EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---x

Index No. 451536/2014

Hon. Eileen A. Rakower
Part 15

In the Matter of an Inquiry by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

Pursuant to Article 23-A of the New York General Business Law in regard to the acts and practices of

IAN BRUCE EICHNER, LESLIE H. EICHNER, STUART P. EICHNER, SCOTT L. LAGER, T. PARK CENTRAL LLC, O. PARK CENTRAL LLC, PARK CENTRAL MANAGEMENT LLC, THE MANHATTAN CLUB MARKETING GROUP LLC, and NEW YORK URBAN OWNERSHIP MANAGEMENT LLC,

Respondents,

in promoting the issuance, distribution, exchange, advertisement, negotiation, purchase, investment advice or sale of securities in or from New York State.

---x

SECOND FAROOQ AFFIRMATION IN OPPOSITION TO RESPONDENTS' MOTIONS (MOTION SEQUENCE #1 AND #2) AND IN SUPPORT OF PETITIONER NEW YORK STATE ATTORNEY GENERAL'S CROSS-MOTION (MOTION SEQUENCE #3)

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271
T: (212) 416-8122
Petitioner

TABLE OF CONTENTS

A. Sponsor and the Eichners Certified the Offering Plan 3

i. *The Offering Plan Represents that the Eichners Are Principals of T. Park Central LLC and O. Park Central LLC* 3

ii. *The Eichners Are Jointly and Severally Liable with Sponsor for Compliance with the Martin Act* 3

B. New Evidence of Fraud Attained During the Public Investigation 4

i. *Respondents Misrepresented the Number of Available Units in the Manhattan Club* 4

1. From at Least May 1, 2009 to May 24, 2012, Rooms Were Rented to the General Public in a Manner that Violated the Seventh Restated Offering Plan 4

2. The Offering Plan Continues to Misrepresent the Manhattan Club's Reservation System 5

3. The Offering Plan Misrepresents the Amount of Inventory Available to Manhattan Club Owners 8

ii. *Sponsor Failed to Pay Maintenance Fees on Time and Nevertheless Earns Millions of Dollars in Rental Income on its Inventory, While Reducing Inventory that Would Otherwise Be Available to Manhattan Club Owners* 9

1. Sponsor Failed to Pay Maintenance Fees in Accordance with the Requirements Set out in the Plan 9

2. Despite Non-Payment, Sponsor Reserved Rooms, Making Millions of Dollars of Profit, and Reduced Inventory by Use of Complimentary Rooms and House Use Rooms 11

iii. *In Violation of the Offering Plan's Representations, the Manhattan Club Charged Owners for Yearly Maintenance Fees and Real Estate Taxes Before Owners' Anniversary Dates* 13

iv. *The Offering Plan's Representations Concerning the Relationship Between the Timeshare Association and Urban Are Misleading* 14

1. The Plan's Represents that the Sponsor-Controlled Board of Directors of the Timeshare Association Delegated All of its Powers to Urban and Paid Urban for Providing Services 14

2. Urban Had No Employees Until August 2014, When it Added 12 Employees from the Marketing Group and/or The Continuum Company 16

3. Urban Was Set Up as a Pass-Through Entity by Which Distributions Were Made to Sponsor, the Eichners and Lager, Using the Timeshare Association's Monies 19

C. Lager Was Actively Involved in the Offering, Including Managing the Sales Staff......22

i. Documents Produced by Respondents Show Lager's Active Role in the Offering 22

ii. Lager Closely Supervised the Sales Staff 23

iii. In Violation of the Order, Lager Sent Dozens of Manhattan Club Owners Forbearance and Deed in Lieu of Foreclosure Agreements Between July and November 2014 24

D. Sponsor Cannot Legally Finalize the 21 Sales to Purchasers in Contract without Filing a Broker-Dealer Registration Statement and an Amendment to the Offering Plan that Extends the Term of the Offering 25

i. Sponsor Is Not Registered With NYAG as a Broker-Dealer of Securities 26

ii. The Offering Plan Expired On May 22, 2014 27

iii. NYAG Did Not Advise the 21 Purchasers In Contract of Their Right to Rescind 27

iv. There is No Evidence Showing that Respondents Advised Purchasers in Contract of their Right to Rescind 28

v. It is Unclear How Many Purchasers are Still in Contract, and How Much Money is Being Held in Escrow in Connection with Those Contracts 28

E. NYAG Routinely Contacts Victims of Fraud Under Investigation 29

F. The Eichners and Lager Have Not Testified Concerning their Roles in the Manhattan Club, as Required by the Order 30

G. The Respondent-Entities Have Not Fully Complied with all Discovery Requirements of the Order, and the Progress of NYAG's Investigation Has Been Systemically Delayed by Respondents 30

i. *Respondents Delayed Production of E-mails and Have Yet to Complete Production* 30

ii. *Respondents Failed to Produce all Sales Materials* 32

iii. *Respondents Have Failed to Provide Documents Relating to the Transfer of All Inventory in the Manhattan Club, and Took over Eight Months to Provide Information Concerning Current Inventory* 34

1. Respondents Failed to Produce Documents Sufficient to Show All Transfers of Title to Fractional Ownership Interests in the Manhattan Club and the Real Estate Transfer Taxes Paid for Each Transaction 34

2. The Respondent-Entities Took Eight Months, and Three Attempts, to Account for Current Inventory....35

iv. *The Respondent-Entities Must Produce Affidavits of Compliance and a Privilege Log Concerning the Documents They Produced To Date* 37

v. *Respondents Have Repeatedly Delayed NYAG's Investigation*....39

H. In Violation of the Court's July 24, 2015 Order, as Amended by Seven Stipulations, Respondents including Lager Repeatedly Withdrew Funds From Frozen Bank Accounts 39

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of an Inquiry by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Petitioner, Pursuant to Article 23-A of the New York General Business Law in regard to the acts and practices of IAN BRUCE EICHNER, LESLIE H. EICHNER, STUART P. EICHNER, SCOTT L. LAGER, T. PARK CENTRAL LLC, O. PARK CENTRAL LLC, PARK CENTRAL MANAGEMENT LLC, THE MANHATTAN CLUB MARKETING GROUP LLC, and NEW YORK URBAN OWNERSHIP MANAGEMENT LLC, Respondents, in promoting the issuance, distribution, exchange, advertisement, negotiation, purchase, investment advice or sale of securities in or from New York State.	**Index No. 451536/2014** **Hon. Eileen A. Rakower** **Part 15**

SERWAT FAROOQ, hereby affirms, pursuant to CPLR 2106, as follows:

1. I am an attorney admitted to practice before the courts of this State and an Assistant Attorney General in the Office of Eric T. Schneiderman, Attorney General of the State of New York ("NYAG"), assigned to the Real Estate Finance Bureau. I am familiar with the facts and circumstances of NYAG's investigation of Respondents' participation in fraudulent practices in the public offer and sale of real estate securities at the Manhattan Club, a timeshare hotel located at 200 West 56th Street, New York, New York.

2. I submit this affirmation based on personal knowledge and an examination of the records and documents contained in the files of the Office of the Attorney General's Real Estate Finance Bureau.

3. On July 24, 2014, NYAG sought and obtained an *ex parte* order pursuant to General Business Law § 354 of the Martin Act directing Respondents to produce documents and provide witness testimony relating to Respondents' conduct in connection with the offer and sale of ownership interests in the Manhattan Club timeshare. The Court's July 24, 2014 Order (the "Order") also granted preliminary injunctive relief to prevent continued injury to the purchasing public and current Manhattan Club owners while NYAG conducts its fraud investigation.

4. Respondents have now moved to vacate and modify Justice Engoron's Order. I submit this affirmation in opposition to the motion of Ian Bruce Eichner, Leslie H. Eichner, Stuart P. Eichner (together, the "Eichners"), T. Park Central LLC, O. Park Central LLC, Park Central Management LLC, The Manhattan Club Marketing Group LLC, and New York Urban Ownership Management LLC (collectively, the "Respondent-Entities") (motion sequence # 1), and the motion of Scott L. Lager (motion sequence # 2) (together with the Eichners and the Respondent-Entities, the "Respondents").

5. This affirmation is also submitted in support of NYAG's cross-motion (motion sequence # 3).

6. The facts set forth in the first Farooq Aff., submitted in support of the Order, including the sworn recounting of videotape evidence of Respondents' sales staff making flagrant misrepresentations in the sale of timeshare interests in the Manhattan Club, are incorporated by reference herein.[1]

---

[1] We request that the Court disregard paragraphs 98 to 100 of the Farooq Affirmation, and Exhibits J, K, and L to the Farooq Affirmation, as those paragraphs and exhibits incorrectly state the number of fractional ownership interests that Sponsor sold to Bluegreen in three units in the Manhattan Club. The miscalculation resulted from Sponsor's misrepresentation in the offering plan that it was selling inventory to Bluegreen in week-long increments, when Sponsor was actually selling Bluegreen inventory in day-long increments.

A. Sponsor and the Eichners Certified the Offering Plan

i. The Offering Plan Represents that the Eichners Are Principals of T. Park Central LLC and O. Park Central LLC

7. Under the Martin Act, the sponsor of a public timeshare offering in the State of New York must file an offering plan with NYAG, and the offering plan must disclose the identities and business background of all principals of the sponsor.

8. The eighth restated offering plan (the "Plan") for the Manhattan Club represents that T. Park Central LLC and O. Park Central LLC (together, "Sponsor") has four principals: the Eichners, and Park Central Management LLC. Annexed hereto as Exhibit A is a courtesy copy of Exhibit A to the Farooq Aff. (part I of the Plan), originally filed by hard copy, and subsequently on NYSCEF as part of Docket No. 4.

9. Documents produced by Respondents represent that the Eichners are also managing members of Park Central Management LLC.

ii. The Eichners Are Jointly and Severally Liable with Sponsor for Compliance with the Martin Act

10. In the Plan, the Eichners each certified that they read the entire offering plan, and that the plan (i) does not omit any material fact; (ii) does not contain any untrue statement of material fact; (iii) does not contain any fraud, deception, concealment, suppression, or false pretense; and (iv) does not contain any representation that is false where they knew the truth, with reasonable effort could have known the truth, made no reasonable effort to ascertain the truth, or did not have knowledge concerning the representation made. Annexed hereto as Exhibit B is a copy of the Sponsor and principal certification included as part of the Plan.

11. In the Plan, the Eichners also represented that they have primary responsibility for compliance with the Martin Act. *See* Ex. B.

B. New Evidence of Fraud Attained During the Public Investigation

i. Respondents Misrepresented the Number of Available Units in the Manhattan Club

1. **From at Least May 1, 2009 to May 24, 2012, Rooms Were Rented to the General Public in a Manner that Violated the Seventh Restated Offering Plan**

12. The Plan represents that New York Urban Ownership Management LLC ("Urban") is the management company retained by the Board of Directors of the Manhattan Club Timeshare Association, Inc. (the "Timeshare Association") to operate the Manhattan Club's day-to-day affairs. *See* Ex. A at 7.

13. Under the seventh restated plan, accepted for filing in 2008, the ability of an owner of a "flexible" ownership interest to make a reservation is subject to enumerated "priority reservation rights" of Urban. Annexed hereto as Exhibit C is an excerpt of the seventh restated plan. The seventh restated plan contained the same certification of the Eichners in which they represented that they had primary responsibility with the Martin Act, read the entire offering plan, investigated the underlying facts, and that the seventh restated plan contained no false representation of material fact. *See* Ex. C.

14. Among other things, Urban had the right to rent rooms that remained unreserved 48 hours prior to a particular date to the general public. *See* Ex. C (Timeshare Reservation Rules ¶ 7(c)).

15. Thus, under the seventh restated plan, Urban was prohibited from allowing the general public to reserve a Manhattan Club room more than 48 hours in advance. *See* Ex. C.[2]

[2] The temporal restriction on Urban's ability to rent rooms to the general public does not appear in the Reservation Rules contained in the Plan, accepted for filing on May 24, 2012. However, the Special Risk section of the Plan does state that "[u]se periods which remain unreserved seventy-two (72) hours prior to a particular date may be offered to Owners on a 'wait list' who have not used all of the nights they are entitled to reserve by virtue of their Ownership Interests and then to the general public." Ex. A at 4.

16. In April 2015, Maritza Gould, a current employee of the Timeshare Association, testified about her job duties from 2010 to mid-2014.[3]

17. Gould testified that she was responsible for making reservations for the general public, also known as the Manhattan Club's "transient" business.

18. Gould testified that the general public's preferred "booking window" was 14 to 30 days ahead of a desired check-in date, but that the general public had the option of booking as far as six to nine months ahead of the desired check-in date.

19. On June 16, 2015, NYAG ran a report through Sponsor's database concerning transient rentals, and generated a 94-page report covering reservations made to non-owners between May 1, 2009 and May 31, 2012. The report shows hundreds of reservations made by the general public more than 48 hours in advance of the desired check-in date, in violation of the seventh restated plan. Annexed hereto as Exhibit D is a 6-page excerpt of the 94-page report.

20. ***All*** reservations by the general public from August 6, 2008 (when the seventh restated plan was filed) to May 24, 2012 (when the eighth restated plan was filed) made more than 48 hours in advance of a desired check-in date violated the terms set forth in the seventh restated plan.

2. The Offering Plan Continues to Misrepresent the Manhattan Club's Reservation System

21. Part II of the Plan contains a copy of the Timeshare Reservation Rules dated May 1, 2012 (the "2012 Reservation Rules"). Annexed hereto as Exhibit E is a copy of the 2012 Reservation Rules.

22. The 2012 Reservation Rules state that reservations for owners of "flexible"

[3] While it is not appropriate to divulge all details of NYAG's investigation prior to the initiation of litigation, the details contained herein should provide the Court with a flavor of the many developments made over the past 10 months.

interests – those who may reserve a room for consecutive or nonconsecutive nights, subject to availability – "are on a '*first come, first served*' basis." *See* Ex. E ¶ 4(a) (emphasis in original).

23. The 2012 Reservation Rules further represent that reservations for owners of flexible interests may be made either by submitting a request to Urban in writing at the Manhattan Club, 200 West 56th Street, New York, New York 10019, or by calling 1-888-956-CLUB.

24. In November 2014, pursuant to subpoena, Doris Lebron, a former salesperson at the Manhattan Club, testified that she helped Manhattan Club owners get reservations by forwarding their e-mail requests to Louise Church, and identified Church as the Director of Reservations.

25. Lebron testified that she would e-mail or sit down with Church to get reservations for owners, and if that did not work, she would go straight to non-party Michael Heller (Chief Operating Officer and Vice President of The Manhattan Club Marketing Group LLC).

26. Lebron testified that her more recent practice was to send owners' reservation requests to Brian Zimmer (formerly the Director of Owner Relations).

27. On or about March 23, 2014, the Respondent-Entities produced e-mails, bates-stamped MClubE 077728, MClubE 077737 to MClubE 077738, and MClubE 077739, demonstrating that Lebron forwarded owners' e-mail requests for reservations to Louise Church.

28. In April 2015, Church testified that she currently serves in the position of Director of Exchange, and previously served as the Director of Inventory Management from 2005 until April 2014.

29. Church testified that she received requests for reservations from sales staff and then made reservations for new Manhattan Club owners' first stays.

30. Church testified that she wrote out a policy differentiating between owners who were making their first reservation or who had been an owner for less than six months ("New Owners") from owners who have owned an ownership interest for more than six months.

31. New Owners' reservations were routed through Church, while all other reservations were routed though the Member Services Department.

32. Church testified that she set up a "hotline for the sales floor" at Michael Heller's direction, for New Owners.

33. Church testified that the telephone number for New Owners' reservations was different than the telephone number for all other owners to make a reservation.

34. Church testified that if an owner left a message on the hotline requesting a reservation, Brian Zimmer or Lee Morgan (then the sales staff's real estate broker) would e-mail Church to create a reservation.

35. Church testified that if a New Owner did not call within 30 days of purchase to make a reservation, a member of the Referrals Department would call up the New Owner and ask if they have any questions, and if they would like to make their first reservation.

36. In addition, in April 2015, Chief Financial Officer Chet Zimmerman testified that some owners are permitted to make reservations early, if they pay their yearly maintenance fees and taxes early: "[t]hey can't make a reservation without paying their maintenance fee. So a lot of people will pay prior to when they are being assessed because they want to be able to book their reservation early."

37. Zimmerman's testimony suggests that some owners are permitted to make reservations more than one year in advance, in violation of the Manhattan Club's reservation

rules (and contrary to Sponsor's sales staff's oral representations). *See* Ex. E.[4]

38. Thus, Respondents failed to follow the 2012 Reservation Rules set forth in the Plan by allowing some owners to make reservation requests by e-mail, allowing some owners to make reservations through the sales staff, setting up a separate hotline for New Owners, having Church handle New Owners' reservations while requiring other owners to seek reservations through the Member Services Department, and allowing some owners to book ahead of time if they pay their maintenance fees and taxes early.

3. The Offering Plan Misrepresents the Amount of Inventory Available to Manhattan Club Owners

39. The Plan represents that 286 timeshare units have been completed and dedicated to the timeshare project. *See* Ex. A at 8.

40. The Plan represents that there are a total of 14,872 annual ownership interests, or weeks, of inventory in the Manhattan Club (*i.e.*, 286 rooms x 52 weeks = 14,872). *Id.* at 15.

41. However, when Church appeared at NYAG's offices in April 2015, she testified that the entire time she was Director of Inventory Management, from 2005 to 2014, she always removed two to three rooms from the inventory available to Manhattan Club owners to serve as "show rooms."

42. Church testified that show rooms were rooms used by Sponsor's sales staff to market timeshare interests to prospective purchasers.

43. Church's testimony is corroborated by DBS Reports produced by the Respondent-Entities.

---

[4] Or, Zimmerman may have been alluding to the Member Services' policy to require payment prior to an owner's anniversary date when the owner seeks to make a reservation that falls in the next use year. For example, if an owner's anniversary date is January 1, they owe maintenance fees and taxes each year on that date. If that owner calls Member Services in August 2015, seeking a reservation in February 2016, Member Services requires that the owner pay the monies that will not be due until January 2016 as a prerequisite to making the requested reservation. This practice violates the 2012 Reservation Rules. *See* Ex. E ¶ 15 (requiring that owners be current on charges owed). NYAG has received complaints concerning this practice.

44. The DBS Reports reviewed by NYAG to date demonstrate that, between July 2012 and mid-October 2013, three rooms – nos. 224, 2512, and 2514 – were designated as "Out of Order" show rooms, and therefore were unavailable for use by Manhattan Club owners.

45. The DBS Reports reviewed by NYAG to date demonstrate that, between mid-October 2013 and June 2014, two rooms – nos. 2512 and 2514 – were designated as "Out of Order" show rooms.

46. Based on only 283 rooms actually being dedicated to the timeshare plan, a maximum of 14,716 weeks of inventory in the Manhattan Club is available to Manhattan Club owners (*i.e.,* 283 rooms x 52 weeks = 14,716).

47. Thus, the Plan misrepresented the number of rooms dedicated to the timeshare plan, and the number of interests available for sale, by representing that 286 were available for use and occupancy, when actually only 283 or 284 rooms were available on any particular night (and as discussed above, inventory was further reduced by rentals to the general public and complimentary rooms used for various purposes).

ii. Sponsor Failed to Pay Maintenance Fees on Time and Nevertheless Earns Millions of Dollars in Rental Income on its Inventory, While Reducing Inventory that Would Otherwise Be Available to Manhattan Club Owners

1. <u>Sponsor Failed to Pay Maintenance Fees in Accordance with the Requirements Set out in the Plan</u>

48. The 2012 Reservation Rules state that:

> No Owner, regardless of the type of Ownership Interest owned, shall be issued a reservation or permitted to use a Timeshare Unit in the Timeshare Project unless Owner is current in the payment of all Timeshare Charges, Real Estate Taxes, individual charges owed to the Timeshare Association, and mortgage payments owed to Sponsor or Sponsor's affiliates, assignee or designees, if applicable.

Ex. E ¶ 15.

49. Owners are charged for the first year of maintenance fees and real estate taxes within 45 days of becoming an owner, and every year after on the anniversary date. *See* Ex. A at 68. Thus, all owners must pay maintenance fees and real estate taxes on an annual basis, on their anniversary date, *i.e.*, at the beginning of each use year, to be entitled to make reservations under the 2012 Reservation Rules.

50. The word "Owner" as used in the Plan means "any Owner of an Ownership Interest in a Timeshare Unit in the Timeshare Project."

51. The Plan further represents that "Sponsor will pay all Timeshare Expenses allocated to any Ownership Interests owed by Sponsor in accordance with the provisions of the Timeshare By-Laws." Ex. A at 73.

52. Zimmerman testified that in 2013, Sponsor paid maintenance fees "subsequent to the end of the year."

53. Zimmerman testified that, since 2007, the practice has always been to charge Manhattan Club owners for maintenance fees before they can reserve a room (which is consistent with the Plan's representations), while Sponsor was charged for unsold inventory after the end of the year.

54. A document produced by the Respondent-Entities on or about March 31, 2015, bates-stamped MClubE 127232, purports to show when Sponsor paid maintenance fees, and is consistent with Zimmerman's testimony that Sponsor paid maintenance fees ***after*** each use year, for 2012 to present.

55. CFO Zimmerman testified that Sponsor has not paid maintenance fees since January 1, 2015, and that as of April 2015 Sponsor owes approximately $300,000 to the Timeshare Association for maintenance fees.

2. Despite Non-Payment, Sponsor Reserved Rooms, Making Millions of Dollars of Profit, and Reduced Inventory by Use of Complimentary Rooms and House Use Rooms

56. Documents produced by the Respondent-Entities, bates-stamped MClubE 127234 to MClubE 127342, purport to show the total revenue that Sponsor earned on its inventory from 2012 to present.

57. Those documents show that Sponsor earned rental income in the amount of: $4,063,947.03 in 2012; $3,724,611.54 in 2013; and $4,232,763.33 in 2014.

58. Zimmerman testified that since January 2015, without having paid maintenance fees for this year, Sponsor nevertheless has been renting rooms in the Manhattan Club and that the "maintenance fees outstanding . . . are being offset against any income that the developer receives or is due for any kind of transient income."

59. Inventory that would otherwise be available to Manhattan Club owners is also reduced by Respondents' use of complimentary rooms.

60. For example, Ian Bruce Eichner allowed Matt Mikhail and Yinan Zhang to stay in a Manhattan Club unit for free as part of the Eichner Family Foundation Entrepreneurship Fellows Program, a five-week program through the University of Cincinnati. Annexed hereto as Exhibit F is a copy of the websites entitled "Eichner Family Foundation Entrepreneurship Fellows Program, *available at* http://www.law.uc.edu/institutes-centers/clinics/ecdc/eichnerfellows (last visited June 12, 2015) and "Legal Training Critical to Business Success for Bruce Eichner '69" *available at* http://law.uc.edu/news/eichner (last visited June 12, 2015).

61. Matt Mikhail stayed in room 228 from June 3 to August 11, 2012. Annexed hereto as Exhibit G is a copy of the Daily Business Consolidated Summary Report ("DBS

Report") bates-stamped MClubE001201 to MClubE001211.

62. Yinan Zhang stayed in room 219 from June 3 to August 11, 2012. *See* Ex. G.

63. In addition, the DBS Reports reviewed by NYAG to date demonstrate that sales managers frequently used Manhattan Club rooms, thereby reducing the inventory available to Manhattan Club owners.

64. For example, from October 9, 2012, to January 7, 2013, Edward Durkee, a former sales manager, stayed in room 2501 on a complimentary basis, on Heller's approval. Annexed hereto as Exhibit H are copies of the DBS Reports produced by the Respondent-Entities for October 25, 2012 and November 28, 2012.

65. From October 1, 2013 to January 16, 2014, Woody Lebar, another former sales manager, stayed in room 1205 on a complimentary basis, on Heller's approval. Annexed hereto as Exhibit I is a copy of the DBS Report produced by the Respondent-Entities for November 16, 2013.

66. In 2014, Stephen Fast was offered 90 days of housing at the Manhattan Club or at the Park Central Hotel (from June 28, 2014 through September 27, 2014) as a condition of his joining the sales staff. Annexed hereto as Exhibit J is a copy of a document produced by the Respondent-Entities, bates-stamped MClubE 070709 to MClubE 070710.

67. From June 28, 2014 to approximately July 31, 2014, Stephen Fast stayed in Manhattan Club room 1603 on a complimentary basis. Annexed hereto as Exhibit K is an excerpt of the July 1, 2014 DBS Report produced in Excel format by the Respondent-Entities, bates-stamped MClubE 024312.

68. The Plan failed to advise purchasers that rooms in the Manhattan Club that would otherwise be available to owners are removed from inventory at Respondents' will, without

Sponsor having to follow the rules that govern everyone else.

iii. In Violation of the Offering Plan's Representations, the Manhattan Club Charged Owners for Yearly Maintenance Fees and Real Estate Taxes Before Owners' Anniversary Dates

69. Buying an ownership interest in the Manhattan Club is a two-step process: first, a purchase agreement is signed; and on a later date, a closing occurs. *See* Ex. A at 65-66 (Closing of Title).

70. The Plan requires that a "closing" occur no sooner than 12 days after execution of a purchase agreement. *Id.* at 65.

71. The Plan establishes that each owner's annual obligation to pay maintenance fees and real estate taxes is triggered by the closing date. *See id.* at 68 (Closing Costs, Timeshare Expenses).

72. The Plan represents that in the first fiscal year, a new owner is charged for maintenance fees and real estate taxes within 45 days of the closing. *Id.*

73. The Plan represents that after the first fiscal year, owners are charged for maintenance fees and real estate taxes on the anniversary date of the closing. *Id.* The Plan further requires purchasers to execute an "Automatic Account Payment Program" authorizing the Timeshare Association to debit the purchasers' credit cards automatically to pay maintenance fees and real estate taxes "as and when due." *Id.* at 55.

74. However, in April 2015, Chief Financial Officer Chet Zimmerman testified that sometimes the Manhattan Club would bill individuals prior to their "use year date."

75. Zimmerman testified that the practice of billing owners for maintenance fees and real estate taxes ahead of each owner's due date started in 2007.

76. Zimmerman testified that the practice of billing owners ahead of their due dates

"was all based on cash flow."

77. Zimmerman testified that he ***and Lager*** jointly decided when to bill owners early.

78. When asked who would decide how much of the ownership to bill early, Zimmerman testified that he "would tell [an employee] how we are going to need $300,000 for payroll this week, and she would figure out how many people she needed to assess to do that."

iv. The Offering Plan's Representations Concerning the Relationship Between the Timeshare Association and Urban Are Misleading

1. The Plan's Represents that the Sponsor-Controlled Board of Directors of the Timeshare Association Delegated All of its Powers to Urban and Paid Urban for Providing Services

79. The Timeshare Association is a not-for-profit corporation organized and existing under the New York Not-For-Profit Law. Annexed hereto as Exhibit L is a copy of the Timeshare Association's Certificate of Incorporation and Certificate of Amendment of the Certificate of Incorporation.

80. The Timeshare Association's Declaration, the by-laws, and the fourth amendment to the contract between the Timeshare Association and Urban are included in, and are a part of, the Plan.

81. The Timeshare Association's by-laws prohibit "compensation (direct or indirect) from the Timeshare Association" to any member of the Board of Directors for acting as a Director. Annexed hereto as Exhibit M is a copy of the current version of the timeshare by-laws recorded with the Department of Finance, Office of the City Register of the City of New York on June 1, 2012. *See* Ex. M ¶ 3.11.

82. The by-laws further prohibit compensation from the Timeshare Association to any of its officers for acting as such. Ex. M ¶ 4.9.

83. The by-laws represent that Sponsor controls the Timeshare Association by appointing four of seven members of its Board of Directors. *See* Ex. M (Article 3).

84. The Sponsor-appointed members of the Board of Directors are Respondents Stuart P. Eichner and Scott L. Lager, and nonparties Joshua A. Wirshba and Salvatore Reale.

85. According to the by-laws, the Board of Directors is authorized:

> to contract for the management of the Timeshare Plan and Declared Units and their appurtenances, and to delegate to such contractor all powers and duties of the Timeshare Association except such as are specifically required by the Timeshare Documents or applicable law to have approval of the Timeshare Board or Owners.

See Ex. M ¶ 2.7.

86. Pursuant to the management agreement contained in the Plan, the Timeshare Association delegated all of the Board of Directors' powers and duties (except powers and duties required to be exercised by the Board of Directors or members under New York law) to Urban. Annexed hereto as Exhibit N is a copy of the management agreement, as amended. *See* Ex. N (fourth amendment ¶ 6).

87. Pursuant to the management agreement, Urban is supposed to operate the physical units in the Manhattan Club, supply security, check-in and check-out services, housekeeping, the reservation system, maintain the books of account and a complete list of names and addresses of all owners, and prepare the annual budget. *Id.*

88. According to the same management agreement, Urban "shall act in a fiduciary capacity with respect to the proper protection of and the accounting for the Timeshare Association's assets. In this capacity, [Urban] shall deal at arm's length with all third parties and shall serve the Timeshare Association's interests at all times." *Id.* (fourth amendment ¶ 7).

89. In exchange for the services set forth in the management agreement, as amended, the Timeshare Association agreed to pay Urban a percentage of revenues collected by the Timeshare Association per year. *Id.*

90. From 1996 to 2002, the management agreement provided that the Timeshare Association would pay Urban a fee of 15% of the estimated operating budget, excluding real estate taxes and reserves. In 2002, the management agreement was amended to provide that Urban be paid a fee of 20% of the estimated operating budget, excluding real estate taxes and reserves. In 2006, the management agreement was amended to calculate the annual fee as "an amount equal to twenty percent (20%) of the total annual revenues of the Timeshare Association produced and/or collected by the [Urban] for the account of the Timeshare Association." *See* Ex. N. However, for several years, the fee paid by the Timeshare Association to Urban has been a fixed fee of approximately $6.4 million per year.[5]

2. Urban Had No Employees Until August 2014, When it Added 12 Employees From the Marketing Group and/or The Continuum Company

91. On February 5, April 10, and May 26, 2015, NYAG demanded that Urban produce W-2 forms for all employees.

92. On or about June 5, 2015, the Respondent-Entities produced a document in which they stated that Urban did ***not*** have any employees on its payroll until August 15, 2014. Annexed hereto as Exhibit O is a copy of the document, bates-stamped MClubE 190455.

93. Thus, it is unclear how Urban could have rendered any services for which they were paid over $6.4 million annually.

[5] The Plan represents that the Eichners and Hospitality Advisors, LLC (Lager's company) are the members of Urban. *See* Ex. A at 97.

94. According to documents produced by the Respondent-Entities, bates-stamped MClubE 190456 to MClubE 190461, 12 individuals received W-2 forms from Urban for 2014: 1) Alisa Balic; 2) Alexandra Hack; 3) Alfonso Joe; 4) Michael Merola; 5) Jared Simon; 6) Luk Sun Wong; 7) Renato R. Bruno; 8) Christopher Grimaldi; 9) Traci Lomb; 10) Ihor Peter Myktyn; 11) William Pascuzzo; and 12) Guillermo Mata.

95. According to other documents produced by the Respondent-Entities, bates-stamped MClubE 190345 to 190348, ***all*** 12 of those individuals also received a W-2 form for 2014 from The Manhattan Club Marketing Group LLC (the "Marketing Group").

96. Thus, after the Court issued the Order prohibiting the Marketing Group from withdrawing funds from accounts in its name, 12 of its employees were put on Urban's payroll. Urban's bank accounts were unaffected by the Order.

97. The names of seven of the 12 individuals – Alisa Balic; Alexandra Hack; Alfonso Joe; Guillermo Mata; Michael Merola; Jared Simon; and Luk Sun Wong – previously appeared on the Marketing Group's lists of employees in 2013 and/or 2014, under the heading "Continuum," bates-stamped MClubE018811 to MClubE018819.[6]

98. The Continuum Company is the real estate development firm founded by Ian Bruce Eichner.

99. Internet websites show that nine of the 12 individuals on Urban's payroll in 2014 have relationships with Ian Bruce Eichner and/or The Continuum Company, not Urban:

i. An AOL.com article identifies Alisa Balic as Ian Bruce Eichner's assistant. *See Olsens Finally Dump Village Penthouse*, Aol Real Estate *available at* http://realestate.aol.com/blog/2010/09/21/olsens-finally-dump-village-penthouse/ (last visited June 16, 2015).

[6] The Marketing Group's actual role is also unclear, as most of Sponsor's sales staff received 1099 forms from O. Park Central LLC, not the Marketing Group.

ii. Alexandra Hack's Linkedin page states that Hack currently works as a "Junior Officer, Development Finance" at The Continuum Company, and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/pub/alexandra-hack/21/a38/733 (last visited June 16, 2015).

iii. Alfonso Joe's Linkedin pages states that Joe is the Executive Driver to the Chief Executive Officer and President of The Continuum Company, Ian Bruce Eichner, and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/pub/alfonso-joe/5/a40/1b7 (last visited June 16, 2015).

iv. Michael Merola's Linkedin page states that Merola is "General Counsel" at The Continuum Company, and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/in/michaeljmerola (last visited June 16, 2015).

v. Jared Simon's Linkedin page states that Simon currently works as a "Development Officer" at The Continuum Company, and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/pub/jared-simon/6/aab/752 (last visited June 16, 2015).

vi. Luk Sun Wong's Linkedin page states that Wong is the "Senior Construction & Development Officer at The Continuum Company," and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/pub/luk-sun-wong/11/16/b89 (last visited June 16, 2015).

vii. Renato R. Bruno's Linkedin page states that Bruno is an "Assistant Project Manager" at The Continuum Company. *See* https://www.linkedin.com/pub/renato-bruno/4/1ba/507 (last visited June 16, 2015).

viii. Christopher Grimaldi's Linkedin page states that Grimaldi was a "Development Associate" at The Continuum Company from March 2014 to October 2014, and does not mention any work related to the Manhattan Club or Urban. *See* https://www.linkedin.com/pub/chris-grimaldi/13/1b2/545 (last visited June 16, 2015).

ix. Traci Jenson Lomb's Linkedin page states that Lomb is the "Controller at The Continuum Company." *See* https://www.linkedin.com/pub/traci-jensen-lomb/4/387/b87 (last visited June 16, 2015).

Annexed hereto as Exhibit P is a copy of the websites.[7]

100. It remains unclear whether any of the individuals who received W-2 forms from Urban ever performed any tasks for Urban.

3. <u>Urban Was Set Up As a Pass-Through Entity by Which Distributions Were Made to Sponsor, the Eichners and Lager, Using the Timeshare Association's Monies</u>

101. Urban's 0178 bank account is exclusively funded by wire transfers from the Timeshare Association's 9374 bank account. Annexed hereto as Exhibit Q is a copy of the monthly statements for Urban's 0178 bank account, from September 16, 2010 to June 30, 2014.

102. Each month, Urban transferred funds from its 0178 bank account to one of Sponsor's accounts (0224) and to a different Urban bank account (5134) at Signature Bank.

103. Since July 2011, Urban has maintained bank account 5134 for the sole purpose of making distributions to its principals. Annexed hereto as Exhibit R is a copy of the application Urban filed for the 5134 bank account.

104. In the section entitled "Detailed Business Description," the application for the 5134 bank account states that Urban is set up to make "distributions to principals" (the Eichners and Lager), from the Timeshare Association's funds:

Detailed Business Description: (Include establishment, years at location, type of customers, and products/services offered.)
Management Company for "The Manhattan Club" timeshare (200 W. 56th), set up to make distributions to principals (Bruce, Leslie, & Stuart Eichner, Scott Lager).
List Names of Major Customers, Suppliers, Large Contributors, and Investors: Funds coming in from "The Manhattan Club" operating accounts. Funds out to principals.
Opening Deposit: 250,000 Source of Funds: Transfer from operating account SBNY
Indicate Corresponding SIC Code: 6531 State and Date of Incorporation: NY May 1996
Estimated Gross Annual Revenue: $5MM Number of Employees: 3
List all foreign countries in which the company transacts business: N/A

See Ex. R at 1.

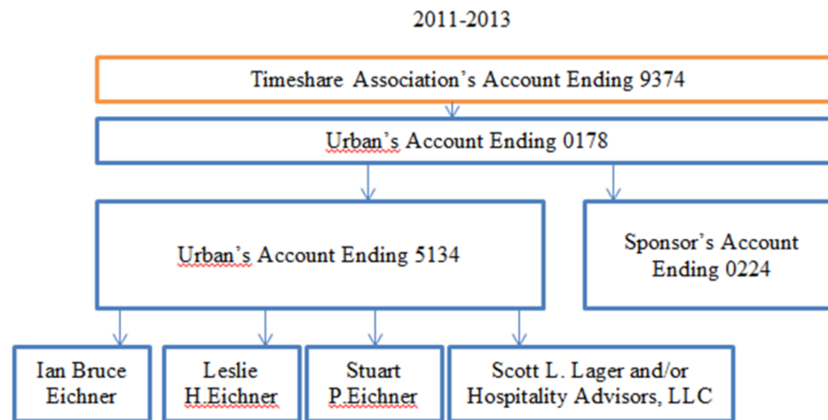
---

[7] William Pascuzzo's Linkedin page states that Pascuzzo currently works at the Manhattan Club, but does not identify his job title or job description. *See* https://www.linkedin.com/pub/william-pascuzzo/6/980/66 (last visited June 16, 2015).

105. This application was signed by Ian Bruce Eichner and Leslie H. Eichner on May 24, 2011. *See* Ex. R.

106. Urban's 5134 bank account is exclusively funded by monies from Urban's operating account (0178). *See* Ex. Q.

107. Thus, from 2011 to 2013, monies flowed from the Timeshare Association to the Sponsor, the Eichners, and Lager as follows:



108. NYAG has obtained documents from Signature Bank demonstrating that, in the second half of 2011, Urban paid:

a. $992,087 to Ian Bruce Eichner, by two checks totaling $302,210, and telephone transfers to a 4774 bank account totaling $689,877;[8]

b. $830,891 to Leslie H. Eichner by seven checks;

c. $202,110 to Stuart P. Eichner, by one check in the amount of $22,500 and by wire transfers totaling $179,610;

d. $25,000 to Hospitality Advisors, LLC, Lager's company, by check; and

e. $191,385 to, upon information and belief, Lager and/or Hospitality Advisors, LLC, by "Pre-Authorized WD" in the amounts of $43,684 in July and $43,632 in August; by "Transfer DR" in the amounts of $22,369 in September, $30,500 in October, $23,321 in November, and $27,879 in December.[9]

---

[8] These two checks issued to Ian Bruce Eichner were endorsed by him and deposited in the 4774 bank account.
[9] The belief that distributions were made to Lager, Hospitality Advisors, LLC and/or Leslie Eichner in 2011, 2012 and 2013 is based on the representation in the application for Urban's 5134 bank account that the purpose of the

Annexed hereto as Exhibit S are copies of 11 checks issued in 2011, and the monthly statements for Urban's 5134 bank account for the second half of 2011.

109. Signature Bank documents demonstrate that, in 2012, Urban paid:

f. $1,830,548 to Ian Bruce Eichner by wire transfers to his 4774 bank account;

g. $188,282 to Leslie H. Eichner by check;

h. $409,960 to Stuart P. Eichner by wire transfers; and

i. $2,175,650 to, upon information and belief, Lager, Hospitality Advisors, LLC and/or Leslie H. Eichner.

Annexed hereto as Exhibit T are copies of one check issued in 2012, and the monthly statements for Urban's 5134 bank account for 2012.

110. Signature Bank documents demonstrate that, in 2013, Urban paid:

i. $2,147,782 to Ian Bruce Eichner by wire transfers to his 4774 bank account;

ii. $374,697 to Stuart P. Eichner by wire transfers; and

iii. $2,175,173 to, upon information and belief, Lager, Hospitality Advisors, LLC and/or Leslie H. Eichner.

Annexed hereto as Exhibit U is a copy of the monthly statements for Urban's 5134 bank account for 2013.

111. Upon information and belief, Urban continued to disburse monies in the same manner as above until July 2014.

112. It appears that Respondents have attempted to conceal these facts. On or about August 8, 2014, the Respondent-Entities purported to produce payroll reports and 1099 forms for Urban. In those documents, the Respondent-Entities state that Urban made no disbursements in 2011, 2012, or 2013. Annexed hereto as part of Exhibit V are copies of the three documents

---

account is to make distributions to the Eichners and Lager; and the offering plan representation that Urban's principals are the Eichners, and Hospitality Advisors, LLC (Lager's company).

stating that Urban made no disbursements between 2011 and 2013, bates-stamped MClubE000132, MClubE000133, and MClubE000144.

113. However, documents obtained from Signature Bank demonstrate that Urban actually did make millions of dollars of disbursements to Sponsor, the Eichners and Lager in all three of those years.

114. In July 2014, NYAG did not seek to sequester Urban's assets, based on the belief that accounts held in the name of Urban were used to finance day-to-day operations of the timeshare hotel. Farooq Aff. ¶ 149.

115. However, as demonstrated above, bank accounts in the name of Urban are ***not*** used to pay the timeshare hotel's employees.

116. The operating budget of the timeshare hotel is funded by the maintenance fees paid by Manhattan Club owners, and the renting of rooms to the general public, not the fee paid to Urban or, as Respondents claim, by Sponsor's sales of ownership interests. *See* Ex. A at 45; Eichner Mem. at 18.

C. Lager Was Actively Involved in the Offering, Including Managing the Sales Staff

i. Documents Produced by Respondents Show Lager's Active Role in the Offering

117. On or around August 8, 2014, the Respondent-Entities produced two organizational charts for the Marketing Group, bates-stamped MClubE 010317 and MClubE 010321. Annexed hereto as Exhibit W is a copy of those documents.

118. The organizational chart for the Marketing Group shows that Lager was in charge of the sales staff. *See* Ex. W.

119. In or around October 2014, the Respondent-Entities produced an affidavit of Lager that concerned certain documents produced in NYAG's investigation. *See id.*

120. In the affidavit, Lager stated that he is an authorized signatory for all of the Respondent-Entities. *See* Ex. W. He also stated that he has a financial interest in non-party Hospitality Advisors, LLC, which has a 10% interest in Urban. *Id.*

121. In the affidavit, Lager stated that he is "in a consulting role with Hospitality Advisors LLC vis-à-vis the [Respondent-Entities]." *See id.*

ii. Lager Closely Supervised the Sales Staff

122. Respondents claim that non-party Arnold Salkin and his sales team were the source of the fraud identified in the Farooq Affirmation.

123. Within the Manhattan Club, Salkin's team was referred to as "Team 4." Annexed hereto as Exhibit X is a copy of a May 7, 2012 internal memorandum, produced by a former sales person.

124. In November 2014, pursuant to confidential subpoena, a former sales representative testified that Team 4 consisted of Salkin, Jeanne Gies, Doris Lebron, and Tiffaney Lane.

125. Lager knew that Team 4 obtained results in weeks when other sales representatives did not. Annexed hereto as Exhibit Y is a copy of a June 5, 2011 e-mail, produced by a former sales person, wherein Heller advises Lager that "[t]his week was about as pathetic as it gets-with a few exceptions, the only people who hit were Team 4."

126. Lager relied on Team 4 members to consistently make sales. For example, Lager was upset when Gies, a member of Team 4, did not show up for work one day, and stated that "[w]e're wasting tour flow!!!!!!" Annexed hereto as Exhibit Z is Lager's August 2, 2012 e-mail, produced by a former sales person, about who should be handling sales presentations in Gies' absence.

127. Lager was aware of who was working on the sales floor on any particular date. Annexed hereto as Exhibit AA is Lager's October 10, 2012 e-mail questioning how Team 4 will cover seven sales tours at 9 a.m.

128. Lager also set the pricing and authorized so-called "First Day Incentives," *i.e.*, incentives used by the sales staff to induce a prospective purchaser to make a purchase decision "today." Annexed hereto as Exhibit BB is Lager's April 29, 2010 internal memorandum entitled "Interval Pricing and Timing of First Use Years."[10]

129. Lager was aware of the ***entire*** sales staff's practice of requiring purchasers to make their purchase decision "today." *See* Ex. Y (e-mail in which Lager discusses the "today" policy and considers modifying the "approach after all these years" to allow purchasers an option to buy at today's prices "not today").

iii. In Violation of the Order, Lager Sent Dozens of Manhattan Club Owners Forbearance and Deed-In-Lieu of Foreclosure Agreements Between July and November 2014

130. The Order preliminarily restrains all Respondents "from engaging in any act directly or indirectly relating to the offer, purchase, sale, . . . negotiation, exchange, or transfer of ownership interests in the Manhattan Club." Annexed hereto as Exhibit CC is a copy of the Order.

131. On November 21, 2014, a Manhattan Club owner wrote to NYAG, advising that he or she had received forbearance and deed-in-lieu of foreclosure agreements from the Timeshare Association in November 2014, in violation of the Order. Annexed hereto as Exhibit DD is a redacted copy of the agreements.

132. Pursuant to these agreements, the Timeshare Association offered to waive past due maintenance fees and forego commencing a foreclosure proceeding if the owner transferred

[10] This document was not produced by the Respondent-Entities.

their ownership interest in accordance with the agreement.

133. NYAG immediately notified the Respondent-Entities and Lager of this violation and requested that they identify the number of forbearance and deed-in-lieu of foreclosure agreements that had been sent out since July 24, 2014.

134. On November 24, 2014, the Respondent-Entities and Lager advised that they had sent forbearance and deed-in-lieu of foreclosure agreements to 28 individuals between August 7 and November 5, 2014, in violation of the Order. Annexed hereto as Exhibit EE is a copy of the November 24, 2014 e-mail of Jeffrey Rotenberg, Esq.

135. Upon information and belief, each agreement contained signature lines for Lager to sign on behalf of Sponsor and the Timeshare Association.

136. Upon information and belief, each agreement sought to have owners release the Timeshare Association and its subsidiaries, affiliates, partners, principals, members, officers, directors, agents, and employees, and each of their assigns, from any and all claims.

137. In December 2014, the parties negotiated a so-ordered stipulation requiring Sponsor to mail written notice to cancel the forbearance and deed-in-lieu of foreclosure agreements. Annexed hereto as Exhibit FF is a copy of the so-ordered stipulation originally filed as Docket No. 27.

D. Sponsor Cannot Legally Finalize the 21 Sales to Purchasers in Contract without Filing a Broker-Dealer Registration Statement and an Amendment to the Offering Plan that Extends the Term of the Offering

138. By their motions, Respondents seek to have the Court issue an order that would allow them to finalize 21 sales of ownership interests, despite that Respondents are not in compliance with the Martin Act's disclosure requirements.

139. Under the Martin Act, interests in a timeshare cannot be sold to or purchased from

the public unless the sponsor of securities has filed with NYAG: (1) a broker-dealer registration statement; and (2) an offering plan.

i. Sponsor Is Not Registered With NYAG as a Broker-Dealer of Securities

140. The broker-dealer registration statement must disclose the business history of the sponsor, and every person or entity controlling the sponsor, each of whom is a principal of the sponsor. Initial broker-dealer registration statements may be made at any time and shall be effective from the date received by NYAG for a period of four years, and must be renewed prior to their expiration. General Business Law § 359-e(3)(c).

141. As previously explained in the Farooq Affirmation, T. Park Central LLC's broker-dealer registration statement expired on April 26, 2004, and O. Park Central LLC's broker-dealer registration statement expired on June 3, 2008. Annexed here to as Exhibit GG is a courtesy copy of the broker-dealer registration statements that were annexed as Exhibits M and O to the Farooq Affirmation, originally filed in hard copy, and subsequently on NYSCEF as part of Docket No. 4.

142. On October 21, 2014, the Court so-ordered the fourth stipulation, requiring Sponsor to make best efforts to submit a broker-dealer registration statement. Annexed hereto as Exhibit HH is a courtesy copy of the stipulation originally filed as Docket No. 21.

143. On or around March 13, 2015, Sponsor submitted proposed broker-dealer registration statements.

144. On March 18, 2015, NYAG sent Sponsor deficiency comments concerning its broker-dealer registration statements. Annexed hereto as Exhibit II is a copy of the March 18, 2015 deficiency comments.

145. Sponsor never responded to the deficiency comments concerning the broker-

dealer registration statements. Thus, Sponsor's broker-dealer registration statements still have not been filed with NYAG's office.

ii. The Offering Plan Expired On May 22, 2014

146. When an offering plan for a timeshare is accepted by NYAG for filing, the offering is effective for 12 months; amendments to the offering plan may extend the offering by six months.

147. On November 22, 2014, the 88th amendment to the offering plan was accepted by NYAG for filing, extending the term of the offering to May 22, 2014.

148. The 89th amendment to the offering plan, accepted for filing on March 24, 2015, did ***not*** extend the term of the offering. *See* Ex. HH.

149. All but two of the purchasers in contract executed their contracts after May 22, 2014 – *i.e.*, after the offering plan had expired. Annexed hereto as part of Exhibit JJ is a redacted list of purchasers in contract as of August 6, 2014.

iii. NYAG Did Not Advise the 21 Purchasers In Contract of Their Right to Rescind

150. In August 2014, Respondents requested that it be able to close on 64 contracts that were pending as of August 6, 2014.

151. In August 2014, NYAG contacted a handful of the purchasers in contract to determine whether their sales experiences were similar to the sales presentations that NYAG's undercover investigators observed at the Manhattan Club. Based on those conversations, it appeared that that the purchasers in contract had attended sales presentations that violated the Martin Act.

152. NYAG did ***not*** speak with all 64 purchasers in contract in August 2014, and have not spoken to any purchaser in contract since then.

153. Because Respondents have not identified who is still in contract, NYAG has no way of knowing if any of the purchasers with whom NYAG spoke in August 2014 are among the 21 purchasers still in contract who have not yet rescinded their contracts.

iv. There is No Evidence Showing that Respondents Advised Purchasers in Contract of their Right to Rescind

154. The same so-ordered stipulation that required Sponsor to file broker-dealer registration statements also required it to file an amendment to the offering plan and, within ten days of filing the amendment, to serve it on all owners and on purchasers in contract. *See* Ex. HH.

155. Because the 89th amendment to the offering plan was filed with NYAG on March 24, 2015, the so-ordered stipulation required that Sponsor serve the 89th amendment on purchasers in contract and owners on or before April 3, 2015.

156. In May 2015, multiple Manhattan Club owners told NYAG that they had not received a copy of the 89th amendment.

157. On June 2, 2015, NYAG requested an affidavit of service for the 89th amendment by e-mail to Sponsor's counsel. Annexed hereto as Exhibit KK is a copy of the e-mail request.

158. To date, Sponsor has failed to provide an affidavit of service, or otherwise respond. Sponsor has not shown that it served the 89th amendment on all purchasers in contract and owners by April 3, 2015, as required by the so-ordered stipulation.

v. It is Unclear How Many Purchasers are Still in Contract, and How Much Money is Being Held in Escrow in Connection with Those Contracts

159. In March 2015, First American Title Insurance Company advised that $342,192 was being maintained in escrow in connection with the Manhattan Club offering, in connection with 53 contracts. Annexed hereto as part of Exhibit LL is a copy of the spreadsheet produced

by First American Title Insurance Company entitled "The Manhattan Club Escrow – Trial Balance as of January 31, 2015."

160. The information provided by First American Title Insurance Company in March 2015 appears to be inconsistent with Respondents' representation to the Court that $423,793 is being held in escrow in connection with 21 contracts. *See* Eichner Mem. at 12.

161. In addition, according to incomplete bank records produced by the Respondent-Entities, bates-stamped MClubE 169369 and MClubE 190591, the balance in the escrow account as of March 25, 2015, when the 89th amendment was accepted for filing was $278,879.00; and as of April 30, 2015, the balance was $240,381.50.

162. This issue remains subject to additional investigation.

E. NYAG Routinely Contacts Victims of Fraud Under Investigation

163. NYAG receives thousands of complaints a year from the public. Accordingly, NYAG regularly communicates with complainants, to interview them and understand their complaints. Complainant affidavits are often used as evidence in actions brought by NYAG.

164. In addition, NYAG communicates with the general public in a variety of ways including by issuing press releases, drafting op-ed pieces to be published in newspapers, and using Facebook (www.facebook.com/Eric.Schneiderman), Twitter (@AGScheiderman), YouTube (https://www.youtube.com/user/AGSchneiderman), and Instagram (agschneiderman).

165. In May 2015, NYAG sent out a survey to Manhattan Club owners. NYAG did not use information contained in the SAM and NEXT databases, produced by the Respondent-Entities on May 11, 2015, in distributing this survey, although there was no prohibition against doing so.

F. The Eichners and Lager Have Not Testified Concerning their Roles in the Manhattan Club, as Required by the Order

166. The Order requires that the Eichners, and Lager appear before the Court and publicly testify in connection with NYAG's investigation. *See* Ex. M at 4-6.

167. The Eichners and Lager have not yet testified in this investigation.

168. NYAG seeks to have the Respondent-Entities complete the production of documents detailed below, including privilege logs and affidavits of compliance, and that NYAG has an opportunity to review those documents before scheduling dates for testimony of the Eichners and Lager.

G. The Respondent-Entities Have Not Fully Complied with all Discovery Requirements of the Order, and the Progress of NYAG's Investigation Has Been Systemically Delayed by Respondents[11]

i. Respondents Delayed Production of E-mails and Have Yet to Complete Production

169. The Order requires that "documents" be produced and expressly includes e-mails within the definition of documents. *See* Ex. CC at 2.

170. Nevertheless, the Respondent-Entities seemingly failed to search their e-mails when they produced documents from August to October 2014, or before they submitted affidavits of compliance in connection with those productions. The documents produced between August and October 2014 contained almost no e-mails, even though e-mails produced since then were plainly responsive to the Order.

171. On December 17, 2014, NYAG demanded that the Respondent-Entities produce certain documents including e-mails as part of the investigation.

172. In February 2015, the Respondent-Entities sought to negotiate the production of e-mails pursuant to specific search terms and custodians.

[11] The examples below are illustrative, not exhaustive.

173. Accordingly, the February 11, 2015 so-ordered stipulation sets forth requirements for the production of e-mails under the December 17, 2014 letter, by limiting the initial production to specific search terms and custodians. Annexed hereto as Exhibit MM is a courtesy copy of the February 11, 2015 so-ordered stipulation, originally filed as Docket No. 30.

174. The Respondent-Entities failed to produce any e-mails in February 2015, despite being required to make best efforts to do so by February 27, 2015.

175. On March 6, 2015, at a status conference before the Special Referee, counsel for the Respondent-Entities stated that e-mails would be produced on a rolling basis, starting on March 20, 2015, and that most of the documents would be produced by March 31, 2015, including affidavits of compliance.

176. On March 12, 2015, Ross Kramer, Esq., of Winston and Strawn LLP, requested that we put off all further document demands until their clients complete the productions required by our December letter demands – *i.e.*, the February 11, 2015 so-ordered stipulation.

177. On or around March 23, 2015, the Respondent-Entities produced tens of thousands of pages of e-mails.

178. On or about April 29, 2015, the Respondent-Entities produced e-mails of the Eichners and Lager, bates-stamped MClubE 163337 through MClubE 168803.

179. In this production, Ian Bruce Eichner was the source custodian of a total of 23 e-mails; Leslie H. Eichner was the source custodian of a total of 30 e-mails; and Stuart P. Eichner was the source custodian of just 2 e-mails.

180. On May 26, 2015, NYAG demanded that the Respondent-Entities produce the Eichners' e-mails that relate to the Manhattan Club, pursuant to the Order:

i. All e-mails to or from IBE@continuum.com (including cc and bcc) that involve any manhattanclub.com or tmcny.com e-mail address or Scott L.

Lager, for the past six years;

ii. All e-mails to or from stuarteichner@gmail.com (including cc and bcc) that involve any manhattanclub.com or tmcny.com e-mail address or Scott L. Lager, for the past six years; and

iii. All e-mails to or from LeslieE@tmcny.com for the past six years.

Annexed hereto as Exhibit NN is a copy of the May 26, 2015 letter.

181. On June 4, 2015, at a status conference before the Special Referee, counsel for the Respondent-Entities (and the Eichners) indicated that they object to the production of the e-mails demanded by the May 26, 2015 demand letter pending the hearing on their motion.

182. The same day, Respondents advised in writing that their "position is that these individual Respondents should not be subjected to the terms of the Order." Annexed hereto as Exhibit OO is a copy of the June 4, 2015 letter.

183. However, the May 26, 2015 demand was addressed to the Respondent-Entities, not the Eichners, and the February 11, 2015 so-ordered stipulation expressly authorized NYAG to expand its demand for e-mails. *See* Exs. CC and MM.[12]

ii. Respondents Failed to Produce all Sales Materials

184. The Order requires that the Respondent-Entities produce to NYAG:

> All sales scripts or other promotional or solicitation scripts, training materials, and directives/memoranda to staff, agents, independent contractors or others acting on Respondent's behalf, relating to the offering, promotion, and sales of interests in the Manhattan Club, including, but not limited to recordings, videos, internet web site documents and materials, and/or similar documents, for the past six years.

See Ex. CC at 3.

185. In or around October 2014, the Respondent-Entities produced the affidavit of

[12] On July 2, 2015, the Respondent-Entities produced additional e-mails of the Respondent-Individuals and other custodians specified in the February 11, 2015 stipulation. NYAG has not yet reviewed this document production.

Michael Heller ("Heller Aff."), in which Heller represented that he "coordinated the identification and collection of Documents potentially covered by [the portion of the Order requiring production of sales and marketing scripts] from the files of the [Respondent-Entities] for review and production by counsel." Annexed hereto as Exhibit PP is a copy of the Heller Affidavit. *See* Ex. PP ¶¶ 4, 6.

186. In the affidavit, Heller also represented that the Respondent-Entities' "productions and responses" to this portion of the Order "are complete and correct to the best of my knowledge and belief." *See* Ex. PP ¶ 8.

187. On January 29, 2015, NYAG took testimony from a former employee of the Respondent-Entities, and learned that the employee had participated in compiling two to three cartons of marketing and sales materials in the summer of 2014.

188. The employee testified that the cartons contained direct mail, samples of magazine ads, samples of e-mails, samples of the "pitch book" and training materials, referral materials, and correspondence with owners. The cartons were couriered from an offsite office to an unknown destination.

189. On or about February 5, 2015, we advised the Respondent-Entities that a former Manhattan Club employee had recently testified that cartons of marketing and sales materials had been removed by courier from their offsite office, and asked that those documents be immediately produced to us.

190. A different employee had previously testified that she had left notes that she took during sales trainings on the sales floor when the sales operation was shut down. She also identified other sales materials that were present on the sales floor at that time.

191. To date, the carton of documents including documents from the sales floor have

not been produced to NYAG, because Respondents claim they are in the possession of DLA Piper LLP (US) and subject to an attorney's lien. Annexed hereto as Exhibit QQ is a copy of the April 30, 2015 letter of Ross Kramer, Esq.[13]

iii. Respondents Have Failed to Provide Documents Relating to the Transfer of All Inventory in the Manhattan Club, and Took over Eight Months to Provide Information Concerning Current Inventory

192. NYAG has sought – and still seeks – to determine not only whether Sponsor had oversold any units in the timeshare plan, at any time, but also whether anyone at the Manhattan Club was keeping accurate records as to the inventory that Sponsor has sold, has yet to sell, and has bought back and re-sold.

193. Respondents' document productions to date and information contained in the SAM and NEXT databases do not resolve these issues. Instead, they raise additional questions.

1. Respondents Failed to Produce Documents Sufficient to Show All Transfers of Title to Fractional Ownership Interests in the Manhattan Club and the Real Estate Transfer Taxes Paid for Each Transaction

194. The Order requires the Respondent-Entities to produce documents sufficient to show all transfers of title to fractional ownership interests in units in the Manhattan Club involving any Respondent or the Timeshare Association, and the real estate transfer taxes paid for each transaction. *See* Ex. CC at 4.

195. On August 1, 2014, at the first hearing before Special Referee Steven Liebman, counsel for the Respondent-Entities indicated that they would use publicly-filed documents on ACRIS to respond to this portion of the order. Using publicy-filed documents to identify Manhattan Club owners seemed inappropriate, so NYAG asked whether any of the Respondent-Entities possesses a closing binder for each real estate transaction involving ownership in any

[13] The first page is dated April 30, the other pages are dated April 29.

unit in the Manhattan Club.

196. To follow up, on August 6, 2014, NYAG sent a letter to the Respondent-Entities asking whether and when they would produce the closing binders for each transaction. Annexed hereto as Exhibit RR is a copy of the August 6, 2014 letter.

197. On August 7, 2014, the Respondent-Entities advised it was their understanding that NYAG did not want the closing binders, that this information could be provided using publicly-available information recorded on the Internet on the New York City, Department of Finance's website known as ACRIS, and that the collection and review of the closing binders would be an extremely lengthy undertaking. Annexed hereto as Exhibit SS is a copy of the August 7, 2014 letter.

198. On August 27, 2014, to avoid further delay, NYAG acknowledged that the Respondent-Entities were going to produce spreadsheets based on publicly available information, while reserving the right to ask for closing binders for all transfers of title to ownership interests in units in the Manhattan Club involving any Respondent or the Timeshare Association, and documents sufficient to show the real estate transfer taxes paid for each transaction. Annexed hereto as Exhibit TT is a copy of the August 27, 2014 letter.

199. To date, the Respondent-Entities produced spreadsheets showing the sales recorded on ACRIS for only 40 units.

2. <u>The Respondent-Entities Took Eight Months, and Three Attempts, to Account for Current Inventory</u>

200. The Order requires that the Respondent-Entities produce documents sufficient to identify the current owners of ownership interests in the Manhattan Club, with the corresponding unit number and type of interest. *See* Ex. CC at 4.

201. On or about August 8, 2014, the Respondent-Entities produced a list of holders of

ownership interests in the Manhattan Club, as of March 2014, who were current in maintenance fee and mortgage payments, bates-stamped MClubE 010322. This list did not include owners who were delinquent on their maintenance fees and/or mortgage payments.

202. On or about September 5, 2014, the Respondent-Entities produced a list of ***all*** current owners, bates-stamped MClubE 018907.

203. Then, on or about September 18, 2014, the Respondent-Entities produced a list of unsold and Bluegreen inventory, bates-stamped MClubE 019646.[14]

204. When combined, these two Excel spreadsheets – the list of the current Manhattan Club owners (MClubE 018907) and the list of unsold inventory and Bluegreen inventory (MClubE 019646) – should have accounted for all of the 14,872 annual ownership interests (286 rooms x 52 weeks) in the Manhattan Club. But, they did not.

205. On December 17, 2014, NYAG advised the Respondent-Entities that the two spreadsheets failed to account for all ownership interests, and asked that they explain why all ownership interests are not accounted for, or to correct any errors. *See* Ex. MM. Over three months later, and over eight months since the Court issued the Order, on or about March 31, 2015, the Respondent-Entities produced a spreadsheet containing unsold inventory, bates-stamped MClubE 127159, and an updated owner list, bates-stamped MClubE 127160, as of March 25, 2015. This document contained a few hundred discrepancies with the prior list, but may be more accurate than the prior list.[15]

---

[14] The Respondent-Entities previously produced this document in pdf format, rather than in native format.

[15] According to document bates-stamped MClubE 127160, there are 14,147 "active" Manhattan Club contracts, meaning the owners of those contracts are current on all maintenance fees, tax and mortgage payments related to their ownership interests. According to the same document, 2,265 contracts are inactive, meaning the Club considers the owners to be delinquent in paying maintenance fees, taxes, and/or mortgage payments.

iv. The Respondent-Entities Must Produce Affidavits of Compliance and a Privilege Log Concerning the Documents They Produced To Date

206. The Respondent-Entities have failed to produce affidavits of compliance for the documents they produced this year, as required by the so-ordered stipulation. *See* Ex. MM.

207. The Respondent-Entities have also failed to produce a privilege log concerning the documents they produced this year, as required by so-ordered stipulation. *See* MM.

208. On March 20, 2015, at a status conference, the Special Referee directed the Respondent-Entities to produce a privilege log covering the Respondent-Entities anticipated March 23, 2015 production of e-mails by April 23, 2015.

209. But, the Respondent-Entities failed to produce a privilege log by April 23, 2015, as directed by the Special Referee.

210. Nevertheless, from April 27 to April 30, 2015, NYAG took testimony from Valerie Cooper, Maritza Gould, Louise Church, and Chet Zimmerman.

211. On May 1, 2015, at a status conference before the Special Referee, NYAG noted that the Respondent-Entities had failed to produce a privilege log covering the March 23, 2015 production by April 23, 2015 as previously directed by the Special Referee, and requested that a privilege log be produced before NYAG takes further testimony.

212. At the May 1, 2015 status conference, counsel for the Respondent-Entities represented that privilege logs would be produced on a rolling basis, by custodian, starting in two weeks. No objection was made to NYAG's request that privilege logs be produced prior to the scheduling of testimony related to any custodian.

213. On May 12, 2015, the Respondent-Entities requested that they be permitted to submit a categorical privilege log, rather than the one called for in the so-ordered stipulation.

214. On May 15, 2015, NYAG advised the Respondent-Entities that we needed more

information to evaluate their proposed categorical privilege log, and identified minimum requirements that the log would need to meet. We received no response. Instead, about two weeks later, Respondents abruptly filed their motions, without asking NYAG to consider agreeing to the relief sought in their motions.

215. On June 2, 2015, NYAG called counsel for the Respondent-Entities to ask their position on the privilege log. They indicated that they would be writing a letter to the Special Referee on this issue.

216. On June 3, 2015, the Respondent-Entities submitted a letter to the Special Referee requesting a ruling on the privilege log. In response, NYAG submitted a letter to the Special Referee, and enclosed a copy of the February 11, 2015 so-ordered stipulation governing this issue.

217. On June 4, 2014, counsel for the Respondent-Entities indicated that the over 25,000 withheld e-mails include communications between the Respondent-Entities' attorneys and "independent contractors" – such as Lager, of Hospitality Advisors, LLC; Michael Heller of Bas Hospitalities; and Chet Zimmerman of Tri Sun Properties – on the basis that the individuals' relationship with the corporate entities is sufficient to invoke attorney-client privilege. Respondents failed to provide any legal or factual basis for such an invocation. At the same time, counsel for the Respondent-Entities requested that NYAG not wait for privilege logs to schedule future examinations.

218. At the June 4, 2015 status conference, the Special Referee stated that NYAG would be permitted to recall witnesses in light of the missing privilege logs.

219. On June 11, 2015, NYAG advised the Respondent-Entities of our intention to recall Maritza Gould and Louise Church by the end of June, and to have Heather Nelson,

Gabrielle Keiser, and Jose Rosario appear and testify at NYAG's offices by mid-July.

220. On June 22, 2015, the Respondent-Entities requested permission to produce a categorical privilege log containing the following categories: 1) document ID number; 2) date of document; 3) authors and recipients of the document; 4) type of privilege asserted; and 5) general subject matter of the document. They also proposed to identify email chains as such, but would log each email thread as one entry.

221. On June 26, 2015, the parties reached an agreement on the requirements of the privilege log. On or around June 30, 2015, the Respondent-Entities advised that they would produce the privilege log by mid-August.

v. Respondents Have Repeatedly Delayed NYAG's Investigation

222. Annexed hereto as Exhibit UU is an abbreviated timeline of events that have occurred since the Court issued the Order.

223. Although this timeline is for illustrative purposes, and does not include all actions taken by NYAG during the course of this investigation, it demonstrates that NYAG is pursuing all leads diligently and expeditiously, while at the same time Respondents have engaged in a pattern of dilatory conduct.

H. In Violation of the Court's July 24, 2015 Order, as Amended by Seven Stipulations, Respondents including Lager Repeatedly Withdrew Funds From Frozen Bank Accounts

224. The Order enjoined T. Park Central LLC, O. Park Central LLC, Park Central Management LLC, and the Marketing Group from making withdrawals from their bank accounts:

> **Ordered** that all Respondents, their principals and agents are preliminarily restrained from making further withdrawals from any account in the name of Respondents T. Park Central, LLC, O. Park Central LLC, Park Central Management LLC or Manhattan Club

> Marketing Group LLC at any bank, savings and loan association or other financial depository located inside or outside New York;

Ex. M at 7 (emphasis in original).

225. On July 24, 2014, NYAG served the Order on Respondents by service on their attorney, Allan Starr, Esq.

226. In violation of the Order, between July 25 and 31, 2015, Lager issued 145 checks: 18 checks from T. Park Central LLC's 0224 bank account; 18 checks from T. Park Central LLC's 0259 bank account; and 109 checks from the Marketing Group's 5826 bank account.

227. Of those checks, 103 were processed by the originating institution on or before July 31, 2015. Annexed hereto as Exhibit VV are copies of those 103 checks, and the related monthly statements.

228. Each of those 103 checks was a violation of the July 24, 2015 order, and they resulted in $93,490.25 being withdrawn from T. Park Central LLC's accounts. *See* Ex. VV.

229. In addition, T. Park Central LLC transferred $3,135 to Leslie H. Eichner and $8,269.23 to Hospitality Advisors, LLC (Lager's company) by wire transfer on July 25, 2015.

230. On August 1, 2014, at the first hearing before the Special Referee, the Respondent-Entities argued that the Order needed to be modified so that the Respondent-Entities could pay employees as required by New York State Labor Law, and to pay certain construction costs to avoid defaulting on their obligations.

231. In August and September, pursuant to three so-ordered stipulations, Respondents were permitted to withdraw funds to make certain payments from August 1, 2014, through and inclusive of the pay period ending September 26, 2014, only from a bank account at Wells Fargo ending 5826, and from three accounts at Signature Bank ending 0259, 0224, and 2026. Annexed hereto as Exhibits WW, XX, and YY, respectively, are courtesy copies of the stipulations

originally filed as Docket Nos. 13, 16, and 18.

232. Nonetheless, during August and September, monies were actually withdrawn from accounts that were not identified in the first three stipulations, in violation of the order, as then amended. Annexed hereto as Exhibit ZZ are copies of monthly statements for the frozen accounts for August and September 2014.

233. In August, Respondents withdrew $201,860.85 from frozen accounts – *i.e.*, $194,822.06 from T. Park Central LLC's bank account; $6,981.29 from Park Central Management LLC's 0437 bank account; and $57.50 from the Marketing Group's 2490 bank account.

234. In September, Respondents withdrew $64,728.76 from frozen accounts – *i.e.*, $57,683.09 from T. Park Central LLC's bank accounts; $6,981.29 from Park Central Management LLC's 0437 bank account; and $64.38 from the Marketing Group's 2490 bank account.

235. Moreover, many of the expenses paid in August and September did not comply with the stipulations, or the spirit and purpose of the so-ordered stipulations, which was to allow the Respondent-Entities to avoid violating the New York Labor Law, and to avoid defaulting on other essential obligations. For example, T. Park Central LLC wrote a check from T. Park Central LLC's 0224 bank account to pay a portion of Lager's American Express Centurion Card bill – a card held by Scott, Sean, and Sabrina Lager. Annexed hereto as Exhibit AAA is a copy of the check and related invoice.

236. Those expenses include a $560.83 dinner at Trattoria Dell'Arte New York on July 23, 2014; a $250.96 lunch at Red Eye Grill on July 24, 2014; $281 for maintenance of a Porsche; and the $2,500 annual membership fee for the credit card. *See* Ex. AAA.

237. NYAG repeatedly advised the Respondent-Entities that they were violating the order. Annexed hereto as Exhibits BBB and CCC, respectively, are copies of my August 27, 2014 letter and October 1, 2014 e-mail.

238. Then, we required that future so-ordered stipulations identify the maximum amount of funds the Respondent-Entities could withdraw from the frozen accounts in a particular time period. Annexed hereto as Exhibits DDD and EEE, respectively, are courtesy copies of the fifth and sixth stipulations originally filed as Docket Nos. 23 and 25. *See also* Ex. HH (the fourth stipulation).

239. In October, pursuant to the fourth, fifth, and sixth so-ordered stipulations, the Respondent-Entities were permitted to withdraw a maximum of $38,188.57 from the frozen accounts. *See* Exs. HH, DDD, and EEE.[16]

240. However, during October, the Respondent-Entities ***actually withdrew $341,385***: over $50,000 from the Marketing Group's 5826 bank account; over $9,000 from T. Park Central LLC's 0232 bank account; over $210,000 from T. Park Central LLC's 0224 bank account; over $9,000 from T. Park Central LLC's 0186 bank account; and over $19,000 from T. Park Central LLC's 0208 bank account. Annexed hereto as Exhibit FFF is a copy of these monthly statements and related checks.

241. Of that amount, ***$82,353.19 of the withdrawn funds are directly attributable Lager's actions***:

- The Marketing Group issued 50 checks from its 5826 bank account, totaling $38,543.87, all signed by Lager.

[16] The fourth stipulation authorized Respondents to make withdrawals for the purpose of satisfying obligations as to employee payroll for the week ending October 17, 2014, in the amount of $7,826.35. The fifth stipulation authorized Respondents to make withdrawals for the purpose of satisfying obligations as to employee payroll for the week ending October 24, 2014, in the amount of $7,000.96. The sixth stipulation authorized Respondents to make withdrawals for the purpose of satisfying obligations as to employee payroll for the week ending October 31, 2014, in the amount of $6,074.49, to pay $945 of filing fees to this Office's Real Estate Finance Bureau, and to pay $16,341.77 of medical premiums to Aetna/US healthcare.

- The Marketing Group issued 40 checks from its 0208 bank account, totaling $17,084.32, all signed by Lager.
- T. Park Central LLC issued 22 checks from account ending 0224 totaling $26,725, all signed by Lager. None of these payments were payroll-related; all were unauthorized withdrawals. *See* Ex. FFF.

242. In November, pursuant to the order, as then amended by six stipulations, ***no monies*** should have been withdrawn from accounts in the name of T. Park Central LLC, O. Park Central LLC, Park Central Management LLC or the Marketing Group.

243. Despite this, in November, T. Park Central LLC withdrew $8,887.59 from its 0224 bank account (including $5,000 transferred to Park Central Management LLC); $75.15 from its 0194 bank account; and $11,553.42 from its 0208 bank account (excluding checks). And, Park Central Management LLC withdrew over $4,800 from its 0437 bank account. Annexed hereto as Exhibit GGG is a copy of these monthly statements.

244. From December 10, 2014 to January 16, 2015, pursuant to the seventh stipulation, Respondents were permitted to withdraw a maximum of $200,018.43 (excluding $550,000 tendered to our office to be held in escrow pursuant to a so-ordered stipulation), from bank accounts ending 0224, 2026, 0208, 0186, and 0283. *See* Ex. FF.

245. In December, Respondents violated the order, as amended by the seventh stipulation, by withdrawing $230,798.63 from frozen bank accounts: $6,294.82 from T. Park Central LLC's 0186 bank account; $164.95 from T. Park Central LLC's 0194 bank account; $77,416.88 from its 0208 bank account; $115,226.66 from T. Park Central LLC's 0224 bank account (excluding monies tendered to our office to be held in escrow); $36.34 from T. Park Central LLC's 0232 bank account; $4,854.21 from the Marketing Group's 2490 bank account; $22,001.03 from the Marketing Group's 5826 bank account; and $4,656.36 from T. Park Central

LLC's 6922 bank account. Annexed hereto as Exhibit HHH are copies of these monthly statements.

246. In January 2015, Respondents continued to violate the Order, as amended, by continuously withdrawing funds from frozen accounts. Annexed hereto as Exhibit III are copies of the monthly statements for January 2015.

247. Since January 16, pursuant to the Order, as then amended by seven stipulations, ***no monies*** should have been withdrawn from the Frozen Accounts. Yet, based on the bank statements we have received and reviewed, Respondents have continued to improperly withdraw funds including from the Signature Bank account ending 0224. *See* Ex. III.

248. For example, between January 20 and 31, over $40,000 was withdrawn from T. Park Central LLC's 0224 bank account. *See id.*

249. On March 20, 2015, at a status conference before the Special Referee, NYAG again advised counsel for the Respondent-Entities that their clients had repeatedly withdrawn monies from frozen accounts in violation of the July 24, 2015 order, as amended.

250. On or around April 3, 2015, we advised the Respondent-Entities in writing of the transactions identified above, and requested that all illegally withdrawn funds be returned by April 17, 2015. Annexed hereto as Exhibit JJJ is a copy of my April 3, 2015 letter.

251. Meanwhile, on or around April 1, 2015, Signature Bank and J.P. Morgan Chase froze all accounts in the name of Sponsor, the Marketing Group and Park Central Management LLC.

252. The Respondent-Entities failed to return any of the illegally withdrawn funds.

253. Instead, the Respondent-Entities "provid[ed] a description of each relevant account's current primary use . . . to assist in understanding the transactions at issue." Annexed

hereto as Exhibit KKK is a copy of the April 22, 2015 letter of Ross M. Kramer, Esq.

254. That letter was not responsive to our April 3, 2015 demand that monies illegally withdrawn from the frozen accounts be returned.

255. Almost all of the checks issued by Sponsor since July 24, 2014 that we have reviewed to date were signed by Lager. *See* Ex. VV.

256. Over $694,996.62 was improperly withdrawn from the Respondent-Entities' bank accounts between July 25 and November 30, 2014:

i. $104,894.58 in July, including 103 checks signed by Lager that comprised $93,490 of the withdrawn funds;

ii. $201,860.85 in August from bank accounts ***not*** identified on the first or second so-ordered stipulation;

iii. $64,728.76 in September from bank accounts ***not*** identified on the third so-ordered stipulation;

iv. $303,196.43 of withdrawals in October in excess of the maximum amount allowed by the fourth, fifth and sixth so-ordered stipulations ($38,188.57 of permissible withdrawals, but $341,385 actually withdrawn), including that 112 checks signed by Lager that comprised of $82,353.19 of the withdrawn funds; and

v. $20,316 of withdrawals in November.

257. Despite repeated requests, on April 10, and May 26, 2015, the Respondent-Entities have not produced checks drawn from the bank accounts of T. Park Central LLC from December 1, 2014 to present.

Dated: July 2, 2015
New York, New York

SERWAT FAROOQ