically set[s] out a general scheme to defraud" but (1) the complaint falls short of pleading a claim with the heightened particularity required by Rule 9(b) and (2) the missing information is "peculiarly within [the] defendants' knowledge," a district court may have discretion to allow the plaintiffs limited discovery to uncover the missing details. *Id.* at 292; *see id.* at 290-92. In *Becher*, for example, the complaint, which alleged a RICO claim based on predicate acts of mail and wire fraud, was deficient only because it did not set forth in detail the "time, place[,] and content" of the underlying mailings or wirings. *Id.* at 291; *see id.* at 290-92; *see also N. Bridge Assocs., Inc. v. Boldt*, 274 F.3d 38, 43-44 (1st Cir. 2001) (discussing *Becher*). This court has never applied *Becher* in a case, like this one, where the complaint fell short not only of Rule 9(b)'s heightened particularity requirements but also of the ordinary plausibility standard. *See Home Orthopedics Corp. v. Rodriguez*, 781 F.3d 521, 532 (1st Cir. 2015)

(rejecting application of *Becher* where complaint did not meet plausibility standard); *Boldt*, 274 F.3d at 43-44 (similar). Because "it is not simply the details [the plaintiffs] lack, but the substance of a RICO claim," *Boldt*, 274 F.3d at 44, *Becher* discovery is unwarranted.

Second, this court held in *Menard v. CSX Transportation, Inc.*, 698 F.3d 40 (1st Cir. 2012), that limited discovery may be appropriate where "a plausible claim may be indicated [by the plaintiff's allegations,] . . . 'information needed [to flesh out the allegations before trial] may be in the control of [the] defendants,'" and "modest discovery may provide the missing link." *Id.* at 45 (third alteration in original) (quoting *Pruell v. Caritas Christi*, 678 F.3d 10, 15 (1st Cir. 2012)). The plaintiff in *Menard* alleged that he had been injured twice while trespassing in a railyard operated by the defendant—first by having his foot crushed by a moving segment of track, then by being hit by a train—and that the defendant's employees had failed to prevent the second injury despite being aware of the first. *See id.* at 41-42, 44. This court explained that, although the plaintiff had not provided detailed allegations about the defendant's employees' activities, "one might not expect precise recollection from a man badly injured by a switched track and shortly thereafter hit and dragged under [a] train." *Id.* at 45. Critically, the plaintiff had made general allegations about those employees on "information and belief" and described his own actions, and the defendant was better positioned to supply the missing information than was the plaintiff. *Id.* at 41-42, 44-45.

Later cases have read *Menard* as indicating that "'some latitude may be appropriate' in applying the plausibility standard" and authorizing discovery where

"a material part of the information needed is likely to be within the defendant's control," and that "the plausibility inquiry properly takes into account whether discovery can reasonably be expected to fill any holes in the pleader's case." *Garcia-Catalan v. United States*, 734 F.3d 100, 104 (1st Cir. 2013) (quoting *Menard*, 698 F.3d at 45); accord *Saldivar v. Racine*, 818 F.3d 14, 23 (1st Cir. 2016).

The complaint in this case falls well short of justifying discovery under *Menard*. As explained above, the complaint does not come close to plausibly alleging that Hirshon or LOSU knowingly joined a RICO conspiracy. It supplies virtually no information about the nature, timing, or extent of their alleged participation in the conspiracy. Nor does the complaint give shape to its claims through allegations made on information and belief, as in *Menard*. *See* 698 F.3d at 44-45; *see also Saldivar*, 818 F.3d at 23 (discussing *Menard*). Given the near-total lack of information, we cannot say that "a plausible claim may be indicated" by the complaint or that there is information likely to be under the defendants' control that would "provide the missing link." *Menard*, 698 F.3d at 45. As the district court correctly concluded, there is simply too wide a "gap between the allegations in the complaint and a plausible claim" for discovery to be appropriate. *Saldivar*, 818 F.3d at 23.

We reject the plaintiffs' contention that, in considering the motion for limited discovery, the district court should have looked beyond the complaint and considered the attachments to the memorandum opposing the motion to dismiss. Cases following both *Becher* and *Menard* have focused specifically on the allegations contained in the complaint (or a proposed

amended complaint). *See*, *e.g.*, *Boldt*, 274 F.3d at 44 (examining "allegations" in "complaint" in holding *Becher* discovery unwarranted); *Becher*, 829 F.2d at 292 (focusing on "the strength of [the] plaintiff's allegations" in the complaint); *Parker v. Landry*, 935 F.3d 9, 18-19 (1st Cir. 2019) (citing *Menard*, 698 F.3d at 45) (assessing whether allegations in proposed amended complaint were sufficiently plausible to permit discovery); *Garcia-Catalan*, 734 F.3d at 104-05 (examining "what the [plaintiff] . . . set forth in her complaint" when applying *Menard*). This focus makes good sense, as both *Becher* and *Menard* concerned the plaintiff's compliance with pleading requirements. *See Becher*, 829 F.2d at 292 (examining compliance with Rule 9(b)); *Menard*, 698 F.3d at 45 (examining compliance with plausibility standard). Nor does this approach impose an unreasonable burden on the plaintiffs, who were free to seek to amend their complaint to include the attachments but failed to do so. *Cf. Bates*, 958 F.3d at 483 (explaining that a plaintiff can "readily" supplement a complaint through a motion to amend). The district court properly considered the material before it with respect to the motion to dismiss when ruling on the plaintiffs' discovery motion.

We also reject the plaintiffs' argument that a plaintiff confronted with a Rule 12(b) (6) motion is entitled to discovery unless the record shows that "there is no means of pleading the claim well." On the contrary, this court has emphasized that the burden is on the plaintiff to "allege[ ] 'enough fact[s] to raise a reasonable expectation that discovery will reveal evidence' of [an] actionable [claim]." *Parker*, 935 F.3d at 18 (second alteration in original) (quoting *Twombly*,

550 U.S. at 556); *see also Boldt*, 274 F.3d at 44 (explaining that *Becher* discovery is appropriate only where the complaint's allegations "render[ ] it likely" that discovery would uncover necessary details). This burden reflects the fact that "[o]ne of the main goals of the plausibility standard is the avoidance of unnecessary discovery." *Rios-Campbell v. U.S. Dep't of Com.*, 927 F.3d 21, 26 (1st Cir. 2019) (quoting *Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 46 (1st Cir. 2012)); *see Schatz*, 669 F.3d at 56. The plaintiffs' approach would undermine that goal by requiring discovery in a broad set of cases where the pleadings offer no reason to think discovery is worthwhile.

The district court properly denied the plaintiffs' motion for limited discovery.

III.

For the foregoing reasons, we *affirm*.

JUDGMENT, U.S. DISTRICT COURT FOR THE DISTRICT OF MAINE (JUNE 7, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOEL DOUGLAS, ET AL.,

Plaintiffs,

v.

SCOTT LALUMIERE, ET AL.,

Defendants.

Civil No. 2:20-cv-00227-JDL

JUDGMENT

In accordance with the Order on David Hirshon and LOSU, LLC's Motion to Dismiss issued on September 29, 2021 by Chief U.S. District Judge Jon D. Levy and the Order on Defendants David Hirshon and LOSU, LLC's Motion for Final Judgment issued on June 7, 2022 by Chief U.S. District Judge Jon D. Levy,

JUDGMENT OF DISMISSAL is hereby entered as to Defendants David Hirshon and LOSU, LLC.

Christa K. Berry
Clerk

By: /s/ Charity Pelletier
Deputy Clerk

Dated: June 7, 2022

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF MAINE (JUNE 7, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOEL DOUGLAS, ET AL.,

Plaintiffs,

v.

SCOTT LALUMIERE, ET AL.,

Defendants.

2:20-cv-00227-JDL

Before: Jon D. LEVY, Chief U.S. District Judge.

ORDER ON DEFENDANTS DAVID HIRSHON AND LOSU, LLC'S MOTION FOR FINAL JUDGMENT

Plaintiffs Joel Douglas, Steven Fowler, and James Lewis filed a complaint (ECF No. 11) against twenty-three named defendants asserting seventeen claims arising out of multiple allegedly fraudulent schemes involving real estate. I previously granted (ECF No. 243) Defendants David Hirshon and LOSU, LLC's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 70). The claims against Hirshon and LOSU were a Racketeer Influenced and

Corrupt Organizations Act ("RICO") claim for conspiring to invest income derived from a pattern of racketeering activity into an enterprise, *see* 18 U.S.C.A. § 1962(a), (d) (West 2022), and a claim for unjust enrichment under Maine law. Now Hirshon and LOSU move (ECF No. 247) for entry of final judgment under Federal Rule of Civil Procedure 54(b). For the reasons that follow, I grant the motion.

I. ANALYSIS

Under Rule 54(b), "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." The first stage of the Rule 54(b) analysis is assessing finality, and the second is determining whether just reason exists for delay. *Spiegel v. Trs. of Tufts Coll.*, 843 F.2d 38, 42-43 (1st Cir. 1988). Finality addresses "whether the trial court action underlying the [requested] judgment disposed of all the rights and liabilities of at least one party as to at least one claim." *Credit Francais Int'l, S.A. v. Bio-Vita, Ltd.*, 78 F.3d 698, 706 (1st Cir. 1996). If a court has dismissed all claims against a defendant, the finality requirement is "plainly satisfied." *Nystedt v. Nigro*, 700 F.3d 25, 29 (1st Cir. 2012).

The Plaintiffs argue that the claims against Hirshon and LOSU have not been fully resolved, seemingly because (1) the claims are intertwined with the surviving claims against other defendants and (2) because a person, whom the Plaintiffs do not identify, seeks to join this lawsuit as a plaintiff to assert a new RICO claim. Whether the claims against Hirshon and LOSU are intertwined with the surviving claims is not

relevant at this first finality-focused stage of the analysis; instead, any overlap is relevant to the second stage of the 54(b) inquiry—whether there is just reason for delay. And, with regards to the new RICO claim, the Plaintiffs made this representation more than six months ago but have not sought leave to file a second amended complaint. I conclude that the finality requirement has been plainly satisfied because all claims against Hirshon and LOSU have been dismissed.

Turning to Rule 54(b)'s second stage, "[o]nce the finality hurdle has been cleared, the district court must determine whether, in the idiom of the rule, 'there is no just reason for delay' in entering judgment." *Spiegel*, 843 F.2d at 43 (quoting Fed. R. Civ. P. 54(b)). At this second and final stage, a court must assess "the litigation as a whole" and "weigh[ ] . . .all factors relevant to the desirability of relaxing the usual prohibition against piecemeal appellate review in the particular circumstances." *Id.* Those factors include "whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). If there is "a sufficiently important reason for . . . granting certification," "the presence of one of these factors would [not] necessarily mean that Rule 54(b) certification would be improper." *Id.* at 8 n.2.

Several factors weigh in favor of immediately entering final judgment for Hirshon and LOSU. First, Hirshon and LOSU have become entangled in this

lawsuit based on vague and conclusory allegations. The amended complaint asserts that Hirshon "is a person residing in Freeport Maine" and LOSU "is a Maine corporation doing business in the State of Maine," and that both "realized the proceeds" from the alleged RICO enterprise and "knew about the fraud" allegedly committed by the same. ECF No. 11 ¶¶ 19, 27, 174, 178. In my decision addressing the adequacy of the Plaintiffs' RICO conspiracy claim against these defendants, I concluded that "it is impossible to discern how [Hirshon and LOSU] might be connected to the Plaintiffs' claims, let alone conclude that they agreed to conspire with [other defendants]." ECF No. 243 at 7. Similarly, for the unjust enrichment claim, I determined that the bare and vague allegation of Hirshon's and LOSU's "extraction of equity from the homes" was insufficient for several reasons. ECF No. 243 at 8 (quoting ECF No. 11 ¶ 255).

Second, the inequity of deferring final judgment for Hirshon and LOSU is compounded by the fact that this case was initiated in 2020 and yet, in some respects, is just beginning. I have granted or granted in part motions to dismiss filed by eighteen other defendants. Now claims are set to move forward against nine named defendants, one of whom was recently granted an extension to file an answer. Given that this lawsuit has yet to enter the discovery phase, Hirshon and LOSU's motion would face an extended period without the benefit of a final judgment if Rule 54(b) relief were not granted.

Finally, the First Circuit has previously recognized that a district court reasonably granted a Rule 54(b) motion when the district court's weighing of the equities "focused on the importance of protecting [a

lawyer and his law firm's] reputation in the legal community," including the possibility that "pending RICO and conspiracy charges might well dissuade potential clients from using their services." *Nystedt*, 700 F.3d at 30. Hirshon is an attorney accused of a RICO conspiracy, so the risk of reputational harm to him is real and weighs in favor of entering a final judgment.

The Plaintiffs do not identify how they would be prejudiced if I were to enter final judgment for Hirshon and LOSU, so the only countervailing equities are those pertaining to efficient judicial administration. The claims that have not been dismissed are: RICO conspiracy claims against Scott Lalumiere, Russell Oakes, Eric Holsapple, and Wayne Lewis; conversion claims against David Jones, Bangor Savings Bank, and Robert Burgess; illegal eviction claims against Bangor Savings Bank and Burgess; trespass and negligence claims against Jones; fraud, breach of contract, and federal and Maine consumer credit law claims against Lalumiere, Birch Point Storage LLC, and MECAP LLC; and unjust enrichment and Maine Unfair Trade Practices Act claims against Lalumiere and MECAP LLC. There is little factual overlap between these surviving claims and the dismissed RICO and unjust enrichment claims against Hirshon and LOSU because very few facts are alleged as to Hirshon and LOSU. Moreover, the facts that are alleged as to Hirshon and LOSU do not illuminate how these defendants are connected to any others. The potential for legal overlap is also slight, even for the surviving RICO and unjust enrichment claims, because the claims against Hirshon and LOSU were dis-

missed for failure to state a claim, while the unadjudicated claims have survived 12(b)(6) motions (or no motions to dismiss were filed). Thus, immediate entry of final judgment for Hirshon and LOSU would not create inefficiencies vis-à-vis the surviving claims.

There is somewhat more overlap between the dismissed RICO and unjust enrichment claims against Hirshon and LOSU and the dismissed RICO and unjust enrichment claims against other defendants. The factual allegations concerning some defendants are similar to those concerning Hirshon and LOSU and, as such, the Plaintiffs have failed to state claims for similar reasons. For example, the allegations against Defendant Andre Bellucci include assertions that he "realized the proceeds" of the enterprise's fraud, was "informed of the fraudulent conduct in late November 2019," and "extraction [sic] of equity from the homes." ECF No. 11 ¶¶ 174, 179, 255.

However, an immediate entry of final judgment for Hirshon and LOSU would not cause significant administrative inefficiencies, notwithstanding these similarities. There are substantial differences between the bare-bones allegations made against Hirshon and LOSU and the facts alleged against other defendants, and these differences make the application of the 12(b)(6) standard a unique exercise as to each defendant. For example, other defendants are variously accused of funding the alleged enterprise through certain mortgage-backed loans, revoking an offer to buy Plaintiff Lewis's property, and agreeing to market properties purchased with the proceeds of fraud. Additionally, the RICO claims against Hirshon and LOSU were dismissed because the amended complaint did

not plausibly allege that they knowingly joined a conspiracy to reinvest the proceeds of racketeering activity back into the alleged enterprise. Yet most of the Court's other orders dismissing RICO claims in this case also relied on the Plaintiffs' failure to allege facts that would satisfy the investment-injury rule, which is an independent basis for the Plaintiffs' failure to state their RICO conspiracy claims. *See Compagnie De Reassurance D'Ile de Fr. v. New Eng. Reinsurance Corp.*, 57 F.3d 56, 91 (1st Cir. 1995). Finally, although the Plaintiffs have suggested the possibility of duplicative appeals, they have not affirmatively indicated that they intend to appeal the dismissal of their claims against Hirshon and LOSU.

Having examined "1) any interrelationship or overlap among the various legal and factual issues involved and 2) any equities and efficiencies implicated by the requested piecemeal review," *State St. Bank & Tr. Co. v. Brockrim, Inc.*, 87 F.3d 1487, 1489 (1st Cir. 1996), I conclude that there is no just reason to delay entering final judgment for Hirshon and LOSU. The equities in favor of immediately entering final judgment outweigh any potential inefficiencies.

II. CONCLUSION

Hirshon and LOSU's Motion for Entry of Final Judgment (ECF No. 247) is GRANTED. Judgment shall be entered for David Hirshon and LOSU, LLC.

SO ORDERED.

/s/ Jon D. Levy
Chief U.S. District Judge

Dated: June 7, 2022

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF MAINE (SEPTEMBER 29, 2021)

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOEL DOUGLAS, ET AL.,

Plaintiffs,

v.

SCOTT LALUMIERE, ET AL.,

Defendants.

2:20-cv-00227-JDL

Before: Jon D. LEVY, Chief U.S. District Judge.

ORDER ON DAVID HIRSHON & LOSU, LLC'S MOTION TO DISMISS

Joel Douglas, Steven Fowler, and James Lewis (collectively, "Plaintiffs") bring this action against Scott Lalumiere and twenty-five other defendants (collectively, "Defendants"), asserting seventeen claims arising out of an alleged scheme to defraud the Plaintiffs and obtain control or ownership of their real estate properties for the purpose of borrowing against the properties' equity. In total, the Defendants have filed thirteen motions to dismiss the First Amended Complaint (the "Complaint") (ECF No. 11) for failure to

state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).[1] This Order addresses David Hirshon and LOSU, LLC's motion to dismiss the claims asserted against them under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.A. §§ 1961-1968 (West 2021), and Maine contract law (ECF No. 70). For the reasons that follow, I grant David Hirshon and LOSU, LLC's Motion to Dismiss, deny the Plaintiffs' Motion for Limited Discovery,[2] and deny as moot the Plaintiffs' objection to the Magistrate Judge's order denying the Plaintiffs' Motion for Limited discovery.

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[1] The following defendants filed have motions to dismiss: Androscoggin Savings Bank (ECF No. 37); Camden National Bank (ECF No. 61); TTJR, LLC, LH Housing, LLC, and Eric Holsapple (ECF No. 65); LOSU, LLC and David Hirshon (ECF No. 70); Bangor Savings Bank and Robert Burgess (ECF No. 98); Wayne Lewis (ECF No. 110); Machias Savings Bank (ECF No. 111); Coastal Realty Capital, LLC, Michael Lyden, and Shawn Lyden (ECF No. 118); Andre Bellucci (ECF No. 147); BLR Capital, LLC (ECF No. 197); F.O. Bailey Real Estate, LLC and David Jones (ECF No. 203); Russell Oakes (ECF No. 223); and David Clarke (ECF No. 225). Only Defendants Scott Lalumiere, MECAP, LLC, and Birch Point Storage, LLC have not filed motions to dismiss.

[2] I recognize that Magistrate Judge John C. Nivison denied the Motion for Limited Discovery on January 21, 2021 (ECF No. 156). His order expressly recognized, however, that the Plaintiffs' request for limited discovery should be revisited as part of the Court's assessment of the Motion to Dismiss. Accordingly, I have treated the earlier order denying the motion as a deferral of action on the motion. Further, I have considered the merits of the motion and, for the reasons explained herein, I deny the motion.

I. BACKGROUND

The Complaint alleges the following facts, which I treat as true for purposes of ruling on this Motion to Dismiss.

The Complaint asserts that Scott Lalumiere and other defendants engaged in three distinct but intertwined schemes to defraud the Plaintiffs. In the first scheme, the Complaint alleges that Scott Lalumiere, funded by various banks and private lenders, fraudulently induced several vulnerable individuals, including Plaintiffs Steven Fowler and Joel Douglas, who lacked access to conventional credit, to enter into unfavorable lease/buy-back agreements. Under the terms of the agreements, the title of the victim's property would be transferred to a corporate entity controlled by Lalumiere with the victim, as the lessee, retaining a purchase option. The Lalumiere-controlled entity would subsequently mortgage the property to banks and private lenders, and, when the entity defaulted on its loan, the mortgagees foreclosed on the property, frustrating the victim's option to purchase.

In the second alleged scheme, Fowler entered into an agreement with Lalumiere whereby he would provide labor and materials at a discounted rate to renovate certain properties controlled by Lalumiere, with the understanding that Fowler could purchase the properties back upon the completion of the renovations. However, Lalumiere frustrated Fowler's right to purchase the properties by defaulting on the mortgages, causing the mortgagees to foreclose on the properties.

In the third alleged scheme, several of the Defendants agreed to pay-off and discharge Plaintiff James Lewis's defaulted mortgage and to lend him

money to make improvements to his property in exchange for him deeding the property to a corporation and making certain payments. After the title was transferred, they refused to loan him the money and subsequently foreclosed on the property.

The Complaint contains scant details regarding Hirshon's and LOSU's participation in Lalumiere's schemes. The Complaint merely alleges that Hirshon "is a person residing in Freeport Maine" and LOSU "is a Maine corporation doing business in the State of Maine," and that they "realized the proceeds" from the RICO enterprise and "knew about the fraud" in the first scheme noted above. ECF No. 11 ¶¶ 19, 27, 174, 178.

The Plaintiffs filed a Motion for Limited Discovery from Hirshon in connection with their response to the Motion to Dismiss. On January 21, 2021, Magistrate Judge John C. Nivison entered an order denying the Plaintiffs' limited discovery request without prejudice, stating that "[t]he Court will consider Plaintiffs' [discovery] requests as part of the Court's assessment of each defendant's motion to dismiss." ECF No. 156 at 3. On January 28, 2021, the Plaintiffs filed a timely objection to the Magistrate Judge's order (ECF No. 162). Below, I address the Plaintiffs' Motion for Limited Discovery and the Plaintiffs' objection to Magistrate Judge Nivison's order as it relates to Hirshon and LOSU's Motion to Dismiss.

II. LEGAL ANALYSIS

In reviewing a motion to dismiss for failure to state a claim, a court must "accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the pleader's favor."

Rodriguez-Reyes v. Molina-Rodriguez, 711 F.3d 49, 52-53 (1st Cir. 2013) (quoting *Santiago v. Puerto Rico,* 655 F.3d 61, 72 (1st Cir. 2011)). To survive a motion to dismiss, the complaint "must contain sufficient factual matter to state a claim to relief that is plausible on its face." *Id.* at 53 (quoting *Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 44 (1st Cir. 2012)). Additionally, a court may consider inferences "gleaned from documents incorporated by reference into the complaint, matters of public record, and facts susceptible to judicial notice." *Id.* (quoting *Haley v. City of Boston*, 657 F.3d 39, 46 (1st Cir. 2011)).

To assess the complaint's adequacy, courts apply a "two-pronged approach," *Ocasio-Hernandez v. Fortufio-Burset*, 640 F.3d 1, 12 (1st Cir. 2011): First, the court must "isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements," and second, the court will "take the complaint's well-pled (*i.e.*, non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief," *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 55 (1st Cir. 2012). To determine the plausibility of a claim is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Although conclusory legal statements may "provide the framework of a complaint, they must be supported by factual allegations." *Id.* The court must determine whether the factual allegations "plausibly give rise to an entitlement to relief." *Id.*

In addition, the Plaintiffs' fraud-related claims are subject to Federal Rule of Civil Procedure 9(b),

which requires that a complaint "state with particularity the circumstances constituting fraud." To satisfy this requirement, the complaint must set forth the "time, place and content of an alleged false representation." *Howell v. Advantage Payroll Servs., Inc.,* No. 2:16-cv-438-NT, 2017 WL 782881, at *6 (D. Me. Feb. 28, 2017) (quoting *Hayduk v. Lanna,* 775 F.2d 441, 444 (1st Cir. 1985)). The Plaintiffs' RICO claims are based in part on the predicate acts of mail and wire fraud, which "must satisfy the particularity requirements of Rule 9(b)." *Ahmed v. Rosenblatt,* 118 F.3d 886, 889 (1st Cir. 1997).

The Plaintiffs' claims against Hirshon and LOSU are: (A) the RICO claim and (B) the unjust enrichment claim. The RICO claim includes a single count against the alleged enterprise operating the conspiracy. The unjust enrichment claim stands for itself. I address each in turn.

A. RICO Claim (Count IV)[3]

The Complaint asserts that David Hirshon and LOSU participated in a RICO conspiracy under 18 U.S.C.A. § 1962(d) (West 2021). "To prove a RICO conspiracy offense, the [plaintiff] must show that 'the defendant knowingly joined the conspiracy, agreeing with one or more coconspirators "to further the endeavor, which, if completed, would satisfy all the elements of a substantive RICO offense."'" *United States v. Velazquez-Fontanez*, 6 F.4th 205, 212 (1st

[3] It is unclear whether the Complaint asserts a RICO count against LOSU. Count IV specifically names Hirshon but not LOSU; however, Count IV includes allegations against LOSU. For purposes of this motion, I accept that Count IV asserts a claim against both Hirshon and LOSU.

Cir. 2021) (alterations omitted) (quoting *United States v. Rodriguez-Torres*, 939 F.3d 16, 23 (1st Cir. 2019)). It is not necessary to "prove that the defendant or his co-conspirators committed any overt act in furtherance of the conspiracy." *United States v. Leoner-Aguirre*, 939 F.3d 310, 317 (1st Cir. 2019).

Here, the Complaint alleges that David Hirshon and LOSU conspired to violate 18 U.S.C.A. § 1962(a), which makes it unlawful to use or invest income derived from a pattern of racketeering activity under certain circumstances:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . in which such person has participated as a principal . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in . . . interstate or foreign commerce.

An "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C.A. § 1961(4) (West 2021). "To establish a pattern of racketeering, a plaintiff must show at least two predicate acts of 'racketeering activity', as the statute defines such activity, and must establish that the 'predicates are related, and that they amount to or pose a threat of continued criminal activity.'" *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786, 788 (1st Cir. 1990) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239). "Racketeering activity" encompasses

mail fraud under 18 U.S.C.A. § 1341 (West 2021), wire fraud under 18 U.S.C.A. § 1343 (West 2021), and money laundering under 18 U.S.C.A. § 1956 (West 2021). 18 U.S.C.A. § 1961(1). A plaintiff asserting a § 1962(a) claim must further prove that he was "injured 'in his business or property by reason of' the defendant's violation." *Compagnie De Reassurance D'Ile de France v. New England Reinsurance Corp.*, 57 F.3d 56, 91 (1st Cir. 1995) (quoting 18 U.S.C.A. § 1964(c) (West 2021)).

The Plaintiffs' theory for their RICO claim against Hirshon and LOSU is that Hirshon and LOSU conspired with the Lalumiere Defendants[4] under § 1962(d) to reinvest the income from a pattern of racketeering activity back into the enterprise. The alleged racketeering activity was money laundering and mail and wire fraud. The Complaint contains so few allegations against Hirshon and LOSU that it is impossible to discern how they might be connected to the Plaintiffs' claims, let alone conclude that they agreed to conspire with the Lalumiere Defendants. The Complaint's only description of Hirshon is that he "is a person residing in Freeport Maine," and the only description of LOSU is that it "is a Maine corporation doing business in the State of Maine." ECF No. 11 ¶¶ 19, 27. The only RICO allegations against Hirshon and LOSU assert that they "realized the proceeds" of the RICO enterprise and they "knew about the fraud committed by the Enterprise because of their participation in the transactions for 661 Allen Avenue and

[4] This term refers to Defendant Scott Lalumiere and the corporate entities he controlled: Defendants Birch Point Storage, LLC and MECAP, LLC.

75 Queen Street." *Id.* ¶¶ 174, 178. However, the Complaint does not contain any description of how they participated in the transactions.

The Plaintiffs' response to Hirshon and LOSU's Motion to Dismiss sets forth additional facts not contained in the Complaint, claiming that Hirshon "handled the transaction that transferred 75 Queen Street from Mr. Lalumiere to MECAP LLC on July 24, 2015" and "began investing into the enterprise" in 2019. ECF No. 112 at 4-5. However, on a Rule 12(b)(6) motion to dismiss, a court's inquiry is confined to the allegations in the complaint and its attachments. *See Foley v. Wells Fargo Bank, N.A.*, 772 F.3d 63, 73-74 (1st Cir. 2014) (reversing the district court for improperly considering evidence beyond the allegations in the pleadings). Thus, I do not consider the new allegations contained in the Plaintiffs' response.

Without any further information, the Complaint provides no indication as to what Hirshon's and LOSU's roles in the conspiracy were, whether they knew of Lalumiere's fraud, or whether they knowingly agreed to facilitate Lalumiere's scheme. For these reasons, I dismiss the RICO count against Hirshon and LOSU.[5]

B. Unjust Enrichment Claim (Count XVII)

The Complaint asserts a claim for unjust enrichment against Hirshon and LOSU based on the alleged

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[5] The Complaint fails to plausibly allege that Hirshon and LOSU knowingly joined Lalumiere's conspiracy, and for that reason alone, the Plaintiffs' RICO claim against Hirshon and LOSU fails. Therefore, I do not address Hirshon and LOSU's additional argument that the Complaint fails to sufficiently plead a plausible pattern of racketeering activity.

"extraction of equity from the homes at 661 Allen Avenue and 57 Queen Street." ECF No. 11 ¶ 255.

A claim for unjust enrichment requires proof that "(1) [the complaining party] conferred a benefit on the other party; (2) the other party had appreciation or knowledge of the benefit; and (3) the acceptance or retention of the benefit was under such circumstances as to make it inequitable for it to retain the benefit without payment of its value." *Knope v. Green Tree Servicing, LLC*, 2017 ME 95, ¶ 12, 161 A.3d 696, 699 (quoting *Me. Eye Care Assocs., P.A. v. Gorman*, 2008 ME 36, ¶ 17, 942 A.2d 707, 712).

The Complaint's unjust enrichment claim must be dismissed because the Complaint fails to allege that a benefit was conferred on Hirshon or LOSU. Although the Plaintiffs allegedly suffered harm through the loss of their properties, the Complaint fails to assert facts that would plausibly establish that a resulting benefit was conferred on Hirshon or LOSU. Relatedly, the Complaint does not allege that Hirshon or LOSU had or should have had "appreciation or knowledge" of the benefit received. There cannot be an unjust enrichment without a "conferred benefit" or "knowledge of the benefit."

In sum, the Complaint fails to plead facts which, if proven, would establish a right of recovery based on unjust enrichment.

C. Motion for Limited Discovery

A dismissal is not automatic once the lower court determines that Rule 9(b) has not been satisfied. *New England Data Servs., Inc. v. Becher*, 829 F.2d 286, 290

(1st Cir. 1987). Instead, after the Rule 9(b) determination, a "court should make a *second* determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint." *Id.* The plaintiff may have a right to limited discovery, to the extent necessary to cure a Rule 9(b) defect about "the details of just when and where the mail or wires were used." *Id.* A court also has "some latitude" to allow discovery "where a plausible claim may be indicated 'based on what is known,' at least where . . . 'some of the information needed may be in the control of the defendants.'" *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012) (alteration omitted) (quoting *Pruell v. Caritas Christi*, 678 F.3d 10, 15 (1st Cir. 2012)).

Here, the Plaintiffs seek limited discovery from Hirshon to reveal "communications between David Hirshon and the other defendants" who were allegedly involved in the conspiracy. ECF No. 113 at 3. Under the Plaintiffs' theory, Hirshon has exclusive access to communications which are necessary to prove the elements of fraud. Hirshon opposes the motion, asserting the Plaintiffs have failed to demonstrate a right to limited discovery because they have not pleaded a plausible claim and limited discovery is generally granted to cure particularity deficiencies, not plausibility defects.

The decisions in *Becher* and *Menard* establish two possible grounds for granting limited discovery. First, under *Menard,* where modest discovery may "provide the missing link" to satisfy the Rule 12(b)(6) plausibility standard, the court may allow limited discovery "at least where . . . 'some of the information

needed may be in the control of the defendants.'" 698 F.3d at 45 (quoting *Pruell v. Caritas Christi*, 678 F.3d 10, 15 (1st Cir. 2012)). Here, however, the Complaint is not lacking a "missing link." The Complaint does not plausibly suggest that Hirshon had information that would provide the "missing link" needed to remedy its deficiencies.

Second, as discussed in *Becher,* a court may allow discovery as to "the details of just when and where the mail or wires were used" in a "RICO mail and wire fraud case." 829 F.2d at 290; *see also Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). Here, however, additional information as to how the conspiracy used the mail or wires would not cure the Complaint's failure to sufficiently allege that Hirshon knowingly joined the conspiracy.

Neither *Menard* nor *Becher* offers a basis to grant limited discovery for the Plaintiffs as against Hirshon. Thus, the Motion for Limited Discovery as to Hirshon is denied, and the Plaintiffs' objection to the Magistrate Judge's Order (ECF No. 156) deferring action on the Motion for Limited Discovery until the Court assessed the motions to dismiss, is denied as moot.

III. CONCLUSION

For the reasons stated above, it is ORDERED that David Hirshon and LOSU, LLC's Motion to Dismiss (ECF No. 70) is GRANTED. The Amended Complaint (ECF No. 11) as to David Hirshon and LOSU, LLC is DISMISSED. The Plaintiffs' Motion for Limited Discovery (ECF No. 113) is DENIED and the Plaintiffs' Objection to the Magistrate Judge's Order on Limited Discovery (ECF No. 162) is DENIED AS MOOT as to David Hirshon.

SO ORDERED.

/s/ Jon D. Levy
Chief U.S. District Judge

Dated: September 29, 2021

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT (MAY 1, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOEL DOUGLAS;
STEVEN FOWLER; JAMES LEWIS,

Plaintiffs-Appellants,

v.

DAVID HIRSHON; LOSU LLC,

Defendants-Appellees.

BIRCH POINT STORAGE LLC; SCOTT LALUMIERE; MICHAEL LYDEN; SHAWN LYDEN; RUSSELL OAKES; WAYNE LEWIS; ANDRE BELLUCCI; DAVID JONES; ROBERT BURGESS; ANDROSCOGGIN SAVINGS BANK; BANGOR SAVINGS BANK; CAMDEN NATIONAL BANK; DAVID CLARKE; MILK STREET CAPITAL LLC; MECAP, LLC, d/b/a Milk Street Capital LLC; COASTAL REALTY CAPITAL, LLC, d/b/a Maine Capital Group, LLC; MAINE CAPITAL GROUP, LLC; LH HOUSING, LLC; TTJR, LLC; F.O. BAILEY REAL ESTATE; BLR CAPITAL, LLC; ERIC HOLSAPPLE; MACHIAS SAVINGS BANK; JOHN DOE NUMBER I; JOHN DOE NUMBER II; JOHN DOE NUMBER III; JOHN DOE NUMBER IV,

Defendants.

No. 22-1483

Before: BARRON, Chief Judge,
LYNCH, THOMPSON, GELPI, and
MONTECALVO, Circuit Judges.

ORDER OF THE COURT
Entered: May 1, 2023

The petition for panel rehearing is denied.

As it appears that there may be no quorum of circuit judges in regular active service who are not recused who may vote on appellant's request for rehearing en banc, the request for rehearing en Banc is also denied. *See* 28 U.S.C. § 46(d); 1st Cir. R. 35.0(a)(1). In any event, a majority of judges in regular active service do not favor en banc review.

By the Court:

Maria R. Hamilton, Clerk

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL (SEPTEMBER 15, 2020)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOEL DOUGLAS, STEVEN FOWLER, JAMES LEWIS,

Plaintiffs,

v.

SCOTT LALUMIERE, ERIC HOLSAPPLE, WAYNE LEWIS, RUSSELL OAKES, MICHAEL LYNDEN, SHAWN LYNDEN, JOHN DOE NUMBER II, JOHN DOE NUMBER III, JOHN DOE NUMBER IV, ANDROSCOGGIN SAVINGS BANK, MACHIAS SAVINGS BANK, COASTAL REALTY CAPITAL, LLC., ANDRE BELLUCCI, DAVID CLARKE, DAVID JONES, DAVID HIRSHON, ROBERT BURGESS, BANGOR SAVINGS BANK, CAMDEN NATIONAL BANK, MECAP, LLC., LH HOUSING LLC., BIRCH POINT STORAGE, LLC., F.O. BAILEY REAL ESTATE, LLC., LOSU, LLC., TTJR, LLC., BLR CAPITAL, LLC.,

Defendants.

20-CV-227-DBH

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiffs in the above titled matter and states as follows:

Nature of the Action

The action arises out of a scheme to defraud Joel Douglas, Steven Fowler, and James Lewis out of money or property that has a combined value of approximately $2,750,000.00. An Enterprise comprised of various other of corporations ("Enterprise") that worked together to take control of the plaintiffs' money and/or property by making promises that were false and were never intended to be kept through the use of voice communication over the telephone, electronic communications by computer, and written communications sent through the United States mail. Specifically, Scott Lalumiere would offer to provide needed money to people he knew to be vulnerable in exchange for transferring real estate into a corporation controlled by Eric Holsapple, Wayne Lewis, Scott Lalumiere, and Shawn Lynden, that there would be a mortgage placed on the property for the amount of money that the vulnerable people would need to pay to the creditors to keep their properties, but they would live on the property and maintain control of the property until the victims paid off the mortgage. The Enterprise would contemporaneously issue a purchase and sale agreement for the property with a set price and a closing date deadline in the distant future, and the victims would then turn over significant sums to the organization to ensure that the purchase and sale agreement would be honored. Once the Enterprise had control of the victim's money and property, other conspiring banks

with the Enterprise would issue payouts to the enterprise in exchange for mortgages. Bank members of the conspiracy would provide funds to the corporations controlled by the Enterprise secured by a mortgage on the property for more than Mr. Lalumiere and the victims agreed. Private lender members of the conspiracy would provide funds to the Enterprise secured by a mortgage on the property subject to the bank mortgage for the remainder of the equity. The victims would then be forced to lose the property in foreclosure or pay off the bank and private lender notes secured by the mortgages leaving the victims with no equity in their respective property. In December of 2018, members of the organization began foreclosing on the property under its control causing Mr. Lewis to lose the home that had been in his family for generations, causing Mr. Fowler to lose the home he had built, and threatening the home of Mr. Douglas where he was raising his children with their mother. The scheme to defraud qualifies as predicate acts for purposes of the Racketeer Influenced and Corrupt Organization Act 18 U.S.C. § 1961, *et seq*., Maine common law torts, and breach of contract, and Maine's Unfair and Deceptive Trade Practices Act.

Parties

1. Plaintiff Joel Douglas is a person residing in Gorham, Maine.

2. Plaintiff Steven Fowler is a person residing in Portland, Maine.

3. Plaintiff James Lewis is a person residing in Casco, Maine.

4. Defendant Scott Lalumiere is a person whose current residency is unknown but reported to be a resident of North Carolina.

5. Defendant Eric Holsapple is a person residing in Fort Collins Colorado.

6. Defendant Wayne Lewis is a person residing in Loveland, Colorado.

7. Defendant Russell Oakes is a person residing in Freeport, Maine.

8. Defendant Michael Lynden is a person residing in Saco, Maine.

9. Defendant Shawn Lynden is a person residing in Cumberland, Maine.

10. Defendant John Doe Number II is a person whose residency is unknown and is the bank representative of Androscoggin Savings Bank.

11. Defendant John Doe Number III is a person whose residency is unknown but is the bank representative of Camden National Bank.

12. John Doe Number IV is a person whose residency is unknown but is the bank representative of Machias Savings Bank.

13. Defendant Androscoggin Savings Bank is a Maine corporation doing business in the State of Maine.

14. Defendant Machias Savings Bank is a Maine corporation doing business in the State of Maine.

15. Defendant Coastal Reality Capital, LLC is a Maine corporation doing business in the State of Maine that operates under the assumed named Maine Capital Group LLC.

16. Defendant Andre Bellucci is a person residing in Portland, Maine.

17. David Clarke is a person who is a residing Westbrook Maine.

18. Defendant David Jones is a person residing in Falmouth, Maine.

19. Defendant David Hirshon is a person residing in Freeport Maine.

20. Defendant Robert Burgess is a person residing in Portland, Maine.

21. Defendant Bangor Savings Bank, is a Maine corporation doing business in the State of Maine.

22. Defendant Camden National Bank is a Maine corporation doing business in the State of Maine.

23. Defendant MECAP, LLC is a Maine corporation doing business in the State of Maine under the assumed name Milk Street Capital LLC.

24. Defendant LH Housing, LLC is a Maine corporation doing business in the State of Maine.

25. Defendant Birch Point Storage, LLC is a Maine corporation doing business in the State of Maine.

26. Defendant F.O. Bailey Real Estate, LLC is a Maine corporation doing business in the State of Maine.

27. Defendant LOSU, LLC is a Maine corporation doing business in the State of Maine.

28. Defendant TTJR, LLC is a Maine corporation doing business in the State of Maine.

29. Defendant BLR Capital, LLC is a Colorado Corporation doing business in the State of Maine

Subject Matter Jurisdiction

30. This action arises under Federal Law, particularly the Racketeer Influenced and Corrupt Organization Act 18 U.S.C. § 1961, *et seq*.

31. This action arises under Federal Law, particularly the Truth in Lending Act 15 U.S.C. § 1640, *et seq*. and the Maine Truth and Lending Act 9A-M.R.S. § 8-505 to the extent the State of Maine has an exemption and is supplemented by 15 U.S.C. § 1640.

32. This Court has jurisdiction of this case under and by virtue of 28 U.S.C. § 1343 and 28 U.S.C. § 1331.

33. This Honorable Court may exercise pendent jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

Personal Jurisdiction

34. This Honorable Court wields jurisdiction over each of the Defendants named herein pursuant to 14 M.R.S.A. § 704-A in that each of the defendants are domiciled in the State of Maine, a Maine Corporation, or a Corporation or a member of a Corporation doing business in the State of Maine.

Venue

35. Venue is properly laid before this Honorable Court pursuant 28 U.S.C. § 1391 and Rule 9(a) of the rules of the United States District Court for the District of Maine in that all of the acts complained of occurred in the County of Cumberland or the County of York in the State of Maine.

36. The Plaintiffs request a jury trial in this matter.

Facts Common to all Counts

37. MECAP, LLC did business under the assumed name of Milk Street Capital and was in the business of loaning money to people who could not get loans from more conventional sources like banks, credit unions or other financial institutions.

38. Eric Holsapple communicates with Scott Lalumiere, Wayne Lewis, and Shawn Lynden the terms of the transactions and completes those transaction through the use of telephone, electronic communications or through the use of the United States mail.

39. There is an Enterprise operating in the State of Maine that is directed by Eric Holsapple who directs the activities of Scott Lalumiere and Shawn Lynden from his home in Fort Collins Colorado through Wayne Lewis.

40. Mike Lynden, Shawn Lynden, Russell Oakes, and Scott Lalumiere were owners, managers, employees, or representatives who structured and conducted the Enterprises activities in the State of Maine through various entities.

41. Wayne Lewis is the person who acts as a go between for Mr. Holsapple and the Enterprises operations in the State of Maine

42. Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, and Skyline Real Estate Services, Inc. are entities managed by Scott Lalumiere.

43. Maine Capital Group and Coastal Reality Capital LLC are entities managed by Shawn Lynden.

44. TTJR, LLC., and BLR Capital LLC., and LH Housing LLC., are entities managed by Wayne Lewis.

45. Coastal Reality Capital LLC and Maine Capital Group are entities managed by Shawn Lynden.

46. Robert Burges, John Doe Number II, John Doe Number III, John Doe Number IV provided funds from Bangor Savings Bank, Androscoggin Savings Bank, Camden National Bank, and Machias Savings Bank to the Enterprise.

PATTERN OF RACKETEERING ACTIVITY

47. The Enterprise used a Sale Lease Back Fraud Scheme to defraud Christina Davis, Joel Douglas, Steven Fowler, and Matthew Crosby. The Contract used to execute the Sale Lease Back Fraud Scheme are attached and included by reference as Exhibit A.

48. The sale lease back transaction involved the signing over of real estate that was the victim's home and primary residence to corporate entities controlled by defendant Scott Lalumiere.

49. On its face, the purpose in signing over the property was to avoid the notice requirements of the Truth in Lending Act and Real Estate Settlement Procedures Act so that the true terms of the transactions would not be revealed to Ms. Davis, Mr. Douglas, or Mr. Fowler who were told it was part of securing the transaction.

50. A corporate entity that comprises the association in fact enterprise would then issue a document that gave the victim the right to purchase the property

at a set price in a credit sale arrangement. These documents had the titled "lease" or "purchase and sale agreement."

51. Also on its face, the Enterprise's purpose in requiring the property be held by an entity under its control was to allow non judicial foreclosure under 14 M.R.S.A. § 6203-A under Maine Law minimizing the possibility that the terms of the transaction would be revealed in a foreclosure action.

52. Scott Lalumiere would then go to the bank and seek a loan for the commercial properties that were being held by a corporate entity under his control as a sale lease back transaction.

53. The banks would then review the lease accept the property as collateral and issue funds to the corporate entity.

54. Because this was a sale lease back, the banks knew the terms of the "leases" and obtained assignments of the leases and recorded those assignments along with Uniform Commercial Code financing statements for the leases.

55. The "leases" all contained the false promise that the victim would be able to purchase their property back at a set price.

56. The "leases" from the Enterprise were actually disguised financing agreements that triggered specific disclosures under the Truth in Lending Act as credit sale transactions and are actually supervised loans by a creditor under the definitions in Maine law under 9-A M.R.S § 1-301(12), 9-A M.R.S. § 1-301(17), and 9-A M.R.S. § 1-301(40) West 2020.

THE SETTLER ROAD FRAUD SCHEME

57. Christina Davis recorded an Affidavit in the Cumberland County Registry of Deeds recounting the sale lease back transaction used to defraud her. A copy of the Affidavit is incorporated by reference as Exhibit B.

58. Skyline Real Estate Service Inc. issued Ms. Davis a residential lease dated April 1, 2012 that provided her an option to purchase the property for $140,000.00 that was extended through April 30, 2021 by addendum executed by Skyline Real Estate Services Inc., on May 1, 2015. *See* Exhibit A.

59. Skyline Real Estate Services Inc. was formed by Scott Lalumiere in Maine by use of the United States mail on November 3, 2004.

60. Christina Davis signed over her property located at 36 Settler Road in South Portland to Skyline Real Estate Services, Inc by Deed dated April 27, 2012.

61. Androscoggin Savings Bank secured funds provided to the Enterprise with a mortgage on 36 Settler Road on August 23, 2018.

62. Scott Lalumiere and Androscoggin Savings Bank knew the promise to sell the 36 Settler Road property back to Ms. Davis for $140,000.00 giving her credit for the rental payments towards the purchase price in a credit sale transaction was false when it was made in 2012.

63. Scott Lalumiere transferred the 36 Settler Road property from Skyline Real Estate Services Inc. on October 4, 2012 to Melissa Lalumiere.

64. John Doe Number II knew that the transaction for 36 Settler Road was fraudulent at its inception.

65. While Christina Davis was able secure her home, it was not at the set price and did not honor her instalment payments as part of the credit sale transaction.

THE QUEEN STREET FRAUD SCHEME

66. Joel Douglas allowed Scott Lalumiere to purchase 75 Queen Street on his behalf by Deed dated June 24, 2015. A copy of the Deed is attached and incorporated by reference as Exhibit C.

67. Eric Holsapple and Wayne Lewis communicated from Colorado to Scott Lalumiere in Maine authorizing the purchase of 75 Queen Street on May 19, 2015.

68. MECAP LLC issued Mr. Douglas a lease from June 1, 2015 to June 30, 2015 on a purchase and sale agreement dated May 19, 2015 that provided him a contractual right to purchase the property for $275,000.00 for a payment of $2,500.00 within three business days and $30,000.00 before closing in earnest money with a closing date of June 30, 2016. Mr. Douglas paid Mr. Lalumiere 32,500.00 in earnest money as required. *See* Exhibit A.

69. Scott Lalumiere knew the promise to sell the 75 Queen Street property to Mr. Douglas for 275,000.00 with credit for the $32,500.00 earnest money was false when it was made in 2015.

70. Scott Lalumiere transferred the 75 Queen Street property to LH Housing LLC on April 13, 2016.

The Deed transferring the property is incorporated by Reference and attached as Exhibit C.

71. LH Housing LLC was formed between Eric Holsapple in Colorado and Scott Lalumiere in Maine by use of the mail on December 17, 2012.

72. Scott Lalumiere encumbered 75 Queen Street with a mortgage from Machias Savings Bank in a Maximum Amount of $256,500.00 undisclosed amount by a mortgage dated April 13, 2016. The recorded Mortgage is attached and included by Reference as Exhibit D.

73. Wayne Lewis told Mr. Douglas that he would have to pay $405,000.00 to purchase his property.

74. Wayne Lewis would communicate by telephone from Colorado with the defendants in Maine. On June 8, 2020, Wayne Lewis communicated by wire to Russell Oaks telling him that Mr. Douglas would have to pay $405,000.00. A record of the communication is attached and included by reference as Exhibit E.

75. Wayne Lewis would also made filings from Colorado to be recorded at the registry of deeds in Maine by wire. Wayne Lewis caused to be transmitted by wire a document titled Mortgage, Assignment of Leases and Rents and Security Agreement on December 4, 2019 at 12:53 PM from Colorado to Maine to be recorded by the Cumberland County registry of deeds. The recorded document is attached and included by reference and Exhibit F.

76. BLR Capital LLC. was formed by Eric Holsapple and Wayne Lewis using wire transmission on October 3, 2019. The Articles of Organization are attached and included by reference as Exhibit G

77. On January 9, 2019, Wayne Lewis contacted Mr. Douglas directly by text message from Colorado while Mr. Douglas was here in Maine. A record of the communication is attached and included by reference as Exhibit H.

THE ALLEN AVENUE FRAUD SCHEME

78. Steven Fowler signed over his property at 661 Allen Avenue in Portland Maine to Birch point Storage LLC by Deed dated April 28, 2017. The recorded Deed is attached and included by reference as Exhibit I.

79. Birch Point Storage LLC issued Mr. Fowler a Residential Lease Agreement dated March 28, 2017 and Purchase and Sale Agreement as the option referenced in the Lease for $219,000.00. *See* Exhibit A.

80. The Enterprise knew that promise to sell the 661 Allen Avenue property back to Mr. Fowler for $219,000.00 was false when it was made in 2017.

81. Androscoggin Savings Bank encumbered 661 Allen Avenue with a mortgage of approximately $397,000.00. A copy of the recorded Mortgage is attached and included by reference as Exhibit J.

82. The United States Department of Housing and Urban Development (HUD) settlement statement for the 661 Allen Avenue transaction did not reflect the $397,000.00 mortgage. The HUD statement is incorporated by reference and attached as Exhibit K.

83. Scott Lalumiere and Androscoggin Savings Bank knew the promise to sell 661 Allen Avenue was false when it was made.

84. John Doe Number II knew that the transaction for 661 Allen Avenue was fraudulent.

85. Androscoggin Savings Bank should have known that the leases in the 36 Settler Road property and 661 Allen Avenue were supervised loans by a creditor but remained willfully blind to the true nature and intent of the leases.

86. Androscoggin Savings Bank concealed the details of the transaction for 661 Allen Avenue by bundling a series of other properties in the recorded mortgage.

87. Androscoggin Savings Bank recorded an assignment of leases and rents for 661 Allen Avenue dated April 28, 2017. The Assignment of Leases is incorporated by reference and attached as Exhibit L.

88. On its own, the property at 661 Allen Avenue had a value near $600,000.00.

89. In December of 2018, the Enterprise faltered when a dispute between Scott Lalumiere and Wayne Lewis occurred.

90. On December 20, 2018, a resolution of this dispute occurred during a telephone call involving Eric Holsapple and Wayne Lewis in Colorado and Scott Lalumiere in Portland Maine. The resolution of this dispute involved the granting of a mortgage to TTJR, LLC secured by 661 Allen Avenue as a means of securing the proceeds would go to Eric Holsapple and Wayne Lewis. The recorded mortgage is attached and included by reference as Exhibit M.

91. The proceeds from the fraud were used to purchase additional real estate for the Enterprise and were made to appear legitimate through those other real estate transactions.

92. Sometime around December 14, 2018, Erin Papkee, who is an employee of Mr. Lalumiere, discovered that money from the sale of 9 Brault Street, which should have gone to LH Housing LLC was deposited into an account for MECAP LLC.

93. This dispute resulted in the succession of the Enterprise's use of the Sale Lease Back Fraud Scheme used in the Settler Road Fraud Scheme, Queen Street Fraud Scheme, and the Allen Avenue Fraud Scheme.

94. The United States Mail was used to execute this fraud on at least three occasions:

A. Certificate of Formation for Skyline Real Estate Services Inc. mailed on November 3, 2004.

B. Certificate of Formation for LH Housing, LLC mailed on December 17, 2012.

C. Certificate of Formation for Birch Point Storage, LLC mailed on November 1, 2016.

D. Recorded Mortgage, Assignment of Leases and Rents and Security Agreement mailed on December 5, 2019.

95. Eric Holsapple, Wayne Lewis, and Scott Lulumiere caused to be transmitted images and writings by wire for the purpose of executing their scheme with the following transmissions:

A. BLR Capital LLC, was formed by Eric Holsapple and Wayne Lewis in Colorado by causing to transmit Articles of Organization on October 30, 2019.

B. The Conversation on December 20, 2018 resolving the dispute between Eric Holsapple, Wayne Lewis and Scott Lalumiere.

C. The Conversation on June 8, 2020 between Eric Holsapple, Wayne Lewis, and Russell Oakes on the purchase price for 75 Queen Street.

D. Recorded Deed for 36 Settler Road transmitted on August 23, 2018.

E. Recorded assignment of Mortgage assigned by TTJR LLC and accepted by LH Housing LLC December 4, 2019. The Recorded Assignment is attached and included by reference as Exhibit N.

MONEY LAUNDERING SCHEME

96. In March of 2019, the Enterprise began extracting all the proceeds from the real estate that had been purchased at least in part with the proceeds from the frauds.

97. In November of 2019, the Enterprise informed David Jones of the problem with the "leases" and he agreed to market the properties for sale.

98. By December of 2019, the Enterprise had informed Bangor Savings Bank and Camden National Bank about the problem with the "leases."

99. By the middle of December, Bangor Savings Bank, Camden National Bank and Androscoggin Savings Bank began foreclosing on the Enterprise's properties.

100. The Enterprise made an agreement with Mr. Fowler involving three Maine properties: 33

Sanborn Lane in Limerick, 181 St. John Street in Portland, and 16 Old Ben Davis Road in Lyman.

101. The Enterprise made an agreement with Mr. Fowler beginning in late April early May of 2016. The terms of this agreement were Mr. Lalumiere would pay Mr. Fowler a portion of his hourly rate and the cost of materials for work completed on a series of properties including 33 Sanborn Lane, 181 St. John Street, and 16 Old Ben Davis Road and in exchange Mr. Fowler would be allowed to purchase the three properties for the payoff amounts on the organization's bank held conventional mortgages secured by the three properties once the rehabilitation work was completed and he would be allowed control over the properties that included the authority to rent the properties and collect the proceeds from the rents on any sublease on those properties until he was able to complete his purchase. Mr. Fowler paid the rent to the Enterprise on these three properties from October 2016 until November 2019.

102. The Enterprise made payments to Mr. Fowler between May 1, 2016 and August 10, 2016 for $30,000.00 for 33 Sanborn Lane and $12,000.00 for 16 Old Ben Davis Road.

103. The acquisitions of these properties involved the proceeds of the fraud from 75 Queen Street. The Enterprise took $32,500.00 representing Mr. Douglas's earnest money and the $256,500.00 in funds received from Machias Savings Bank on April 13, 2016 secured by the mortgage on 75 Queen Street.

104. Bangor Savings Bank provided the Enterprise funds on November 13, 2016 that was secured

by a mortgage in the amount of 139,200.00 by 33 Sanborn Lane in Limerick.

105. Androscoggin Savings Bank provided the Enterprise funds October 13, 2016 in the amount of $1,090,000.00 that was secured in part by 16 Old Ben Davis Road.

106. The Enterprise began a money laundering phase by selling off the properties acquired with proceeds of the fraud through Coastal Realty Capital, LLC, Milk Street Capital LLC, Maine Capital Group LLC, MECAP LLC, Birch Point Storage LLC, LH Housing LLC, TTJR LLC, and BLR Capital LLC.

107. Acting on behalf of the Enterprise, David Jones has been representing the Enterprise as it extracts the proceeds from the fraud and makes the money appear legitimate through transactions that sell the properties to buyers.

108. David Jones is the owner of F.O Bailey Real Estate LLC, which provides the Enterprise the appearance of legitimacy.

109. Camden National Bank used a non-judicial foreclosure to auction off the 181 St. John Street Property on January 31, 2020.

110. Androscoggin Savings Bank used a non-judicial foreclosure to schedule an action for September 17, 2020.

111. Androscoggin Savings bank used a non-judicial foreclosure action to auction of 16 Old Ben Davis Road on June 17, 2020.

BEACH STREET FRAUD SCHEME

112. James Lewis was directed to Milk Street Capital to finance the payoff of a mortgage that was in default on the home that had belonged to his mother before she passed away.

113. In the weeks prior to December 2010, Milk Street Capital through Mike Lynden made promises to Mr. Lewis that the organization would pay off the mortgage and loan him money to make improvements in exchange for him placing 57 Beach Street in South Portland Maine into a corporation to hold title but that he could continue to live there so long as he paid the mortgage.

114. On December 12, 2010, James Lewis and his brother executed a transfer of the home located at 57 Beach Street to Lewis Plumbing and Heating, LLC.

115. Coastal Reality Capital LLC refused to honor its promises to loan additional money to Mr. Lewis for the necessary home improvements and never intended to loan Mr. Lewis money for home improvements.

116. On September 19, 2014, Mike Lynden arranged for Coastal Reality Capital LLC. to loan Mr. Lewis money in the principle amount $125,000.00.

117. Coastal Reality Capital LLC foreclosed on 57 Beach Street.

118. Andre Bellucci, claiming that he could prevent Coastal Reality Capital LLC from extending more time to resolve the matter, reneged on his offer to pay the value of the home at 57 Beach Street and indicated that he would only pay the outstanding balance on the note.

THE EVICTIONS

119. Mr. Fowler was given control of 33 Sanborn Lane where he rented out the house portion and used the garage portion for his business.

120. Bangor Savings Bank, Androscoggin Savings Bank, Machias Savings Bank and Camden National Bank all had a special relationships with Scott Lalumiere through the representatives Robert Burgess, John Doe Number II, John Doe Number III, John Doe Number IV that allowed the banks to lend money to the corporate entities without personal guarantees and without regard to debt to income ratios of the specific corporate entity holding title. The respective bank policies and exceptions to that specific customary policies resulted in Bangor Saving Bank, Androscoggin Savings Bank, Machias Savings Bank or Camden National Bank being able to direct the organization and to manage who was responsible for making the payouts secured by the mortgages and who realized the distressed asset at the end of the process.

121. On Thursday March 19, 2020, David Jones and an associate of David Jones removed property belonging to Mr. Fowler and denied Mr. Fowler access to the property at 33 Sanborn Lane in Limerick.

122. Even though Mr. Fowler was not the title owner, he was in control of the property at 33 Sanborn Lane as a tenant at will.

123. On March 19, 2020, David Jones claimed to be acting under the authority of Bangor Savings Bank with respect to 33 Sanborn Lane, which was in fact verified by Robert Burgess although Mr. Burgess denied that the bank had given Mr. Jones the broad authority that Mr. Jones claimed.

COUNT I

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT 18 U.S.C. § 1962(d) Closed Pattern Association in Fact Enterprise (Against Eric Holsapple, Wayne Lewis, and Scott Lalumiere)

124. Plaintiffs repeats and realleges paragraph 1 through 123.

125. Eric Holsapple is the leader of the Enterprise that uses a pattern of racketeering activity to conduct its affairs.

126. In Relevant Part 18 U.S.C. § 1962(a) states "[i]t shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

127. From at least April 27, 2012 until April 28, 2017, Eric Holsapple, Wayne Lewis, and Scott Lalumiere who are all persons for purposes of 18 U.S.C. § 1961 through an association in fact enterprise comprised of Skyline Realty Services Inc., Birch Point Storage LLC, LH Housing LLC, and MECAP LLC conspired to use a pattern of mail and wire fraud to take control of the property belonging to Christina

Davis, Joel Douglas, Steven Fowler, and Matthew Crosby in violation of 18 U.S.C. § 1962(d).

128. The association-in-fact Enterprise is evidenced by the organizational structure and discrete tasks through which the defendants accomplish the goals of the Enterprise, in that vulnerable victims were recruited, control over their property achieved, conventional lenders lent money secured by the controlled property, private lenders were then given the remaining equity. The Enterprise then sold or foreclosed on the distressed property for value returning the funds used by the Enterprise. The Sale Lease Back Scheme allowed the defendants to take control and realize the equity in the property that they otherwise would not be entitled to while increasing their transactional profits with fees and interest on the funds provided to the Enterprise but paid by the victims.

129. There is a closed pattern of racketeering activity over a five year period of time because defendants have engaged in racketeering activity through at least two predicate acts of mail and wire fraud, 18 U.S.C. §§ 1341, 1343 from 2012 until 2017 with the Settler Road Scheme, the Queen Street Scheme, and the Allen Avenue Scheme.

130. The Sale Lease Back Schemes relied on communications through the mails, telephone, email, and texts and it was foreseeable that the use of those modes of communication were both necessary and likely to be used to accomplish the fraud.

131. The Enterprise fraudulently induced the plaintiffs to transfer their money or property to the enterprise by telling them they could later buy the respective properties at the amount in the purchase

and sale contracts for the respective property or pay off the mortgage which was false and the defendants knew it was false when that promise was made.

132. Steven Fowler relied on Scott Lalumiere false statements that he would be able to regain title to his property for $219,000.00 even though the defendants knew on the day of the transaction that the property would be securing a $400,000.00 obligation that was part of an approximately $800,000.00 loan.

133. Joel Douglas relied on Scott Lalumiere false statements that he would be able to purchase 75 Queen Street for $275,000.00 even though the defendants knew that they were never going to sell the property to Mr. Douglas and simply kept his 32,500.00 in earnest money.

134. Christina Davis relied on Scott Lalumiere fraudulent statements that she would be able to purchase 36 Settler Road for $140,000.00.

135. The enterprise accomplished its purpose through a pattern of Racketeering Activity because the transaction involving 36 Settler Road qualifies and wire fraud or mail fraud, 661 Allen Avenue qualifies as wire fraud or mail fraud, and the transaction involving 75 Queen Street qualifies as wire fraud or mail fraud qualifying both in terms of the number by the four times it was known to be executed and qualified in terms of duration because the pattern was executed over at least 5 years.

136. The Sale Lease Back Schemes used in the pattern were both related and continuous in terms of the people involved, the Sale Leas Back Fraud Scheme, and the goals achieved as part of the Enterprises regularly conducted business.

137. The Enterprise's activities affect and involved interstate commerce by the at least four caused to be mailed known contacts with the United States mails creating the entities that would comprise the Enterprise, and the at least four caused to be transmissions by wire necessary to execute the scheme creating entities that are a part of the enterprise, filings with the registry of deeds and communications directly between the defendants and plaintiffs between Colorado and Maine.

138. The enterprise has caused Mr. Fowler and Mr. Douglas to lose more than $1,000,000.00 in equity in their homes.

WHEREFORE, Plaintiffs, Mr. Fowler and Mr. Douglas requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) award them treble damages, attorney's fees and costs pursuant to 18 U.S.C. § 1961, and (3) award such other and further relief as this Honorable Court deems just and proper.

COUNT II

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT 18 U.S.C. § 1962(d) Closed Pattern Association in Fact Enterprise. (Against Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number II, Androscoggin Savings Bank)

139. Plaintiffs repeats and realleges paragraph 1 through 138.

140. Eric Holsapple is the leader of the Enterprise that uses a pattern of corrupt and racketeering activity to conduct its affairs.

141. In relevant part 18 U.S.C. § 1962(a) states "[i]t shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

142. From at least April 27, 2012 until April 28, 2017, Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number II, and Androscoggin Savings Bank who are all persons for purposes of 18 U.S.C. § 1961 through an association in fact enterprise comprised of Skyline Realty Services Inc., Birch Point Storage LLC, LH Housing LLC, and MECAP LLC conspired to use a pattern of mail and wire fraud to take control of the property belonging to Christina Davis, Joel Douglas, and Steven Fowler in violation of 18 U.S.C. § 1962(d).

143. The association-in-fact Enterprise is evidenced by the organizational structure and discrete tasks through which the Enterprise Defendants accomplished the goals of the Enterprise, in that vulnerable victims were recruited, control over their property achieved, conventional lenders lent money secured by the controlled property, private lenders were then given the remaining equity. The Enterprise then sold or foreclosed on the distressed property for value returning

the funds used by the Enterprise. The Sale Lease Back Schemes allowed the Defendants to take control and realize the equity in the property that they otherwise would not be entitled to while increasing their transactional profits with fees and interest on the funds provided to the Enterprise but paid by the victims.

144. In relevant part 18 U.S.C. § 2 provides "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal [and] [w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

145. Androscoggin Savings Bank is a principle within the meaning 18 U.S.C. § 2 having participated in at least two predicate acts of mail or wire fraud and knew both about the false statements that Ms. Davis and Mr. Fowler would be able to buy their property back $140,000.00 and $219,000.00 respectively and that these false statements were part of a much larger Enterprise involving at least 12 other properties that were collateral for at least two other disbursements from Androscoggin Savings Bank that totaled $1,655,179 .17 in principle amount and grew in appraised value over the scheme to $2,462,000.00 as collateralized property. The Androscoggin Savings Bank spread Sheet is attached and included by reference as Exhibit O.

146. There is a closed pattern of racketeering activity over a 5 year period of time because Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number II, and Androscoggin Savings Bank have engaged in racketeering activity through at least two

predicate acts of mail and wire fraud, 18 U.S.C. §§ 1341, 1343 from 2012 until 2017 with the Settle Road Scheme, the Queen Street Scheme, and the Allen Avenue Scheme.

147. The Sale Lease Back Schemes relied on communications through the mails, telephone, email, and texts and it was foreseeable that the use of those modes of communication were both necessary and likely to be used to accomplish the fraud.

148. The organization fraudulently induced the plaintiffs to transfer their money or property to the Enterprise by telling them they could later buy the respective properties at the amount in the purchase and sale contracts for the respective property or pay off the mortgage which was false and the defendants knew it was false when that promise was made.

149. Steven Fowler relied on Scott Lalumiere's false statements that he would be able to regain title to his property for $219,000.00 even though the defendants knew on the day of the transaction that the property would be securing a $400,000.00 obligation that was part of an approximately $800,000.00 loan.

150. Christina Davis relied on Scott Lalumiere's false statements that she would be able to purchase 36 Settler Road for $140,000.00.

151. The Enterprise accomplished its purpose through a pattern of Racketeering Activity because the transaction involving 36 Settler Road qualifies and wire fraud or mail fraud, 661 Allen Avenue qualifies as wire fraud or mail fraud, and the transaction involving 75 Queen Street qualifies as wire fraud or mail fraud qualifying both in number by the four times it

was known to be executed and as qualified by duration in that the pattern went on for at least 5 years.

152. The Sale Lease Back Schemes used in the pattern were both related and continuous in terms of the people involved, the Sale Leas Back Fraud Scheme, and the goals achieved as part of the Enterprises regularly conducted business.

153. The Enterprise's activities affect and involve interstate commerce by the at least four caused to be mailed known contacts with the United States mails creating the entities that would comprise the Enterprise, and the at least four caused to be transmissions by wire necessary to execute the scheme creating entities that are a part of the enterprise, filings with the registry of deeds and communications directly between the defendants and plaintiffs between Colorado and Maine.

154. The enterprise has caused Mr. fowler to lose more than $400,000.00 in equity in this home.

WHEREFORE, Plaintiff, Mr. Fowler, requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) award them treble damages, attorney's fees and costs pursuant to 18 U.S.C. § 1961, and (3) award such other and further relief as this Honorable Court deems just and proper.

COUNT III

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT 18 U.S.C. § 1962(d) Closed Pattern Association in Fact Enterprise. (Against Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number IV, Machias Savings Bank)

155. Plaintiffs repeats and reallege paragraph 1 through 154.

156. Eric Holsapple is the leader of the Enterprise that uses a pattern of corrupt and racketeering activity to conduct its affairs.

157. In Relevant part 18 U.S.C. § 1962(a) states "[i]t shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

158. From at least April 27, 2012 until April 28, 2017, Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number IV, and Machias Savings Bank who are all persons for purposes of 18 U.S.C. § 1961 through an association in fact enterprise comprised of Skyline Realty Services Inc., Birch Point Storage LLC, LH Housing LLC, and MECAP LLC conspired to use a pattern of mail and wire fraud to take control

of the property belonging to Christina Davis, Steve Douglas and Steven Fowler in violation of 1'8 U.S.C. § 1962(d).

159. The association-in-fact enterprise is evidenced by the organizational structure and discrete tasks through which the defendants accomplish the goals of the Enterprise, in that vulnerable victims were recruited, control over their property achieved, conventional lenders lent money secured by the controlled property, private lenders were then given the remaining equity. The Enterprise then sold or foreclosed on the distressed property for value returning the funds used by the Enterprise. The Sale Lease Back Schemes allowed the Defendants to take control and realize the equity in the property that they otherwise would not be entitled to while increasing their transactional profits with fees and interest on the funds provided to the Enterprise but paid by the victims.

160. In relevant part 18 U.S.C. § 2 provides "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal [and] [w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

161. Machias Savings Bank is a principle within the meaning 18 U.S.C. § 2 having participated in at least two predicate acts of mail or wire fraud and knew both about the false statements that Ms. Davis, Mr. Fowler, Mr. Douglas would be able to buy their property back $140,000.00, $219,000.00, and $275,000.00 respectively.

162. There is a closed pattern of racketeering activity over a 5 year period of time because Defendants have engaged in racketeering activity through at least two predicate acts of mail and wire fraud, 18 U.S.C. §§ 1341, 1343 from 2012 until 2017 with the Settler Road Scheme, the Queen Street Scheme, and the Allen Avenue Scheme.

163. The Sale Lease Back Schemes relied on communications through the mails, telephone, email, and texts and it was foreseeable that the use of those modes of communication were both necessary and likely to be used to accomplish the fraud.

164. The organization fraudulently induced the plaintiffs to transfer their money or property to the Enterprise by telling them they could later buy the respective properties at the amount in the purchase and sale contracts for the respective property or pay off the mortgage which was false and the defendants knew it was false when that promise was made.

165. Joel Douglas relied on Scott Lalumiere's false statements that he would be able to regain title to his property for $275,000.00, the property was sold to LH Housing LLC before the closing date in the purchase and sale agreement with MECAP LLC expired and the bank would have had to see the terms of the lease that were written on the purchase and sale agreement between MECAP LLC and Joel Douglas.

166. Christina Davis relied on Scott Lalumiere's false statements that she would be able to purchase 36 Settler Road for $140,000.00.

167. The Enterprise accomplished its purpose through a pattern of Racketeering Activity because

the transaction involving 36 Settler Road qualifies and wire fraud or mail fraud, 661 Allen Avenue qualifies as wire fraud or mail fraud, and the transaction involving 75 Queen Street qualifies as wire fraud or mail fraud qualifying both in number by the four times it was known to be executed and as qualified by duration in that the pattern went on for at least 5 years.

168. The Sale Lease Back Schemes used in the pattern were both related and continuous in terms of the people involved, the Sale Leas Back Fraud Scheme, and the goals achieved as part of the Enterprises regularly conducted business.

169. The Enterprise's activities affect and involved interstate commerce by the at least four caused to be mailed known contacts with the United States mails creating the entities that would comprise the enterprise, and the at least four caused to be transmissions by wire necessary to execute the scheme creating entities that are a part of the enterprise, filings with the registry of deeds and communications directly between the defendants and plaintiffs between Colorado and Maine.

170. The Enterprise has caused the plaintiffs to lose more than $400,000.00 in equity in their homes.

WHEREFORE, Plaintiff, Mr. Douglas, requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) award them treble damages, attorney's fees and costs pursuant to 18 U.S.C. § 1961, and (3) award such other and further relief as this Honorable Court deems just and proper

COUNT IV

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT 18 U.S.C. § 1962(d) Open or Closed Pattern Association in Fact Enterprise. (Against Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number II, Androscoggin Savings Bank, Robert Burgess, Bangor Savings Bank, John Doe Number III, Camden National Bank, John Doe Number IV, Machias Savings Bank, David Jones, David Hirshon, Russell Oaks, David Clark, Shawn Lynden, Michael Lynden, And Andre Bellucci)

171. Plaintiffs repeats and reallege paragraph 1 through 170.

172. Eric Holsapple is the leader of an enterprise that uses a pattern of racketeering activity to conduct its affairs.

173. In Relevant Part 18 U.S.C. § 1962(a) states "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

174. There was a structure to the Enterprise in that each individual and entity played a role in

achieving the goals of the Enterprise: Eric Holsapple was the money man providing the initial funds to gain control of the victims property, Wayne Lewis was go between who communicated Mr. Holsapple's directions, and Scott Lalumiere recruited victims and secured control of the property, MECAP, LH Housing, Birch Point Storage were the property holding entities that make up part of the association in fact enterprise, Robert Burgess John Doe II, John Doe Number III and John Doe Number IV would approve the properties for loans, Androscoggin Savings Bank, Bangor Savings Bank, Camden National Bank, and Machias Savings Bank secured the money so it could reclaim the funds provided, through LH Housing, Birch Point Storage, and MECAP, David Jones and F.O. Bailey Realty LLC market the properties for sale and BLR Capital LLC, TTJR LLC, LOSU LLC, David Hirshon, Maine Capital Group, Coastal Reality Capital LLC, Michael Lynden, Shawn Lynden, Andre Bellucci and David Clarke realized the proceeds through the other part of the association in fact enterprise LOSU LLC, Coastal Reality Capital LLC, TTJR LLC, LH Housing LLC, and BLR Capital LLC all of which conspired in violation of 18 U.S.C. § 1962(d).

175. Defendants Eric Holsapple, Wayne Lewis, Scott Lalumiere, John Doe Number II, Androscoggin Savings Bank, Robert Burgess, Bangor Savings Bank, John Doe Number III, Camden National Bank, John Doe Number IV, Machias Savings Bank, David Jones, David Hirshon, Russell Oaks, David Clark, Shawn Lynden, Michael Lynden, and Andre Bellucci all qualify as persons under 18 U.S.C. § 1961.

176. The association-in-fact Enterprise is evidenced by the organizational structure and discrete

tasks through which the defendants accomplished the goals of the Enterprise, in that the defendants worked together to conceal the nature and owner of the proceeds by engaging in financial transactions for the Enterprise properties that were then sold or foreclosed on as distressed assets for value returning funds to the participants in the Enterprise appearing as legitimate proceeds from the sale of real estate. The Money Laundering Scheme allowed the Defendants to take control and realize the equity in the property that they otherwise would not be entitled to while increasing their transactional profits with fees and interest on the funds provided to the Enterprise but paid by the victims.

177. From at least April 27, 2012 until April 28, 2017, Eric Holsapple, Wayne Lewis, and Scott Lalumiere, John Doe Number II, Androscoggin Savings Bank, John Doe Number IV and Machias Savings Bank through LH Housing, MECAP and BLR Capital LLC used a pattern of mail and wire fraud to take control of the property belonging to Christina Davis, Steven Fowler, Matthew Crosby and Joel Davis.

178. Eric Holsapple, Wayne Lewis, Scott Lalumiere, David Hirshon, John Doe Number II, John Doe Number IV, MECAP LLC, Birch Point Storage LLC, LH Housing, LOSU LLC, TTJR LLC, and BLR Capital, Androscoggin Savings Bank, and Machias Savings Bank knew about the fraud committed by the Enterprise because of their participation in the transactions for 661 Allen Avenue and 75 Queen Street.

179. The Enterprise informed Bangor Savings Bank, Robert Burgess Camden National Bank, John Doe Number III, David Jones, F.O. Bailey Realty LLC, Michael Lynden, Russell Oaks, Shawn Lynden,

Maine Capital Group, Maine Coastal Realty LLC, Andre Bellucci, and David Clarke were informed of the fraudulent conduct in late November 2019.

180. The Enterprise purchased the property at 33 Sanborn Lane, 181 St. John Street, and 16 Old Ben Davis Road were paid for with the proceeds from the fraud in the transaction for 75 Queen Street and generally comingled the proceeds throughout the Enterprise.

181. The foreclosures of the property located 181 St. John Street and 16 Old Ben Davis Road were a financial transaction engaged in for the purpose of concealing or disguising the nature of proceeds used to buy the properties or the true owner of the properties knowing that the properties had been purchased with proceeds from the fraud at 75 Queen Street and represent the factual basis for a pattern of racketeering activity by the Enterprise in violation of 18 U.S.C. § 1956.

182. The goal of the association in fact enterprise is to conceal the nature of the fraudulent transactions that enabled the purchase of the property and to extract the proceeds from that activity while making it appear as though the proceeds were the product of a failed real estate transaction.

183. There is a pattern of racketeering activity over a three year period of time because Defendants have engaged in racketeering activity through at least two predicate acts of mail and wire fraud, 18 U.S.C. § 1956 with the 181 St John Street, 16 Old Ben Davis Road, and 33 Sanborn Lane from 2017 until 2020.

184. The facts justify either a closed or open pattern of racketing activity.

185. The transactions for 75 Queen Street, 661 Allen Avenue, 33 Sanborn Lane have yet to be completed.

186. The association in fact money laundering enterprise is a hub and spoke conspiracy with the unifying wheel around the hub and spoke being the desire to conceal the underlying fraud and recover the funds provided to the Enterprise.

187. Despite the obligation to report or otherwise not participate in the money laundering scheme of the proceeds, none of the defendants reported the fraud nor refused to participate in the transactions to sell the remaining Enterprise properties despite their knowledge of the underlying fraud.

188. The Enterprise plans to continue this pattern of racketeering activity until the remaining property completes the money laundering scheme. 33 Sanborn Lane, 661 Allen Avenue, and 75 Queen Street evidence the continuing nature of the pattern of racketeering activity.

189. The Enterprise's activities affect and involved interstate commerce by the at least four caused to be mailed known contacts with the United States mails creating the entities that would comprise the enterprise, and the at least four caused to be transmissions by wire necessary to execute the scheme creating entities that are a part of the Enterprise, filings with the registry of deeds and communications directly between the defendants and plaintiffs between Colorado and Maine.

190. The Defendants money laundering has cost the plaintiffs more than $1,000,000.00.

WHEREFORE, Plaintiffs, Mr. Douglas, Mr. Fowler, and Mr. Lewis requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) award them treble damages, attorney's fees and costs pursuant to 18 U.S.C. § 1961, and (3) award such other and further relief as this Honorable Court deems just and proper

COUNT V

Violation of The Truth in Lending Act 15 U.S.C. § 1601 and the Maine Consumer Credit Code 9-A M.R.S. § 8-505 and 9-A M.R.S. 9-401. (Against Eric Holsapple, Wayne Lewis, Scott Lalumiere, Androscoggin Savings Bank, Machias Savings Bank, TTJR LLC, BLR Capital LLC, Birch Point Storage LLC, MECAP LLC, LH housing LLC)

191. Plaintiffs Steven Fowler and Joel Douglas repeat and re-allege Paragraphs 1 through 190.

192. Eric Holsapple, Wayne Lewis, Scott Lalumiere, Androscoggin Savings Bank, Machias Savings Bank, TTJR LLC, BLR Capital LLC, Birch Point Storage LLC, MECAP LLC, LH Housing LLC were creditors engage in consumer credit transactions involving 661 Allen Avenue and 75 Queen Street.

193. The consumer credit transactions involved in 661 Allen Avenue and 75 Queen Street were induced by knowing misrepresentations of Eric Holsapple, Wayne Lewis, Scott Lalumiere, Androscoggin Savings Bank, Machias Savings Bank, TTJR LLC, BLR Capital

LLC, Birch Point Storage LLC, MECAP LLC, LH Housing LLC in violation of 9 M.R.S. § 9-401.

194. The residential mortgage loans resulted in supervised loans that were induced by misrepresentation that they would be able to retain their property by paying the amount in the purchase and sale agreements associated with their leases that were in reality credit sale agreements in violation of 9-A M.R.S. § 9-401.

195. The residential mortgage loans qualify as higher-priced mortgage loans and were subject to the special restrictions of 9-A M.R.S.§ 8-506.

196. The misrepresentations that induced Mr. Fowler and Mr. Douglas to enter into the supervised loans is an unfair and deceptive trade practice under 9-A M.R.S. § 9-408.

197. The misrepresentations were made to Mr. Fowler and Mr. Douglas inducing them to agree to supervised loans was made with actual malice.

WHEREFORE, Plaintiffs, Mr. Fowler and Mr. Douglas requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) recission of the mortgages on 661 Allen Avenue and 75 Queen Street, (3) Punitive damages, (4) attorney's fees and costs, and (5) injunctive relief, preventing eviction and foreclosure (6) and award such other and further relief as this Honorable Court deems just and proper.

COUNT VI

FRAUD
(Against Coastal Realty Capital, LLC, Milk Street Capital LLC, Maine Capital Group LLC., MECAP LLC., Birch Point Storage LLC, LH Housing LLC., TTJR, LLC., BLR Capital LLC., F.O. Bailey Real Estate LLC., Androscoggin Savings, Mike Lynden, Shawn Lynden, Russell Oakes, Andre Bellucci, Scott Lalumiere, Wayne Lewis, Eric Holsapple)

198. Plaintiffs James Lewis, Steven Fowler, and Joel Douglas repeat and re-allege Paragraphs 1 through 197.

199. Defendants Coastal Realty Capital, LLC, Milk Street Capital LLC., Maine Capital Group LLC., MECAP LLC., Birch Point Storage LLC, LH Housing LLC., TTJR, LLC., BLR Capital LLC., F.O. Bailey Real Estate LLC., Androscoggin Savings, Mike Lynden, Shawn Lynden. Russell Oakes, Andre Bellucci, Scott Lalumiere, Wayne Lewis, Eric Holsapple with foreknowledge of the falsity of their statements and representations knowingly misstated and misrepresented that the properties at 57 Beach street, 661 Allen Avenue, and 75 Queen Street would ever have title returned to their owners.

200. Defendant's fraudulent statements and misrepresentations were made with the intention that Plaintiffs would rely upon them to their detriment.

201. The Defendant's fraud has cost the plaintiffs more than $2,750,000.00 in damages.

202. The fraudulent statements were made with actual malice.

WHEREFORE, Plaintiffs, Mr. Lewis, Mr. Fowler, and Mr. Douglas requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) punitive damages (3) and award such other and further relief as this Honorable Court deems just and proper.

COUNT VII

BREACH OF CONTRACT
(Against Mike Lynden, Milk Street Capital, Coastal Realty Capital, and Maine Capital Group)

203. Plaintiff James Lewis repeats and realleges paragraph 1 through 202.

204. Mike Lynden made an oral contract with Mr. Lewis to supply additional money to make necessary repairs to the aforementioned property at 57 Beach Street.

205. Mike Lynden, Milk Street Capital, Coastal Realty Capital, and Maine Capital Group failed to honor their contract.

206. The failure to honor the contract and subsequent refusal to lend additional sums of money for necessary repairs resulted in damages of approximately $224,000.00.

WHEREFORE, Plaintiff, Mr. Lewis requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely

compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper.

COUNT VIII

BREACH OF CONTRACT
(Against Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, Androscoggin Savings Bank, TTJR LLC, LH Housing LLC, Wayne Lewis, Eric Holsapple, and John Doe Number II)

207. Plaintiff Steven Fowler repeats and realleges paragraph 1 through 206.

208. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage, LLC, Androscoggin Savings Bank LLC, TTJR LLC, LH Housing LLC, Wayne Lewis, and Eric Holsapple, John Doe Number II had a contract with Mr. Fowler for the purchase of the home at 661 Allen Avenue for the amount of $219,000.00.

209. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, Androscoggin Savings Bank, TTJR LLC, LH Housing LLC, Wayne Lewis, Eric Holsapple, and John Doe Number II failed to honor that contract for the sale 661 Allen Avenue and will not return title for $219,000.00.

210. The failure to honor the contract has resulted in the loss of approximately $400,000.00 to Mr. Fowler.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained,

(2) injunctive relief (3) and award such other and further relief as this Honorable Court deems just and proper.

COUNT IX

BREACH OF CONTRACT
(Against Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, TTJR LLC, LH Housing LLC, Machias Savings Bank, Wayne Lewis, Eric Holsapple, BLR Capital LLC and John Doe Number IV)

211. Plaintiff Joel Douglas repeats and realleges paragraph 1 through 210.

212. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, TTJR LLC, LH Housing LLC, Machias Savings Bank, Wayne Lewis, Eric Holsapple, BLR Capital LLC and John Doe Number IV had a contract with Mr. Douglas for the purchase of the home at 75 Queen Street for the amount $275,000.00.

213. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, TTJR LLC, LH Housing LLC, Wayne Lewis, Eric Holsapple, Machias Savings Bank, BLR Capital LLC and John Doe Number IV failed to honor that contract for the sale of 75 Queen Street and will not return title for $245,000.00.

214. The failure to honor the contract has resulted in the loss of approximately $300,000.00 to Mr. Douglas.

WHEREFORE, Plaintiff, Mr. Douglas requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely

compensates them for the injuries they have sustained, (2) injunctive relief, (3) and award such other and further relief as this Honorable Court deems just and proper.

COUNT X

BREACH OF CONTRACT
(Against Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, Androscoggin Savings Bank, Bangor Savings Bank, Camden National Bank TTJR LLC, LH Housing LLC, Wayne Lewis, and Eric Holsapple, John Doe Number II, John Doe Number III, Robert Burgess)

215. Plaintiff Steven Fowler repeats and realleges paragraph 1 through 214.

216. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, Androscoggin Savings Bank, Bangor Savings Bank, Camden National Bank TTJR LLC, LH Housing LLC, Wayne Lewis, and Eric Holsapple, John Doe Number II, John Doe Number III, Robert Burgess had a contract with Mr. Fowler for the purchase of the home at 33 Sanborn Street, 181 St. John Street, and 116 Old Ben Davis Road in the amount of the mortgages by Bangor Savings Androscoggin Savings Bank and Camden National Bank.

217. Scott Lalumiere, Milk Street Capital LLC, MECAP LLC, Birch Point Storage LLC, Androscoggin Savings Bank, Bangor Savings Bank, Camden National Bank TTJR LLC, LH Housing LLC, Wayne Lewis, Eric Holsapple, John Doe Number II, John Doe

Number III, and Robert Burgess will not cause title to be turned over to Mr. Fowler.

218. The failure to honor the contract has resulted in the loss of approximately $300,000.00 to Mr. Fowler.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper.

COUNT XI

TRESPASS
(Against David Jones)

219. Mr. Fowler repeats and re-alleges paragraphs 1 through 218.

220. Mr. Fowler had lawful possession of the aforementioned home at 33 Sanborn Lane.

221. Mr. Jones had no right of entry.

222. Mr. Jones's entry into the home and removal of Mr. Fowler's personal property caused the destruction of Mr. Fowler's personal property.

223. Mr. Fowler is entitled to recovery in the amount equal to the value of the destroyed property.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper

COUNT XII

ILLEGAL EVICTION
(Against David Jones, F.O. Bailey Real Estate LLC, Bangor Savings, Robert Burgess)

224. Mr. Fowler repeats and re-alleges paragraphs 1 through 223.

225. 14 M.R.S.A.§ 6014 states in relevant part "[e]xcept as permitted by Title 15, chapter 517 or Title 17, chapter 91, evictions that are effected without resort to the provisions of this chapter are illegal and against public policy."

226. 14 M.R.S.A.§ 6014 specifically prohibits the denial of access by any landlord except to make actual repairs for the period of time the repairs are in process or in an emergency.

227. There were no emergencies or repairs being made to 33 Sanborn Lane during any access attempts by Mr. Fowler.

228. There was no emergency that required the removal of Mr. Fowler's property.

229. Mr. Fowler was a tenant at will and not given notice of termination which had been served on Mr. Fowler.

230. David Jones did deny Mr. Fowler access to his premises and property.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained,

(2) and award such other and further relief as this Honorable Court deems just and proper

COUNT XIII

UNFAIR AND DECEPTIVE TRADE PRACTICE
(Scott Lalumiere, Wayne Lewis, Eric Holsapple, MECAP LLC., Bangor Savings Bank, Robert Burgess, David Jones, F.O. Bailey Real Estate LLC)

231. Mr. Fowler repeats and re-alleges paragraph 1 through 230.

232. Pursuant to 14 M.R.S.A. § 6030 "[i]t is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a lease or tenancy at will agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a provision that has the effect of waiving a tenant right established in chapter 709."

233. Fraud is an unfair and deceptive trade practice.

234. Removing Mr. Fowler's personal property is an unfair and deceptive trade practice as a violation 14 M.R.S.A. § 6014.

235. Scott Lalumiere, MECAP LLC., Bangor Savings Bank, Robert Burgess, David Jones, F.O. Bailey Real Estate LLC. committed the acts described in this count with actual malice.

236. Defendants Coastal Realty Capital, LLC, Milk Street Capital LLC. Maine Capital Group LLC., MECAP, LLC., Birch point Storage, LLC, LH Housing, LLC., TTJR, LLC., BLR Capital, LLC., F.O. Bailey

Real Estate, LLC., Bangor Savings Bank, Mike Lynden, Shawn Lynden. Russell Oakes, Andre Bellucci, Scott Lalumiere, Wayne Lewis, Eric Holsapple, Robert Burges and David Clarke have combined value that exceeds $20,000,000.00.

WHEREFORE, Plaintiffs, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) punitive damages in amount determined sufficient to deter such conduct, (3) and award such other and further relief as this Honorable Court deems just and proper

COUNT XIV

CONVERSION OF PERSONAL PROPERTY
(Against David Jones, Bangor Savings Bank, and Robert Burgess)

237. Mr. Fowler repeats and re-alleges paragraphs 1 through 236 and further alleges:

238. David Jones, Bangor Savings Bank, and Robert Burgess took possession of Mr. Fowler's property.

239. Mr. Fowler has a property interest in his personal property at 33 Sanborn Lane.

240. Mr. Fowler had a right to possession of his personal property at the time Mr. Jones denied him access to his property.

241. Because Mr. Jones's possession of Mr. Fowler's personal property was unlawful, it is not necessary to demand its return.

242. In the event that it is necessary to demand return, Mr. Fowler told Mr. Jones that his property was in the home and he had no right to its possession and that he wanted his property back.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper

COUNT XV

NEGLIGENT DESTRUCTION OF PERSONAL PROPERTY (Against David Jones)

243. Mr. Fowler repeats and re-alleges paragraphs 1 through 242 and further alleges:

244. Mr. Jones had a duty to protect Mr. Fowler's personal property from destruction.

245. Mr. Jones violated that duty by disposing Mr. Fowler's property.

246. Mr. Jones's actions were the proximate cause of the destruction of Mr. Fowler's property.

247. Mr. Fowler suffered damages in the amount equal to the value of his destroyed property.

WHEREFORE, Plaintiff, Mr. Fowler requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper.

COUNT XVI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against Andre Bellucci)

248. Mr. Lewis repeats re-alleges paragraphs 1 through 247 and further alleges:

249. Mr. Bellucci negligently caused the infliction of severe emotional distress.

250. Mr. Bellucci's behavior was so outrageous that it cannot be tolerated in civilized society.

251. Mr. Bellucci's negligence caused the severe emotional distress of Mr. Lewis.

252. Mr. Bellucci could reasonably foresee that offering to purchase 57 Beach Street for $380,000.00 and then revoking the offer days before the foreclosure sale would cause Mr. Lewis severe emotional distress.

253. The distress is so severe that no ordinary person could be expected to endure it.

WHEREFORE, Plaintiff, Mr. Lewis requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates him for the injuries he has sustained, (2) and award such other and further relief as this Honorable Court deems just and proper.

COUNT XVII

UNJUST ENRICHMENT
(Against Milk Street Capital LLC., Maine Capital Group LLC., MECAP, LLC., LH housing, LLC., TTJR, LLC., BLR Capital, LLC., LOSU LLC, F.O. Bailey Real Estate, LLC., Bangor Savings Bank, Androscoggin Savings Bank Camden National Bank, Mike Lynden, Shawn Lynden, Russell Oakes, Scott Lalumiere, Wayne Lewis, Eric Holsapple, David Hirshon, David Jones, Andre Bellucci, John Doe Number II, John Doe Number III, John Doe Number IV, Robert Burges and David Clarke)

254. Plaintiffs James Lewis, Joel Douglas and Steven Fowler repeat and re-allege paragraphs 1 through 253.

255. Milk Street Capital LLC. Maine Capital Group LLC., MECAP, LLC., LH Housing, LLC., TTJR, LLC., BLR Capital, LLC., LOSU LLC, F.O. Bailey Real Estate, LLC., Bangor Savings Bank, Androscoggin Savings Bank, Camden National Bank, Machias Savings Bank, Mike Lynden, Shawn Lynden. Russell Oakes, Scott Lalumiere, Wayne Lewis, Eric Holsapple, David Hirshon, David Jones, Andre Bellucci, John Doe Number II, John Doe Number III, John Doe Number IV, Robert Burges and David Clarke extraction of equity from the homes at 661 Allen Avenue and 57 Queen Street when Mr. Douglas and Mr. Fowler paid the underlying obligations on the property unjustly enriched the organization, which in good faith and conscience they should not be permitted to keep.

256. By reason of the forgoing unjust enrichment, Mr. Lewis, Mr. Douglas and Mr. Fowler have been damaged by more than $1,000,000.00.

WHEREFORE, Plaintiffs, Mr. Lewis Mr. Fowler, Mr. Douglas requests that this Honorable Court (1) enter judgment in favor of the plaintiff in an amount that fully and completely compensates them for the injuries they have sustained, (2) and award such other and further relief as this Honorable Court deems just and proper.

/s/ Robert C. Andrews
Bar Number 8980
117 Auburn Street
Suite 201
Portland, Maine 04103
207-879-9850

Dated: September 15, 2020

PLAINTIFFS' RESPONSE IN OPPOSITION TO DAVID HIRSHON'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER F. R. CIV. P. 12(b)(6) (DECEMBER 14, 2020)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOEL DOUGLAS, ET AL.,

Plaintiffs,

v.

SCOTT LALUMIERE, ET AL.,

Defendants.

20-CV-227-JDL

PLAINTIFFS' RESPONSE IN OPPOSITION TO DAVID HIRSHON'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER F. R. CIV. P. 12(b)(6)

Joel Douglas, Steven Fowler, James Lewis, and Dale Williams have chosen to respond by explaining the claims actually made in the Amended Complaint recognizing that unexplained or undeveloped problems cannot be responded to in any serious way, that many of the supposed problems are really a product of David Hirshon's failure to understand the claims made against them, and that there is a conduct claim under

18 U.S.C. 1962(c) plead as an enterprise used by Scott Lalumiere to conduct a pattern of racketeering activity that is not asserted as a cause of action but is otherwise well plead, Mr. Douglas, Mr. Fowler, and Mr. Lewis sufficiently plead the claims they make against David Hirshon.

The Amended Complaint asserts an 18 U.S.C. § 1962(d) conspiracy to violate 18 U.S.C. § 1962(a) investment into the enterprise claim, in which David Hirshon conspired with Scott Lalumiere to turn the proceeds of his racketeering income into funds to be invested back into the enterprise. Despite David Hirshon's assertions that this is somehow a claim based on the conduct of a RICO enterprise claim, the actual claims made in the Amended Complaint are both well plead and follow an established legal path to lender liability in cases brought under 18 U.S.C. § 1964. At this early pleading stage of the case, the Court should deny David Hirshon's Motion to Dismiss allowing them to renew the motion, and should the Court decide that Federal Rule of Civil Procedure 9(b) or the Federal Rule Civil Procedure Rule 8 plausibility requirement is not met with respect to Mr. Hirshon, Grant the Plaintiffs' Motion for Limited Discovery and Motion to Amend once that limited discovery has been completed.

Far from an afterthought, David Hirshon was added to the Amended Complaint as a defendant because at the time of filing the original complaint, Mr. Hirshon was reported to have said he was a victim who just did not do enough due diligence and those statements were belied by the evidence. Mr. Hirshon is a defendant in this case because he both knew the

extent of Mr. Lalumiere's racketeering activity and agreed to facilitate it:

> Described above, the Petition plausibly alleges the Bank Defendants knew the full extent of Weller's fraudulent intentions in using Weller Farms to shield his assets from Kruse. *See* [ECF No. 18-2 ¶¶ 136, 145, 148-57]. The financial discrepancies and irregularities contained in the 2016 refinancing, Plaintiffs claim, was necessary to refinance Weller's personal finances because after Kruse's $2.5 million judgment was recorded, and the value of the farmland was transferred to Weller Farms, Weller was actually "massively insolvent." *Id.* ¶ 98(c). These false and misleading aspects of the documentation produced through Weller's relationship with First State—recognizing Weller Farms' existence while simultaneously ignoring its ownership of the real estate; devaluing the land as a personal holding of Weller while also omitting Kruse's $2.5 million judgment from his financial statement and containing no provision for its payment—produced an arrangement that was unnecessary to effectuate a loan except to benefit an insolvent debtor's aim to avoid compensating his tort victims through continued financing. *See id.* ¶¶ 94-96, 103-105, 107. In other words, the circumstances surrounding the January 4, 2016 refinancing raises a reasonable inference that the refinancing was done that way because the Bank Defendants agreed to further or facilitate Weller's scheme to defraud Kruse. This is

> sufficient, at least at the pleadings stage, to state a claim for RICO conspiracy.

Kruse v. Repp, ___ F.Supp.3d ___ (2020) 2020 WL 1317479 Slip at 25. *Kruse* is analog to the present case with respect to all the banks. The Amended Complaint in this case alleges a conspiracy to violate 18 U.S.C. § 1962(a). The Amended Complaint further alleges a special relationship with the people who controlled the enterprise and David Hirshon who provided funds to the enterprise. As explained throughout this response, the Amended Complaint alleges facts sufficient for the rationale inference that David Hirshon knew the full extent of the money laundering scheme and conspired to further the enterprise by providing funds for its operation. *See Smith v Berg*, 247 F.3d 532, 537 (3rd Cir. 2001). David Hirshon's claims that he was a victim and his statements to the press that he just did not do enough due diligence were false and designed to hide his involvement in this conspiracy and the 18 U.S.C. § 1962(a) claims brought under 18 U.S.C. § 1964.

RELEVANT FACTS

Scott Lalumiere began using the sale lease back fraud scheme in 2012. Amended Complaint hereinafter AC ¶ 47 Attached Response Exhibit hereinafter RE 1. Mr. Wolf a lawyer who frequently worked with Mr. Lalumiere and Mr. Holsapple filed a Certificate of Formation for LH Housing LLC listing himself as authorized person on December 17, 2012. RE 2. LH Housing LLC was a corporate entity whose members prior to January 2019, included Eric Holsapple, Wayne Lewis, and Scott Lalumiere. RE 3 ¶ 48. LH Housing

LLC manages rental properties. RE 3 ¶ 47. The transactions for the properties at 75 Queen Street and 661 Allen Avenue are connected by fraud committed by Scott Lalumiere and Eric Holsapple. AC ¶ 38 and ¶ 39.

Mecap LLC began offering lease to own arraignments to the public in 2012. RE 1. These arraignments were presented as legitimate leases with enforceable option provisions for the purchase of property. AC ¶ 47 Exhibit A and RE 1 and RE 4. Mecap LLC offered these arrangements at least through 2018. RE 4. During this period, Mecap LLC issued "leases" with "options" to Dale Williams, Joel Douglass, and Matthew Crosby. Skyline Real Estate Services Inc, another entity controlled by Mr. Lalumiere issued a "lease" with an "option" to Christine Davis in 2012. Birch Point Storage LLC, yet another entity controlled by Mr. Lalumier issued a "lease" with an "option" to Steven Fowler. Mecap LLC would advertise these arraignments on the internet. RE5.

The members of LH Housing LLC became involved in a dispute over proceeds related to a transaction for 9 Brault Street in Lewiston. AC ¶ 92, RE 3 ¶ 50. MECAP LLC and LH Housing LLC have a history of sharing funds. AC ¶ 92 RE 3 ¶ 50 and ¶ 60. This dispute was over several days around December 14, 2018 and was resolved. RE 3 ¶ 70. Ms. Papkee filed her complaint on January 8, 2020.

Mr. Lalumiere used several different lawyers in the 75 Queen Street transaction, RE 6 and RE 7. David Hirshon handled the transaction that transferred 75 Queen Street from Mr. Lalumiere to MECAP LLC on July 24, 2015. RE 6. Mr. Lalumiere used a different lawyer to transfer the property to LH Housing LLC on

April 13, 2016. RE 7. Mr. Lalumiere transferred 75 Queen Street three times within a one-year period. RE 8.

Mr. Lalumiere used these three transactions between himself and the entities he controlled to secure a loan to LH Housing by Machias Savings Bank. AC ¶ 72 AC Exhibit D. The loan was secured by a mortgage that Mr. Lalumiere signed as LH Housing LLC's manager on April 13, 2016. AC Exhibit D. By November 19, 2019 Wayne Lewis was acting as LH Housings Manager. AC Exhibit F. On November 20, 2019, Mr. Wolf, acting as Authorized Agent, transferred TTJR LLC's interest in 661 Allen Avenue to LH Housing LLC. AC Exhibit N. Mr. Wolf admits that he became aware of the leases and was hired by LH Housing LLC at the end of 2019 but carefully omits the exact date. RE 9.

In any event, the existence of the lease for 75 Queen Street was a matter of public record. RE 10. David Hirshon recorded a "Subordination Agreement" with the Cumberland County Registry of Deeds. RE 10. This agreement explicitly recognized the lease for 75 Queen Street. RE 10. It also implicitly recognized that the lease was more than a rental agreement. RE 10. This filing was made on June 29, 2015. RE 10.

In 2019, Mr. Hirshon began investing into the enterprise. RE 11. Mr. Hirshon provided funds to Mr. Lalumiere that was secured by a mortgage. RE 11. The Junior Mortgage, Security Agreement and Financing Statement had provision (e) that provided all present and future leases tenancies occupancies and licenses, whether written or oral ("Leases"), of the land, the improvements, the personal property and the intangible property, or any combination or part

thereof, and all income, rents, issues, royalties, profits, revenues, security deposits and other benefits of the land, the improvements, the personal property and the intangible property from time to time accruing, all payments under leases, and all payments on account of oil and gas and other mineral leases, working interests, production payments, royalties, overriding royalties, rents, delay rents, operating interests, participating interests and other such entitlements, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same (hereinafter collectively referred to as the "Revenues"); RE 11 page 3 and 4 ¶ e. Paragraph (e) transferred the leases to LOSU LLC. RE 11 Page 2. This agreement was secured by mortgages on 36 Settler Road owned by Christine Davis and 171 South Street owned by Dale Williams. AC ¶ 57 RE 1. Mr. Hirshon refused to honor the options. AC Exhibit B, RE 12.

The Enterprise made an agreement with Mr. Fowler beginning in late April early May of 2016. The terms of this agreement were Mr. Lalumiere would pay Mr. Fowler a portion of his hourly rate and the cost of materials for work completed on a series of properties including 33 Sanborn Lane, 181 St. John Street, and 16 Old Ben Davis Road and in exchange Mr. Fowler would be allowed to purchase the three properties for the payoff amounts on the organization's bank held conventional mortgages secured by the three properties once the rehabilitation work was completed and he would be allowed control over the properties that included the authority to rent the properties and collect the proceeds from the rents on any sublease on those properties until he was able to complete his

purchase. Mr. Fowler paid the rent to the Enterprise on these three properties from October 2016 until November 2019. AC ¶ 101.

ARGUMENT

1. The Amended Complaint Alleges a Sufficiently Plead and Asserted Conspiracy to Violate 18 U.S.C. 1962(a) That an Enterprise Existed, the Enterprise Effected Interstate Commerce, and David Hirshon Intended to Further Its Goals

Joel Douglas, Steven Fowler, James Lewis and Dale Williams assert a violation of Racketeer Influenced and Corrupt Organizations Act that allows for an entity to be both a defendant and part of the Enterprise. 18 U.S.C. § 1962(a) prohibits the investment into and acquisition of the enterprise:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(a) (West 2020). At the heart of the Plaintiffs claims is David Hirshon's relationship with Scott Lalumiere, a person, who controlled various corporate entities that held real estate. Specifically,

Mr. Hirshon, is alleged to have engaged in transactions with either Mr. Lalumiere personally or a corporate entity under his control, where the equity in a home acquired through fraud was converted into cash and that cash was used to fund the activities of the collection of corporate entities that made up the enterprise. For purposes of a claim under 18 U.S.C. 1962(a) it is entirely without consequence David Hirshon had no direct interaction with the victims.

Mr. Hirshon failed to acknowledge the difference between a claim brought under 1962(c) and a claim brought under 1962(a) in its incorporated memorandum to the motion to dismiss. 1962(a) conspiracy claims prohibit providing funds to the enterprise and not the pattern of racketeer activity:

> "This provision was primarily directed at halting the investment of racketeering proceeds into legitimate businesses, including the practice of money laundering." *Brittingham v. Mobil Corp.*, 943 F.2d 297, 303 (3d Cir. 1991) (quoting 11 Cong.Rec. 35,199 (1970) (remarks of Rep. St. Germain) and 116 Cong. Rec. 607 (1970) (remarks of Sen. Byrd)). Under this section, a plaintiff must allege: (1) that the defendant has received money from a pattern of racketeering activity; (2) invested that money in an enterprise; and (3) that the enterprise affected interstate commerce. *Shearin*, 885 F.2d at 1165. Furthermore, the plaintiff must allege an injury resulting from the investment of racketeering income distinct from an injury caused by the predicate acts themselves. *Glessner v. Kenny*, 952 F.2d 702, 708 (3d Cir. 1991);

> *Banks v. Wolk*, 918 F.2d 418, 421 (3d Cir. 1990); *Rose v. Bartle*, 871 F.2d 331, 357-58 (3d Cir. 1989). This allegation is required because section 1962(a) "is directed specifically at the use or investment of racketeering income, and requires that a plaintiffs injury be caused by the use or investment of income in the enterprise." *Brittingham*, 943 F.2d at 303 (emphasis added); *see also Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1149 (10th Cir. 1989) (recognizing that section 1962(a) "does not state that it is unlawful to receive racketeering income . . . [rather] the statute prohibits a person who has received such income from using or investing it in the proscribed manner" (emphasis in original)), *cert. denied*, 493 U.S. 820, 110 S.Ct. 76, 107 L.Ed.2d 43 (1989).

Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1188 (3rd Cir. 1993). The Amended Complaint alleges that Mr. Lalumiere received money in the form of equity in the property located at 661 Allen Avenue and the property at 75 Queen Street through the mail and wire fraud schemes. Mr. Lalumiere could not turn the equity into actual cash so he conspired with Androscoggin Savings Bank and Machias Savings Bank to convert the equity into cash. This cash was then used purchase additional properties through a broader conspiracy to launder the money that involved among others, David Hirshon. Mr. Lalumiere then used the cash to fund the association in fact enterprise made up of Skyline Real Estate Services LLC, Mecap LLC, LH Housing LLC, and Birch Point Storage LLC. The

association in fact enterprise affected interstate commerce because it involved people and entities in Colorado. Like the other Defendants, Mr. Hirshon does not understand that this is not a conducting an enterprise claim. Claims made under 18 U.S.C. § 1962(a) for acquiring an interest in the enterprise are categorically different from claims made under 18 U.S.C. § 1962(c)for conducting an enterprise.

The fact that 1962(a) claims are categorically different from 1962(c) claims has been recognized by the United States Supreme Court. In *Beck v. Prupis*, Justice Thomas recognized the distinction:

> For example, most courts of appeals have adopted the so-called investment injury rule, which requires that a plaintiff suing for a violation of § 1962(a) allege injury from the defendant's "use or invest [ment]" of income derived from racketeering activity, see § 1962(a). *See*, *e.g., Crowe v. Henry*, 43 F.3d 198, 205 (C.A.5 1995); *Vemco, Inc. v. Camardella*, 23 F.3d 129, 132 (C.A.6) (collecting cases), *cert. denied*, 513 U.S. 1017, 115 S.Ct. 579, 130 L.Ed.2d 495 (1994). Although we express no view on this issue, arguably a plaintiff suing for a violation of § 1962(d) based on an agreement to violate § 1962(a) is required to allege injury from the "use or invest[ment]" of illicit proceeds.

529 U.S. 494, 506 n.9 (2000). The Plaintiffs in this case have not asserted a 1962(c) claim that they have been damaged by the underlying predicate acts of mail and wire fraud against David Hirshon or anyone as of yet. The Plaintiffs have asserted a claim that they have been damaged because the equity in their property

has been drained by Mr. Lalumiere's investment back into the enterprise and that Mr. Hirshon conspired with Mr. Lalumiere to further that investment.

The loss of the equity is a distinct injury from the loss caused by the underlying predicate act of mail fraud and wire fraud. The First Circuit recognize the by means of limitation for mail fraud claims:

> The Court explained that "by means of "typically indicates that the given result (the 'end') is achieved, at least in part, through the specified action, instrument, or method (the 'means'), such that the connection between the two is something more than oblique, indirect, and incidental." [*Loughrin v. United States*, 573 U.S 352, 36 (2014)]. (citing *Webster's Third New International Dictionary* 1399 (2002); 9 *Oxford English Dictionary* 516 (2d ed. 1989)). Accordingly, "not every but-for cause will do." *Id.* Rather, the "by means of language requires that the defendant's fraud be "the mechanism naturally inducing a bank . . . to part with money." *Id.* Here, the defendants' alleged fraud in obtaining their medical licenses cannot be said to have "naturally induc[ed]" healthcare consumers to part with their money years later.

United States v. Berroa, 856 F.3d 141, 149-50 (1st Cir. 2017). The mail or wire fraud scheme for 75 Queen Street induced Mr. Douglas to pay $32,500.00 for the option to buy from MECAP LLC, but it was the sale of the property to LH Housing LLC and the subsequent mortgage from Machias Savings Bank that deprived him of the $162,500.00 in equity for 75 Queen Street. Similarly, it was the mail or wire fraud scheme that

induced Mr. Fowler through S and K Properties into the transfer of 661 Allen Avenue to Birch Point Storage LLC for his personal option to repurchase at $219, 000.00, but it was the mortgage to Androscoggin Savings Bank and TTJR LLC that caused the damage of the $400,000.00 in equity that remained in 661 Allen Avenue.

Under the investment rule, Mr. Douglas, Mr. Fowler, or Mr. Williams do not need to show that Mr. Hirshon committed any part of the predicate acts of wire and mail fraud or money laundering himself. The injury claims in this action are solely related to the investment into the enterprise and has very little to do with the underlying predicate acts of mail and wire fraud:

> In order to recover in a civil RICO action, a plaintiff must prove both that the defendant violated one of the provisions of 18 U.S.C. § 1962 and that the plaintiff was injured "in his business or property by reason of the defendant's violation. 18 U.S.C. § 1964(c). Thus, in proving a right to recover for a RICO violation premised upon § 1962(a), the plaintiffs had to prove that they were harmed by reason of NERCO's use or investment of income derived from a pattern of racketeering activity in some enterprise (here alleged to be Graham Watson) engaged in interstate or foreign commerce. 18 U.S.C. §§ 1962(a), 1964(c). This they failed to do. Even assuming that they had been defrauded through the use of the mails or international wires, *see* 18 U.S.C. § 1961(1)(B), that alone is not enough to show that they were harmed additionally

> by NERCO's use or investment of the proceeds of that fraud to establish or operate Graham Watson. *See*, *e.g.*, *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1188 (3d Cir.1993) ("the plaintiff must allege an injury resulting from the investment of racketeering income distinct from an injury caused by the predicate acts themselves"). The plaintiffs have simply "repeat[ed] the crux of [their] allegations in regard to the pattern of racketeering activity." *Id.*

Compagnie De Reassurrance D'ile de France v. New England Reinsurance Corp., 57 F.3d 56, 91 (1st Cir. 1995). The problem here is that Mr. Hirshon did know that Mecap LLC was involved in using a sale lease bank transaction that involved the sale of an interest in land and that Mecap LLC was not licensed to engage in these types of transactions in Maine. Mr. Hirshon's knowledge of these leases was so extensive that he recognized the need to file a subordination agreement so that his mortgage would remain secure. RE 10. Moreover, the existence of the lease specifically for 75 Queen Street was acknowledged by a filing two weeks after the transaction for 181 St. John Street. Without the investment by Mr. Holsapple and Mr. Lalumiere the enterprise would simply have the property at 75 Queen Street.

Although there is an underlying conducting an enterprise claim under 18 U.S.C. § 1962(c) involving Mr. Holsapple and Mr. Lalumiere, that claim does not affect the cause of action under 18 U.S.C. 1962(a). First Circuit precedent does not require Mr. Holsapple or Mr. Lalumiere to have the same relationship to the enterprise as is required by a claim based in 1962(c):

> The language in section 1962(a) does not require a relationship between the person and the enterprise as does section 1962(c), and so it does not require the involvement of two separate entities. Applied to the facts of this case, section 1962(a) would prohibit FCCB, the person, from using ill-gotten gains in FCCB, the enterprise.

Schofield v. First Commodity Corporation of Boston, 793 F.2d 28, 31 (1st Cir. 1986). Mr. Holsapple and Mr. Lalumiere used Mr. Hirshon as a funding source in which they funneled the proceeds back into the enterprise. The effect of this reinvestment made it harder to recover the property lost in the frauds both because it was cloaked in legitimacy and it was no longer possible to enforce the contracts against the parts of the enterprise that issued them. The exhibits attached to the Amended Complaint clearly demonstrate how Mr. Holsapple and Mr. Lalumiere accomplished these transactions.

The cash conversion investment transactions are the source of the damage to the protected equity. Under Maine law, the property interest in the equity was secured by the purchase and sale agreement:

> "Sale of an interest in land" includes, but is not limited to, a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

9-A M.R.S.A. § 1-301(34) (West 2020). Here the lease to Mr. Douglas has the hallmarks of and is in fact a

sale of an interest in land. The Subordination Agreement demonstrates that Mr. Hirshon understood the consequence of the leasing arrangements that Mecap LLC held itself out as providing and Mr. Hirshon has made no allegation of fraud against Mr. Lalumiere. Moreover, these are supervised loans under Maine law:

> "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12 1/4% per year, or which is secured by an interest in real estate.

9-A M.R.S.A. § 1-301(40) (West 2020). Mr. Douglas paid a finance charge $32,500.00 for one year that was secured by the property at 75 Queen Street through the purchase and sale agreement. Mr. Williams paid a finance charge of $9,000.00 that was secured through the option to purchase 171 South Street. Mr. Fowler forgave a $50,000.00 loan to Mr. Lalumiere as finance charge for 661 Allen Avenue that was secured through his purchase and sale agreement. *See* 9-A M.R.S.A. § 1-301(19) (West 2020) for definition of finance charge. Eric Holsapple, Wayne Lewis, Scott Lalumiere, and Mr. Hirshon were otherwise prohibited from engaging in these transactions by Maine law and by the Truth and Lending Act. As a lawyer, David Hirshon must have recognized that these lease arrangements made Mecap LLC's business illegal even without the mail and wire fraud.

Because the damage by the investment is done to the interest protected by the option to purchase the real estate, and not the false statements that resulted in the transfer of the money or property, the injury is separate from the predicate act of mail fraud, wire

fraud, and money laundering. There is a direct connection between the reinvestment and the injury to the protected equity in the property:

> A RICO plaintiff cannot circumvent the proximate-cause requirement simply by claiming that the defendant's aim was to increase market share at a competitor's expense. *See Associated Gen. Contractors*, 459 U.S., at 537, 103 S.Ct. 897 ("We are also satisfied that an allegation of improper motive . . . is not a panacea that will enable any complaint to withstand a motion to dismiss"). When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs injuries.

Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 460-61 (2006). Androscoggin Savings Bank, Eric Holsapple, Camden National Bank, and now David Hirshon all fail to recognize that the claims asserted so far in this case under 18 U.S.C. § 1962(a) are only connected to the predicate acts of mail fraud, wire fraud, and money laundering to the extent that they are necessary to show that at least Scott Lalumiere received income from a violation of 18 U.S.C. § 1962(c). While some standards and requirements from 18 U.S.C. § 1962(c) may be analogous to claims made under 18 U.S.C. § 1962(a), the cause of damages is the investment into the enterprise and not the underlying predicate acts of mail fraud, wire fraud, or money laundering. Joel Douglas, Steven Fowler, Jamie Lewis and Dale Williams have been injured by the investment because they cannot now access their equity either because the enterprise does not have the physical property, the proceeds from

the equity in the property, or the property purchased with the equity.

A. The Amended Complaint Sufficiently Pleads an Association in Fact Enterprise Where the Corporate Entities Are Associated for the Purpose of Converting Equity from Fraudulently Obtained Property into Cash.

In this case the defendants used a series of corporate entities that were associated together to facilitate real estate transactions as a vehicle to perpetrate a pattern of racketeering activity. The Supreme Court has established the need to separate the pattern of racketeering activity from the entity through which that pattern of racketeering activity is conducted:

> The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by the statute. The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise. While the proof used to establish these separate elements may in particular cases coalesce, proof of one does not necessarily establish the other. The "enterprise" is not the "pattern of racketeering activity"; it is an entity separate and apart

> from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved . . .

United States v. Turkette, 452 U.S. 576, 583 (1981). The complaint identifies an association in fact enterprise formed by the corporate entities Skyline Real Estate Service LLC, LH Housing, Mecap LLC, and Birch Point Storage LLC as the vehicle through which Scott Lalumiere and other co-conspirators conducted a pattern of racketeering activity. The entity itself is separate from the mail and wire fraud scheme or money laundering scheme but its association is demonstrated by the use of the fraud scheme, the people controlling the entity, and the goal of converting fraudulently obtained equity into cash.

The complaint clearly alleges a structure which meets the defining elements of an association in fact enterprise. The Amended Complaint sets out the enterprise's purpose, the relationship among those associated, and sufficient longevity:

> In the sense relevant here, the term "structure" means "[t]he way in which parts are arranged or put together to form a whole" and "[t]he interrelation or arrangement of parts in a complex entity." . . . From the terms of RICO, it is apparent that an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose. . . . That an "enterprise" must have a purpose is apparent from the meaning of the term in

> ordinary usage, *i.e.,* a "venture," "undertaking," or "project."

Boyle v. United States, 556 U.S 938, 946-47 (2009). There are at least five episodes where the collection of entities that make up the enterprise executed the fraud scheme over a period of five years. While it is true that Mr. Holsapple and Mr. Lalumiere are accused of approving the transactions and conducting the enterprise through six fraudulent transactions in which they acted as a principle, Mr. Hirshon provided funds to the enterprise in transactions involving dozens of loans. It is the providing of funds gained through racketeering activity to be used by the enterprise that is the violation of 1962(a) and it is Mr. Hirshon's provision of the funds through the conspiracy with Mr. Lalumiere that facilitated or furthered that criminal objective.

B. The Amended Complaint Sufficiently Pleads the Predicate Acts of Fraud or Money Laundering for the Underlying but Unasserted Conduct of an Enterprise Claim That Could Be Brought Under 18 U.S.C. § 1962(c) Necessary to Prove That Scott Lalumiere Received Income from Racketeering Activity and That He Sought to Invest That Income Back into the Enterprise.

The evidence of fraud presented in the Amended Complaint is more than sufficient for Federal Rule of Civil procedure 9 pleading standard for claims of fraud. Federal Rule of Civil Procedure 9(b) "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or

mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed.R.Civ.P. 9(d) (West 2020). The First Circuit has described this burden in 18 U.S.C. § 1964 cases as significant:

> We hold that Rule 9(b) requires specificity in the pleading of RICO mail and wire fraud. This degree of specificity is no more nor less than we have required in general fraud and securities fraud cases. *See McGinty*, 633 F.2d 226; *Wayne*, 739 F.2d 11. However, in a RICO mail and wire fraud case, in regards to the details of just when and where the mail or wires were used, we hold that dismissal should not be automatic once the lower court determines that Rule 9(b) was not satisfied. In an appropriate case, where, for example the specific allegations of the plaintiff make it likely that the defendant used interstate mail or telecommunications facilities, and the specific information as to use is likely in the exclusive control of the defendant, the court should make a second determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint.

New England Data Services Inc. v. Becher, 829 F.2d 286, 290 (1st Cir 1987). Mr. Fowler and Mr. Douglas alleged the fraud with the necessary particularity. In particular, Mr. Fowler and Mr. Douglas have attached the written contracts that contained the false statements in addition to Mr. Crosby's purchase and sale contract and Christine Davis affidavit as exhibits to

the complaint. Mr. Williams has attached his contract to this response as Response Exhibit 1. It is beyond dispute that all five of the victims were told they would be able to reacquire their property or acquire their property in the purchase and sale agreements issued to them by Scott Lalumiere. Amended Complaint Exhibit A and the attached Response Exhibit 1 establishes time, the place, and the content of the false statements with particularity.

The only real concern under Federal Rule of Civil Procedure 9(d) is the mail and wire use in the fraud schemes. The First Circuit does not require this contact to meet the same level of particularity for section 1964 cases:

> We advocate this procedure because of the apparent difficulties in specifically pleading mail and wire fraud as predicate acts. In the instant case, it is seemingly impossible for the plaintiff to have known exactly when the various defendants phoned or wrote to each other or exactly what was said. The plaintiff clearly set out a general scheme, which very plausibly was meant to defraud the plaintiff, and also probably involved interstate commerce. Assuming the facts as stated in plaintiff's complaint, defendant Monarch Investments is incorporated in a different state than that resided in by the other defendants. In this day and age, it is difficult to perceive how the defendants would have communicated without the use of the mail or interstate wires.

Id. at 290-291. The facts of the present case are very similar to *Becher* where an out of state Co-conspirators

and corporate entities had to have some means of communicating between the states in which the parties were located. Notwithstanding the everyday communications necessary to execute the fraud schemes, it is possible to identify a number of communications that would have occurred through the mails and wires.[1] Specifically, all the corporate entities were set up using the mails because Maine does not have an electronic means of establishing a Limited Liability Company. It is also possible to determine specific wire communications between Colorado and Maine because various documents were recorded at the Cumberland County Registry of Deeds electronically. There is already ample identified contact with the mails and wires to meet the standard for Rule 9(d).

Similarly, the Amended Complaint provides sufficiently plead facts to establish the money laundering counts. The First Circuit has articulated the elements of money laundering: (1) knowingly engaged or attempted to engage in a monetary transaction (2) in criminally derived property (3) of a value greater than $10,000, and (4) derived from specified unlawful activity. *United States v. Richard*, 234 F.3d 763, 767 (1st Cir. 2000). In this case, the complaint sets out predicate acts of money laundering. Specifically, Mr. Lalumiere used the proceeds from the 75 Queen Street mail and wire fraud to purchase 33 Sanborn Lane, 181 St. John Street, and 16 Old Ben Davis Road. The complaint alleges sufficient number of predicate acts of money laundering. Moreover, if these acts are

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[1] To the extent that Mr. Hirshon's motion complains about satisfying Rule 9 requirements as to him, there is a corresponding motion for limited discovery now pending with the Court to address this concern.

not sufficient, it is also possible to trace the proceeds from the 36 Settler Road fraud scheme and the 171 South Street fraud scheme.

C. The Amended Complaint Sufficiently Pleads a Pattern of Racketeering Activity That Is Both Related and Continuous.

In any event, Mr. Lalumiere participated in a pattern of racketeering activity by engaging in the fraud through the transactions for 75 Queen Street and 661 Allen Avenue. Mr. Lalumiere's participation in these two transactions is the starting point of the pattern:

> As we explained in *Turkette*, the existence of an enterprise is an element distinct from the pattern of racketeering activity and "proof of one does not necessarily establish the other." 452 U.S., at 583. On the other hand, if the phrase is used to mean that the existence of an enterprise may never be inferred from the evidence showing that persons associated with the enterprise engaged in a pattern of racketeering activity, it is incorrect. We recognized in *Turkette* that the evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise "may in particular cases coalesce." *Ibid.*

Boyle, at 947. As detailed in the complaint, the enterprise used the sale lease back fraud scheme on at least five occasions over a period of five years starting in 2012. The fraud scheme involved the contracts attached and included by reference as Exhibit A to the Amended Complaint and the attached Response Exhibit 1. The

Amended Complaint further details a conspiracy between Eric Holsapple, Wayne Lewis, and Scott Lalumiere to use the enterprise to perpetrate the sale lease back fraud scheme. The Amended Complaint also details the who, what, where, and when of the fraud scheme and identifies several interstate communications necessary to complete the fraud scheme. David Hirshon knew exactly what Mr. Lalumiere was doing, helped him do it, and hoped to make money from these transactions.

The Plaintiffs agree that two discrete acts alone are insufficient to meet the requirement of a pattern for purposes of 1962(a) claims. However, the Plaintiffs disagree that Mr. Hirshon's direct involvement is the right measure of the pattern:

> The legislative history, which we discussed in Sedima, supra, at 496, n. 14, shows that Congress indeed had a fairly flexible concept of a pattern in mind. A pattern is not formed by "sporadic activity," S. Rep. No. 91-617, p. 158 (1969), and a person cannot "be subjected to the sanctions of title IX simply for committing two widely separated and isolated criminal offenses," 116 Cong, Rec. 18940 (1970) (Sen. McClellan). Instead, "[the term 'pattern' itself requires the showing of a relationship" between the predicates, *ibid.*, and of "'the threat of continuing activity,'" *ibid.*, quoting S. Rep. No. 91-617, supra, at 158. "It is this factor of continuity plus relationship which combines to produce a pattern." 116 Cong. Rec., at 18940 (emphasis added). RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering

> activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.

H.J Inc. v. Nw. Bell Tel Co., 492 U.S. 229 (1989). In this case, two predicate acts plus relatedness and continuity are demonstrated by the number of instances that the enterprise used the fraud scheme over the extended period of time of five years. Mr. Hirshon mistakenly assumes that Mr. Fowler, Mr. Douglas or Mr. Williams must show that it participated in each and every act of mail fraud or wire fraud or money laundering. As explained below, Mr. Fowler, Mr. Douglas and Mr. Williams do not need to demonstrate the three defendant's participation in each part of any predicate act. Instead, the Plaintiffs must show that Mr. Hirshon was aware of the racketeering activity and furthered the goals of the enterprise.

Moreover, the Plaintiffs do not agree that relatedness as to the pattern of racketeering activity has not been sufficiently alleged as to either the mail or wire fraud scheme predicate act enterprise or the money laundering scheme predicate act enterprise. Demonstrating relatedness is not difficult:

> As we noted in *Sedima*, *supra*, at 496, n. 14, Congress defined Title X's pattern requirement solely in terms of the relationship of the defendant's criminal acts one to another: "[C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."

> § 3575(e). We have no reason to suppose that Congress had in mind for RICO's pattern of racketeering, component any more constrained a notion of the relationships between predicates that would suffice.

id., at 240. The contracts included as Exhibit A to the Amended Complaint and the Attached Response Exhibit 1 outline a distinct fraud scheme that had common features: an entity that comprised the enterprise would agree to loan a victim money for a home so long as the home was in the name of the entity and the entity would issue a contract obligating the entity to sell the property to the victim personally. This sale lease back scheme was used five times on five different victims. Each entity in those five executed fraud schemes was controlled by Mr. Holsapple, Mr. Lewis and Mr. Lalumiere. Scott Lulumiere had a relationship with Eric Holsapple and Wayne Lewis, who were two men from Colorado who had an interest in the entity with Mr. Lalumiere. David Hirshon conspired with Mr. Lalumiere to provide the enterprise with funds gained from the use of the fraud scheme or the money laundering scheme so the enterprise could operate.

Continuity as a concept is more difficult but that too is demonstrated by the Amended Complaint. The Amended Complaint alleges a closed conspiracy for the mail or wire fraud scheme predicate act enterprise and an open or closed conspiracy for the money laundering predicate act enterprise:

> "Continuity" is both a closed-and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. *See Barticheck v. Fidelity*

> *Union Bank/FirstNationalState*, 832 F. 2d 36, 39 (CA3 1987). It is, in either case, centrally a temporal concept and particularly so in the RICO context, where what must be continuous, RICO's predicate acts or offenses, and the relationship these predicates must bear one to another, are distinct requirements. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated.

Id., at 241-42. The closed continuity is based on the dispute between Scott Lalumiere, Eric Holsapple, and Wayne Lewis over distribution of enterprise funds and Mr. Lalumiere's apparent divestiture of himself from the enterprise in December of 2019. The open-ended continuity of the money laundering is based on the entities that comprise the enterprise legitimizing the proceeds of the fraud scheme through sale or foreclosure. The Plaintiffs assert that Mr. Holsapple's and Mr. Lalumiere's involvement in dozens of properties controlled by the enterprise, the enterprises use of the sale lease back fraud scheme on different unconnected victims, the five identified fraudulent transactions, the five year duration of the use of the

fraud scheme, and the three defendants direct involvement in those fraudulent transactions is sufficient for a closed continuity determination for the mail or wire fraud scheme predicate act enterprise or money laundering predicate act enterprise or an open ended continuity money laundering predicate act enterprise for the twelve remaining properties under the money laundering predicate act enterprise's control.

The pattern of conduct alleged in the Amended Complaint is not so limited that it justifies a finding of no continuity. The First Circuit has articulated a standard that accounts for the limited duration single victim scheme:

> Our own precedent firmly rejects RICO liability where "the alleged racketeering acts . . . , 'taken together, . . . comprise a single effort' to facilitate a single financial endeavor," *Schultz*, 94 F.3d at 732; *see also Apparel Art*, 967 F.2d at 723 ("[A] single criminal episode, or event, is not a 'pattern' . . . [because] its parts, taken together, do not 'amount to or pose a threat of continued criminal activity.' ") (quoting *Hi Inc.*, 492 U.S. at 239, 109 S.Ct. 2893). And, while the cases in this volatile field understandably cannot all be reconciled, we find ourselves in good company. *See, e.g., Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1265 (D.C.Cir.1995) (combination of "single scheme, single injury, and few victims . . . makes it virtually impossible for plaintiffs to state a RICO claim"); *Stone*, 998 F.2d at 1545 ("Where the scheme has a limited purpose, most courts have found no continuity."); *Sil–*

> *Flo, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1516 (10th Cir. 1990) (affirming dismissal of RICO claim where a "closed-ended series of predicate acts . . . constituted a single scheme to accomplish 'one discrete goal,' directed at one individual with no potential to extend to other persons or entities" (citation omitted)); *Menasco, Inc. v. Wasserman*, 886 F.2d 681, 684 (4th Cir.1989) ("Defendants' actions were narrowly directed towards a single fraudulent goal.").

Efron v. Embassy Suites, 223 F.3d 12, 19 (1st Cir. 2000). The correct view of the pattern of mail or wire fraud in this case does not rely on Mr. Hirshon's interaction with the predicate acts. *See Kruse v. Repp*, Slip at 22. The correct view of the predicate acts of mail or wire fraud looks at the enterprise's interactions with the predicate acts. A fraud scheme that uses the mails and the wires over a five-year period with some sixteen identified interstate mails and wires does not justify the position that continuity cannot be met in this case. Similarly, a money laundering scheme over the past four years involving dozens of properties also is not the type of conduct that justifies a finding of no continuity since many of those transactions are not yet complete and are a regular way the enterprise conducted its business.

The indicia of continuity are required to be viewed under a common sense dictate and a finding of continuity in this case seems certain. Continuity is not simply a product of some commonsense dictate:

> Some cases, however, fall into a middle ground where the duration and extensiveness of the alleged conduct does not easily resolve

> the issue. In these cases, we examine other indicia of continuity, *see Efron*, 223 F.3d at 17 (where plaintiff alleged 17 acts of wire and mail fraud over 21 months, the time frame was "not so long[,]" nor were the predicate acts "so many[,]" that "other indicators of continuity—or the lack of them—are without significance" *388), including whether the RICO allegation concerns only a single scheme that is not far reaching, *see Kenda Corp.*, 329 F.3d at 233; *Apparel Art Intl, Inc. v. Jacobson*, 967 F.2d 720, 723-24 (1st Cir. 1992) (Breyer, C.J.). In such cases, we decline to find the requisite continuity. *See Sys. Mgmt., Inc. v. Loiselle*, 303 F.3d 100, 105-06 (1st Cir. 2002) ("RICO is not aimed at a single narrow criminal episode, even if that single episode involves behavior that amounts to several crimes.").

Guiliano v. Fulton, 399 F.3d 381, 387-88 (1st Cir. 2005). Continuity is a product of individualized assessment of the indicia of continuity. In this case, indicia militate to a finding of continuity. The sale lease back scheme was employed by the enterprise for a period of at least five years. It was not a single scheme but five separate schemes for five sperate properties with five sperate victims. The enterprise itself was in control of dozens of properties. The Amended Complaint sufficiently establishes continuity because this was a regular way that Mr. Lalumiere conducted his business.

D. David Hirshon Objectively Manifest an Agreement to Further the Illegal Goals of the Enterprise by Providing Funds for Its Operation.

Notwithstanding Mr. Hirshon's approach to this case as if it were necessary to show he agreed to conducted the affairs of the enterprise as if it were a 18 U.S.C. § 1962(c) claim, Mr. Hirshon seems to be adopting a misinterpretation first asserted by Androscoggin Savings bank in their motion to dismiss of an observation made by Justice Alito in *Boyle*. *Boyle* does not really suggest conspiracy to commit a RICO violation requires commission of all the acts required by the elements:

> Likewise, proof that a defendant conspired to commit a RICO predicate offense—for example, arson—does not necessarily establish that the defendant participated in the affairs of an arson enterprise through a pattern of arson crimes. Under § 371, a conspiracy is an inchoate crime that may be completed in the brief period needed for the formation of the agreement and the commission of a single overt act in furtherance of the conspiracy. *See United States v. Feola*, 420 U.S. 671, 694 (1975). Section 1962(c) demands much more: the creation of an "enterprise"—a group with a common purpose and course of conduct—and the actual commission of a pattern of predicate offenses.

Boyle, at 948. There is no shortcoming in the Amended Complaint as to the underlying source of Mr. Lalumiere's income from the enterprise. Indeed, any argument Mr. Lalumiere's individual conduct—regular use

of the sale lease back fraud scheme through various corporate entities under his control for the purpose of defrauding victims out of their homes over a period of five years from 2012 to 2017 on at least five separate pieces of property with at least five separate victims—is not a valid 1962(c) claim is categorically specious.

The claims made in the Amended Complaint under 18 U.S.C. § 1962(a) are for Mr. Hirshon's role in facilitating Mr. Lalimuiere's investment of income gained through a pattern of racketeering activity back into the enterprise. Neither 1962(a) nor 1962(c) claims require co-conspirators to agree to commit any predicate act:

> It makes no difference that the substantive offense under § 1962(c) requires two or more predicate acts. The interplay between subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense. True, though an "enterprise" under § 1962(c) can exist with only one actor to conduct it, in most instances it will be conducted by more than one person or entity; and this in turn may make it somewhat difficult to determine just where the enterprise ends and the conspiracy begins, or, on the other hand, whether the two crimes are coincident in their factual circumstances. In some cases the connection the defendant had to the alleged enterprise or to the conspiracy to further it may be tenuous enough so that his own commission of two predicate acts may become an important

> part of the Government's case. Perhaps these were the considerations leading some of the Circuits to require in conspiracy cases that each conspirator himself commit or agree to commit two or more predicate acts. Nevertheless, that proposition cannot be sustained as a definition of the conspiracy offense, for it is contrary to the principles we have discussed.

Salinas v. United States, 522 U.S. 52, 65-66 (1997). The conspiracy claims require facts from which it is possible to infer knowledge of the underlying pattern of racketeering activity and conduct from which it can be inferred they intended to further the enterprise. David Hirshon provided funds to an entity that was engaged in consumer credit transactions for an interest in land without a license in violation of Maine law, that same entity used the proceeds from the business that Mr. Hirshon was actually involved in to purchase 181 St. John Street, 33 Sanborn Lane, and 16 Old Ben Davis Road in quick succession, which was all evident from the transactions involving the entity and people that would have had to be evident even in the most cursory due diligence investigation. From these facts alleged in the Amended Complaint it is reasonable to infer both that Mr. Hirshon was aware of the extent of the pattern of racketeering activity and that he intended to further the enterprise by providing it with funds to conduct its activities.

Meeting F.R.Civ.P. 8 plausibility requirements is simply a matter of showing that Mr. Hirshon had knowledge of the underlying racketeering activity. Contrary to the Mr. Hirshon's position, showing knowledge is not some medieval quest for the holy grail:

> In alleging the Zions Defendants knew the transactions were fraudulent, Reyes pleads facts showing Zions Bank and MP/ND were aware of several blatant indications of fraud, including NHS's and related telemarketers' staggeringly high rates of ACH returns, and in particular, rates of return for lack of authorization. Reyes asserts Zions Bank discussed the high return rates with MP/ND, and MP/ND communicated frequently with the allegedly fraudulent telemarketers about their return rates. Reyes also alleges Zions Bank and MP/ND received notification from another bank they were violating NACHA's rule prohibiting ACH TEL transactions for outbound telemarketing, and received at least one complaint about unauthorized ACH transactions originated by NHS which they processed. Furthermore, Reyes asserts Zions Bank, in complying with its due diligence requirements, either knew or remained willfully blind to the fact that several of the telemarketers for which it processed ACH TEL debits, including NHS, had been sanctioned for operating fraudulent telemarketing schemes.

Reyes v. Zion First National Bank, 2012 WL 947139 at 4. David Hirshon's knowledge of Mecap LLC's business is more than the product of due diligence. The mortgage that secured one of the loans had several provisions designed secure his first position. Paragraph (e) was an unusual characterization of the leases to be transferred as a part of the mortgage. Moreover, Mr. Hirshon acknowledged that he knew about the leases and what

those leases actually did when he filed the subordination agreement. To be sure, these sale lease back transactions were prohibited by Maine's Consumer Credit Code and Mr. Hirshon was no more authorized to engage in such transactions than Eric Hollsopple, Wayne Lewis or Scott Lalumiere. These facts allow the inference that David Hirshon knew the extent of the enterprises racketeering activity when he agreed to provide funds to the enterprise through Scott Lalumiere.

David Hirhson's behavior is not the innocent behavior otherwise contemplated by *Salinas*. Mr. Hirshon's intent appears in his behavior after November 2019:

> As discussed above, the Complaint adequately alleges that Lateko knew about and agreed to facilitate the scheme. Lateko's letter to MasterCard suggests that Lateko investigated and uncovered Card Accounts' involvement in other frauds when that company first approached it, and Lateko's false denial of any relationship with Card Accounts gives rise to an inference of a guilty mind.

OSRecovery, Inc. v. One Groupe International, 354 F.Supp.2d 357, 376 (S.D. NY 2005). Mr. Hirshon maintains that he is just an innocent victim but he took control of a series of properties involving fraudulent transactions and refused to honor the options that existed prior to the loan and security agreement. Mr. Hirshon filed a subordination agreement with Mr. Douglas because he was concerned that the lease in that case was a mortgage and would have priority to his because it transferred an interest in land. Such

behavior is indicative of the intent to facilitate the goals of the conspiracy.

The conspiracy element is met in this case because there is no real argument that Mr. Hirshon did not agree to provide funds to Mr. Lalumiere and the entities under his control. The interest in the enterprise evidenced by the Junior Mortgage, Security Agreement and Financing Statement is enough:

> Each RICO-conspiracy defendant must have knowingly joined the conspiracy. *See*, *e.g.*, *Aetna Cas. Sur. Co.*, 43 F.3d at 1562. And 141 that is necessary to prove" this RICO-conspiracy element is to show "that the defendant agreed with one or more coconspirators to participate in the conspiracy." *See Ramirez-Rivera*, 800 F.3d at 18 n.11 (quotation marks omitted). Rodriguez-Torres, Rodriguez-Martinez, Guerrero-Castro, and Sanchez-Mora think that the government's evidence falls short of satisfying that element, because, the argument goes, they were at most merely present (which is all they'll cop to) at the scene of conspiratorial deeds. But we agree with the government that a rational jury could infer their knowing agreement to conspire from their actual participation as drug-point owners. *See id.* Making money through drug dealing was a key object of the conspiracy. And a reasonable jury could conclude that their drug-point ownership was intended to—and actually did—accomplish that object. *See id.* (finding the knowledge element met by similar evidence).

United States v. Rodriguez-Torres, 939 F.3d 16, 30 (1st Cir. 2019). At the center of Mr. Hirshon's Rule 9 complaints is that Mr. Fowler and Mr. Williams cannot sufficiently show knowledge. Rule 9, though, does not require heightened pleading for intent and Mr. Fowler, Mr. Douglas, and Mr. Williams are not required to show the who what where and when of joining the conspiracy to invest in the enterprise. Under any analysis, Mr. Hirshon has the clearest expression of intent of any defendant in this case. The Plaintiffs have sufficiently alleged the element of conspiracy to further the enterprise.

E. There Is an Enforceable Contract for 181 St John Street, 33 Sanborn Lane, and 16 Old Ben Davis Road and the Enterprise Was Unjustly Enriched When It Failed to Pay Mr. Fowler for the Renovation He Performed

Under Maine law, the fact that Mr. Fowler did not have a written contract for 181 St. John Street, 33 Sanborn Lane, or 16 Old Ben Davis Road is not fatal to his claim. Maine recognizes partial performance as an exception to the statute frauds:

> We begin with the axiom that, absent extraordinary circumstances, a contract for the sale of land must be in writing to be enforceable. 33 M.R.S.A. § 51(4) (1999) (statute of frauds).4 A transfer of real property without a written instrument may be enforced only if the party seeking to enforce the contract proves by clear and convincing evidence that an oral contract exists and that an exception to the statute of frauds applies. *See Landry v. Landry*, 641 A.2d 182, 183 (Me.1994); *Goodwin v.*

> *Smith*, 89 Me. 506, 508, 36 A. 997, 998 (1897). One exception to the statute of frauds is found in the part performance doctrine. *Landry*, 641 A.2d at 183.

Sullivan v. Porter, 861 A.2d 625 629 (Me. 2004). There was more than partial performance on these properties by Mr. Fowler. Mr. Fowler had not only completed the renovations work but had managed those properties for a significant period of time as his property. The Amended Complaint clearly identifies the terms of the contract for payment in paragraph 101. The fact that title had not yet transferred to him, or that there was no written contract, does not mean that the oral contract for compensation with Mr. Lalumiere did not exist.

Even if there was no contract, there is a valid claim under a theory of unjust enrichment. Maine allows parties to collect the value of the work they performed for benefits retained by the property owners:

> To sustain a claim for unjust enrichment, a claimant must establish *1046 "that it conferred a benefit on the other party . . . that the other party had 'appreciation or knowledge of the benefit' . . . and . . . that the 'acceptance or retention of the benefit was under such circumstances as to make it inequitable for it to retain the benefit without payment of its value.'" *Howard & Bowie v. Cloutier & Briggs*, 2000 ME 148, ¶ 13, 759 A.2d 707, 710 (quoting *June Roberts Agency, Inc.*, 676 A.2d at 49). Unjust enrichment, therefore, permits recovery "for the value of the benefit retained when there is no contractual relationship, but when, on the grounds of fairness and justice,

> the law compels performance of a legal and moral duty to pay. . . ." *Paffhausen v. Balano*, 1998 ME 47, ¶ 6, 708 A.2d 269, 271. Trial court determinations on the elements of unjust enrichment are factual issues that will not be set aside as clearly erroneous unless there is no competent evidence in the record to support them. *See Howard & Bowie*, 2000 ME 148, ¶ 13, 759 A.2d at 710.

Forrest Associates v. Passamaquoddy Tribe, 760 A.2d 1041, 1045-46 (Me 2000). A benefit was provided to the enterprise and all of the people and entities that realized funds from the mortgages placed on those properties. MECAP LLC and LH Housing LLC were in the business of renovating homes, securing financing on those renovated homes, renting those homes, and then selling those homes. All the defendants knew that somebody was performing that renovation work and in the case of these three properties it was Mr. Fowler. To the extent that each defendant received money from the equity, money from the sale, or money from the foreclosure they are liable to Mr. Fowler in unjust enrichment.

/s/ Robert C. Andrews
Bar Number 8980
117 Auburn Street
Suite 201
Portland, Maine 04103
207-879-9850

Dated: December 14, 2020

EXHIBIT 1
LEASE/OPTION DISCLOSURE
(AUGUST 14, 2012)

Tenant/ Optionee: Dale and Kelly Williams
Landlord/Optionor:
Chris Castaldo (Manager)/ MeCap LLC
Property Address: 171 South Street, Gorham, ME

Date: 8/14/2012

I/We, the undersigned tenant/optionee acknowledge and agree that by executing that Standard Lease Agreement (the "Lease") and Standard Option Agreement (the 'Option") dated 8/14/2012, for the property located at 171 South Street, Gorham, Maine (the "Property"), said Lease and Option being attached hereto and incorporated herein, I/we have entered into a landlord-tenant relationship with Chris Castaldo (Manager)/ MeCap LLC; and that I/we have an option to purchase the Property under the terms stated in the Option. I/we acknowledge and agree that should I/we default on the Lease by failing to make timely payments, failing to keep the Property in good repair or for any other reason set forth in the Lease, that my/our option to purchase will become automatically void. In that event I/we understand that I/we will no longer have the right, or option to purchase the Property, nor would I/we have any rights, interests or claims to the Property.

I/We have thoroughly read the Lease and Option and landlord/optionor has done its best to explain the terms thereof. Furthermore, I/we acknowledge and agree that landlord/optionor has provided me/us with a reasonable opportunity to have the Lease and

Option reviewed by an attorney who represents my/our interests, and my/our interests only, at my/our sold cost and expense. I/we agree and understand that should we fail to execute the Option or purchase the Property for any reason, I/we am/are not entitled to any money back (except the amount of my/our security deposit after all just debits for unpaid rent and damages to the Property have been made.

I/we acknowledge and agree that the Option is not subject to me/us obtaining financing, and that landlord/optionor has no control over unforeseen events that may negatively affect my/our ability to purchase the property such as my/our inability to obtain financing, job loss, or the like.

Landlord/optionor acknowledges that tenant/optionee is enrolled or is enrolling in a credit repair program to improve tenant/optionee's credit record, credit history, credit rating or to obtain advice or assistance with any of the aforesaid activities or services. I/we acknowledge and agree that landlord/ optionor has no control over the outcome with respect to my/our use or involvement with a credit repair organization and as such the Option is not subject to a successful result thereof.

Landlord, its employees or agents, have not made any express or implied representations not contained in this disclosure, the Lease, Option, Property Disclosure Statement, Energy Efficiency disclosures, arsenic disclosures, lead based paint disclosures, as to the Property, its ownership, the condition, the neighborhood or the value of the Property. Tenant/optionee acknowledges and agrees and understands that the Landlord is not acting as a real estate broker or agent in this transaction and is not necessarily the owner of

the Property or representing the owner of the Property, but rather is acting as an optionee under an agreement of sale or option to purchase with the owner of the Property.

/s/ Kelly Williams
Signature

/s/ Dale Williams
Signature

/s/ Chris Castaldo
Manager

STANDARD LEASE AGREEMENT

This is intended to be a legally binding contract:
If not fully understood, seek the advice of an attorney.

THIS AGREEMENT made and entered into this 14th day of August, 2012 by and between Chris Castaldo/MeCap LLC and/or assigns, (hereinafter referred to as the "Lessor") and Dale and Kelly Williams, (hereinafter referred to collectively as the "Lessee).

Witnesseth:

That the Lessor in consideration of the covenants and agreements hereinafter set forth, agrees to lease that certain real property, with any improvements situated thereon, located at 171 South Street the City of Gorham, County of Cumberland, State of Maine more particularly described as follows:

SEE ADDENDUM "A" ATTACHED AND TO AND MADE A PART HEREOF:

1. Term. The term of this lease shall be for a period of **six (6) months**. Commencing on the **1st day of September, 2012** and expiring on the **last day of February 2013**. If Lessee remains in possession of the property at the expiration of the term of this lease agreement then the tenancy of the Lessee shall be on a month-to-month basis during any such hold-over period. In connection with any such month-to-month period, Lessor may require an increase in rent upon forty-five (45) days advance written notice to Lessee. Failure to pay such increased rent shall terminate the tenancy.

2. Rent/Lease-Option Payments. Lease payments in the amount of twelve hundred ninety nine dollars ($1299) shall be made on a regular monthly basis with the first payment being due on the **1st day of September, 2012**, and all future monthly payments being due on the **1st day** of the month thereafter.

3. Late Charges, Returned Checks, and Other Fees. If lease option payment is paid 1 Day from the day which rent is due, there will be a late charge of four (4%) percent of the monthly rental payment charged to the Lessee. If any check given by Lessee to Lessor for payment of rent or for any other sum due under this agreement is returned for insufficient funds, a "stop payment" or any other reason, Lessees shall pay Lessor a returned check charge of $50.00. In addition, the Lessee agrees to make payments for the following six (6) months with Certified Funds only. Lessee further agrees that should 2 (two) check be dishonored for insufficient funds that they will make all future payments with Certified Funds only.

If Lessee fails to return, upon termination of this Lease and/or vacation of the Property, Lessee's key or keys, Lessee shall be liable to Lessor a charge of $15.00 per key. Lessor may, at any time and for any reason, change the lock or locks at the Property and provided Lessee with a key or keys.

4. Deposit. Lessee upon execution of this agreement has deposited with Lessor the sum of **$4,000 as a no refundable deposit**. This Deposit will either come off the purchase price of the home OR be refunded at closing if the funds are not needed to close the loan as it pertains to either a down payment or closing costs. **There will be an additional non**

refundable deposit to be used towards the down payment of the home in the amount of $5,000 once Dale receives his settlement on or around October 2012.

5. Use. Lessee understands and agrees that this agreement is made with the understanding that the Lessee intends to occupy the property solely as the Lessee's primary residence for Lessee for the entire length of the agreement. Lessee may not re-rent or sublease the property to any third party. Lessee further agrees that they will not use the property for any agricultural, business or commercial purposes whatsoever.

Lessee further agrees that at no time will more than _____ ( ) people occupy the property at any given time. The property shall be occupied only by the following person(s).

[. . .]

6. Utilities. Lessee shall be solely responsible for and pay for all utility charges during the term of this lease including, but not limited to, gas, electric, sewer and water, storm water fees, cable, telephone, and similar utility expenses.

7. Vehicles. Inoperable vehicles are not allowed on the street or on the driveway or front yard. Vehicle repairs are only allowed in case of emergency and repairs must be completed within a reasonable time period not to exceed forty-eight (48) hours.

8. INSURANCE. Lessee acknowledges and agrees that the insurance coverage maintained by Lessor is for the structures located on the property only. Lessee agrees to obtain individual insurance

coverage for their personal contents and liability and shall name Lessor as an additional insured.

9. MAINTENANCE, WASTE, LIENS. Lessee agrees as follows:

A. At all times, at Lessee's own expense, to reasonably maintain any buildings and improvements on the property, or their replacements or substitutions, in good condition and repair. Repairs and replacements shall be made in a timely manner. However, Lessee agrees to not do or permit any renovation or remodeling on the property without first obtaining written consent from Lessor.

B. Not to allow or permit any waste or strip of the property. Should Lessee replace (with Lessor's written permission) appliances or other aspects of the property, it is with the understanding that said replacements shall revert to Lessor should Lessee vacate the property

C. To maintain the property in a clean, orderly, neat, tenable and attractive condition.

D. To neither allow nor permit any nuisance, nor allow or permit the property to be used for any unlawful purpose.

E. To keep the property free from mechanics and all other liens and hold Lessor harmless there from and reimburse Lessor in defending against any such liens.

F. To comply with all federal, state, city, and/or other applicable governmental or association codes, and to comply with covenants, conditions, and restrictions applicable to the property.

G. Lessee **<u>may/may not</u>** keep pets in the property only with prior written permission from Lessor.

H. To not use or keep in or about the property anything that would adversely affect coverage of the property under a standard fire or extended insurance policy.

I. To maintain a reasonable amount of heat in cold weather to prevent damage to the property, and if damage results from Lessee's failure to comply, Lessee shall be held liable for this damage.

J. To allow Lessor to enter the property, after twenty four (24) hour advance notice for the purpose of inspecting the property to confirm compliance with the above requirements. Lessor may enter without advance notice when a health or safety emergency exists or if the Lessee is absent and Lessor believes entry is necessary to protect the property or the building in which they are located from damage.

(LESSEE'S INITIALS ARE REQUIRED)

/s/ Kelly Williams
Lessee

/s/ Dale Williams
Lessee

10. <u>NON-LIABILITY OF LESSOR FOR DAMAGES</u>. Lessor shall not be held liable for damage or liability claims for injury to persons, including Lessee or his agents, guests or invitees, or for property

damage from any cause related to Lessee's occupancy of the property, including those arising out of the damages or losses occurring on sidewalks or other areas adjacent to the leased property, during the term of this lease. Lessee hereby covenants and agrees to indemnify Lessor and hold Lessor harmless from all liability, loss, or other damage claims or obligations because of, or arising out of such injuries or losses. If Lessor shall be made a PARTY to recover damages because of the condition of or any activity on or relating to the property, Lessee shall assume the defense of Lessor and shall indemnify and hold Lessor harmless from any and all liability, loss, cost, damages, or judgments arising out of such suit or action.

11. RISK OF LOSS AND DAMAGE. Lessee agrees that the property is at all times at Lessees risk and should the property suffer any loss, damage, or injury as a result of Lessee, their agents, guests or invitees, acts or omissions, Lessee agrees notwithstanding, to purchase and pay the amounts due hereunder in full according with the terms hereof without right of offset or abatement.

Lessee agrees to be responsible for all acts of negligence or breaches of this agreement by Lessee and Lessee's guests and invitees, and to be liable for any resulting property damage or injury, and Lessee shall be responsible for any destruction, damage, impairment, or removal of any part of the property caused by an act or omission of the Lessee, or by any person, or animal, or pet on the property at anytime.

If the leased property is damaged by fire or other casualty to such an extent that renders it untennantable, Lessee may move out, unless Lessor within six (6) months proceeds to repair and rebuild. Lessee may

move out if the repair work causes undue hardship. If Lessee remains, rent shall abate to the extent Lessee is deprived of normal, full use of the property, until the property are restored. The Lessor shall in no way be obligated to rebuild or restore the leased property. If repairs are not made, which determination shall be in the sole discretion of the Lessor, then in such event, this agreement shall terminate, and the Lessee is entitled to refund of their security deposit as outlined in Paragraph 4 of this agreement.

12. DEFAULT. If Lessee shall fail to pay any month's installment of rent/lease option payment for a period of fifteen (15) days after the same becomes due and payable, or if Lessee shall abandon the property prior to the termination hereof, then all the remaining unpaid installments of rent for the whole term hereof shall, at the option of Lessor, become due and payable immediately. In the event that Lessee breaches any terms or conditions of this agreement, Lessor may give Lessee seven (7) days written notice of such breach, stating the reasons therefore. In the event that Lessee does not correct the breach listed in such notice to the full satisfaction of Lessor, Lessor may, at its option, treat this lease as terminated. Lessor shall have all the remedies provided by law including the right to sue for unpaid rents or damages, the right to terminate this Lease and re-enter the property, and the right to re-enter the property without termination of the agreement for the purposes of attempting to re-let said property. The election by Lessor of any of the foregoing remedies shall be in addition to, and shall not constitute a waiver of the right of Lessor to apply all or any part of deposits made by Lessee in accordance with this agreement to cure any default of Lessee

hereunder. In the event Lessor employs an attorney because of Lessee's violation of any terms, conditions, covenants or restrictions of this agreement, Lessee agrees to pay reasonable attorneys' fees, sheriffs fees for service of process, and applicable court costs. The failure of Lessor to enforce any breach of this agreement, or to terminate this agreement in the event of a breach of this agreement by the Lessee, shall not be deemed a waiver of the right of Lessor to enforce any other breach of this agreement or to terminate this agreement at any other time because of Lessee's breach hereof.

13. REMEDIES. If any legal action or proceeding is brought by either party to enforce any part of this agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorney's fees.

14. NON-WAIVER OF PERFORMANCE. Lessee further agrees that any extension of time or payment or the acceptance of a part thereof or failure of Lessor to enforce promptly any other provision of this agreement by Lessee, shall not be construed as a waiver on the part of Lessor of the strict performance of all conditions and agreements set forth herein, and Lessor may, nevertheless, enforce the performance of this agreement as herein provided, upon any breach by Lessee of any of the conditions and obligations set forth herein or upon failure to make prompt payment according to any extension granted.

15. LEAD-BASED PAINT DISCLOSURE (INITIALS REQUIRED). The U.S. Department of Housing and Urban Development requires any Lessor of residential real property built prior to 1978 to (1) notify the Lessee of any known lead-based paint or lead-based paint hazards in the property to be sold, (2)

provide the Lessee with any lead-based paint risk assessments or inspections in the Lessor's possession, and (3) provide the Lessee a 10-day opportunity, or other mutually agreed upon period, to conduct or obtain a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards. Lessee is advised to conduct or obtain such assessments or inspections during the Inspection Period.

By initialing below, **Lessee acknowledges**:

- That the residence(s) and building(s) located on the property were constructed prior to 1978 and that Lessee has received the Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards, and any report, records, pamphlets and/or other materials referenced therein, including the pamphlet "Protect Your Family from Lead in Your Home"; or
- That the residence(s) and building(s) located on the property were constructed in 1978 or later.

(LESSEE'S INITIALS ARE REQUIRED):

/s/ Kelly Williams
Lessee

/s/ Dale Williams
Lessee

16. MOVE IN WALK THROUGH. Lessee and Lessor have completed a walk through of the property on or prior to the move-in date and the condition of the property has been accepted by Lessee with the following exceptions:

1. Crack in Back b.r. window
– Fixed by cold weather

Date: 8/14/12 Lessor /s/_____

17. LESSOR'S RIGHT OF ENTRY. Lessor may enter the property in accordance with Title 14 M.R.S.A. § 6025 after reasonable notice to Lessee. In case of an emergency, Lessor may enter the property without notice pursuant to Title 14 M.R.S.A. § 6025(2).

18. MOVE OUT. Upon vacating the property, the Lessee(s) and Lessor are required to complete a walk-through for the purposes of determining the condition of the property and the disposition of the security deposit.

19. LOCKS. Lessee may not change the locks to the property without first giving notice to the Lessor and giving the Lessor a duplicate key within forty-eight (48) hours of the change.

20. NOTICES. Any notice which may be required by terms of this agreement shall be given in writing and forwarded by regular United States Mail to Lessor or Lessee at their current mailing address or at such other address or addresses as the parties may hereafter respectively designate. A United State Postal Service Certificate of Mailing will be sufficient proof of mailing.

Both parties hereby agree to notify the other party within two (2) days upon change of address or daytime telephone number.

21. CONSTRUCTION. In constructing this agreement, it is understood that Lessor and/or Lessee

may be more than one person and that where the agreement so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine, and the neuter. If there is more than one Lessee, the obligations of all Lessees shall be joint and several.

22. **SEVERABILITY**. Each covenant, condition, and provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant, condition, or provision shall be held to be void or invalid, the same shall not affect the remainder hereof, which shall be effective as though the void or invalid covenant, condition, or provision had not been contained herein.

23. **GOVERNING LAW**. This agreement shall be construed according to the laws of the State of Maine.

24. **ENTIRE AGREEMENT**. This agreement constitutes the entire agreement between the parties relating to the property, it supersedes any and all prior memoranda, earnest money agreements, options, and all other prior documents made by the parties in connection with the transaction described herein. Oral agreements and understandings of the parties respecting the subject matter of this agreement, if any, have been integrated herein.

25. **EXECUTION IN COUNTERPARTS**. This agreement may be executed in counterparts and by facsimile signatures. This agreement shall become effective as of the date of the last signature.

26. **BINDING EFFECT**. This agreement shall be binding upon the heirs, executors, administrators, successors, and assigns (where permitted) of the respective parties hereto.

27. COMPREHENSION OF DOCUMENT. Lessor has advised Lessee to have this agreement reviewed by independent legal counsels of their own choice. Lessee before executing this agreement, has fully reviewed the terms, contents, conditions, and effects with their legal counsel, if any, and that in executing this agreement, no promise or representation of any kind has been made to Lessee by Lessor or by anyone acting for Lessor except as expressly stated in this agreement. Lessee has relied solely upon Lessee's judgment after consulting with their legal counsel, if any.

The below named persons have executed this Standard Lease Agreement this ___ day of _____ 20__.

LESSOR:

/s/ Chris Castaldo
Manager

Date: 8/14/12

LESSEE:

/s/ Dale Williams

/s/ Kelly Williams

Date: 8/14/12

WARRANTY DEED

TSL VENTURES, LLC, a Maine Limited liability Company with a mailing address of 39 Smithwheel Road, #35, Old Orchard Beach, Maine 04084, for consideration paid, grants to **MELISSA C. LALUMIERE** with a mailing address of 23 Turnberry Road, Cumberland, Maine 04021 **with Warranty Covenants**, the land and interest in land situated in Gorham, County of Cumberland, and State of Maine, described as follows:

A certain lot or parcel of land, with the buildings thereon, situated at and numbered 171 on the westerly side of South Street in the Town of Gorham, County of Cumberland and State of Maine, northerly of and adjoining land which was conveyed to Millard Irish by Sylvia W. Dixon, said lot having a frontage on South Street of one hundred four (104) feet, more or less, and extending westerly from South Street to a line which is two hundred fifty-six (256) feet from the center line of South Street; the northerly boundary line of the lot hereby conveyed is parallel with the northerly line of the foundation wall of the house now standing on said lot and distant from said foundation wall thirty (30) feet when measured at right angles thereto; said lot being bounded on the southerly side by land conveyed to Irish and on the westerly and northerly sides by land now or formerly of Sylvia W. Dixon.

Also another certain lot or parcel of land, with any buildings thereon, situated westerly of South Street in the Town of Gorham, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point in the northerly side line of land conveyed by Sylvia W. Dixon to Millard Irish at the southwesterly corner of land conveyed by Sylvia W. Dixon to John P. Myatt et al by Warranty Deed dated January 20, 1966 recorded in Cumberland County Registry of Deeds in Book 2944, Page 433; thence northerly along the westerly side line of said Myatt land one hundred four (104) feet to the northwesterly corner of said Myatt land; thence westerly on a line parallel to the northerly side line of said Irish land, three hundred seventy-five (375) feet, more or less, to land formerly of Thomas S. McConkey et al.; thence southerly along said McConkey land one hundred four (104) feet to a point and land conveyed to said Irish; thence easterly along said Irish land three hundred seventy-five (375) feet, more or less, to said Myatt land and the point of beginning.

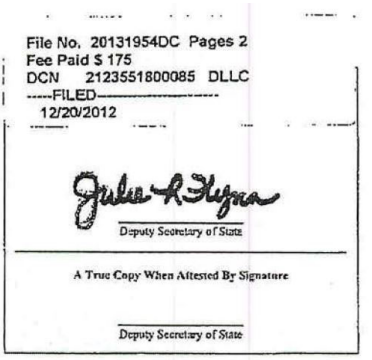
Being the same premises conveyed to TSL Ventures, LLC by virtue of a deed of David Haacke dated May 13, 2001 recorded in York County Registry of Deeds in Book 28704, Page 187.

IN WITNESS WHEREOF, TSL Ventures, LLC has caused this instrument to be signed in its name and behalf by Tina E. Wilson, it's authorized Member, thereunto duly authorized, this 30th day of December, 2011.

EXHIBIT 2
CERTIFICATE OF FORMATION
(DECEMBER 17, 2012)

MAINE
LIMITED LIABILITY COMPANY

STATE OF MAINE


File No. 20131954DC Pages 2
Fee Paid $ 175
DCN 2123551800085 DLLC
-----FILED-----
12/20/2012
Deputy Secretary of State
A True Copy When Attested By Signature
Deputy Secretary of State

File No. 20131654DC

Pursuant to 31 M.R.S.A § 1531, the undersigned executives and delivers the following Certificate of Formation:

FIRST: The name of the limited liability company is:

LH Housing, LLC

SECOND: Filing Date:

Date of this filing;

[. . .]

FIFTH: The Registered Agent is a: (Select either a Commercial or Noncommercial Registered Agent)

Noncommercial Registered Agent

Alan E. Wolf
27 Mitchellwood Drive, Falmouth, Maine 04105
P.O. Box 1292, Portland, ME 04104

SIXTH:

Pursuant to 5 MRSA § 105.2 the registered agent list above has consented to serve as the registered agent for this limited liability company.

[. . .]

Authorized Person(s)**

/s/ Alan E. Wolf
Authorized Person

Dated December 17, 2012

** Pursuant to 31 MRSA § 1676.1A, Certificate of Formation MUST be signed by at least one authorized person.

The execution of this certificate constitutes an oath or affirmation under the penalties of false swearing under 17-A MRSA § 453.

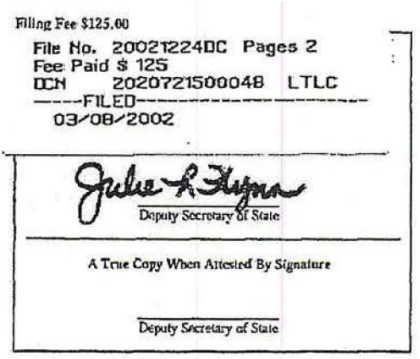
Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to:

Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries: (207) 624-7752
Email Inquiries: CEC.Corporations@Maine.gov

ARTICLES OF ORGANIZATION OF LIMITED LIABILITY COMPANY (MARCH 7, 2002)

DOMESTIC LIMITED LIABILITY COMPANY
STATE OF MAINE



File No. 20021224DC

Pursuant to 31 M.R.S.A § 622, the undersigned adept(s) the following articles of organization:

FIRST: The name of the limited liability company is:

TTJR, LLC

SECOND: The name of its Registered Agent, an individual Maine resident or a corporation, foreign or domestic, authorized to do business or carry on activities in Maine, and the address of the registered office shall be

Alan E. Wolf
27 Mitchellwood Drive, Falmouth, Maine 04105
P.O. Box 1292, Portland, ME 04104

THIRD:

A. The management of the company is vested in a member or members.

[. . .]

ORGANIZER(S)*

/s/ Alan E. Wolf, Esq.
Agent

Dated March 7, 2002

THE FOLLOWING SHALL BE COMPLETED BY THE REGISTERED AGENT *UNLESS* THIS DOCUMENT IS ACCOMPANIED BY FORM MLLC-18 (§ 607.2).

The undersigned hereby accepts the appointment as registered agent for the above named limited liability company.

REGISTERED AGENT

/s/ Alan E. Wolf, Esq.

Dated March 7, 2002

---

* Articles MUST be signed by

(1) all organizers OR
(2) any duly authorized person.

The execution of this certificate constitutes an oath or affirmation under the penalties of false swearing under Title 17-A, section 453.

EXHIBIT 3
COMPLAINT
(JANUARY 8, 2020)

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ERIN PAPKEE,

Plaintiff,

v.

MECAP, LLC d/b/a MILK STREET CAPITAL and SCOTT LALUMIERE,

Defendant.

Civil Action No.

COMPLAINT
JURY TRIAL REQUESTED
INJUNCTIVE RELIEF REQUESTED

NOW COMES the Plaintiff: Erin Papkee ("Ms. Papkee"), by and through undersigned counsel, and complains against the Defendants, MECAP, LLC d/b/a Milk Street Capital ("MECAP") and Scott Lalumiere ("Mr. Lalumiere"), as follows:

JURISDICTION AND PARTIES

1. This action arises under the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C.

§ 201, *et seq.,* the Whistleblowers' Protection Act ("WPA"), 26 M.R.S. §§ 831 *et seq.,* as enforced through the Maine Human Rights Act ("MHRA"), and 26 M.R.S. § 664 ("Maine Wage Statute").

2. This action also includes common law claims for tortious interference.

3. Ms. Papkee is a United States citizen residing in the City of Portland, County of Cumberland, State of Maine.

4. Ms. Papkee was known as Erin Leigh Mancini at the time she was employed by Defendants.

5. MECAP is a Maine limited liability corporation that has or had a principal place of business in the City of Portland, County of Cumberland, State of Maine.

6. Mr. Lalumiere is a United States citizen residing in the City of Portland, County of Cumberland, State of Maine.

7. At all times relevant to this case MECAP had one or more employees.

8. At all times relevant to this case MECAP had employees who engaged in interstate commerce and does $500,000 dollars or more in annual business.

9. While employed by Defendants, Ms. Papkee was an employee covered by FLSA's overtime pay requirements.

10. This Court has subject matter jurisdiction over Ms. Papkee's federal and state claims pursuant to 28 U.S.C. §§ 1331 and 1367.

11. On April 19, 2019, Ms. Papkee filed a timely Complaint of Discrimination against MECAP alleging

unlawful whistleblower retaliation with the Maine Human Rights Commission ("MHRC").

12. On or about January 7, 2020, the MHRC issued a Notice of Right to Sue with respect to Ms. Papkee's WPA claims.

13. Ms. Papkee has exhausted her administrative remedies with respect to all claims requiring administrative exhaustion set forth in this Complaint.

JURY TRIAL REQUESTED

14. Ms. Papkee requests a trial by jury for all claims and issues for which a jury is permitted.

FACTUAL ALLEGATIONS

15. MECAP is a loan brokerage, property management, and real estate development firm.

16. Mr. Lalumiere is the sole shareholder of MECAP and managed the business.

17. Ms. Papkee was a project manager for MECAP from October 2016 until she was fired or forced to resign on January 10, 2019.

18. Ms. Papkee was appropriately classified as an employee when she was hired.

19. Ms. Papkee worked full time under the control and supervision of Mr. Lalumiere.

20. The normal work week for Ms. Papkee was 40 hours per week.

21. Ms. Papkee was paid $960 per week regardless of how many hours per week she worked.

22. Ms. Papkee routinely worked from 40 to 50 hours per week driving to remote locations on weekends to handle Defendants' projects without getting paid overtime.

23. Ms. Papkee was entitled to payment equal to 1.5 times her pay for forty hours per week for all hours that she worked over forty hours in a week.

24. Defendants' failure to pay Ms. Papkee overtime premium for hours worked over forty violated the FLSA and also the Maine Wage Law, 26 M.R.S. § 644(3).

25. Throughout Ms. Papkee's employment, Mr. Lalumiere and Ms. Papkee would exchange work-related emails as early as 6:14 AM and as late as 9:13 PM.

26. Ms. Papkee was also not paid for work-related mileage or tolls even though she often drove hundreds of miles per week for work.

27. In about September 2018, when Ms. Papkee asked Mr. Lalumiere to pay for mileage and tolls, he proposed instead to increase her weekly pay and stop withholding employment taxes from her pay.

28. Ms. Papkee agreed to this arrangement as she believed it would compensate her for her mileage and other transportation costs like car repairs, tires, and tolls.

29. Ms. Papkee's new rate of pay was $1,200 per week.

30. Ms. Papkee was not paid by the project; she was paid the same amount every week.

31. Nothing else changed about the work Ms. Papkee performed or where she performed her work.

32. Mr. Lalumiere continued to control the manner in which Ms. Papkee performed her work.

33. Mr. Lalumiere had control over Ms. Papkee's work hours, where she worked, and how she performed her work.

34. Ms. Papkee's services were thoroughly integrated into MECAP's business operations.

35. Ms. Papkee did not operate a separate business that provided services to Defendants.

36. While employed by Defendants, Ms. Papkee did not provide services to companies that are unrelated to Defendants.

37. Ms. Papkee was not involved in her own real estate projects that would have caused a conflict of interest if she had continued to be classified properly as an employee.

38. Ms. Papkee performed her job duties satisfactorily.

39. Ms. Papkee denies that Mr. Lalumiere received complaints about her work from vendors, brokers, and others regarding matters under Ms. Papkee's control for which Ms. Papkee was responsible.

40. MECAP underfunded projects that Ms. Papkee was responsible for, and did not pay contractors on time or in full.

41. At times, Ms. Papkee's projects were delayed because contractors refused to work without pay. When contractors called and complained about not getting

paid, she referred those callers to Mr. Lalumiere because MECAP was responsible for issuing payments.

42. After about September 2018. Ms. Papkee remained an employee but employment taxes were no longer withheld from her paychecks.

43. Even if Ms. Papkee was an independent contractor, she has standing to bring this claim against Defendants.

44. The WPA protects "employees" from retaliation, and defines "employee" as follows:

> "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied, but does not include an independent contractor engaged in lobster fishing. "Employee" includes school personnel and a person employed by the State or a political subdivision of the State. 26 M.R.S. § 832(1).

45. Under this broad definition, anyone who performs a service for wages or other remuneration under contract of hire, written or oral, expressed or implied except for lobster fisherpersons — are employees for purposes of the WPA.

46. Beginning in about September 2018, Ms. Papkee performed services for Defendants in exchange for $1,200 per week.

47. At the time of these events, Mr. Lalumiere was a partner or member in business entities other than MECAP, including but not limited to LH Housing, LLC, which manages rental properties.

48. LH Housing had four partners: Mr. Lalumiere, Wayne Lewis, Eric Holsapple, and Steve Matthews.

49. One of Ms. Papkee's job responsibilities was to track the date of transactions and closings as it provided her with the ability to begin another project once funds from a previous sale were posted to the LH Housing account.

50. On about December 14, 2018, Ms. Papkee discovered that funds from the sale of a house located at 9 Brault Street, Lewiston, Maine, owned by LH Housing, were deposited in the MECAP bank account and not to the LH Housing account.

51. Ms. Papkee mentioned this to Mr. Lewis. He was not aware that funds from the sale of that house were received and deposited into Mr. Lalumiere's MECAP account.

52. Christine Seifer. who handled accounts receivables for MECAP, asked Ms. Papkee to send an email to Mr. Lewis in Colorado, telling him that she was mistaken and that the house had not been sold and no funds had been deposited.

53. Ms. Papkee did not agree to communicate false information to Mr. Lewis.

54. Ms. Papkee was concerned that Mr. Lalumiere and MECAP were stealing from Mr. Lewis, Mr. Holsapple, and Mr. Matthews.

55. During their phone conversation, Ms. Seifer confessed to Ms. Papkee that Mr. Lalumiere had instructed her to wire the money into the MECAP account.

56. Ms. Papkee told Ms. Seifer that she was not going to lie for Mr. Lalumiere and that when asked, she would tell the truth and let the chips fall where they may.

57. Being asked to lie for Mr. Lalumiere made Ms. Papkee very uncomfortable.

58. Ultimately, Ms. Papkee told Mr. Lewis by telephone what she had found out.

59. Mr. Lewis asked Ms. Papkee other questions which she answered honestly and to the best of her knowledge.

60. They discussed another house owned by LH Housing located at 294 Hio Ridge Shore, Bridgton, Maine, which produced rental income that was shared by MECAP and LH Housing.

61. Mr. Lewis thought that the house was empty.

62. Ms. Papkee told Mr. Lewis that in fact, the house was rented with a lease between the tenant and MECAP instead of LH Housing, the rightful owner.

63. Ms. Papkee's co-worker, Sara McKee, normally handled the leasing of homes owned by LH Housing.

64. In this case, Mr. Lalumiere instructed his assistant, Miranda Elkanrich, to market and rent the property to tenants.

65. Ms. McKee did not know that Ms. Elkanrich had been tasked to market and rent the property to tenants which raised concerns for Ms. Papkee and Ms. McKee that Mr. Lalumiere was hiding something.

66. Ms. Elkanrich was on vacation and Ms. Papkee was in charge of assisting the tenants if

needed on move-in day, which was on about December 15, 2018.

67. Ms. Papkee helped coordinate minor maintenance to the heating system and got a copy of the lease, which is how she discovered that the parties to the lease were MECAP and the tenants and not LH Housing.

68. If Ms. McKee had handled the rental, she would have taken the deposit money and rent due and deposited it into the rightful account, *i.e.*, LH Housing's account.

69. Ms. Papkee expected that Mr. Lewis would bring these matters up with Mr. Lalumiere and that it would cause problems between them but Ms. Papkee was not willing to participate in defrauding LH Housing,

70. Upon information and belief, Mr. Lalumiere and Mr. Lewis came to an agreement and Mr. Lalumiere returned to LH Housing the money it was owed from the proceeds of the sale of 9 Brault Street.

71. After that, Mr. Lalumiere became increasingly aggressive and degrading to Ms. Papkee both in person and via email.

72. Mr. Lalumiere behaved in such an abusive, combative and irrational way that it was clear that he knew that Ms. Papkee had uncovered and spoken out regarding his fraudulent handling of funds.

73. Ms. Papkee was involved in a civil lawsuit filed by MECAP against a contractor claiming monetary damages.

74. The case was filed in Androscoggin Superior Court on September 7, 2018.

75. The dispute was over work the contractor performed on a property located at 498 Turner Street in Auburn, Maine.

76. MECAP claimed that the contractor took funds and did not complete the work.

77. A motion for default judgment was filed on October 18, 2018 and granted by the court on November 14, 2018. A hearing on damages was set for December 4, 2018.

78. On about December 2, 2018, Mr. Lalumiere prepared a spreadsheet of costs that was not accurate.

79. On December 5, 2018, during the hearing on damages, Mr. Lalumiere tried to submit the spreadsheet as evidence of the damages owed by the contractor.

80. Mr. Lalumiere told the Judge that Ms. Papkee prepared the spreadsheet, which was not true.

81. The Judge asked Ms. Papkee if the numbers on the spreadsheet were accurate.

82. Ms. Papkee told the Judge that she was unable to confirm that they were.

83. The Judge rejected the spreadsheet and told Mr. Lalumiere that he needed more proof.

84. The Judge told Mr. Lalumiere that if he wanted to pursue the case, he would need to submit documents showing that MECAP paid a new contractor to finish work that the original contractor failed to complete.

85. The Judge told Mr. Lalumiere that he needed to submit detailed invoices that matched the checks paid to the new contractor.

86. The Judge also said that the new contractor would need to testify to the truth and accuracy of the invoices and checks.

87. MECAP's accounting manager, Christina Davis, was not able to locate checks that were issued to the new contractor in the amounts that Mr. Lalumiere put on his spreadsheet.

88. MECAP did not have any receipts to back up the payments as the contractor had not provided any to MECAP.

89. Mr. Lalumiere repeatedly told Ms. Papkee to have the new contractor "make up a bill-contract-receipt" to match the checks paid by MECAP.

90. Ms. Papkee was not willing to participate in what she, in good faith, believed to be fraud.

91. Ms. Papkee told Mr. Lalumiere many times that she was not willing to participate in fraud.

92. Mr. Lalumiere responded by becoming combative and abusive and by accusing Ms. Papkee of not doing her job.

93. For example, Ms. Papkee (then-Mancini) exchanged emails with Mr. Lalumiere about this on December 10, 2018:

Mr. Lalumiere:

> Can you sent that our (sic) like now I need this stuff off my list Please email it over

Ms. Mancini:

> Scott. I can't do this without exact numbers and invoices from dash. I sat with Chris Davis about this on Friday. She also spoke at length with [MECAP's lawyer], this cannot he (sic) turned in as is. We need exact figures. . . . Anything we turn in will be false, I am not doing that
>
> Mr. Lalumiere:
>
> At least have the spreadsheet done for our meeting tomorrow. Fill in the work that was done under the original agreement
>
> Ms. Mancini:
>
> Scott, I need numbers itemized from his work, so we aren't submitting false info. This can't be estimated.
>
> Mr. Lalumiere:
>
> Erin
> I got it
> But it needs to get done
> Have him come in
> Fill out the spreadsheet and have him prepare a bill that matches the spreadsheet

94. In Defendants' submission to the MHRC, Mr. Lalumiere admitted that the numbers on the spreadsheet were an estimate of damages, not actual damages.

95. Mr. Lalumiere knew that he was telling Ms. Papkee to help him with fraud. Otherwise, he would have asked Ms. Papkee to have the contractor prepare a bill that matched the work he actually performed, not the spreadsheet that was prepared by Mr. Lalumiere based on guesswork,

96. Ms. Papkee asked many times to meet with Ms. Davis and the MECAP attorney to work out what to do about MECAP's lack of evidence of its actual damages.

97. Ms. Papkee repeatedly told Mr. Lalumiere that they could not make his numbers work.

98. Mr. Lalumiere told Ms. Papkee that the numbers did not match because the house wasn't finished.

99. Mr. Lalumiere said that the checks to the contractor were "miscoded" in Quickbooks and that Ms. Davis would need to "fix" that.

100. Ms. Papkee had a good faith belief that this was fraud because this particular contractor had done many projects for MECAP.

101. Ms. Davis routinely cut checks to this contractor without invoices for multiple concurrent projects and without clearly stating what the funds were for.

102. This led Ms. Papkee to believe that Mr. Lalumiere would instruct Ms. Davis to re-code checks that paid for work on other projects to match the number he desired from the contractor he was suing.

103. Ms. Papkee also believed that Mr. Lalumiere was asking the contractor to make up a fraudulent bill to match his numbers so that Mr. Lalumiere could get the court to award him more damages than he was entitled to.

104. Mr. Lalumiere was furious with Ms. Papkee when she refused to help him defraud the court. On January 8, 2019, she (then known as Ms. Mancini) exchanged these emails with Mr. Lalumiere:

Mr. Lalumiere:

Where are we with the documents [the attorney] is looking for? I thought we gave her everything she needed-that is what we discussed

Ms. Mancini:

Nothing matches

I have reached out to [the attorney], and we are coordinating the following

Ryan's bills he gave me don't match the checks paid out to him.

His invoice is off

I have asked Chris to work with us and have
-Updated checks paid through January

-undated debt service amount paid

-updated utilities and insurance

totals paid to other vendors (we have this)

Once we have this number Ryan will have to make an invoice to match (to the dollar)

We need to match the amount you put on the spreadsheet. We aren't there. I will talk to [the attorney] today and see if she wants anything else.

Mr. Lalumiere:

Ryan already agreed to provide us with an invoice that matches I really want this done No matter what On Thursday I want this entire package to [our attorney] and off our to do list

Ms. Mancini:

We need to take 15 mins which we haven't done and sit all together with her. Ryan included

We are all trying to match the amount we submitted to the judge the first time. I'll work with Chris and [the attorney] and resolve

Mr. Lalumiere:

I did all of that

That is why I put together the spreadsheet This is getting out of hand

The judge already said she was not allowing some of our claim

Our claim has to be for work he did not do on the bid he submitted

That is why I took my time to do the spreadsheet

Ms. Mancini:

Scott

We need to make the checks we paid match! They don't.

Your number was way bigger.

Again we need

-matching invoice

-proof we paid Ryan this amount

-updated debt service - utilities

I will meet with [the attorney], but I can't manifest these matching amounts unless we have checks to back it up

Mr. Lalumiere:

You want to get this done and move on

Last week you talking about how everyone here hates me because I miro (sic) manage stuff

> Trust me-when you did this to us-it exploded here Just the discussions we had-we all have to move on
>
> Ms. Mancini:
>
> You're going to have to be more clear

105. Later that day, January 8, 2018, Ms. Papkee emailed the MECAP attorney, asking her (the attorney) if they were required to submit documents to the court that matched the spreadsheet Mr. Lalumiere presented on December 5, 2018.

106. Ms. Papkee asked the attorney if they could submit a new spreadsheet because the actual documents did not support MECAP's claim for damages.

107. Things came to a head on the morning of Thursday, January 10, 2019.

108. Ms. Papkee and Mr. Lalumiere were in the break room before any other employees arrived at work.

109. Mr. Lalumiere was arguing with Ms. Papkee again about not cooperating with his efforts to submit false information to the court. Mr. Lalumiere snapped and he came after Ms. Papkee. He stormed across the room with his arms towards her, fast and angry. He looked like he was preparing to physically attack her. Ms. Papkee put her hands up and screamed, "What the f*ck are you doing! Get the f"ck away from me." Mr. Lalumiere told her, "Just GO!"

110. Ms. Papkee left the break room and went to her "seating area," followed shortly thereafter by Mr. Lalumiere. Ms. Papkee was upset, crying, and gathering all of her things to leave. She told Mr. Lalumiere again to leave her alone. He said, "I never touched you" and "I never came after you." Ms. Papkee

was shaken and kept backing away (there were file cabinets between them) but Mr. Lalumiere was between her and the exit. They went back and forth until Ms. Papkee put a file onto the file cabinet. Mr. Lalumiere took the file and walked away.

111. After that, Ms. Papkee believes that Mr. Lalumiere left the office on foot.

112. Almost immediately after Mr. Lalumiere left, the intern, John Logan, and Ms. McKee walked in to find Ms. Papkee collecting her belongings and crying.

113. Ms. Papkee spoke to both of them about what happened and then took her belongings and left using the back exit.

114. The dispute between Ms. Papkee and Mr. Lalumiere on January 10, 2019 was not about "a very serious mistake she had made" as Mr. Lalumiere alleged to the MHRC.

115. In fact, Mr. Lalumiere has never explained exactly what mistake Ms. Papkee allegedly made.

116. The dispute was about Ms. Papkee's refusal to help Mr. Lalumiere engage in fraud by submitting knowingly false information to the court.

117. Ms. Papkee was engaging in activity that is protected by the WPA, 26 M.R.S. § 833(I)(D) which provides, in part:

> No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because . . . the employee acting

> in good faith has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State . . .

and 26 M.R.S. § 833(1)(A) which provides:

> The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States.

118. Mr. Lalumiere retaliated against Ms. Papkee for refusing to carry out his unlawful directive to help him defraud the court and for reporting what she reasonably believed to be a violation of law.

119. Mr. Lalumiere physically and verbally threatened her and terminated Ms. Papkee's employment by telling her to "just go."

120. The fact that Mr. Lalumiere terminated Ms. Papkee may be inferred from the fact that Mr. Lalumiere never contacted Ms. Papkee again and told other employees not to talk to her.

121. Alternatively, Mr. Lalumiere constructively discharged Ms. Papkee by lunging at her and telling her to "just go" in retaliation for her refusal to carry out his unlawful directive and reporting what she reasonably believed to be a violation of the law.

122. A reasonable person would find these working conditions objectively intolerable.

123. Assuming that Mr. Lalumiere viewed Ms. Papkee as an independent contractor, he knew or should have known that she could not return to his place of business without his invitation after he told her to "just go."

124. Defendants discharged, threatened and otherwise discriminated against Plaintiff regarding her compensation, terms, conditions, location or privileges of employment because she, acting in good faith, refused to carry out a directive to engage in illegal conduct.

125. Defendants discharged, threatened and otherwise discriminated against Plaintiff regarding her compensation, terms, conditions, location or privileges of employment because she, acting in good faith, reported orally and in writing to Defendants what she had reasonable cause to believe was illegal conduct.

126. For 89 weeks (that is, 57 weeks between date of hire on October 17, 2016 and the start of maternity leave on November 19, 2017, and then 32 more weeks after returning from maternity leave on February 14, 2018 and September 28, 2018 when Ms. Papkee was misclassified as an independent contractor), Ms. Papkee was paid $960 per week, worked 40 to 50 hours per week, and was not paid overtime.

127. During the time frame referenced in paragraph 126 above, Defendants failed to pay Ms. Papkee for 455 hours at the proper overtime rate of $36 per hour, for a total underpayment of $16,380.

128. For 16 weeks (that is, from September 28, 2018 until Ms. Papkee's last day of work on January 10, 2019), Ms. Papkee was paid $1,200 per week, worked 40 to 50 hours per week, and was not paid overtime.

129. During the time frame referenced in paragraph 128 above, Defendants failed to pay Ms. Papkee for 80 hours at the proper overtime rate of $45 per hour, for a total underpayment of $3,600.

130. During the six-year period prior to the riling of this complaint, Defendants owe Ms. Papkee $19,980 in unpaid overtime in violation of the Maine Wage Statute.

131. During the two-year period prior to the fling of this complaint, Defendants owe Ms. Papkee $9,540 in unpaid overtime in violation of the FLSA.

132. In spite of Ms. Papkee's diligent efforts to mitigate her loss of wages, she has not been able to find a comparable job since her employment with Defendants terminated on January 10, 2019. Her lost wages through December 25, 2019 are $71,250.

COUNT I: FLSA VIOLATIONS

133. Plaintiff repeats and re-alleges each of the allegations set forth in paragraphs 1-132 as if fully set forth herein.

134. The Defendants are subject to the requirements of the FLSA including the requirement to pay overtime premium(s) for hours worked in excess of 40 in a given workweek.

135. Defendants have failed to pay Plaintiff overtime premiums which she is owed for work performed.

COUNT II: MAINE WAGE STATUTE

136. Plaintiff repeats and re-alleges each of the allegations set forth in paragraphs 1-135 as if fully set forth herein.

137. The Defendants are subject to the requirements of 26 M.R.S. § 664 including the requirement to pay overtime premium(s) for hours worked in excess of 40 in a given workweek.

138. Defendants have failed to pay Plaintiff overtime premiums which she is owed for work performed.

COUNT III: WPA

139. Paragraphs 1-138 are incorporated by reference.

140. Defendants' conduct violated the WPA as enforced through the MHRA.

COUNT IV: TORTIOUS INTERFERENCE

141. Paragraphs 1-140 are incorporated by reference.

142. A valid contract or prospective economic advantage existed between Ms. Papkee and MECAP.

143. Mr. Lalumiere was aware of the contract/prospective economic advantage between Ms. Papkee and MECAP and interfered with that contract or advantage with the intention of interference with and ending the contract/prospective economic advantage.

144. Mr. Lalumiere's interference proximately caused damages to Ms. Papkee.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court grant the following relief:

A. Declare the conduct engaged in by Defendants to be in violation of her rights;

B. Enjoin Defendants, their agents, successors, employees, and those acting in concert with it from continuing to violate her rights;

C. Order Defendants to reinstate Plaintiff or award front pay to Plaintiff;

D. Award lost future earnings to compensate Plaintiff for the diminution in expected earnings caused by Defendants' discrimination;

E. Award equitable-relief for back pay in the amount of $71,250 through December 25, 2019 and ongoing to the date of trial, plus benefits and prejudgment interest;

F. Award $19,980 in back pay for unpaid overtime under the Maine Wage Statute;

G. Award liquidated, treble damages under the Maine Wage Statute which totals $59,940;

H. Award $9,540 in back pay for unpaid overtime under FLSA;

I. Award liquidated, double damages under FLSA which totals $19,080;

J. Award compensatory damages in an amount to be determined at trial;

K. Award punitive damages in an amount to be determined at trial;

L. Award nominal damages;

M. Award attorney's fees, including legal expenses, and costs;

N. Award prejudgment interest;

O. Permanently enjoin Defendants from engaging in any employment practices which violate the WPA, MHRA, FLSA, and Maine Wage Statute;

P. Require Mr. Lalumiere to mail a letter to all employees notifying them of the verdict against them and stating that Defendants will not tolerate whistle-blower retaliation or wage theft in the future;

Q. Require that Defendants post a notice in all of its workplaces of the verdict and a copy of the Court's order for injunctive relief;

R. Require that Defendants train all management level employees on the protections afforded by the WPA, MHRA, FLSA, and Maine Wage Statute;

S. Require that Defendants place a document in Plaintiff's personnel file which explains that Defendants unlawfully terminated her because whistleblower retaliation; and

T. Grant to Plaintiff such other and further relief as may be just and proper.

/s/ Chad T. Hansen
Attorney for the Plaintiff

MAINE EMPLOYEE RIGHTS GROUP
92 Exchange Street 2nd floor
Portland, Maine 04101
Tel. (207) 874-0905
Fax. (207) 874-0343
chansen@mainemployeerights.com

Dated: January 8, 2020

EXHIBIT 4
RESIDENTIAL LEASE AGREEMENT

This Residential Lease Agreement and Option to Purchase is entered into by and between Mecap, LLC, of 84 Middle Street, Portland, ME 04101, hereinafter referred to as "Lessor" and Nicole Aceto and Michael Aceto, hereinafter referred to as "Lessees".

For the valuable considerations described below, the sufficiency of which are hereby acknowledged, Lessor and Lessees do hereby covenant, contract, and agree as follows:

1. GRANT OF LEASE: Lessor does hereby lease unto Lessees and Lessees do hereby rent from Lessor the personal residence located at **241 Libby Avenue, Gorham, Maine** (hereinafter the "Home" or "leased premises"). The Lessees during the term of the Agreement acquire no equitable interest in the Home until the Option of Purchase is exercised. Until that occurs the Lessees are only renters and tenants of a Horne owned and managed by the Lessor. Lessor and Lessees hereby agree that this property will serve as the residence of Nicole Aceto and Michael Aceto.

2. TERMS OF LEASE: This agreement shall commence on the 15th day of November, 2018, and extend until the 14th day of November, 2019 unless extended or terminated pursuant to the terms hereof. Tenant has the option to purchase home by the end of the lease term for the amount of **$225,000.00**. The down payment to enter into this agreement is **$5,000.00**. One half ($2,500.00) of the down payment will be due at the signing of this agreement, with the remaining

half (**$2,500.00**) due with the first months rent, on the 15th day of November, 2018.

3. RENTAL PAYMENTS: Lessees agree to pay unto Lessor as the rent sum of **$1,450.00** per month. **No part of the monthly rent payments will be applied to principal. A 4% increase will be applied annually to monthly rent amount**.

4. LESSEES COVENANTS: It is agreed and understood by the Lessees the following:

(a) That the leased premises shall be used only as a private dwelling and for no other purposes whatsoever.

(b) That all the usual electric, oil, and water fees shall be paid by the Lessees.

(c) That the Lessees shall maintain the premises in good condition during the continuance of this agreement and shall neither cause nor allow any abuse of the facilities therein, and upon the termination or expiration thereof shall redeliver the property in as good condition as the commencement of the term or as may be put in during the term, reasonable wear and tear from use and obsolescence accepted, in the event the option to purchase is not exercised.

(d) The Lessees are and shall be responsible and liable for making repairs and or replacements that may be required for injury or damage to the leased premises, equipment of facilities, or kitchen appliances therein.

(e) That Lessees shall not make or cause to be made any changes, alterations, additions, or

attach any objects of permanence to portions of the building or do anything that might cause injury damage to the leased premises without the written consent of the Lessor.

(f) That Lessees, their household members, or any guest or other person under control of the Lessees, shall refrain from behavior and/or actions that:

(i) Threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of Lessor and/or management.

(ii) Threatens the health or safety of, or right to peaceful enjoyment of their premises by persons residing in the immediate vicinity of the premises; or

(iii) Is criminal activity (including drug-related criminal activity) on or off the premises.

(g) That all personal property placed in or upon the leased premises, or in any storage rooms, shall be at the risk of the Lessees, or the parties owning same, and Lessor shall in no event be liable for the loss or damage of any such property.

(h) That Lessees must give Lessor thirty (30) days advance written notice of his intention to vacate the premises prior to the fifteenth day of the month at which the Agreement will be terminated. Lessees understand that a termination will only be effective on the fifteenth day of the month. Lessee may not

terminate on any day other than the fifteenth day of the month. Thus, partial monthly rental payments are not allowed and rent shall not be prorated.

5. <u>RIGHTS AND PRIVILEGES OF LESSOR</u>: Lessor shall have the following rights in addition to all other rights given by law:

(a) The right to enter the leased premises at all reasonable times for the purpose of inspecting the same and/or showing the same prospective tenants or purchasers.

(b) After application of all homeowners insurance payments, it is agreed and understood that Lessor, its agents and employees shall not be liable to any person for any damage of any nature which may occur at any time on account of any defect in the leased premises, the building in which the leased premises are situated or the improvements therein, whether said defects exists at the time of execution of the Agreement or arises subsequent hereto and whether such defect was known or unknown at the time of such injury or damage, or for damages from fire, wind, rain or any other case whatsoever, all claims for such injuries and damages being specifically waived by the Lessees.

(c) Lessor shall not be responsible or liable for any accident or damage to automobiles, persons, or any other equipment or persons utilizing parking facilities upon the leased premises. The failure of the Lessor to insist upon the strict performance of the terms, covenants,

and agreements hereto shall not be construed as a waiver or relinquishment of Lessor's right thereafter to enforce any such term, covenant, or condition but the same shall continue in full force and effect.

(d) Insurance on the leased premises shall be paid by Lessor.

(e) Real Estate taxes shall be paid by Lessor.

6. INSURANCE AND DESTRUCTION OF PREMISES: Hazard and fire insurance shall be acquired and maintained by Lessor, the proceeds of which shall be payable to Lessor. In the event the leased premises shall be destroyed or rendered totally untenantable by fire, windstorm, or other cause beyond the control of the Lessor, then this agreement shall cease and terminate as of the date of such destruction, and the rental shall cease and terminate as of the date of such destruction, and the rental shall then be accounted for between Lessor and the Lessees up to the time of such damage or destruction of said premises damaged by fire, windstorm or other cause beyond the control or the Lessor so as to render the same partially untenantable, by repairable within reasonable time, then this Agreement shall remain in force and effect and the Lessor shall, within a reasonable time, restore said premises to substantially the condition the same were in prior to said damage, and there shall be an abatement in rent to proportion to the relationship the damaged portion of the leased premises bears to the whole of said premises.

7. TERMINATION OF LEASE:

(a) Lessor may not terminate Lessee's tenancy during the term of this agreement except for

(i) serious or repeated violation of terms or conditions of the Agreement, (ii) violation of any applicable Federal, State, Tribal, or local law, or (iii) other good cause.

(b) Lessor shall give adequate written notice of termination to lessee as required under the laws of the State of Maine.

(c) Any written notice of termination shall inform the Lessees that they have the opportunity, prior to any hearing or trial, to examine any documents, records, or regulations that Lessor determines relevant and directly related to the proposed termination or eviction.

(d) Notice of termination shall be delivered to the Lessee at their last known address, by United States Mail, postage prepaid.

(e) In the event that Lessor employs an attorney to collect any rent or other charges due hereunder by the Lessees or to enforce any of the Lessee's covenants herein or to protect the interest of the Lessor hereunder, the Lessees agree to pay a reasonable attorney's fee and all expenses and costs incurred thereby.

8. <u>ASSIGNMENT OR TRANSFER</u>: The Lessees shall not have the right or power to transfer, assign, or sublease this Agreement or any provision thereof without the express written consent of Lessor.

9. <u>HEIRS AND ASSIGNS</u>: It is agreed and understood that all covenants of this Agreement shall succeed to and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto, but nothing contained herein

shall be construed so as to allow the Lessees to transfer or assign this Agreement in Violation of any term hereof.

10. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties hereto and neither party is bound by any representations or agreements of any kind except as contained herein.

11. GOVERNING LAW: This agreement shall be governed by the laws of the State of Maine.

WITNESS THE SIGNATURE(S) this the ___ day of ___, 20__.

Lessor

Mecap, LLC

Lessee(s)

_____

Nicole Aceto

_____

Michael Aceto

EXHIBIT 5
MLS LISTING

Private Detail Report

MLS #: 1253952
County: York
Seasonal: No
Status: Closed
Property Type: Residential
List Price: $134,900
Original List Price: $149,900
Directions:

Route 111 to Old Ben Davis Road - first property on the left. Old Ben Davis Road is also known as OBD Road

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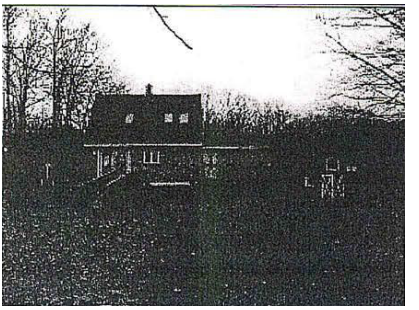

16 Old Ben Davis Road
Lyman, ME 04002-6219
List Price: $134,900
MLS#: 1253952

General Information

Sub-Type:	Single Family Residence Beds: 3
Style:	Cape
Color:	Taupe
Year Built:	1940

Rooms:	6
Beds:	3
Baths:	1/0
Sqft Fin Abv Grd+/-:	1,200
Sqft Fin Blw Grd+/-:	0
Sqft Fin Total+/-:	1,200
Source of Sqft:	Public Records

Land Information

Leased Land:	No
Waterfront:	No
Zoning:	General Purpose
Lot Size Acres +/-:	5
Water Views:	No
Source of Acreage:	Public Records
Surveyed:	Unknown

Interior Information

Full Baths Bsmnt:	0	Half Baths Bsmnt:	0
Full Baths Lvl 1:	1	Half Baths Lvl 1:	0
Full Baths Lvl 2:	0	Half Baths Lvl 2:	0
Full Baths Lvl 3:	0	Half Baths Lvl 3:	0
Full Baths Upper:	0	Half Baths Upper:	0

Room Name	**Level**
Bedroom 1	Second
Bedroom 2	Second
Bedroom 3	First

Property Features

Utilities On:	Yes
Site:	Corner Lot; Farm; Pasture/Field; Rolling/Sloping
Driveway:	Gravel
Parking:	1 - 4 Spaces
Location:	Near Turnpike/Interstate; Rural
Roads:	Gravel/Dirt; Private
Electric:	Circuit Breakers
Gas:	No Gas
Sewer:	Private Sewer
Water:	Private
Basement Entry:	Walk-Out

Construction:	Wood Frame
Basement Info:	Daylight; Walkout Access
Exterior:	Vinyl Siding
Roof:	Shingle
Heat System:	Hot Air
Heat Fuel:	Oil
Water Heater:	Electric
Cooling:	Other
Floors:	Carpet; Vinyl; Wood
Veh. Storage:	No Vehicle Storage; Off Street Parking

Tax/Deed Information

Book/Page/Deed:	17181/305/A Full Tax Amt/Yr: $2,118/2015
Deed/Conveyance Type:	Quit Claim
Map/Block/Lot:	3//5
Tax ID:	LYMN-000003-000000-000058-000001

Remarks

Remarks:

Sited on five acres of land, this antique Cape with ell is awaiting rejuvenation and creativity. Handy front deck and ramp at front of property; walk-out basement with semi-finished space. Bring you ideas and paint brushes! Seasoned barn in need of TLC.

Showing Instructions:

Electronic Lockbox; Email Listing Broker; Sign on Property

Internal Remarks/Contingency:

CASH OFFERS or REHAB LOANS ONLY DUE TO CONDITION - PROOF OF FUNDS ARE REQUIRED AT THE TIME OFFER IS SUBMITTED.

EXHIBIT 6
QUITCLAIM DEED WITHOUT COVENANT
(JULY 24, 2015)

KNOW ALL PERSONS BY THESE PRESENTS, that Scott Lalumiere, with a mailing address of 23 Turnberry Drive, Cumberland, Maine ME 04021, for consideration paid, does hereby sell, grant, convey and forever release to MECAP, LLC, a Maine limited Liability company with a mailing address of P.O. Box 4787, Portland, Maine 04112, the real estate, together with any buildings or improvements thereon, located at and known as 75 Queen Street, Gorham, County of Cumberland and State of Maine, and being more particularly bounded and described as follows:

SEE ATTACHED EXHIBIT A

Meaning and intending to convey the same premises conveyed to Scott Lalumiere by deed from James and Carla Harper of even or recent date recorded in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the said Scott Lalumiere has executed this instrument this 24th day of July, 2015.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

/s/ {Illegible}
WITNESS

/s/ Scott Lalumiere

STATE OF MAINE
CUMBERLAND, ss.

July 24, 2015

Then personally appeared the above-named Scott Lalumiere and acknowledged the foregoing instrument to be his free act and deed.

Before me,

/s/ David M. Hirshon
Attorney

Printed Name: David M. Hirshon

EXHIBIT A – LEGAL DESCRIPTION

A certain lot or parcel of land situated in the Town of Gorham, County of Cumberland, State of Maine, and located on the Northerly side of Queen Street so called, and bounded and described as follows:

Beginning at an iron pipe in the ground at said Queen Street and the Southerly corner of the land of Albert G. Sewell, Jr., said point being approximately two hundred eighty-one feet (281') from the intersection of U.S. Route 202 and Queen Street aforesaid; thence along the land of said Sewell in a Northwesterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at the land now of formerly of Norman Barrett; thence along the land of the said Norman Barrett in a Northwesterly direction a distance of two hundred eighty-five (285'), more or less to an iron pipe driven in the ground at the land of said Barrett; thence along the land now or formerly of Maurice Francoeur in a Southwesterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at said Queen Street; thence along said Queen Street in a Southwesterly direction a distance of two hundred eighty-five feet (285'), more or less to the point of beginning.

This conveyance is made subject to any and all rights which the Portland Water District, a public municipal corporation, now has to lay, repair, and maintain aquaducts, pipe lines, and other structures through and upon the aforesaid premises and as shown in Cumberland County Registry of Deeds, particularly but not exclusively in documents or plan recorded in said Registry of Deeds on Book 2646, Page 134.

A certain lot or parcel of land in Gorham, County of Cumberland, State of Maine, being lot 3-E as shown or plan recorded at Plan Book 171, Page 30 of the Cumberland County Registry of Deeds, to which plan reference is made for a more particular description. Subject to the right of owners of Lot 3-C to establish a septic system on said lot.

Excepting and reserving a portion of said Lot 3-E, with any buildings thereon, that is bounded and described as follows:

Beginning at the southeast corner of Lot 3-E, as shown on said plan; Thence, westerly along Queen Street a distance of 349 feet, more or less, to an iron pin and land now or formerly of Johnson;

Thence, northerly along land now or formerly of said Johnson a distance of 267, more or less, to an iron pin;

Thence, continuing northerly along the same course as immediately above to Lot 3-D of said plan, also being land now or formerly of Major;

Thence, easterly along land now or formerly of Major to land now or formerly of Hamblen and an iron pin;

Thence, southerly along a wire fence and land now or formerly of Hamblen a distance of 320, more or less to the point of beginning.

Subject to the right to Donald J. Gilbert and Brenda L. Jones to establish, maintain and repair a septic system on the land hereinabove conveyed.

EXHIBIT 7
WARRANTY DEED
(APRIL 13, 2016)

KNOW ALL MEN BY THESE PRESENT: That MECAP LLC, a Maine Limited Liability Company of 84 Middle Street, Portland, ME 04101, for consideration paid grant(s) to LH Housing, LLC, a Maine Limited Liability Company, of 84 Middle Street, Portland, ME 04101, with WARRANTY COVENANTS:

A certain lot or parcel of land situated in the Town of Gorham, County of Cumberland, State of Maine, and located on the Northerly side of Queen Street so called, and bounded and described as follows:

Beginning at an iron pipe in the ground at said Queen Street and the Southeasterly corner of the land of Albert G. Sewell, Jr., said point being approximately two hundred eighty-one feet (281') from the intersection of U.S. Route 202 and Queen Street aforesaid; thence along the land of said Sewell in a Northwesterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at the land now of formerly of Norman Barrett; thence along the land of the said Norman Barrett in a Northeasterly direction a distance of two hundred eighty-five feet (285'), more or less, to an iron pipe driven in the ground at the land of said Barrett; thence along the land now or formerly of Maurice Francoeur in a Southeasterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at said Queen Street; thence along said Queen Street in a Southwesterly direction a distance of two hundred eighty-five feet (285') more or less to the point of beginning.

This conveyance is made subject to any and all rights which the Portland Water District, a public municipal corporation, now has to lay, repair, and maintain aquaducts, pipe lines, and other structures through and upon the aforesaid premises and as shown in Cumberland County Registry of Deeds, particularly but not exclusively in documents or plan recorded in said Registry of Deeds on Book 2646, Page 134.

A certain lot or parcel of land in Gorham, County of Cumberland, State of Maine, being lot 3-E as shown on plan recorded at Plan Book 171, Page 30 of the Cumberland County Registry of Deeds, to which plan reference is made for a more particular description. Subject to the right of owners of Lot 3-C to establish a septic system on said lot.

Excepting and reserving a portion of said Lot 3-E, with any buildings thereon, that is bounded and described as follows:

Beginning at the southeast corner of Lot 3-E as shown on said plan; Thence, westerly along Queen Street a distance of 349 feet, more or less, to an iron pin and land now or formerly of Johnson;

Thence, northerly along land now or formerly of said Johnson a distance of 267, more or less, to an iron pin;

Thence, continuing northerly along the same course as immediately above to Lot 3-D of said plan, also being land now or formerly of Major:

Thence, easterly along land now or formerly of Major to land now or formerly of Hamblen and an iron pin;

Thence, southerly along a wire fence and land now or formerly of Hamblen a distance of 320, more or less to the point of beginning.

Subject to the right to Donald J. Gilbert and Brenda L. Jones to establish, maintain and repair a septic system on the land hereinabove conveyed.

Reference is hereby made to a deed to MECAP LLC by virtue of a quitclaim deed from Scott Lalumiere dated 07/24/2015 and recorded at the Cumberland County Registry of Deeds in Book 32477, Page 114.

Executed this 4/13/16

MECAP LLC

By /s/ Scott Lalumiere
Its Managing Member

State of Maine
County of Cumberland 4/13, 2016

Personally appeared the above named Scott Lalumiere, Managing Member of MECAP LLC and acknowledged the foregoing to be his free act and deed in his said capacity.

/s/ Mathew Capbello

EXHIBIT 8
WARRANTY DEED
(JUNE 24, 2015)

KNOW ALL MEN BY THESE PRESENT: That James L. Harper and Carla S. Harper of 75 Queen St., Gorham, ME 04038, for consideration paid grant(s) to Scott Lalumiere, of 84 Middle St., Portland ME 04101, with WARRANTY COVENANTS:

A certain lot or parcel of land situated in the Town of Gorham, County of Cumberland, State of Maine, and located on the Northerly side of Queen Street so called, and bounded and described as follows:

Beginning at an iron pipe in the ground at said Queen Street and the Southeasterly corner of the land of Albert G. Sewell, Jr., said point being approximately two hundred eighty-one feet (281') from the intersection of U.S. Route 202 and Queen Street aforesaid; thence along the land of said Sewell in a Northwesterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at the land now of formerly of Norman Barrett; thence along the land of the said Norman Barrett in a Northeasterly direction a distance of two hundred eighty-five feet (285'), more or less, to an iron pipe driven in the ground at the land of said Barrett; thence along the land now or formerly of Maurice Francoeur in a Southeasterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at said Queen Street; thence along said Queen Street in a Southwesterly direction a distance of two hundred eighty-five feet (285'), more or less to the point of beginning.

This conveyance is made subject to any and all rights which the Portland Water District, a public municipal corporation, now has to lay, repair, and maintain aquaducts, pipe lines, and other structures through and upon the aforesaid premises and as shown in Cumberland County Registry of Deeds, particularly but not exclusively in documents or plan recorded in said Registry of Deeds on Book 2646, Page 134.

A certain lot or parcel of land in Gorham, County of Cumberland, State of Maine, being lot 3-E as shown on plan recorded at Plan Book 171, Page 30 of the Cumberland County Registry of Deeds, to which plan reference is made for a more particular description. Subject to the right of owners of Lot 3-C to establish a septic system on said lot.

Excepting and reserving a portion of said Lot 3-E, with any buildings thereon, that is bounded and described as follows:

Beginning at the southeast corner of Lot 3-E as shown on said plan; Thence, westerly along Queen Street a distance of 349 feet, more or less, to an iron pin and land now or formerly of Johnson;

Thence, northerly along land now or formerly of said Johnson a distance of 267, more or less, to an iron pin;

Thence, continuing northerly along the same course as immediately above to Lot 3-D of said plan, also being land now or formerly of Major;

Thence, easterly along land now or formerly of Major to land now or formerly of Hamblen and an iron pin;

Thence, southerly along a wire fence and land now or formerly of Hamblen a distance of 320, more or less to the point of beginning.

Subject to the right to Donald J. Gilbert and Brenda L. Jones to establish, maintain and repair a septic system on the land hereinabove conveyed.

Reference is hereby made to a deed to James L. Harper and Carla S. Harper by virtue of a Warranty deed from F. David Blaisdell, Jr. and Cynthia B. Blaisdell dated 10/23/2006 and recorded at the Cumberland County Registry of Deeds in Book 24499, Page 332.

Executed this 24th day of June, 2015.

/s/ James L. Harper

/s/ Carla S. Harper

State of Maine
County of Cumberland June 24, 2015

Then personally appeared before me on this 24th day of June, 2015, the said James L. Harper and Carla S. Harper and acknowledged the foregoing to be his/her/their voluntary act and deed.

/s/ Dee-Dee L. Whittemore
Notary Public/Justice of the Peace
Commission expiration: 08/02/2021

EXHIBIT 9
AFFIDAVIT OF ALAN E. WOLF, ESQUIRE IN OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY (NOVEMBER 25, 2020)

STATE OF MAINE

CUMBERLAND, SS

LH HOUSING, LLC,

Plaintiff,

v.

JOEL DOUGLAS AND AMY SPRAUGE,

Defendants.

Portland District Court
Civil Action Docket No. SA-20-454

AFFIDAVIT OF ALAN E. WOLF, ESQUIRE IN OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY

I, Alan E. Wolf, hereby depose and state:

1. I am an attorney in good standing of the Bar of the State of Maine and a Member of the firm S&W Associates, LLC.

2. This is a case for the eviction of Joel Douglas and Amy Sprague from 75 Queen Street ("Queen Street")

in Gorham. In his Motion to Disqualify, Douglas references properties that have nothing to do with this eviction, including a property owned by Christina Davis (36 Settler Road South Portland) and Steven Fowler (661 Allen Avenue, Portland). After losing the request for a Temporary Restraining Order in Federal Court attempting to block the foreclosure sale, 661 Allen Avenue was sold.

3. The history of Queen Street is available from the public record which shows that Scott Lalumiere bought Queen Street in October 2014 (Cumberland County Registry of Deeds Book 32382, Page 212) with funds that he borrowed from Losu, LLC (Mortgage is recorded in the Cumberland County Registry of Deeds Book 32386, Page 1). I, and my office, office had nothing to do with that transaction.

4. In 2015, Scott Lalumiere deeded Queen Street to MeCap, LLC (Cumberland County Registry of Deeds Book 32477, Page 114). My office and I had nothing to do with that transaction.

5. In April 2016, MeCap, LLC deeded Queen Street to LH Housing (Cumberland County Registry of Deeds Book 33043, Page 285) and used Queen Street to secure a loan with Machias Savings for $256,600. My office and I were not involved in either transaction. I first learned about the agreement with Douglas when I was hired to represent LH Housing at the end of 2019.

6. I served as the Registered Agent of LH Housing but prior to the end of 2019 did not represent LH Housing. I never had an interest in LH Housing.

7. In the Motion to Disqualify, allegations are made relating to legal services I provided to an entity unrelated to this eviction, TTJR. I have been counsel

for TTJR, LLC since 2002. In 2018 I represented TTJR, LLC in a loan transaction between TTJR, LLC and Lalumiere, individually. TTJR, LLC was adverse to Lalumiere in the loan transaction. *Id*. I did not represent LH Housing or Lalumiere. The only contact my office had with the LH Housing members in Colorado was to get their consent to Lalumiere's pledge of his membership interest in LH Housing to TTJR, LLC.

8. In approximately September 2019 Lalumiere defaulted under the terms of the $250,000 Promissory Note with TTJR. TTJR moved to exercise its rights under the loan agreements. As such, the remaining members of LH Housing were left in a position of potentially having TTJR as a 45% partner in LH Housing, subject to restrictions imposed pursuant to the loan agreements. The LH Housing members hired counsel in Colorado to negotiate a purchase of TTJR's interest in LH Housing. TTJR, LLC's interest in the transaction that ensued were adverse to Lalumiere and LH Housing.

9. Contrary to Attorney Andrews allegations, I did not have any connection or knowledge or provide legal advice with regard to Mr. Douglas or the property at 75 Queen St. Attorney Andrews further falsely alleged that I concealed activity by providing funds on behalf of TTJR in exchange for a mortgage on 661 Allen Ave. and then assigning the mortgage to BLR Capital. As is set out above, Lalumiere and TTJR, LLC negotiated a loan transaction and my office represented TTJR in preparing the loan paperwork and the closing. LH engaged Colorado counsel with its BLR Capital transaction. I did not provide any funds, was not involved in the transaction between LH and BLR Capital, nor did I have any knowledge in 2019 of who

the parties were that made up BLR Capital. I never participated in the transactions detailed as a party. I never participated in any fraud or any crime. *Id.*

Signed under the penalties of perjury this 25th day of November, 2020

/s/ Alan E. Wolf, Esquire

STATE OF MAINE
Cumberland, ss. November 25, 2020

Personally appeared before me this 25th day of November, 2020 Alan Wolf and swore that the information set forth herein is true of his own personal knowledge. To the extent that it is upon information and belief that is so stated and he believes such information to be true.

/s/ Norma J. Pavis
Notary Public/Attorney-at-Law
My Commission Expires April 04, 2025

EXHIBIT 10
SUBORDINATION AGREEMENT
(JUNE 24, 2015)

This Subordination Agreement ("Agreement") is entered by and among LOSU, LLC (the "Lender"), Joel Douglas and Amy Sprague jointly and severally ("Tenant")

WITNESSETH: That,

WHEREAS, the Lender has made or is about to make a loan in the amount of Two Hundred Thirty-Six Thousand Dollars ($236,000.00) (the "Loan") to Scott Lalumiere and/or MECAP, LLC (the "borrower"); and

WHEREAS the Loan is or is to be secured by a First Mortgage, Security Agreement and Financing Statement, and a Collateral Assignment of Leases and Rentals ("Mortgage") and UCC-1 financing statement relating to premises owned or to be owned by Borrower and located at 75 Queen Street, Gorham, Maine; and

WHEREAS, the Tenant has or will enter into a lease with Borrower and a Purchase and Sales Agreement (collectively "lease") for certain premises owned by Borrower and located at or about 75 Queen Street, Gorham, Maine, secured by the Mortgage; and

WHEREAS, the Tenant has agreed to subordinate the Lease to a Mortgage of even or recent date from Scott Lalumiere to Lender and to a Mortgage to be dated on or about July 24, 2015 from MECAP, LLC to lender, both recorded or to be recorded at the Cumberland County Registry of Deeds.

NOW THEREFORE, in consideration of the premises the parties hereby agree as follows:

1. For consideration paid, the receipt of which is hereby acknowledged, the Tenant hereby subordinates the Lease to the Loan and the Mortgage and to any extensions, renewals or modifications thereof or substitutions therefor, the interest thereon, costs and expenses of enforcement and collection thereof and of enforcement of this Agreement, including, without limitation, reasonable attorney's fees, cost and all other amounts secured by the Mortgage.

IN WITNESS THEREOF the undersigned have caused this instrument to be signed and sealed on the date set forth below.

LOSU, LLC

/s/ Jonathan Young
By: Jonathan Young
Its: Member duly authorized

/s/ {Illegible}
Witness

Date: June 24, 2015

MECAP, LLC

/s/ Scott Lalumiere
By: Scott Lalumiere
Its: Manager duly authorized

/S/ {Illegible}
Witness

Date: June 24, 2015

/s/ Joel Douglas
By: Joel Douglas

/s/ {Illegible}
Witness

Date: June 24, 2015

/s/ Amy Sprague
By: Amy Sprague

/s/ {Illegible}
Witness

Date: June 24, 2015

State of Maine
County of Cumberland, ss. June 24, 2015

Then personally before me the above-named Scott Lalumiere and acknowledged the foregoing to be his free act and deed.

Before me,

/s/ Kathleen J. Laflamme
Notary Public/Maine Attorney-at-Law
My Commission Expires January 05, 2019

EXHIBIT A – LEGAL DESCRIPTION

A certain lot or parcel of land situated in the Town of Gorham, County of Cumberland, State of Maine, and located on the Northerly side of Queen Street so called, and bounded and described as follows:

Beginning at an iron pipe in the ground at said Queen Street and the Southeasterly corned of the land of Albert G. Sewell, Jr., said point being approximately two hundred eighty-one feet (281') from the intersection of U.S. Route 202 and Queen Street aforesaid; thence along the land of said Sewell in a Northwesterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at the land now of formerly of Norman Barrett; thence along the land of the said Norman Barrett in a Northeasterly direction a distance of two hundred eighty-five feet (285'), more or less, to an iron pipe driven in the ground at the land of said Barrett; thence along the land now or formerly of Maurice Francoeur in a Southeasterly direction a distance of two hundred sixty-seven feet (267'), more or less, to an iron pipe driven in the ground at said Queen Street; thence along said Queen Street in a Southwesterly direction a distance of two hundred eighty-five feet (285'), more or less to the point of beginning.

This conveyance is made subject to any and all rights which the Portland Water District, a public municipal corporation, now has to lay, repair, and maintain aquaducts, pipe lines, and other structures through and upon the aforesaid premises and as shown in Cumberland County Registry of Deeds, particularly but not exclusively in documents or plan recorded in said Registry of Deeds on Book 2646, Page 134.

A certain lot or parcel of land in Gorham, County of Cumberland, State of Maine, being lot 3-E as shown on plan recorded at Plan book 171, page 30 of the Cumberland County Registry of Deeds, to which plan reference is made for a more particular description. Subject to the right of owners of Lot 3-C to establish a septic system on said lot.

Excepting and reserving a portion of said Lot 3-E, with any buildings thereon, that is bounded and described as follows:

Beginning at the southeast corner of Lot 3-E as shown on said plan; Thence, westerly along Queen Street a distance of 349 feet, more or less, to an iron pin and land now or formerly of Johnson;

Thence, northerly along land now or formerly of said Johnson a distance of 267, more or less, to an iron pin;

Thence, continuing northerly along the same course as immediately above to Lot 3-D of said plan, also being land now or formerly of Major;

Thence, easterly along land now or formerly of Major to land now or formerly of Hamblen and an iron pin;

Thence, southerly along a wire fence and land now or formerly of Hamblen a distance of 320, more or less to the point of beginning.

Subject to the right to Donald J. Gilbert and Brenda L. Jones to establish, maintain and repair a septic system on the land hereinabove conveyed.

EXHIBIT 11
JUNIOR MORTGAGE, SECURITY AGREEMENT AND FINANCE STATEMENT (MARCH 1, 2019)

JUNIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

171 South Street, Gorham, Maine
36 Settler Road, South Portland, Maine
8 Laura Whitney Drive, North Yarmouth, Maine

SCOTT P. LALUMIERE

to

LOSU, LLC

THIS INSTRUMENT CONSTITUTES A FINANCING STATEMENT UNDER THE MAINE UNIFORM COMMERCIAL CODE COVERING THE ITEMS AND TYPES OF COLLATERAL DESCRIBED HEREIN. THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR, AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL ARE AS DESCRIBED BELOW AND ON EXHIBIT C ATTACHED HERETO, IN COMPLIANCE WITH THE REQUIREMENTS OF THE MAINE UNIFORM COMMERCIAL CODE.

UNDER THE TERMS AND PROVISIONS OF THE NOTE WHICH THIS INSTRUMENT SECURES AND UNDER THE TERMS AND PROVISIONS OF

ANY FUTURE OR FURTHER ADVANCES SECURED HEREBY, THE INTEREST RATE PAYABLE THEREUNDER MAY BE VARIABLE. THE PURPOSE OF THIS PARAGRAPH IS TO PROVIDE RECORD NOTICE OF THE RIGHT OF LENDER, ITS SUCCESSORS AND ASSIGNS, TO INCREASE OR DECREASE THE INTEREST RATE ON ANY INDEBTEDNESS SECURED HEREBY WHERE THE TERMS AND PROVISIONS OF SUCH INDEBTEDNESS PROVIDE FOR A VARIABLE INTEREST RATE.

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (hereinafter referred to as this "Security Deed") is made and entered into by SCOTT P. LALUMIERE, a Maine resident (hereinafter referred to as "Borrower" or "Grantor") as grantor or mortgagor and with a mailing address of P.O. Box 4787, Portland, Maine 04112, to LOSU, LLC, a Maine limited liability company as grantee or mortgagee (hereinafter referred to as "Lender"), with a mailing of c/o David M. Hirshon, Esq., PO Box 124, Freeport ME 04032.

WITNESSETH:

That for and in consideration of One and no/100 dollars ($1.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Borrower, and in order to secure the Secured Obligations (as hereinafter defined), Borrower does hereby give, grant, bargain, sell, transfer, assign, mortgage and convey unto Lender, and its successors and assigns, with MORTGAGE COVENANTS and upon the STATUTORY CONDITION, all of the following described property (hereinafter collectively referred to as the "Property):

(a) All of that certain real estate located in the City of South Portland, the Town of Gorham and the Town of North Yarmouth, more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with all right, title and interest of Borrower, including any after-acquired title or reversion, in and to the rights-of-ways, streets and alleys adjacent thereto, and all easements, rights-of-way, licenses, permits, operating agreements, strips and gores of land, vaults, roads, streets, ways, alleys, passages, sewers, sewer rights, waters, water courses, water rights and powers, riparian rights, canals, bridges, overpasses, oil, gas and other minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on, servicing or benefiting the land or under or above same, and all estates, rights, titles, interests, privileges, liberties, covenants, tenements, hereditaments, easements and appurtenances whatsoever, in any way belonging, relating to or appertaining to said tract or parcel of land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and the reversion and reversions, remainder and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same (hereinafter referred to as the "Land"); and

(b) All buildings, structures, parking areas, landscaping, and other improvements of every nature now or hereafter situated, erected or placed on the

Land (hereinafter referred to as the "Improvements"), and all materials intended for construction, reconstruction, alteration and repairs of the Improvements now or hereafter erected, all of which materials shall be deemed to be included within the Improvements immediately upon the delivery thereof to the Land; and

(c) All fixtures, machinery, equipment, furniture, inventory, building supplies, appliances and other articles of personal property (hereinafter collectively referred to as the "Personal Property"), including, but not limited to, all gas and electric fixtures, radiators, heaters, furnaces, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, commodes, basins, pipes, faucets and other plumbing, heating and air conditioning equipment, mirrors, refrigerating plant, refrigerators, iceboxes, dishwashers, carpeting, floor coverings, furniture, light fixtures, signs, lawn equipment, water heaters, and cooking apparatus and appurtenances, and all other fixtures and equipment now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the Land or the Improvements, whether installed in such a way as to become a part thereof or not, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing and all the right, title and interest of Borrower in and to any of the foregoing now owned or hereafter acquired by Borrower, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Improvements as

between the parties hereto and all persons claiming by, through or under them; and

(d) All right, title and interest of Borrower in and to all permits, approvals, drawings, plans, specifications, engineering data, surveys, renderings, studies, and governmental applications and approvals, licenses, consents, approvals and authorizations now or hereafter granted or issued, policies of insurance, licenses, franchises, permits, service contracts, maintenance contracts, property management agreements, equipment leases, tradenames, trademarks, servicemarks, logos, goodwill, accounts, tax abatements, investment property, chattel paper, and general intangibles as defined in the Uniform Commercial Code as enacted in the State of Maine, which in any way now or hereafter belong, relate or appertain to the Land, the Improvements or the Personal Property or any part thereof now owned or hereafter acquired by Borrower, including, including, all condemnation payments, tax refunds, tax abatements, investment property, insurance proceeds and escrow funds, and all other property of Borrower deposited with Lender or held by Lender (hereinafter referred to as the "Intangible Property"); and

(e) All present and future leases, tenancies, occupancies and licenses, whether written or oral ("Leases"), of the Land, the Improvements, the Personal Property and the Intangible Property, or any combination or part thereof, and all income, rents, issues, royalties, profits, revenues, security deposits and other benefits of the Land, the Improvements, the Personal Property and the

Intangible Property, from time to time accruing, all payments under. Leases, and all payments on account of oil and gas and other mineral Leases, working interests, production payments, royalties, overriding royalties, rents, delay rents, operating interests, participating interests and other such entitlements, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same (hereinafter collectively referred to as the "Revenues");

(f) All the right, title, interest of Borrower in and to all plans and specifications relating to the Improvements on the Land (hereinafter collectively referred to as the "Plans and Permits"); and

(g) All proceeds, products, substitutions and accessions of the foregoing of every type.

(h) All judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Property or any interest therein or part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property, or the improvements thereon or any part thereof, including any award for change of grade of streets.

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender and the successors and assigns of Lender, in fee simple forever; and Borrower covenants that Borrower is lawfully seized and possessed of the Property and holds marketable fee simple absolute title to the same and has good right to convey the Property and that the conveyances in this

Security Deed are subject to only those matters (hereinafter referred to as the "Permitted Encumbrances') expressly set forth in Exhibit B attached hereto and by this reference made a part hereof. Except for the Permitted Encumbrances, Borrower does warrant and will forever defend the title to the Property against the claims of all persons whomsoever.

This Security Deed is intended to constitute: (i) a mortgage deed under the laws of the State of Maine, and (ii) a security agreement and FINANCING STATEMENT under the Uniform Commercial Code as enacted in the State of Maine. This Security Deed is also intended to operate and be construed as an absolute present assignment of the rents, issues and profits of the Property, Borrower hereby agreeing that Lender is entitled to receive the rents, issues and profits of the Property prior to an Event of Default and without entering upon or taking possession of the Property.

PROVIDED NEVERTHELESS, that if Borrower, its successors or assigns, pays and performs or causes to be paid and performs following described indebtedness and obligations (hereinafter all collectively referred to as the 'Secured Obligations"), then this Security Deed shall be void, otherwise shall remain in full force:

(a) The debt evidenced by that certain Commercial Note (hereinafter, together with any and all amendments, renewals, modifications, consolidations and extensions thereof, referred to as the "Note") dated March 1, 2019, made by Borrower to the order of Lender in the principal amount of One Hundred Eighty Thousand Dollars ($180,000.00), together with interest, prepayment fees and other fees;

(b) Any and all existing and future advances made by Lender to or for the benefit of Borrower, whether pursuant to the Note, this Security Deed, the Loan Documents or otherwise, up to a maximum principal amount outstanding from time to time (exclusive of amounts advanced to protect the security) of FIVE HUNDRED AND FIFTY THOUSAND DOLLARS ($550,000.00) together with interest, in accordance with the provisions of Section 32 hereof;

(c) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Security Deed, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents"), and the payment of all other sums therein covenanted to be paid;

(d) Any and all additional advances made by Lender to preserve and protect the Improvements or to protect or preserve the Property or the security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or

in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances); and

(e) Any and all other indebtedness, however incurred, which may now or hereafter be due and owing from Borrower to Lender, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether expressed or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations and extensions thereof.

This Security Deed is upon the STATUTORY CONDITION, upon the breach of which Lender shall have the STATUTORY POWER OF SALE, which is hereby incorporated herein by reference.

Borrower hereby further covenants and agrees with Lender as follows:

1. Payment and Performance of Secured Obligations. Borrower shall promptly pay the Secured Obligations when due, and fully and promptly perform all of the provisions, agreements, covenants and obligations of the Secured Obligations.

2. Funds for Impositions. Subject to Lender's option under Sections 3 and 4 hereof following an Event of Default not cured within any applicable cure period, Borrower shall pay to Lender on the days that monthly installments of interest are payable under the Note, until the Note is paid in full, a sum (hereinafter referred to as the "Funds") equal to one-twelfth (1/12) of the following items (hereinafter collectively referred to as the "Impositions"): (a) the yearly water

and sewer bills, real estate taxes, ad valorem, taxes, personal property taxes, assessments, betterments, and all governmental charges of every name and restriction which may be levied on the Property, and (b) the yearly premium installments for the insurance covering the Property and required by Lender pursuant to Section 4 hereof. The Impositions shall be estimated initially and from time to time by Lender on the basis of assessments and bills and estimates thereof. The Funds shall be held by Lender, free of interest and free of any liens or claims on the part of creditors of Borrower and as part of the security for the Secured Obligations. The Funds shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender. Lender shall apply the Funds to pay the Impositions with respect to which the Funds were paid to the extent of the Funds then held by Lender and provided Borrower has delivered to Lender the assessments or bills therefore, Lender shall make no charge for so holding and applying the Funds or for verifying and compiling said assessments and bills. The Funds are pledged as additional security for the Secured Obligations, and may be applied, at Lender's option and without notice to Borrower, to the payment of the Secured Obligations upon any Event of Default hereunder. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay Impositions as such become due, Borrower shall pay to Lender any amount necessary to make up the deficiency within five (5) days after notice from Lender to Borrower requesting payment thereof. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower any Funds held by Lender.

3. Impositions, Liens and Charges. Borrower shall pay all Impositions and other charges, if any, attributable to the Property, and at Lender's option following an Event of Default not cured within any applicable cure period, shall pay in the manner provided under Section 2 hereof. Borrower shall furnish to Lender all bills and notices of amounts due under this Section 3 as soon as received, and in the event Borrower shall make payment directly, Borrower shall furnish to Lender receipts evidencing such payments at least five (5) days prior to the dates on which such payments are due. Borrower shall promptly discharge (by bonding, payment or otherwise) any lien filed against the Property and will keep and maintain the Property free from the claims of all persons supplying labor or materials to the Property.

4. Property and Other Insurance.

(a) Borrower, at its expense, shall procure and maintain for the benefit of Borrower and Lender, insurance policies issued by such insurance companies, in such amounts, in such form and substance, and with such coverages, endorsements, deductibles, and expiration dates as are reasonably acceptable to Lender, providing the following types of insurance covering the Property:

(i) "All Risks" property insurance (including comprehensive boiler and machinery coverages) on the Improvements and Personal Property in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements and the Personal Property determined annually by an insurer or qualified appraiser selected and paid for by Borrower and acceptable to Lender, with

deductibles not to exceed $5,000 for any one occurrence, with a replacement cost coverage endorsement, an agreed amount endorsement, and, if requested by Lender, a contingent liability from operation of building laws endorsement, a demolition cost endorsement and an increased cost of construction endorsement in such amounts as Lender may require. Full replacement cost as used herein means the cost of replacing the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and the Personal Property without deduction for physical depreciation thereof;

(ii) During the course of reconstruction or significant repair of any Improvements on the Land, the insurance required by clause (i) above shall be written on a builders risk, completed value, non-reporting form, meeting all of the terms required by clause (i) above, covering the total value of work performed, materials, equipment, machinery and supplies furnished, existing structures, and temporary structures being erected on or near the Land, including coverage against collapse and damage during transit or while being stored off-site, and containing reasonable soft costs (including loss of rents) coverage endorsement and a permission to occupy endorsement;

(iii) Flood insurance if at any time the Improvements are located in any federally designated "special hazard area" (including any area having special flood, mudslide and/or flood-related erosion hazards, and shown on a Flood

Hazard Boundary Map or a Flood Insurance Rate Map and the broad form flood coverage required by clause (i) above is not available, in an amount equal to the full replacement cost or the maximum amount then available under the Maine Flood Insurance Program;

(iv) Rent loss insurance in an amount sufficient to recover at least (1) the total estimated gross receipts from all sources of income for the Property, if any, including, without limitation, rental income, for a twelve-month period, plus (2) Impositions for a twelve-month period to the extent not included in (1) above;

(v) Commercial general liability insurance against claims for personal injury (to include, without limitation, bodily injury and personal and advertising injury) and property damage liability, all on an occurrence basis, if available, with such coverages as Lender may request (including, without limitation, contractual liability coverage, completed operations coverage for a period of two (2) years following completion of construction of any Improvements on the Land, and coverages equivalent to an ISO broad form endorsement), with a general aggregate limit of not less than $1,000,000, and a combined single "per occurrence" limit of not less than $1,000,000 For bodily injury, property damage and medical payments;

(vi) During the course of construction or repair of any Improvements on the Land, owner's contingent or protective liability insurance covering claims not covered by or under the

terms or provisions of the insurance required by clause (v) above;

(vii) Employers liability insurance;

(viii) Umbrella liability insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) to be in excess of the limits of the insurance required by clauses (v), (vi) and (vii) above, with coverage at least as broad as the primary coverages of the insurance required by clauses (v), (vi) and (vii) above, with any excess liability insurance to be at least as broad as the coverages of the lead umbrella policy. All such policies shall be endorsed to provide defense coverage obligations;

(ix) Workmen's compensation insurance for all employees of Borrower engaged on or with respect to the Land or Improvements; and

(x) Such other insurance in such form and in such amounts as may from time to time be reasonably required by Lender against other insurable hazards and casualties which at the time are commonly insured against in the case of properties of similar character and location to the Land and the Improvements.

Borrower shall pay all premiums on insurance policies, and at Lender's option, shall pay in the manner provided under Section 2 hereof. The insurance policies provided for in clauses (v), (vi) and above shall name Lender as an additional insured and shall contain a cross liability/severability endorsement. The insurance policies provided for in clauses (i), (ii), (iii) and (iv) above shall name Lender as mortgagee and loss payee,

shall be first payable in case of loss to Lender, and shall contain mortgage clauses and lender's loss payable endorsements in form and substance acceptable to Lender. Borrower shall deliver duplicate originals or certified copies of all such policies to Lender, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of the policies, Borrower shall deliver to Lender duplicate originals or certified copies of renewal policies in form satisfactory to Lender.

(b) All policies of insurance required by this Security Deed shall contain clauses or endorsements to the effect that (i) no act or omission of either Borrower or anyone acting for Borrower (including, without limitation, any representations made by Borrower in the procurement of such insurance), which might otherwise result in a forfeiture of such insurance or any part thereof, no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, and no foreclosure or any other change in title to the Property or any part thereof, shall affect the validity or enforceability or such insurance insofar as Lender is concerned, (ii) the insurer waives any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Borrower and Lender, (iii) such insurance is primary and without right of contribution from any other insurance which may be available, (iv) such policies shall not be modified, canceled or terminated without the insurer thereunder giving at least **thirty (30) days** prior written notice to Lender by certified or registered mail, and (v) that Lender shall not be liable for any premiums thereon or subject to any assessments thereunder, and shall

in all events be in amounts sufficient to avoid any coinsurance liability,

(c) With the prior consent of Lender not to be unreasonably withheld, the insurance required by this Security Deed may be effected through a blanket policy or policies covering additional locations and property of Borrower not included in the Property, provided that such blanket policy or policies comply with all of the terms and provisions of this Section and contain endorsements or clauses assuring that any claim recovery will not be less than that which a separate policy would provide, including, without limitation, a priority claim endorsement in the case of property insurance and an aggregate limits of insurance per location endorsement in the case of liability insurance.

(d) All policies of insurance required by this Security Deed shall be issued by companies licensed to do business in the state where the policy is issued and also in the State of Maine and having a rating in Best's Key Rating Guide of at least "A" and a financial size category of at least "VIII".

(e) Borrower shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Security Deed unless such insurance complies with the terms and provisions of this Section.

(f) In the event of any loss or damage to the Property. Borrower shall give immediate written notice to the insurance carrier and Lender. Borrower hereby irrevocably authorizes and empowers Lender, at Lender's option and in Lender's sole discretion, as attorney in fact for Borrower, to make proof of such loss, to adjust and compromise any claim under insurance

policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds. If Borrower is not then in default under the Loan Documents, Lender will agree to the use of insurance proceeds for reconstruction or repair of the Property, under Lender's usual construction loan procedures. Otherwise, Lender is authorized to apply the balance of such proceeds to the payment of the Secured Obligations whether or not then due. If Lender shall require or if Borrower desires to proceed with (and is not otherwise in default) the reconstruction or repair of the Property, to hold the balance of such proceeds to be used to pay Impositions and the Secured Obligations as they become due during the course of reconstruction or repair of the Property and to reimburse Borrower, in accordance with such terms and conditions as Lender may prescribe, for the costs of reconstruction or repair of the Property, and upon completion of such reconstruction or repair to apply any excess to the payment of the Secured Obligations. If under Section 22 hereof the Property is sold or the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds thereof resulting from loss or damage to the Property prior to the sale or acquisition shall pass to Lender or any other successor in interest to Borrower or purchaser or grantor of the Property but receipt of any insurance proceeds and any disposition of the same by Lender shall not constitute a waiver of any rights of Lender, statutory or otherwise, and specifically shall not constitute a waiver of the right of foreclosure

by Lender in the event of Default or failure of performance by Borrower of any of the Obligations.

5. Preservation and Maintenance. Borrower (a) shall not permit or commit waste, impairment, or deterioration of the Property or abandon the Property, (b) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property in the event of any damage, injury or loss thereto, to the equivalent of its condition prior to such damage, injury or loss, or such other condition as Lender may approve in writing, provided that Lender may at its option release net insurance proceeds, to the extent actually received by Lender, to Borrower in accordance with the commercial construction disbursement procedures acceptable to Lender (provided, however, the insufficiency of such proceeds shall not relieve Borrower of its obligations to restore hereunder), (c) shall keep the Property, including the Improvements and the Personal Property, in good order, repair and tenantable condition and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good order, repair, and tenantable condition, and (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property. Borrower covenants and agrees to give Lender prompt notice of any non-compliance with such laws, ordinances, regulations or requirements and of any notice of non-compliance therewith which it receives or any threatened or pending proceedings in respect thereto or with respect to the Property (including, without limitation, changes in zoning or the Contract Zone). Neither Borrower nor any tenant or other person shall remove, demolish or alter any Improvements now existing or

hereafter erected on the Property or any Personal Property in or on the Property except when incident to the replacement of Personal Property with items of like kind. Borrower further covenants and agrees that, without the prior written consent of Lender, herein, no part of the Property shall be declared, or become the subject of, a condominium under the Maine Condominium Act, as it may be amended or supplemented, or become the subject of any covenants or restrictions, or any planned unit development except as referenced in Schedule A attached hereto, or any other type of development that would control or restrict the uses to which the Land and Improvements may be put or the scheme or arrangement or its development or the design, location or character of its buildings or improvements, or which would impose Obligations or assessments of any type upon any owners or tenants of the Property, or upon any other parties who may use or enjoy the Property.

6. Transfers. Borrower will not, directly or indirectly, voluntarily or involuntarily, without the prior written consent of Lender in each instance: (a) sell, convey, assign, transfer, lease, option, mortgage, pledge, hypothecate or dispose of the Property, or any part thereof or interest therein, except as expressly permitted by the terms of this Security Deed; or (b) create or suffer to be created or to exist any lien, encumbrance, security interest, mortgage, pledge, restriction, attachment or other charge of any kind upon the Property, or any part thereof or interest therein, except for Permitted Encumbrances.

7. Hazardous Materials Warranties and Indemnification.

(a) **Definitions**. The following definitions shall apply for purposes of this Section 7:

(i) "Environmental Laws" shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereafter enacted, promulgated or issued, with respect to any Hazardous Materials (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes and regulations promulgated thereunder as well as any amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. § 9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); (iii) Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. § 2061 et seq.); (v) the Clean Water Act (33 U.S.C. § 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. § 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. § 349; 42

U.S.C. § 201 and § 300f et seq.); (viii) the Maine Environmental Policy Act of 1969 (42 U.S.C. § 4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. § 1101 et seq.); (xi) the Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. § 1361 et seq.; (xii) the Hazardous Matter Control Law, 38 M.R.S.A. § 1317, et seq.; (xiii) the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. § 1301 et seq.; (xiv) the Reduction of Toxics Use, Waste and Release Law, 38 M.R.S.A. § 2301 et seq.; and (xv) the Site Location of Development Law, 38 M.R.S.A. § 481 et seq.

(ii) "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(A) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as

amended, and regulations promulgated thereunder;

(B) "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(C) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(D) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder;

(E) "hazardous matter" as defined in the Hazardous Matter Control Law as amended, and regulations promulgated thereunder; and

(F) "hazardous waste" as defined in the Maine Hazardous Waste, Septage and Solid Waste Management Act, as amended, and regulations promulgated thereunder.

(iii) "Indemnified Parties" shall mean Lender, Lender's parent, subsidiaries and affiliates, each of their respective shareholders, directors, officers, employees and agents, and the successors and assigns of any of them; and "Indemnified Party" shall mean any one of the Indemnified Parties.

(iv) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(v) "Threat of Release" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) **Environmental Representations and Warranties of Borrower**. Borrower represents and warrants to Lender as follows:

(i) No condition, activity or conduct exists on or in connection with the Property which constitutes a violation of any Environmental Law.

(ii) There has been no Release or Threat of Release of any Hazardous Materials on, upon or into the Property, nor, to the best of Borrower's knowledge, has there been any such Release or Threat of Release of any Hazardous Materials on, upon or into any real property in the vicinity of the Property which, through soil or groundwater migration, could reasonably be expected to come to be located on the Property.

(iii) Intentionally Omitted.

(iv) None of the following are or will be located in, on, under or constitute a part of the Property: asbestos or asbestos-containing material in any form or condition; urea formaldehyde insulation; transformers or other equipment which contain dielectric

fluid containing polychlorinated biphenyls; or leaded paint.

(v) There are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Property.

(vi) No notice has been issued to Borrower by any agency, authority, or unit of government that Borrower has been identified as a potentially responsible party under any Environmental Law.

(vii) There exists no investigation, action, proceeding, or claim by any agency, authority, or unit of government or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Law with respect to any condition, use or operation of the Property or any other real property owned, leased or operated by Borrower.

(viii) There has been no claim by any party that any use, operation, or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property.

(ix) There is presently no condition on the Land or Improvements that would constitute any form of pollution, contamination, discharge, spillage, uncontrolled loss, seepage or filtration of hazardous materials.

(c) **Environmental Covenants of Borrower**. The Borrower covenants and agrees with Lender that Borrower shall:

(i) comply with all Environmental Laws;

(ii) not store (except in compliance with all Environmental Laws pertaining thereto), dispose of, Release or allow the Release of any Hazardous Materials on the Property;

(iii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Materials (except in compliance with all Environmental Laws pertaining thereto); and

(iv) upon the request of Lender, take all such action (including, without limitation, the conducting of environmental assessments at the sole expense of the Borrower in accordance with subparagraph (e) hereof) to confirm that no Hazardous Materials are presently illegally stored, Released or disposed of on the Property.

(d) **Environmental Indemnity**. Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender) and hold each Indemnified Party harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements incurred in investigating, defending, settling or

prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or the Property and arising directly or indirectly from or out of (A) the Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (B) the violation of any Environmental Laws relating to or affecting the Property or the Borrower, whether or not caused by or within the control of Borrower; (C) the failure of Borrower to comply fully with the terms and conditions of this Section 7; (D) the violation of any Environmental Laws in connection with other real property of Borrower which gives or may give rise to any rights whatsoever in any party with respect to the Property by virtue of any Environmental Laws; (E) the breach of any representation or warranty contained in this Section 7; or (F) the enforcement of this Section 7, including, without limitation (i) the reasonable costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas, (ii) the reasonable costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas, but such indemnity obligations shall not apply to Lenders

gross negligence or deliberate acts following its taking of possession and control of the Property. Lender's rights under this Section shall be in addition to all other rights of Lender under this Security Deed, the Note, and the other Loan Documents and payments by Borrower under this Section shall not reduce Borrower's obligations and liabilities under any of the Loan Documents.

(e) **Notice to Lender**. If Borrower receives any notice or obtains knowledge of (i) any potential or known Release or Threat of Release of any Hazardous Materials at or from the Property, notification of which must be given to any governmental agency under any Environmental Law, or notification of which has, in fact, been given to any governmental agency, or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental health or safety matter affecting Borrower or the Property (an "Environmental Complaint") from any person or entity (including, without limitation, the Environmental Protection Agency), then Borrower shall immediately notify Lender orally and in writing of said Release or Threat of Release or Environmental Complaint, Upon such notification, Lender may, at its election without regard to whether an Event of Default has occurred, obtain one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert approved by the Lender which evaluates or confirms (i) whether any Hazardous Materials are present in the soil or water at or adjacent to the Property, and (ii) whether the use and operation of the Property comply with all Environmental Laws. Environmental assessments may

include detailed visual inspections of the Property, including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the cost and expense of the Borrower.

(f) **Survival, Assignability, and Transferability**

(i) The warranties, representations and indemnity set forth in subparagraphs (b) and (d) of this Section shall survive the payment and performance of the Secured Obligations and any exercise by Lender of any remedies under this Security Deed, including without limitation, the power of sale, or any other remedy in the nature of foreclosure, and shall not merge with any deed given by Borrower to Lender in lieu of foreclosure or any deed under a power of sale.

(ii) It is agreed and intended by Borrower and Lender that the warranties, representations, and indemnity set forth above in subparagraphs (b) and (d) of this Section 7 may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchasers of all or any portion of the Property by, through or under Lender, without notice to Borrower and without any further consent of Borrower. To the extent

consent or any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Borrower in order to maximize the extent and effect of the warranties, representations, and indemnity given hereby.

8. Use of Property. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the occupancy or use of the Property. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property or subject the Property to restrictive or negative covenants without Lender's written consent. Borrower shall comply with, observe and perform all zoning and other laws affecting the Property, all restrictive covenants affecting the Property, and all licenses and permits affecting the Property.

9. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained ln this Security Deed, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender reasonably deems necessary to protect Lender's interest, including, but not limited to, disbursement of attorneys' fees, payment, contest or compromise or any lien or security interest which is prior to the lien or security interest of this Security Deed, and entry upon the Property to make repairs. At its option, and

without limitation, Lender may pay any Impositions, or provide for the maintenance and preservation of the Property. Any amounts disbursed by Lender pursuant to this Section 9, with interest thereon, shall become a portion of the Secured Obligations. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the default rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower shall have the right to prepay such amounts in whole or in part at any time. Nothing contained in this Section 9 shall require Lender to incur any expense or do any act.

10. Inspection. Lender may, at Borrower's expense, make or cause to be made reasonable entries upon and inspections of the Property during normal business hours, or at any other time when necessary to protect or preserve the Property.

11. Books and Records.

(a) Borrower shall keep and maintain at all times at Borrower's address stated in this Security Deed, or such other place as Lender may approve in writing, complete, proper and accurate records and books of account in which full, true and correct entries shall be made in accordance with generally accepted accounting principles reflecting the results of the operation of the Property, and copies of all written contracts, leases and other instruments which affect the Property. Such records, books of account, contracts, leases and

other instruments shall be subject to examination, inspection and copying by Lender at any reasonable time by Lender and at Borrower's expense.

(b) Upon request of Lender in writing, Borrower shall promptly provide Lender with all documents reasonably requested by Lender prepared in the form and the manner called for in such request and as may reasonably relate to the Property or the use, maintenance, operation or condition thereof, or the financial condition of Borrower or any party obligated on the Note or under any guaranty. Failure to provide the foregoing financial information when due shall constitute an Event of Default under the Secured Obligations.

12. Condemnation. If all or substantially all of the Property shall be damaged or taken through condemnation (which term, when used in this Security Deed, shall include any damage or taking by any governmental authority, quasi-governmental authority, any party having the power of condemnation, or any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire Secured Obligations shall, at the option of Lender, become immediately due and payable. Borrower authorizes Lender, at Lender's option, as attorney in fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned and shall

be paid to Lender. Borrower authorizes Lender to apply such awards, proceeds or damages, after the deduction of Lender's reasonable expenses incurred in the collection of such amounts, and at Lender's option, to restoration or repair of the Property or to payment of the Secured Obligations, whether or not then due, with the balance, if any, to Borrower. Borrower agrees to execute such further assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or injury that Lender may require. For the purposes of this Section, "substantially all of the Property" shall mean a taking of or damage to less than the entire Property through condemnation, which in the good faith judgment of Lender, renders the Property remaining after such taking or damage unsuitable for restoration for the use intended to be made of the Property or substantially the same value, condition, character or general utility as the then use which existed on the Property before such condemnation.

13. Borrower and Lien Not Released. From time to time, without affecting the obligation of Borrower or Borrower's successors or assigns to pay the Secured Obligations and to observe the covenants of Borrower contained in this Security Deed and the other Loan Documents, and without affecting the guaranty of any person, corporation, partnership or other entity for payment or performance of the Secured Obligations, and without affecting the lien or priority of lien of this Security Deed on the Property, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any guarantor, and without liability on Lender's part, grant extensions or

postponements of the time for payment of the Secured Obligations or any part thereof, release anyone liable on any of the Secured Obligations, accept a renewal note or notes therefore, release from this Security Deed any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plat or subdivision of the Property, consent to the granting of any easement, join in any extension or subordination agreement and agree in writing with Borrower to modify the rate of interest or terms and time of payment or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred, at Lender's option, for any such action if taken at Borrower's request.

14. Forbearance Not Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Secured Obligations. Lender's receipt of any awards, proceeds or damages under Sections 4 and 12 hereof shall not operate to cure or waive Borrower's default in payment of the Secured Obligations.

15. Estoppel Certificates. Borrower shall within twenty (20) days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the amount of the Secured Obligations and any right of set-off,

counterclaim or other defense which may exist or be claimed by Borrower against the Secured Obligations and the obligations of Borrower under this Security Deed.

16. Security Agreement. Insofar as any item of property included in the Property which is or might be deemed to be "personal property" is concerned, this Security Deed is hereby made and declared to be a security agreement, granting a security interest in and to each and every item of such property included in the Property (hereinafter collectively referred to as the "Collateral"), in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Maine. A financing statement or statements reciting this Security Deed to be a security agreement, covering all of the Collateral, shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and hereby stated intention of Borrower and Lender that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Deed, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be. regarded as part of the real estate

irrespective of whether (i) any such item is physically attached to the Land or the Improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to the proceeds of any hazard insurance policy, or any award in eminent domain proceedings for a taking or for loss of value, or Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any wise altering any of the rights of Lender as determined by this instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of Lender in the event any court shall at any time hold, with respect to any such matter, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the records of the Uniform Commercial Code kept with the Secretary of State of the State of Maine, Borrower warrants that (i) Borrower's (that is, 'Debtor's") name, identity or organizational structure and residence or principal place of business are as set forth in Exhibit C attached hereto and by this reference made a part hereof; (ii) Borrower (that is, "Debtor") has been using or operating under said name, identity or organizational structure without change for the time period set forth in Exhibit C attached hereto and by this reference made a part hereof; and (iii) the location of all collateral constituting

fixtures is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in name, identity, organizational structure, residence or principal place of business within thirty (30) days of the effective date of any such change and Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status. The information contained in this Section 16 is provided in-order that this Security Deed shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Maine, for instruments to be filed as financing statements. The names of the "Debtor" and the "Secured Party", the identity or organizational structure and residence or principal place of business of "Debtor", and the time period for which "Debtor" has been using or operating under said name and identity or organizational structure without change, are as set forth in Schedule 1 of Exhibit C attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor", are as set forth in Schedule 2 of said Exhibit C attached hereto; and a statement indicating the types, or describing the items, of collateral is set forth in this Security Deed.

17. Leases and Revenues.

(a) As part of the consideration for the Secured Obligations, Borrower has absolutely and unconditionally assigned and transferred to Lender all of Borrower's right, title and interest in and to the Leases and the Revenues, including those now due,

past due or to become due by virtue of any Lease for the occupancy or use of all or any part of the Property. Borrower hereby authorizes Lender or Lender's agents to collect the Revenues and hereby directs such tenants, lessees and licensees of the Property to pay the Revenues to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of any Event of Default by Borrower, Borrower shall collect and receive the Revenues as trustee for the benefit of Lender, to apply the Revenues so collected to the Secured Obligations, to the extent then due, with the balance, so long as no Event of Default has occurred, to the account of Borrower. Borrower agrees that each and every tenant, lessee and licensee of the Property shall pay, and hereby irrevocably authorizes and directs each and every tenant, lessee and licensee of the Property to pay, the Revenues to Lender or Lender's agents on Lender's written demand therefore without any obligation on the part of said tenant, lessee or licensee to inquire as to the existence of an Event of Default and notwithstanding any notice or claim of Borrower to the contrary, and Borrower agrees that Borrower shall have no right or claim against said tenant, lessee or licensee for or by reason of any Revenues paid to Lender following receipt of such written demand.

(b) Borrower hereby covenants that Borrower has not executed any prior assignment of the Leases or the Revenues, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instruments which would prevent Lender from exercising the rights of holder under this Security Deed, and that at the time of execution of this Security Deed, there has been no anticipation or prepayment

of any of the Revenues for more than one (1) month prior to the due dates of such Revenues. Borrower further covenants that Borrower will not hereafter collect or accept payment of any Revenues more than one (1) month prior to the due dates of such Revenues.

(c) Borrower agrees that neither the foregoing assignment of Leases and Revenues nor the exercise of any of Lender's rights and remedies under Section 22 hereof shall be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Leases, the Property or the use, occupancy, enjoyment or operation of a]] or any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. Nor shall the appointment of any receiver for the Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of any part of the Property by such receiver, be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Leases, the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

(d) If Lender or a court-appointed receiver enters upon, takes possession of and maintains control of the Property pursuant to this Security Deed, all Revenues thereafter collected shall be applied first to the reasonable costs of taking control of and managing the Property and collecting the Revenues, including, but not limited to, reasonable attorney's fees actually incurred, receiver's fees, premiums on receiver's bonds, reasonable costs of repairs to the Property, premiums on insurance policies, Impositions and other charges on the Property, and the reasonable costs of discharging any obligation or liability of Borrower as landlord,

lessor or licensor of the Property and then to the Secured Obligations. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those Revenues actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender. If the Revenues are not sufficient to meet the reasonable costs of taking control of and managing the Property and collecting the Revenues, any monies expended by Lender for such purposes shall become a portion of the Secured Obligations. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the default rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. The entering upon and taking possession of and maintaining of control of the Property by Lender or the receiver and the application of Revenues as provided herein shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender hereunder.

18. Leases of the Property. Borrower will not enter into any Lease of all or any portion of the Property, or amend, supplement or otherwise modify, or terminate or cancel, or accept the surrender of, or consent to the assignment or subletting of, or grant any concessions to or waive the performance of any

obligations of any tenant, lessee or licensee under, any now existing or future Lease of the Property, without the prior written consent of Lender. Borrower, at Lender's request, shall furnish Lender with executed copies of all Leases hereafter made of all or any part of the Property, and all Leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Upon Lender's request, Borrower shall make a separate and distinct assignment to Lender, as additional security, of all Leases hereafter made of all or any part of the Property.

19. Remedies Cumulative. All remedies provided in this Security Deed are distinct and cumulative to any other right or remedy under this Security Deed or under the other Loan Documents or afforded by law or equity, and maybe exercised concurrently, independently or successively.

20. Taxation of Security Deeds. In the event of the enactment of any law deducting from the value of the Property any mortgage lien thereon, or imposing upon Lender the payment of all or part of the taxes, charges or assessments previously paid by Borrower pursuant to this Security Deed, or changing the law relating to the taxation of mortgages or debts secured by mortgages or Lender's interest in the Property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender therefore; provided that, however, if in the opinion of counsel to Lender, such payment cannot lawfully be made by Borrower, and such change in the law cannot be remedied and lawful payment made by Borrower to the reasonable satisfaction of Lender within thirty (30)

days following notice to Borrower by Lender of the occurrence of such change, then Lender may, at Lender's option, declare the Secured Obligations to be immediately due and payable and invoke any remedies permitted by Section 22 of this Security Deed.

21. Events of Default and Acceleration. The term "Event of Default," wherever used in this Security Deed, shall mean any one or more of the following conditions or events:

(a) Failure by Borrower to pay as and when due and payable any interest on or principal of or other sum payable under the Note and/or the Advances and continuation of such failure for a period of five (5) days; or

(b) Failure by Borrower to pay as and when due and payable any sums to be paid by Borrower under this Security Deed (including, but not limited to, any payment of Funds) and continuance of such failure for a period of ten (10) days after written notice thereof from Lender; or

(c) Failure by Borrower to duly observe or perform any term, covenant, condition or agreement contained in this Security Deed (other than the obligations to make payments referred to in subparagraph (b) above) and continuance of such failure for a period of thirty (30) days after written notice thereof from Lender; or

(d) Failure by Borrower to duly observe or perform any other term, covenant, condition or agreement contained in Sections 6 or 7 of this Security Deed; and with respect to Borrower's obligations to comply with all applicable Environmental Laws, including either or

both the clean-up and removal of Hazardous Materials present on the Property, Borrower shall have at least twenty (20) days to achieve such full compliance after written notice from Lender requiring such compliance, if Borrower shall commence and diligently pursue to full compliance in accordance with the terms of Section 7, plus such additional time as Lender, in its sole judgment, shall allow Borrower for such compliance, provided however, Lender may in its sole judgment, declare an Event of Default to exist by written notice thereof to Borrower at any time after the expiration of such twenty (20) day period if such full compliance with all applicable Environmental Laws shall not have been so achieved at the time of such notice and continuance of such Failure for a period of five (5) days after such subsequent notice thereof from Lender; or

(e) Any representation or warranty of Borrower contained in this Security Deed shall prove to have been false or incorrect in any material respect upon the date when made; or

(f) Without the prior written consent of Lender, any cumulative transfer of more than ten percent (10%) of the voting interest in Borrower; or any merger, dissolution, or termination of existence of Borrower; or

(g) The filing by Borrower or any Guarantor of the Obligations of a voluntary petition in bankruptcy under Title 11 of the United States Code, or the issuing of an order for relief against Borrower or any Guarantor in any

involuntary petition in bankruptcy under Title 11 of the United States Code, or the filing by Borrower, or any guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or, other relief for debtors, or Borrower's, or any guarantor's seeking or consenting to or acquiescing in the appointment of any custodian, trustee, receiver, conservator or liquidator of Borrower, or such Guarantor, respectively, or of all or any substantial part of its respective property, or the making by Borrower or any guarantor of any assignment for the benefit of creditors, or Borrower's or any guarantor's failure generally to pay its debts, as such debts become due, or Borrower's, or any guarantor's giving of notice to any governmental authority or body of insolvency or pending insolvency or suspension of operations; or

(h) The entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against Borrower or any guarantor of the Obligations seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or appointing any custodian,

trustee, receiver, conservator or liquidator of all or any substantial part of Borrower's or any guarantor's property; or

(i) The occurrence of any "Event of Default" as defined in any of the other Loan Documents executed by Borrower and continuation of such default beyond any grace period set forth therein for the curing thereof; or

(j) Default after the expiration of any applicable cure period in the prompt payment, performance or observance of any material term, provision, condition, covenant, warranty or representation set forth in any mortgages, liens, lease or encumbrances affecting the Property, whether or not such mortgage, lien, lease or encumbrance is senior or junior to this Mortgage, and whether or not such mortgage, lien, lease or encumbrance has been consented to by Lender, provided, however, that nothing herein shall be deemed to be a consent by Lender, implied or otherwise, to the granting of any mortgage, lien or encumbrance on the Premises.

If an Event of Default shall have occurred, Lender may, at Lender's option, by notice to Borrower declare the entire Secured Obligations to be immediately due and payable, whereupon the same shall become immediately due and payable, and without presentment, protest, demand or other notice of any kind, all of which are hereby expressly waived by Borrower; **provided** that if any Event of Default specified in clauses (f), (g), (h), (i) or (j) of this Section shall occur, the Secured Obligations automatically shall become and be immediately due and payable, without any

declaration or other act on the part of Lender, unless a notice of grace period shall be given therein for any specific type of Event of Default. No omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

22. **Rights and Remedies**.

(a) **Power of Sale and other Remedies**. Upon the occurrence of any Event of Default, and whether or not Lender shall have accelerated the maturity of the Secured Obligations pursuant to Section 21 hereof, Lender, at its option, may take the following actions or any one or more of them from time to time:

(i) Declare any one or more of the Secured Obligations immediately due and payable;

(ii) Cease advancing money or extending credit to or for the benefit of the Borrower under any agreement, whether or not secured hereby;

(iii) Foreclose this Security Deed under any legal method of foreclosure in existence at the time or now existing, or under any other applicable law, including, without limitation, the Statutory Power of Sale, which is incorporated herein by reference, and if the Property consists of multiple parcels or units, to foreclose against the entire Property or such portions thereof in such order and at such times as Lender may determine all in its discretion, and the deferral or delay in foreclosure against any portion of the Property shall not impair the right of Lender to subsequently foreclose;

(iv) either with or without entering upon or taking possession of the Property, demand, collect and receive any or all Revenues;

(v) take possession of all or any part of the Collateral, and for such purpose Lender may, so far as Borrower can give authority, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same;

(vi) either with or without taking possession of the Collateral, sell, lease or otherwise dispose of the Collateral in its then condition or following such preparation as Lender deems advisable;

(vii) either with or without entering upon or taking possession of the Property, and without assuming any obligations of Borrower thereunder, exercise the rights of Borrower under, use or benefit from, any of the Plans, Leases or Intangible Property;

(viii) in person, by agent or by court-appointed receiver, enter upon, take possession of, and maintain full control of the Property in order to perform all acts necessary or appropriate to complete the Improvements and to maintain and operate the Property, including, but not limited to, the execution, cancellation or modification of Leases, the making of repairs to the Property and the execution or termination of contracts providing for the improvement, management or maintenance of the Property, all on such terms as Lender,

in its sole discretion, deems proper or appropriate;

(ix) proceed by a suit or suits in law or in equity or by other appropriate proceeding against Borrower or any other party liable to enforce payment of the Secured Obligations or the performance of any term, covenant, condition or agreement of this Security Deed or any of the other Loan Documents, or any other right, and to pursue any other remedy available to it, all as Lender shall determine most effectual for such purposes;

(x) institute and maintain such suits and proceedings as Lender may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Security Deed, to preserve or protects its interest in the Property and the Revenues, and to restrain the enforcement of or compliance with any legislation or other governmental enactment, ride or order that would impair the security hereunder or be prejudicial to the interest of Lender. Borrower recognizes that in the event Borrower defaults, no remedy of law will provide adequate relief to Lender, and therefore Borrower agrees that Lender shall be entitled to temporary and permanent injunctive relief to cure any such Default without the necessity of proving actual damages;

(xi) apply all or any portion of the Property, or the proceeds thereof, towards (but not necessarily

in complete satisfaction of) the Secured Obligations without being deemed to have waived any Event of Default;

(xii) foreclose any and all rights of Borrower in and to the Property, whether by sale, entry or in any other manner provided for hereunder or under the laws of the State of Maine whether now existing or as hereafter arising;

(xiii) in the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the creditors or property of Borrower, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount of the Secured Obligations at the date of the institution of such proceedings and for any additional portion of the Secured Obligations accruing after such date;

(xiv) exercise any other right or remedy of a mortgagee or secured party under the laws of the State of Maine; and

(xv) Set-off against any and all deposits, accounts, certificate of deposit balances, claims, or other sums at any time credited by or due from Lender to Borrower and against all other property of Borrower in the possession of Lender or under its control.

(b) **Receiver**. If an Event of Default shall have occurred Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of

strict right, upon reasonable notice and without regard to the occupancy or value of any security for the Secured Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the Revenues. The receiver shall have all of the rights and powers permitted under the laws of the State of Maine or otherwise existing. Borrower will pay to Lender upon demand, all reasonable expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to such appointment and all such expenses shall be a portion of the Secured Obligations.

(c) **Sale or Other Disposition of Property**. Any sale or other disposition of the Collateral may be at public or private sale, to the extent such private sale is authorized under the provisions of the Uniform Commercial Code as enacted in the State of Maine, upon such terms and in such manner as Lender deems advisable. Lender may conduct any such sale or other disposition of the Property at or near the Land, in which event Lender shall not be liable for any rent or charge for such use of the Land, or Lender may conduct the sale at any of the offices of the Lender or Lender's attorney located in the County in which the Lend is located. Lender may purchase the Property, or any portion of it, at any sale held under this Section. With respect to any Collateral to be sold pursuant to the Uniform Commercial Code, Lender shall give Borrower at least seven (7) days written notice of the date, time, and place of any proposed public sale, or such additional notice as may be required under the laws of the State of Maine, and of the date after which any private sale or other disposition may be made.

Lender may self any of the Collateral as part of the real property comprising the Property, or any portion or unit thereof, at the foreclosure sale or sales conducted pursuant hereto. If the provisions of the Uniform Commercial Code are applicable to any part of the Collateral which is to be sold in combination with or as part of the real property comprising the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice given in execution of any method of foreclosure, including without limitation, the STATUTORY POWER OF SALE with respect to the real property or any part thereof. Borrower waives any right to require the marshalling of any of its assets in connection with any disposition conducted pursuant hereto. In the event all or part of the Property is included at any foreclosure sale conducted pursuant hereto, a single total price for the Property, or such part thereof as is sold, may be accepted by Lender with no obligation to distinguish between the application of such proceeds amongst the property comprising the Property. The obligations of Borrower to pay such amounts shall be included in the Secured Obligations of Borrower to Lender and shall accrue interest at the default rate of interest set forth in the Note. Borrower agrees that all rights and remedies of Lender as to the Personal Property and as to the Property, and all rights and interests appurtenant thereto, shall be cumulative and may be exercised together or separately without waiver by Lender of any other of its rights or remedies. Borrower further agrees that any sale or other disposition by Lender of any of the Personal Property and any rights and interests therein or appurtenant thereto, or any part thereof, may be conducted either separately from or together

with any foreclosure, sale or other disposition of the Property, or any rights or interests therein or appurtenant thereto, or any part thereof, all as the Lender may in its sole discretion elect.

(d) **Collection of Revenues**. In connection with the exercise by Lender of the rights and remedies provided for in this Section:

(i) Lender may notify any tenant, lessee or licensee of the Property, either in the name of Lender or Borrower, to make payment of Revenues directly to Lender or Lender's agents, may advise any person of Lender's interest in and to the Revenues, and may collect directly from such tenants, lessees and licensees all amounts due on account of the Revenues;

(ii) At Lender's request, Borrower will provide written notification to any or all tenants, lessees and licensees of the Property concerning Lender's interest in the Revenues and will request that such tenants, lessees and licensees forward payment thereof directly to Lender;

(iii) Borrower shall hold any proceeds and collections of any of the Revenues in trust for Lender and shall not commingle such proceeds or collections with any other funds of Borrower; and

(iv) Borrower shall deliver all such proceeds to Lender immediately upon the receipt thereof by Borrower in the identical form received, but duly endorsed or assigned on behalf of Borrower to Lender.

(e) **Use and Occupation of Property**. In connection with the exercise of Lender's rights under Subparagraph (a)(vi) of this Section, Lender may enter upon, occupy, and use all or any part of the Property and may exclude Borrower from the Land and the Improvements or portion thereof as may have been so entered upon, occupied, or used. Lender shall not be required to remove any Personal Property from the Land and the Improvements upon Lender's taking possession thereof and may render any Personal Property unusable to Borrower. In the event Lender manages the Land and the Improvements, Borrower shall pay to Lender on demand a reasonable fee for the management thereof in addition to the Secured Obligations. Further, Lender may make such alterations, renovations, repairs, and replacements to the Improvements, as Lender, in its reasonable discretion, deems proper or appropriate. The obligation of Borrower to pay such amounts and all expenses incurred by Lender in the exercise of its rights hereunder shall be included in the Secured Obligations and shall accrue interest at the default rate of interest stated in the Note.

(f) **Partial Sales**. Borrower agrees that in case Lender, in the exercise of the power of sale contained herein or in the exercise of any other rights hereunder given, elects to sell in parts or parcels, said sales may be held from time to time and that the power shall not be exhausted until all of the Property not previously sold shall have been sold, notwithstanding that the proceeds of such sales exceed, or may exceed, the Secured Obligations.

(g) **Assembly of Collateral**. Upon the occurrence of any Event of Default that continues

beyond any applicable grace or cure period, Lender may require Borrower to assemble the Collateral and make it available to Lender, at Borrower's sole risk and expense, at a place or places to be designated by Lender which are reasonably convenient to both Lender and Borrower.

(h) **Actions by Lender**. Upon the occurrence of any Event of Default that continues beyond any applicable grace or cure period, Borrower hereby irrevocably constitutes and appoints Lender or any receiver appointed in accordance with this Security Deed to be Borrower's true and lawful attorney in fact to take any action with respect to the Property to preserve, protect, or realize upon Lender's interest therein, each at the sole risk, cost and expense of Borrower, but for the sole benefit of Lender. The rights and powers granted by the within appointment include, but are not limited to, the right and power to: prosecute, defend, compromise, settle, or release any action relating to the Property; (ii) endorse the name of Borrower upon any and all checks or other items constituting Revenues; (iii) sign and endorse the name of Borrower on, and to receive as secured party, any of the Collateral; (iv) sign and file or record on behalf of Borrower any financing or other statement in order to perfect or protect Lender's security interest; (v) enter into leases or subleases relative to all or a portion of the Land or the Improvements; (vi) enter into any contracts or agreements relative to, and to take all action deemed necessary in connection with, any Improvements on the Land; (vii) manage, operate, maintain, or repair the Land and the Improvements; and (viii) exercise the rights of Borrower under any Plans, Leases, or Intangible Personal Property. Such

receiver or Lender shall not be obligated to perform any of such acts or to exercise any of such powers, but if it so elects so to perform or exercise, it shall not be accountable for more than it actually receives as a result of such exercise of power and shall not be responsible to Borrower except for willful misconduct or gross negligence. All powers conferred by this Security Deed, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of Lender or until payment of this Security Deed as shall entitle the Borrower to a discharge of record of the lien hereof, whichever shall first occur.

23. **Notices**. Except as otherwise specified in this Security Deed, any and all notices, demands, elections or requests provided for or permitted to be given pursuant to this Security Deed (hereinafter in this Section 23 referred to as "Notice) shall be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing same in the United States Mail, postpaid and registered or certified, return receipt requested, and addressed to the addresses at the beginning of this Security Deed. Each Notice shall be effective upon being personally delivered or upon being sent by overnight courier or upon being deposited in the United States Mail as aforesaid. However, the time period in which a response to such Notice must be given or any action taken with respect thereto, if any, shall commence to run from the date of receipt if personally delivered or sent by overnight courier, or, if so deposited in the United States Mail, the earlier of three (3) business days following such deposit and the date of receipt as disclosed on the

return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address for which no Notice was given shall be deemed to be receipt of the Notice sent. By giving at least thirty (30) days prior Notice thereof, Borrower or Lender shall have the right from time to time and at any time during the term of this Security Deed to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

24. Successors and Assigns Bound; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 6 hereof. The captions and headings of the paragraphs of this Security Deed are for convenience only and are not to be used to interpret or define the provisions hereof.

25. Governing Law; Severability. This Security Deed and the obligations of Borrower hereunder shall be governed by and interpreted and determined in accordance with the laws of the State of Maine. in the event that any provision or clause of this Security Deed or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Deed or the Note which can be given effect without the conflicting provision, and to this end, the provisions of this Security Deed and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge for which provision is made in this Security Deed or in the Note, whether

considered separately or together with other charges permitted to be collected from Borrower, is interpreted so that any such charge, whether considered separately or together with other charges that are considered a part of the transaction represented by this Security Deed and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note.

26. Discharge. Upon payment and performance of the Secured Obligations, Lender shall discharge this Security Deed. Borrower shall pay Lender's reasonable costs incurred in discharging this Security Deed.

27. Waivers. Borrower agrees to the full extent permitted by law, that in case of an Event of Default hereunder that continues beyond any applicable grace or cure period, neither Borrower nor anyone claiming through or under Borrower shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Deed, or the absolute sale of the Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Borrower, for Borrower and all who may at any time claim through or under Borrower, hereby waives to the fullest extent that Borrower may lawfully so do, the benefit of all such laws, and any and all right to

have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Security Deed to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Event of Default shall be deemed or construed to be a consent or waiver to or of any other Event of Default. Failure on the part of Lender to complain of any act or failure to act which constitutes an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of Lender's rights hereunder or impair any rights, powers or remedies consequent on any Event of Default. No act or omission of Lender as described in Section 13 above shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted ln the event of any Event of Default then made or of any subsequent Event of Default; nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Security Deed be altered thereby. No acceptance of partial payment or performance shall waive, affect or diminish any right of Lender or Borrower's duty of compliance and performance therewith. Any Obligation which this Mortgage secures is a separate instrument and may be negotiated, extended or renewed by Lender without releasing Borrower or any guarantor or co-maker. In the event of the sale or transfer by operation of law or

otherwise of all of any part of the Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Secured Obligations or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings (including, without limitation, the restrictions upon transfer contained in Section 6).

28. Further Assurances. At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Security Deed, and (b) the lien and security interest created by this Security Deed upon the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or re file any and all such assignments, mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower

hereby irrevocably appoints Lender the agent and attorney in fact of Borrower so to do.

29. **Subrogation**. Lender shall be subrogated to all right, title, lien or equity of all persons to whom Lender may have paid any monies in settlement of liens, charges or assessments, or in acquisition of title or for its benefit hereunder, or for the benefit or account of Borrower upon execution of the Note or subsequently paid under any provisions hereof.

30. **Time of the Essence**. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Security Deed, the Note and any and all other Loan Documents.

31. **Indemnification; Subrogation; Waiver of Offset**.

(a) Borrower shall indemnify, defend and hold Lender harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the Secured Obligations, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Secured Obligations, this Security Deed, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Security Deed; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Lender from Lender's willful misconduct or gross negligence.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the Secured Obligations, this Security Deed, the Property, or any part thereof, or any interest therein, or the maintenance, operation or occupancy or use thereof, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' Fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Lender in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Lender commences an action against Borrower to enforce any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, Borrower shall pay to Lender its reasonable attorneys' fees (together with reasonable appellate counsel, fees, if any) and expenses. The right to such reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and reasonable expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Security Deed, Lender may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and reasonable expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "attorneys" in this Subparagraph and elsewhere in this Security Deed shall include without limitation any attorney or

law firm engaged by Lender and Lender's in-house counsel, and all references to "fees and expenses" in this Subparagraph and elsewhere in this Security Deed shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Lender's in-house counsel.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Security Deed.

(d) All sums payable by Borrower hereunder shall be paid without notice (except as may otherwise be provided herein), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements on the Land or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Lender, or any action taken with respect to this Security Deed by any trustee or receiver of Lender, or by any court, in

such proceeding; (v) any claim which Borrower has, or might have, against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Borrower.

32. Future Advances by Lender. Lender may from time to time, at its sole option, make further advances to Borrower to be secured hereby; provided, however, that the total principal secured hereby and remaining unpaid, including any such advances, shall not at any time exceed the sum of FIVE HUNDRED AND FIFTY THOUSAND DOLLARS ($550,000.00). Borrower shall execute and deliver to Lender a note or other agreement evidencing each and every such further advance which Lender may make, which note or agreement shall contain such terms and conditions as Lender may require. Borrower shall pay when due all such further advances with interest and other charges thereon, as applicable, and the same, and each note and agreement evidencing the same, shall be fully secured hereby. All provisions of this Security Deed shall apply to each such further advance as well as to any other indebtedness secured hereby. Nothing herein contained, however, shall limit the amount secured by this Security Deed if such amount is increased by advances make by Lender to protect or preserve the Property as provided elsewhere herein. Any future

advances made hereunder may be made to Borrower or to any successor to Borrower in ownership of the Property.

THIS MORTGAGE IS GIVEN PRIMARILY FOR BUSINESS OR COMMERCIAL PURPOSES. THE PREMISES SUBJECT TO THIS MORTGAGE ARE NOT THE PRIMARY RESIDENCE OF THE BORROWER.

IN WITNESS WHEREOF, Borrower has executed this Junior Mortgage, Security Agreement and Financing Statement under seal as of March 1, 2019.

/s/ Scott P. Lalumiere

/s/ Lori Harmon
Witness signature

State of Maine
Cumberland, ss. March 1, 2019

Then personally appeared before me the above-named Scott P. Lalumiere and acknowledged the foregoing to be his free act.

Before me,

/s/ Lori Harmon
Notary Public / Attorney-At-Law
My commission expires April 24, 2021

EXHIBIT A

71 South Street, Gorham, Maine

A certain lot or parcel of land, with the buildings thereon, situated at and numbered 171 on the westerly side of South Street in the Town of Gorham, County of Cumberland and State of Maine. northerly of and adjoining land which was conveyed to Millard Irish by Sylvia W. Dixon, said lot having a frontage on South Street of one hundred four (104) feet, more or less, and extending westerly from South Street to a line which is two hundred fifty-six (256) feet from the center line of South Street; the northerly boundary line of the lot hereby conveyed is parallel with the northerly line of the foundation wall or the house now standing on said lot and distant from said foundation wall thirty (30) feet when measured at right angles thereto: said lot being bounded on the southerly side by land conveyed to Irish and on the westerly and northerly sides by land now or formerly of Sylvia W. Dixon.

Also another certain lot or parcel of land, with any buildings thereon, situated westerly of South Street in the Town of Gorham, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point in the northerly side line of land conveyed by Sylvia W. Dixon to Millard Irish at the southwesterly corner of land conveyed by Sylvia W. Dixon to John P. Myatt et al by Warranty Deed dated January 20, 1966 recorded in Cumberland County Registry of Deeds in Book 2944, Page 433; thence northerly along the westerly side line of said Myatt Land one hundred four (1 04) feet to the northwesterly corner of said Myatt land; thence westerly on a line parallel to the northerly side line of said Irish land,

three hundred seventy-five (375) feet, more or less, to land formerly of Thomas S. McConkey et. al.; thence southerly along said McConkey land one hundred four (104) feet to a point and land conveyed to said Irish; thence easterly along said Irish land three hundred seventy-five (375) feet, more or less, to said Myatt land and the point of beginning.

Meaning and intending to describe the same premises conveyed by a Warranty Deed dated August 22, 2018 from Melissa Lalumiere to Scott P. Lalumiere and recorded in the Cumberland County Registry of Deeds at Book 35091, Page 325.

36 Settler Road, South Portland, Maine

A certain lot or parcel of land, with the buildings and improvements thereon, situated in the City of South Portland, County of Cumberland and State of Maine, and being Lot No. 188 as delineated on Plan of Country Gardens, Sec. 12 which plan is recorded in Plan Book 102, Page 27 of the Cumberland County Registry of Deeds. Said premises are subject to utility easements of record.

The above-described premises are conveyed subject to the restriction that no fence or other obstruction of metal construction shall be built on the boundaries of the above-described premises; also that no building shall be built closer to either side of an adjoining lot property line than ten (10) feet. It is the intent hereof that the foregoing restrictions are for the mutual benefit of all lot owners with in the development entitled "Country Gardens".

Meaning and intending to describe the same premises conveyed by a Warranty Deed dated August 22, 2018 from Melissa Lalumiere to Scott P. Lalumiere

and recorded in the Cumberland County Registry of Deeds at Book 35091, Page 299.

8 Laura Whitney Drive, North Yarmouth, Maine

Parcel 1: A certain lot or parcel of land in the Town of North Yarmouth, County of Cumberland and State of Maine, bounded and described as follows:

Commencing at a point which marks the most Southeasterly corner of other land of the Grantors (which land is situated on the Easterly side of the North Road); thence from said Southwesterly corner of the Grantors' land and proceeding in a general Easterly direction along the Northerly bounds of a certain right of way a distance of fifty-five feet (55') to a point; thence in a general Northerly direction a distance of one hundred seventy feet (170) to a point; thence in a general Westerly direction along the bounds of land now or formerly of John W. & Nellie E. Campbell a distance of thirty feet (30) to the Easterly bounds of land of the Grantors; thence in a general Southerly direction along the Easterly bound of the Grantors land one hundred seventy feet (170') to the point of the beginning.

Parcel 11: Also another certain lot or parcel of land located in the Town of North Yarmouth. County of Cumberland and State of Maine, being and described as follows:

Beginning at a point on the Northerly sideline of a driveway there at, at its point of intersection with the Easterly sideline of the Grand Trunk Railroad right of way; thence in an Easterly direction along the Northerly sideline of the said driveway, a distance of two hundred and sixteen feet (216), to an iron pin set in the ground; thence in a Northerly direction a

distance of three hundred feet (300'), to an iron pin set in the ground; thence in a Westerly direction a distance of two hundred and sixteen feet (216'), to an iron pin set in the ground on the Easterly sideline of the Grand Trunk Railroad right of way a distance of three hundred feet (300'), to an iron pin set in the ground and the point of the beginning.

And the Grantee shall have a right to use and enjoy in common with others, the driveway situated on the Southerly sideline of the lot herein conveyed for purposes of ingress and egress. And the Grantee covenants and agrees to share in the expense of maintenance of the said right of way to the extent of fifty percent (50%) thereof.

SUBJECT to the restrictions set forth in the deed of Lisa Muldowney and Ronald S. Muldowney to the Grantor herein dated June 19, 2017 to be recorded in the Cumberland County Registry of Deeds.

Meaning and intending to describe the same premises conveyed by a Warrant Deed dated August 23, 2018 from Mecap, LLC to Scott P. Lalumiere and recorded in the Cumberland County Registry of Deeds in Book 35092, Page 25.

EXHIBIT B

[Permitted Encumbrances]

The Permitted Encumbrances are those encumbrances and restrictions referred to in Exhibit A above and any encumbrances of record as of the date of recording of this instrument in the Cumberland County Registry of Deeds, provided however, that notwithstanding those encumbrances and restrictions in Exhibit A to this instrument, Borrower represents and warrants that such encumbrances and restrictions do not materially interfere with the use and enjoyment of the Land, Improvements and Personal Property.

EXHIBIT C

Schedule 1 (Description of "Borrower" and "Secured Party")

A. Borrower: Borrower is a resident of the State of Maine with a mailing address of PO Box 4787, Portland, Maine 04112.

B. Secured Party: LOSU, LLC.

Schedule 2 (Notice Mailing Addresses of "Debtor" and "Secured Party')

A. The mailing address of Debtor is: Scott P. Lalumiere, P.O. Box 4787, Portland ME 04112.

B. The mailing address of Secured Party is: LOSU, LLC, c/o David M. Hirshon, Esq., PO Box 124, Freeport ME 04032.

EXHIBIT 12
EMAIL CORRESPONDENCE

Janet Devou

From: Dan Warren <jonesandwarren@gmail.com>
Sent: Monday, April 6, 2020 4:34 PM
To: Janet Devou
Subject: Print Fwd: Williams

Begin forwarded message:

From: David Hirshon
<dhirshon@hirshonlawgroup.com>
Date: April 3, 2020 at 4:21:14 PM EDT
To: Dan Warren <jonesandwarren@gmail.com>
Subject: Re: Williams

Losu did dozens of loans with mecap or third parties. Properties were to be rehabbed and sold and the loan then paid. He may have obtained conventional financing on some of the properties to refinance the LOSU debt.

Dan, I will lose over one million dollars with Scott's defaults. I guess Androscoggin Savings bank must have been in on the scam too? I will ignore the innuendo. But I can tell you I never heard of your clients until December of 2019. I believe Scott acquired the property as part of a divorce settlement, but unsure. Losu was to be paid on a loan from a refinancing but Scott needed money for the refi. Rather than getting paid Losu loaned 180k and took junior mortgages behind ASB on, among other things, the Gorham property. The ASB loan in 2018 was about 200k. Scott defaulted on his ASB loan and did not pay real estate taxes. So

no Dan, I really don't care how it smells. I know the facts.

David M. Hirshon, Esq.
PO Box 124
Freeport, ME 04032
207-831-6700 (cell)
207-865-4852 (land)

On Apr 3, 2020, at 3:51 PM,
Dan Warren <jonesandwarren@gmail.com> wrote:

One of the local TV stations said he has done the same thing with seven different people on seven different properties – suck them in with this eight year agreement, got to about 7 1/2 years, then somebody else comes in and takes over, pretends they know nothing about nothing. Is this the only property of his you are involved in? You understand, David – this really really smells badly

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On Apr 3, 2020, at 3:49 PM, David Hirshon
<dhirshon@hirshonlawgroup.com> wrote:

I knew who Scott generally was probably through Tranzon Auction Properties. I am guessing maybe 30 years or so ago. At some point and If you want the details on the loan transaction involving your clients, I will be happy to provide.

David M. Hirshon, Esq.
PO Box 124
Freeport, ME 04032
207-831-6700 (cell)
207-865-4852 (land)

On Apr 3, 2020, at 3:38 PM,
Dan Warren <jonesandwarren@gmail.com> wrote:

I have one Multi part question-do you know Scott Lalumiere, and if so, how, and for how long?

On Apr 3, 2020, at 3:28 PM, David Hirshon <dhirshon@hirshonlawgroup.com> wrote:

Hi Dan. Thank you for your letter of March 31, 2020. LOSU, LLC holds the second mortgage and the first mortgage by assignment from Androscoggin Savings Bank. A deed in lieu of foreclosure was recently recorded. I have no clue what your clients are talking about. I am unaware of any recorded instrument granting your clients a rent to purchase option that has priority as a matter of law over the first and second mortgages and have no knowledge of any agreement between Scott and your clients. They may have a claim against Scott Lalumiere but do not have any right to assert a priority over the duly recorded mortgages.

As you know, the lender exercised its rights for an assignment of rents from your clients. They paid rent for the months of January and February but nothing else. I would be happy to discuss this matter with you as 1 had told them I would be happy to try to accommodate discharge of the mortgages upon receipt of something less than fair market value. The property probably has a value of $300k but if your clients believe they have a right to purchase for $149,000 we have nothing to talk about. So in a nutshell, I will be happy to talk to you. As you know I contacted your by

phone and email and your office advised last week you were not representing them. Have a great weekend, stay safe and give a call on Monday.

David

David M. Hirshon, Esq.
Hirshon Law Group, P.C.
PO Box 124
Freeport ME 04032-0124
(207) 831-6700 (cell phone)
(207) 865-4852 (direct land line)