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SWEETWATER MALIBU CA LLC
6 and TEODORO NGUEMA OBIANG
MANGUE
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10

11 SWEETWATER MALIBU CA, LLC, a
California limited liability company;
12 and TEODORO NGUEMA OBIANG
MANGUE, an individual,

13 Plaintiff,

14 vs.

15 SAM HAKIM, an individual; AITAN
16 SEGAL, an individual; BERKSHIRE
HATHAWAY HOMESERVICES,
17 CALIFORNIA INC., a California
corporation; MAURICIO OBERFELD,
18 an individual; and 3620
SWEETWATER MESA LLC, a
19 California limited liability company.

20 Defendants.
21

Case No. 2:20-cv-08945-GW-KS

**FIRST AMENDED COMPLAINT
FOR:
(1) VIOLATION OF FEDERAL
COURT ORDER;
(2) VIOLATION OF SECTION 1 OF
THE SHERMAN ANTITRUST ACT;
(3) VIOLATION OF CALIFORNIA
CARTWRIGHT ACT;
(4) AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY;
(5) CONSPIRACY TO DEFRAUD;
AND
(6) BREACH OF DUTIES OF
HONESTY AND FAIR DEALING**

22

23 Plaintiffs Teodoro Nguema Obiang Mangue (“Nguema”) and Sweetwater
24 Malibu CA, LLC, formerly known as Sweetwater Malibu, LLC (“Sweetwater”)
25 (collectively, “Plaintiffs”), for their First Amended Complaint against defendants
26 Mauricio Oberfeld (“Oberfeld”), 3620 Sweetwater Mesa LLC (“3620 Sweetwater”),
27 Sam Hakim (“Hakim”), Aitan Segal (“Segal”), Berkshire Hathaway Homeservices
28 California Inc. (“BHHC”) (collectively, “Defendants”), allege:

JURISDICTION

1
2 1. The Court has original subject matter jurisdiction over this action
3 because it alleges claims under the Clayton Act, 15 U.S.C. § 15, based on Plaintiffs’
4 claim for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Court
5 has ancillary jurisdiction over the state law claims arising out of the same
6 transactions, conduct and occurrences.

7 2. This action also relates to and alleges violations of a Stipulated
8 Settlement Agreement (the “Settlement Agreement”) and Order in a related civil
9 asset forfeiture action pending in this Court entitled *United States of America v. One*
10 *Michael Jackson Signed Thriller Jacket, et al.* (Case No. CV 13-9169-GW-SS) (the
11 “Action”). That Action sought, among other things, civil forfeiture of an estate that
12 was owned by Plaintiffs and located at 3620 Sweetwater Mesa Drive in Malibu,
13 California (the “Property”) that is at issue in this lawsuit.

14 3. The Court entered an Order on October 13, 2014 (the “Order”) that
15 attached and adopted the Settlement Agreement and ordered that the Property “be
16 liquidated and distributed in accordance with the Settlement Agreement,” and that
17 all of the parties “cooperate with the other(s) to perform the acts required by the
18 Settlement Agreement, and refrain from taking any action that is inconsistent with
19 the Settlement Agreement.” The Order stayed but did not dismiss the Action and
20 provided that the “Court retains jurisdiction in this matter to take additional action
21 and enter further orders as necessary to implement and enforce this Order and the
22 Settlement Agreement.”

23 4. Accordingly, this Court also has ancillary jurisdiction over the claims
24 in this action because they include claims that Defendants conspired and aided and
25 abetted violations of the Order, damaging Plaintiffs, and Plaintiffs seek relief that is
26 necessary to implement and enforce the Order, including recovery of proceeds of the
27 sale that were diverted from the uses ordered by the Court. *See Kokkonen v.*
28 *Guardian Life Ins. Co.*, 114 S. Ct. 1673 (1994).

1 utmost care, loyalty, honesty, and the obligation to work diligently to maximize the
2 sale price and a duty not to engage in self-dealing or earn secret profits. Plaintiffs
3 bring this action against Defendants for their role.

4 10. This conspiracy could not have succeeded without knowing assistance
5 of Defendants. Defendants conspired with Umansky and other buyers directly and
6 through Umansky to unlawfully refrain from bidding against each other for the
7 Property in violation of the Order and federal and state antitrust laws. Defendants
8 aided and abetted Umansky's breach of fiduciary duties to his clients and conspired
9 with him to defraud Plaintiffs. This conspiracy also violated the Order governing
10 the sale of the Property and use of proceeds, and agreements to pay Umansky secret
11 compensation for his help in depressing the price.

12 11. As required by the Settlement Agreement and Order, the full, actual
13 market value for the Property was supposed to have been used to benefit the people
14 of Equatorial Guinea. Instead, as a result of the conspiracy and wrongful conduct
15 alleged herein, Oberfeld was able to purchase the property for \$32.5 million, well
16 below its market price, and then sell it less than a year later for almost \$70 million,
17 resulting in massive profits that he shared with Umansky and his other wealthy
18 associates, thousands of miles and worlds away from Equatorial Guinea.

19 **THE PARTIES**

20 12. Plaintiff Sweetwater Malibu CA, LLC ("Sweetwater"), formerly known
21 as Sweetwater Malibu, LLC, is and at all relevant times was a California limited
22 liability company.

23 13. Plaintiff Nguema is and at all relevant times was a resident of
24 Equatorial Guinea and the sole owner and managing member of Sweetwater.
25 Nguema also currently is the Vice President of Equatorial Guinea.

26 14. Defendant Mauricio Oberfeld ("Oberfeld") is and at all relevant times
27 was a resident of the State of California, and a real estate developer.

28

1 15. Defendant 3620 Sweetwater Mesa LLC., is a California limited liability
2 company, with its principal place of business in Los Angeles and liable vicariously
3 and as a successor, assignee and co-conspirator of Oberfeld’s acts and omissions
4 alleged herein and for all damages and monetary relief resulting therefrom.

5 16. Defendant Sam Hakim (“Hakim”) is and at all relevant times was a
6 resident of the State of California, and a real estate developer.

7 17. Defendant Aitan Segal (“Segal”) is and at all relevant times was a
8 resident of the State of California, and a licensed real estate agent.

9 18. Defendant Berkshire Hathaway Homeservices California Inc.
10 (“BHHC”) is a real estate brokerage licensed in the State of California, and Segal is
11 and at all relevant times was an employee and agent of BHHC, acting on behalf of
12 and for the benefit of BHHC, and BHHC is vicariously liable for his acts, omissions,
13 and resulting damages alleged herein.

14 19. Each defendant was the agent, principal, co-conspirator and/or aider
15 and abettor of each other defendant and the other third parties as alleged herein,
16 acting within the course and scope of such agency, and/or in furtherance of such
17 conspiracy, such that each is jointly and severally liable for all damages, secret
18 profits and other relief sought herein.

19 **FACTS COMMON TO ALL CAUSES OF ACTION**

20 20. On December 12, 2013, the United States filed the Action, seeking
21 among other things civil forfeiture of the Property. On October 9, 2014, the parties
22 entered into the Settlement Agreement, resolving those claims by agreeing that the
23 Plaintiffs would sell the Property with the proceeds used as specified therein,
24 including to benefit the people of Equatorial Guinea.

25 21. The Settlement Agreement was filed in the Action, and the Court
26 entered an Order on October 13, 2014 (the “Order”) providing that the Property
27 “shall be liquidated and distributed in accordance with the Settlement Agreement.”
28 The Order also required each party to “cooperate with the other(s) to perform the

1 acts required by the Settlement Agreement, and [to] refrain from taking any action
2 that is inconsistent with the Settlement Agreement.”

3 22. This Court also “retain[ed] jurisdiction in this matter to take additional
4 actions and enter further orders as necessary to implement and enforce this Order
5 and the Settlement Agreement.” A copy of the Settlement Agreement was attached
6 and became part of the public record in the Action. Each of the Defendants herein
7 was aware of and read the Settlement Agreement and Order.

8 23. The Settlement Agreement provided for Plaintiffs to hire a California
9 licensed real estate agent approved by DOJ to sell the Property, and that the contract
10 with the agent "will require that the Licensed Agent review and comply with the
11 provisions of this Settlement Agreement."

12 24. In addition to fiduciary and contractual duties to Plaintiffs as sellers,
13 the Ordered required the listing agent “to work cooperatively with the United States
14 in the conduct of its activities, including reporting regularly to the United States and
15 providing all requested information promptly to the United States relating to the
16 [property] and its sale."

17 25. The Order required that the Property "be sold in accordance with the
18 terms of this Settlement Agreement for fair-market-value (‘FMV’), as that term is
19 defined pursuant to California Code of Civil Procedure Section 1263.320, unless a
20 sale at an alternative price is approved in writing by both counsel for the United
21 States and counsel for Nguema, in arm's length transactions."

22 26. Section 1263.320 states: "The fair market value of the property taken
23 is the highest price on the date of valuation that would be agreed to by a seller, being
24 willing to sell but under no particular or urgent necessity for so doing, nor obliged to
25 sell, and a buyer, being ready, willing, and able to buy but under no particular
26 necessity for so doing, each dealing with the other with full knowledge of all the
27 uses and purposes for which the property is reasonably adaptable and available.”

28

1 27. The Settlement Agreement provided that Plaintiffs would sell the
2 Property and the proceeds reflecting fair market value would be held in an escrow
3 account to be used for specified purposes, including reimbursement of expenses
4 associated with the sale, and a payment to the United States, with the remainder of
5 the proceeds used for the benefit of the people of Equatorial Guinea, as determined
6 by representative of Nguema and the United States. The United States also agreed
7 to use the funds it received to benefit of the people of Equatorial Guinea.

8 28. Plaintiffs continue to have a significant interest in and role in deciding
9 the specific ways in which the proceeds were used, as well as recovering the greatest
10 amount for the benefit of the people of Equatorial Guinea. No charity has yet been
11 selected to receive proceeds already obtained or more proceeds that subsequently
12 may be recovered. This Court continues to oversee enforcement of the Settlement
13 Agreement and Order and expenditure fund and has scheduled a hearing to address
14 issues that have arisen concerning use of the proceeds.

15 29. Mauricio Umansky and his brokerage firm The Agency are high-end
16 licensed real estate agents and brokers who hold themselves out as the “preeminent
17 player[s] in the luxury real estate market, representing many of the country’s most
18 visible and high-end properties.” They tout to prospective clients and the broader
19 public their “knowledge, spheres of influence, contacts and expertise, ensuring our
20 clients better representation and a true competitive edge.” Umansky also promotes
21 himself “as the #3 top-producing real estate agent in the U.S. and #1 in California,”
22 having sold the most homes in the country above \$20 million, and his representation
23 of celebrities and wealthy individuals. He also is married to one of the “Beverly
24 Hills Housewives,” and has frequent appearances on the show.

25 30. In June 2015, pursuant to the Settlement Agreement and Order,
26 Plaintiffs entered into an exclusive listing agreement (the “Listing Agreement”) with
27 Umansky to sell the Property, which provided for a commission of six percent (6%)
28 of the sale proceeds, which is higher than the typical amount of five percent (5%) or

1 less. Plaintiffs and DOJ agreed to this higher commission based on Umansky's
2 reputation and ability to get the best possible price for the Property.

3 31. The Listing Agreement provided that the Property would be listed at
4 \$32 million but, as required by the Settlement Agreement, and Order, the Property
5 was also required to be sold at its actual true market value. The Listing Agreement
6 obligated Umansky to comply with the Settlement Agreement, and provided that the
7 "Settlement Agreement provisions will prevail in the event any of them conflict with
8 the terms in this Agreement."

9 32. As Umansky and Defendants were aware, as the listing agent,
10 Umansky owed Plaintiffs fiduciary duties, including duties to work diligently to
11 obtain the highest price for the Property, to not enter into secret arrangements to
12 earn compensation beyond his commission or that would create conflicting interests
13 from Plaintiffs as his clients, to disclose all material facts to Plaintiffs including all
14 offers received for the Property, and not to disclose to buyers the lowest price
15 Plaintiffs as sellers would accept for the Property.

16 33. Umansky knew the Property was worth far more than the list price and
17 was an opportunity for a buyer to earn massive profits on resale. He discussed his
18 new listing with his friend and client Oberfeld, a real estate developer Umansky had
19 previously worked with was knowledgeable about the Malibu real estate market.
20 Oberfeld agreed the listing price was well below market and was the value of just
21 the land. Both agreed that, even if the buyer paid tens of millions of dollars above
22 the list price, he could earn massive profits on a resale.

23 34. On information and belief, Umansky agreed with Oberfeld, and later
24 Defendants and other buyers as alleged in greater detail below, to use his role as
25 listing agent to depress the price for the Property so it could be bought for far below
26 market, then resold for a large profit. In furtherance of that agreement, Oberfeld
27 agreed to use Umansky to help him find buyers of the Property from him and other
28 investors in the acquisition in exchange for compensation, and invited Umansky to

1 invest in the project, as they had done on prior transactions, earning him additional
2 secret profits from a depressed price and creating undisclosed conflicts of interest
3 with Umansky's fiduciary duties to Plaintiffs.

4 35. After entering into the Listing Agreement, Umansky approached only
5 his friends and clients as potential buyers and entered into agreements with some or
6 all of them not to bid against each other for the Property. Umansky also ignored
7 expressions of interest from other non-clients, including Jones Builders Group, Inc.,
8 which had contacted DOJ and was then referred to Umansky. As discussed below,
9 this resulted in offers in a narrow range from only Umansky's clients, except for an
10 offer from one non-client and his agent, Hakim and Segal.

11 36. Hakim learned about the Settlement Agreement and its provisions for
12 sale of the Property and hired Segal and BHHC to be his agents in connection with a
13 potential purchase, as well as a subsequent resale of the Property for a large profit.
14 Knowing the Property was being sold subject to the Settlement Agreement and
15 Order, Segal approached the DOJ on Hakim's behalf to express interest in the
16 Property and was referred to Umansky as listing agent.

17 37. On information and belief, before contacting the DOJ, Hakim and
18 Segal reviewed the Settlement Agreement and Order and were familiar with their
19 requirements, including that the Property be sold for its fair market value. Segal
20 directed his email to Stephen Welk and Woo Lee, who represented the United States
21 in the Action and the Settlement Agreement and Order. Their names appeared on
22 the Order and Settlement Agreement along with other DOJ attorneys, but their email
23 addresses were the only ones appearing on those documents. As a licensed agent
24 and a real estate developer, both Segal and Hakim were familiar with the provisions
25 of the Order and Settlement Agreement and the form Listing Agreement Umansky
26 signed and his fiduciary duties to Plaintiffs as his clients.

27 38. On July 27, 2015, after Segal had contacted Umansky to express
28 interest in the Property, Umansky told Segal the listing price for the Property was

1 \$32 million. Hakim and Segal were surprised because this was far below the actual
2 market value for the Property. Segal told Umansky that Hakim was prepared to pay
3 significantly more for the Property. Umansky instead asked them not to offer more
4 thus avoiding a bidding war and keeping the price down. Hakim, BHHC and Segal
5 agreed with Umansky and gave him a written offer for the list price for delivery to
6 his clients, with documentation verifying Hakim's ability to pay.

7 39. On August 1, 2015, Hakim and Segal met with Umansky at the
8 Property. During this meeting, Hakim and Segal reiterated their strong desire to
9 purchase the Property and made a verbal offer of \$40 million for the Property and
10 told him that they would pay "whatever it takes" to buy the Property. Knowing this
11 would result in a bidding war and much higher price for the Property, Umansky told
12 them not to put the higher offer they had made to him in writing. He also told them
13 DOJ was overseeing the sales process and Plaintiffs and DOJ would agree to sell at
14 the list price if no higher offers were submitted. On information and belief, he also
15 assured them the lower offer would not reduce their chances of being chosen and he
16 would ensure no other offers would be higher to avoid a bidding war.

17 40. Hakim and Segal both knew based on this conversation that Umansky
18 was not trying to obtain the market price for the Property but instead was violating
19 the Order and his contractual and fiduciary duties to his clients by trying to keep the
20 price as low as possible. They also knew that this could be accomplished only if
21 Umansky was having similar discussions with other buyers, including those whom
22 Hakim and Segal knew or believed were represented by Umansky or The Agency.
23 Hakim and Segal agreed with Umansky to not put their offer in writing and instead
24 let him submit their lower offer of \$32 million to avoid a bidding war and conceal
25 from Plaintiffs and DOJ that they could sell it for much more.

26 41. Umansky also obtained offers from four other prospective buyers, all of
27 whom were also his clients and represented by Umansky's firm, The Agency. On
28 information and belief, while the legally required disclosure on each offer stated that

1 The Agency was the brokerage firm for both the seller and each offer named other
2 agents at The Agency as buyers' agents, Umansky had prior business relationships
3 with, and was advising, each of them with respect to the purchase.

4 42. Among the other offers was one from Oberfeld, who had retained
5 Umansky as his agent on the purchase and any resale, and who also was a close
6 childhood friend of Hakim. The required "disclosure" of agency in Oberfeld's first
7 offer identified another agent at The Agency as working for him. In fact, Umansky
8 secretly advised and acted as Oberfeld's agent on the purchase as well as efforts to
9 find a buyer and investors for Oberfeld for secret compensation while Umansky was
10 purportedly acting as Plaintiffs' agent on the sale, while the other agent Oberfeld
11 identified in this disclosure had minimal involvement.

12 43. On information and belief, Umansky told Oberfeld about the above
13 discussions with Segal and Hakim and agreed with him to violate his fiduciary duty
14 to Plaintiffs and obligations under the Listing Agreement and Order by working to
15 depress the price in order to maximize profits on the resale of the Property, and to
16 use his position as agent, advisor and fiduciary to Plaintiffs to further this scheme.
17 As a result, Oberfeld offered \$32.5 million. On information and belief, Umansky
18 had similar conversations with the other prospective buyers, and ensured that all
19 offers were within a narrow range of the listing price.

20 44. All of the offers were between \$32 and \$33.5 million, the highest of
21 which came from a developer in London named Nicholas Candy, who also required
22 the most time to close the sale. Even though Hakim had verbally offered over \$40
23 million to Umansky, and said he would pay far higher, the written offer he signed
24 for delivery to Plaintiffs and DOJ was only \$32 million, as Hakim and Segal agreed
25 with Umansky to offer, knowing Umansky was thereby violating his contractual and
26 fiduciary duties to Plaintiffs and the Settlement Agreement and Order.

27 45. In August 2015, Umansky presented Plaintiffs and the DOJ with these
28 offers. Despite knowing that Hakim and others were willing to pay more, Umansky

1 recommended to DOJ and Plaintiffs that they send the same counter-offer to all of
2 the bidders, at the amount of the highest bid, \$33.5 million. This was in furtherance
3 of his efforts to keep the price as low as possible and agreements with Defendants
4 and others. Umansky recommended \$33.5 million because that was the highest of
5 the offers he had presented and therefore he could not credibly propose that they
6 counter with a lower price. Based on the recommendation of Umansky as their
7 agent and fiduciary, Plaintiffs and DOJ agreed with this proposal.

8 46. On or about December 14, 2015, Umansky gave Hakim, Segal and
9 Oberfeld a “Multiple Counter-Offer” from Plaintiffs offering to sell the Property to
10 Hakim for \$33.5 million. The counter-offers stated that Plaintiffs were also making
11 the counter-offer to other prospective buyers, and would have the right to select the
12 buyer even if one accepted the counter-offer without change. They also knew it is
13 common in such cases for buyers to offer more than the counter-offer to increase the
14 likelihood of being chosen as buyer. They also knew that, unless the other bidders
15 had agreed with Umansky not to increase their offers, there was a risk that someone
16 else would increase his offer by even a small amount and be chosen as buyer.

17 47. Hakim and Segal again told Umansky they would pay significantly
18 more for the Property, but Umansky again urged them not to put a higher offer in
19 writing in order to avoid a bidding war that would drive up the price to them or
20 whoever was chosen as buyer, but to instead agree to \$33.5 million. Hakim and
21 Segal complied with Umansky’s request and signed the counter-offer. Hakim and
22 Segal agreed to do so despite knowing that Umansky was breaching his duties to
23 Plaintiffs, concealing higher offers, and actively working to keep the price as low as
24 possible to maximize the profits on a resale, in furtherance of a conspiracy with him
25 and other buyers not to bid up the purchase price.

26 48. Hakim and Segal agreed with Umansky to conceal their higher written
27 offer because they believed that, with Umansky’s efforts and communications with
28 all bidders, the Property could be acquired by one of the bidders for below its value,

1 but that, if they raised their bid, other bidders would compete, leading to a bidding
2 war and a significantly higher price for whoever was chosen as purchaser. While
3 there was a risk another buyer could be selected, Hakim and Segal believed Hakim
4 would be chosen if all offers were equal amount because of his financial ability and
5 short time frame to close. They also believed the possibility of buying the Property
6 for a price that was tens of millions of dollars below its value outweighed the risk
7 that a price war would make the purchase far less profitable.

8 49. Hakim and Segal also believed they would be chosen without the need
9 to increase their offer, because Segal secretly agreed in writing that, if Hakim was
10 chosen, he would kick back to Umansky part of his share of the broker commission.
11 On November 4, Segal gave Umansky a signed, written “confidential” addendum
12 agreeing in writing to pay half his commission to Umansky. In response, Umansky
13 wrote: “Received. You are a man of your word. I truly hope that you get picked.”
14 Hakim and Segal understood this to mean Umansky would ensure that Plaintiffs
15 chose Hakim. This was a commercial bribe, illegal under California law.

16 50. By offering a secret kickback to the seller’s agent instead of increasing
17 the offer to Plaintiffs by the kickback amount or more, Segal and Hakim knew and
18 intended this would ensure Hakim would be chosen and benefit from the artificially
19 below market price. Segal also knew and intended that he would make up for the
20 lower commission with the commission as listing agent on the resale.

21 51. On information and belief, Umansky also told Hakim and Segal that, if
22 Hakim was not chosen as buyer, he could invest with the buyer or buy the Property
23 from him and still pay far less than they would have paid in a competitive contest to
24 buy from Plaintiffs, thereby sharing in the fruits of the scheme. Hakim and Oberfeld
25 were close childhood friends and, as agreed, immediately after Oberfeld was chosen
26 as buyer, Hakim gave Umansky a secret agreement to buy Oberfeld’s position as
27 buyer for an additional \$8 million dollars to Oberfeld and Umansky.

28

1 52. On information and belief, Umansky told Hakim and Segal and other
2 bidders that Oberfeld was seeking investors and, if Oberfeld was chosen, they could
3 share in the profits by investing or paying for an assignment from him. Hakim and
4 Segal also believed that if someone else was chosen as the buyer at the agreed and
5 anticompetitively lower price, they would be able to acquire the Property from that
6 buyer for the same \$40 million, instead of a higher price.

7 53. Umansky delivered to Oberfeld the same Multiple Counter-Offer as
8 Hakim. Umansky knew Oberfeld was willing to pay many millions of dollars more
9 for the Property and believed the listed price was “land value” and very far below its
10 true market value. Despite knowing this, Umansky told Oberfeld he did not need to
11 increase his offer because Umansky had ensured the other bidders including Hakim
12 also would not compete on price.

13 54. Oberfeld believed Umansky would ensure he would be chosen as buyer
14 without having to compete on price, thereby dramatically increasing his anticipated
15 profits on the transaction, because Oberfeld had agreed Umansky would act as the
16 listing agent on resale of the Property, which would result in an extremely lucrative
17 additional commission, and, as he had done in prior sales, Umansky would have the
18 opportunity to invest in the project if Oberfeld was chosen.

19 55. The same Multiple Counter-Offer was also delivered to two other
20 prospective buyers, Nicholas Candy in London and Richard Stark in Los Angeles,
21 both of whom were also represented by The Agency and clients and friends of
22 Umansky who were being and advised by him in connection with this transaction.
23 Umansky also personally met with Candy in London to discuss his response, after
24 which Candy did not increase his offer. Umansky chose to fly to London to meet
25 him in person in order to avoid any paper trail. On information and belief, Umansky
26 also discussed the counter-offer with Stark, who did not raise his offer.

27 56. After meeting with Umansky, a very savvy and skilled agent tasked
28 with getting the highest price for Plaintiffs, and despite each of them knowing and

1 believing the Property was worth far more than \$33.5 million, none of the bidders
2 increased their offer. On information and belief, in addition to the communications
3 and agreements through Umansky, Oberfeld had direct communications with other
4 bidders in furtherance of this scheme and discussed allowing them to invest in the
5 purchase by Oberfeld, thereby earning profits from the resale and sharing in the
6 increased profits resulting from the depressed purchase price.

7 57. Umansky recommended that Plaintiffs and DOJ agree to sell the
8 Property to Oberfeld for \$33.5 million, with Hakim as the backup buyer. Umansky
9 recommended against selling to Candy, purportedly because would not be able to
10 close until after March 2016, even though he knew Oberfeld would need time find
11 investors in order to be close and would also need even more time than Candy.
12 Plaintiffs agreed to the recommendation of their agent and fiduciary.

13 58. The sale was subject to approval of the DOJ, as required by the
14 Settlement Agreement and Order, and the approval process included an interview of
15 Oberfeld by federal agents. As a result, DOJ did not approve the sale until February
16 2016. If DOJ or Plaintiffs had been made aware of the agreements and higher offers,
17 they would not have approved the sale to Oberfeld.

18 59. Even though Oberfeld's offer stated that it was an "as is" cash offer that
19 did not require third party financing, Umansky and Oberfeld knew he could not pay
20 the \$33.5 million price without a loan and investors, or a buyer to whom to flip the
21 Property. In fact, Umansky was already secretly helping Oberfeld find investors for
22 his acquisition and buyers who would pay a significantly higher amount for the
23 Property than Umansky was trying to get for Plaintiffs.

24 60. On December 23, 2015, Umansky emailed Oberfeld to tell him he had
25 been chosen as the buyer for \$33.5 million. Oberfeld responded: "Fantastic. Moe,
26 how did it go w your guy." Umansky responded: "Very well. He might take it off
27 *our* hands. I pitched it for 42." (Emphasis added) Umansky identified the buyer as
28 Ian Livingstone. In other words, by the time Umansky persuaded Plaintiffs to sell

1 the Property to Oberfeld for \$33.5 million, he was already secretly discussing sale to
2 Livingstone on Oberfeld's behalf for almost \$10 million higher. Umansky did not
3 pitch the Property to Livingstone for \$42 million on Plaintiffs' behalf.

4 61. On information and belief, Umansky also pitched the Property to other
5 potential buyers from Oberfeld while he purportedly was acting as seller's agent for
6 Plaintiffs, and Oberfeld agreed to compensate Umansky for these efforts, including
7 with commissions and profits. Umansky's efforts to find buyers and investors for
8 Oberfeld continued after he was chosen as buyer, including over the several months
9 before the close, when Plaintiffs still owned the Property and Umansky was still
10 acting as their agent with fiduciary and contractual duties to them.

11 62. Shortly before the sale to Oberfeld was approved, and even though he
12 was the listing agent who continued to owe fiduciary duties to Plaintiffs until at least
13 the close and knew Oberfeld had neither satisfied contingencies nor raised the funds
14 he needed to complete the sale, Umansky discussed with Hakim and Segal investing
15 or purchasing Oberfeld's position as buyer, as they had discussed during the period
16 prior to Plaintiffs' agreement to sell to Oberfeld. During that time period, Umansky
17 was seeking investors and buyers for Oberfeld and simultaneously in discussions
18 with Hakim, Segal, Candy and other buyers and therefore would have discussed
19 with them the possibility of investing with Oberfeld.

20 63. Umansky arranged a secret meeting between him, Hakim, Segal and
21 Oberfeld in February 2016, at which Oberfeld provided Segal and Hakim a written
22 development plan Oberfeld and Umansky had been using to pitch the Property to
23 investors and buyers, even though Plaintiffs owned the Property and contingencies
24 had not yet been satisfied. The plan stated, among other things: "The acquisition
25 price is close to land value and there is a minimal amount of work required to relist
26 this at a price that generates substantial returns. Product in this class now sells for
27 over 60, even 70 million in Malibu."
28

1 64. On February 20, 2016, as previously discussed with Oberfeld and
2 Umansky but not disclosed to Plaintiffs or DOJ, Segal delivered to Umansky a
3 signed letter of intent from his client Hakim to pay Oberfeld \$8 million for a secret
4 assignment of his position as buyer with a 4% commission to Umansky. Segal’s
5 email stated: “Sam is very much pleased with the discussions we had and prospect
6 of getting this home for his wife and children. It is my understanding Mauricio
7 Oberfeld has been a dear friend of Sam’s since childhood and with that taken into
8 consideration we present to you the terms included.”

9 65. Umansky presented the offer to Oberfeld, but not to Plaintiffs, who
10 owned the Property. Shortly thereafter, Umansky sent Hakim a counter-offer by
11 email dated February 21, 2016, of \$15 million on behalf of Oberfeld, with the same
12 4% commission to him. Hakim’s offer and this counter provided that they would be
13 kept strictly “confidential” and not disclosed to anyone else, including Plaintiffs and
14 DOJ. In doing so, Hakim and Segal made clear they were knowingly encouraging
15 Umansky to violate the Order and his fiduciary and other duties.

16 66. Hakim and Segal continued to discuss the assignment transaction or
17 investment with Umansky and Oberfeld and Umansky provided Hakim and Segal
18 information concerning the status of the sale and information on contingencies,
19 while simultaneously working to assist Oberfeld in finding investors as another
20 alternative to enable him to close, none of which was disclosed to Plaintiffs.

21 67. As real estate agents, brokers and developers, Defendants knew
22 Umansky continued to owe fiduciary duties of honesty and full disclosure, and the
23 duty not to enter into arrangements to obtain secret profits from the transaction, until
24 at least the close. They also knew that real property transactions like this provided
25 many opportunities for a seller to terminate the sale, including if the buyer failed to
26 pay required deposits or meet deadlines. Defendants knew the existence of other
27 buyers or offers would be an important factor in Plaintiffs’ and DOJ’s deciding if
28

1 they would terminate the sale for such failures and whether to agree to repair credits,
2 extensions and requests to waive contingencies and deposits.

3 68. Defendants also knew Umansky’s activities in attempting to negotiate a
4 flip to Hakim and others long before the sale to Oberfeld had closed, and his efforts
5 to depress the price, breached his fiduciary and contractual duties to Plaintiffs, but
6 continued to actively encourage and assist him in doing so, including by offering
7 him secret compensation as alleged above.

8 69. In exchange for Oberfeld’s promises of commissions and other
9 compensation, Umansky recommended Plaintiffs and DOJ waive an agreed million
10 dollar deposit, claiming Oberfeld “is concerned about having 1 Million dollars tied
11 up indefinitely” and it would be impossible to find another buyer for the property,
12 when Umansky knew he needed the waiver because he did not have the funds and
13 that other buyers were prepared to take his place for millions more.

14 70. With the deadlines for various contingencies and the close rapidly
15 approaching, at Oberfeld’s request and in exchange for Oberfeld’s agreement to pay
16 secret commissions and other compensation, Umansky repeatedly recommended
17 that Plaintiffs and DOJ extend contingency periods and close of escrow so that
18 Oberfeld could continue to find investors or a buyer.

19 71. In April 2016, Umansky was still helping Oberfeld find investors and
20 buyers so that he could complete the purchase. Despite having agreed to buy the
21 property “as is,” Umkansky requested for Oberfeld a \$1 million credit for repairs.
22 At Oberfeld’s request and in furtherance of the scheme, Umansky pushed Plaintiffs
23 “so hard” (in Umansky’s own words) to agree to the credit. Plaintiffs reluctantly
24 agreed to the credit, benefiting Oberfeld and anyone else with a financial interest,
25 including Umansky and Segal and Hakim if they invested or acquired Oberfeld’s
26 position. Oberfeld also told Umansky in writing that his ability to complete the
27 purchase depended on the credit because he did not have sufficient funds.

28

1 72. Just two weeks before the close of the sale, and after all contingencies
2 had cleared and the deed was signed by Plaintiffs, Umansky wrote to the DOJ that
3 Oberfeld had just “invited me to invest with him” and “to express my intention of
4 making an investment with Mauricio Oberfeld into the deal.” Three days later, he
5 wrote an e-mail to Sweetwater about several topics. Towards the end of the e-mail
6 Umansky wrote, “for the sake of *full disclosure* . . . Mauricio [Oberfeld] invited me
7 to invest about *one month ago after we removed all contingencies* [and] I do intend
8 to make an investment with them.” (Emphasis added).

9 73. This “full disclosure” was anything but. It was too late for Sweetwater
10 to get out of the sale to Oberfeld. It also itself was another fraud, as conspicuously
11 absent was disclosure of Umansky’s other and earlier financial dealings, interests
12 and conflicts outlined above, long before contingencies were removed. As a result,
13 Plaintiffs did not know or have reason to suspect any agreements existed prior to
14 removal of contingencies, let alone that the Property could have been sold for far
15 more, until at the earliest learning that the Property had been resold for more than
16 double the purchase less than a year after the sale closed.

17 74. Oberfeld affirmatively assisted Umansky in this fraud, by providing
18 him with an email he sent Umansky that he could show DOJ stating that he had first
19 invited Umansky to invest in the project only after contingencies had cleared: “I
20 know you did not want to discuss the possibility of becoming involved in this deal
21 with us until the deal was done and ready to close. Given that it is there now, I
22 would like for you to consider joining us in the deal and leaving a substantial
23 portion of your commission as investment in the deal.”

24 75. Oberfeld knew and intended that Umansky would provide this email to
25 DOJ and/or Plaintiffs in order to help conceal the fact that Oberfeld had entered into
26 earlier arrangements giving Umansky secret profits on the transaction, including
27 commissions on the resale and an opportunity to invest even before Oberfeld was
28

1 approved as buyer and long before contingencies were cleared. Umansky gave this
2 misleading email to DOJ as part of his “disclosure.”

3 76. The sale of the Property closed on or about June 30, 2016. On March
4 30, 2017, less than a year later, Oberfeld flipped the Property to a buyer Umansky
5 found for \$70 million, more than double what they paid, raising doubts that he used
6 required diligence to sell the Property or had acted in Plaintiffs’ interests. Plaintiffs’
7 counsel demanded more information from Umansky. In September 2017, Umansky
8 provided additional documents relating to the sale, revealing some of the facts
9 alleged and specific statements quoted in this complaint.

10 77. Plaintiffs did not know and had no reason to suspect that they had
11 suffered an injury and that it was the result of wrongdoing until after March 30,
12 2017, when the Property was resold in a private sale just nine months after the sale
13 to Oberfeld for more than double the price, press reports were published providing
14 information on the sale that included the purchase price, and Plaintiffs thereafter
15 obtained documents from Umansky revealing information suggesting his conflicting
16 interest and arrangements with Oberfeld that had begun long before Umansky and
17 Oberfeld had represented they did.

18 78. On March 13, 2019, Plaintiffs filed a lawsuit against Umansky and The
19 Agency, entitled *Sweetwater Malibu CA LLC et al. v. Mauricio Umansky, et al.*
20 (Case No. CV 19-1848-GW-SSx) (“Umansky Action”), in which they
21 sought, among other things, disgorgement of any profits earned on resale of the
22 Property, based on various claims including breach of contract and the Order, fraud
23 and breaches of fiduciary duty. Plaintiffs reached a confidential settlement with
24 Umansky and The Agency, but the action remains pending.

25 79. In September 2019, Hakim and Segal each filed actions against
26 Umansky and Oberfeld in Los Angeles County Superior Court entitled *Sam Hakim*
27 *v. Mauricio Umansky, et al.* (L.A.S.C. Case No. 19SMCV01619) (“Hakim Action”)
28 and *Aitan Segal v. Mauricio Umansky, et al.* (Case No. 19SMCV01720) (“Segal

1 Action”). Hakim and Segal each admitted they had offered Umansky \$40 million
2 and were willing to pay “whatever it takes,” but agreed with Umansky to submit a
3 written offer to his clients for only \$32 million and not bid more than \$33.5 million
4 in response to Plaintiffs’ counter-offer, knowing Umansky was violating his
5 fiduciary and contractual duties to Plaintiffs to maximize the price.

6 80. Plaintiffs entered into written tolling agreements with Defendants
7 effective as of March 20, 2020, that extended the statute of limitations or any other
8 defense based on passage of time by three months, that was subsequently extended
9 an additional three months for Hakim, Segal and BHHL, and an additional six
10 months in the case of Oberfeld and 3620 Sweetwater.

11 **FIRST CAUSE OF ACTION**

12 **(Aiding and Abetting Violation of the Order**

13 **Against All Defendants)**

14 81. Plaintiffs hereby incorporate in this cause of action each and every one
15 of the foregoing paragraphs as though fully set forth herein.

16 82. The Order required that the Property be sold in accordance with the
17 Settlement Agreement, including its requirement that the Property be sold for its
18 true fair market value. The Order also imposed obligations on Umansky and The
19 Agency as listing agents, including obligations to sell the Property for its true fair
20 market value and to work cooperatively with the United States and provide it with
21 relevant information related to the Property and sale.

22 83. Defendants were aware of the provisions of the Order and Settlement
23 Agreement and reviewed them in connection with the transactions alleged above
24 relating to the Property and Plaintiffs.

25 84. Defendants knowingly conspired with and aided and abetted Umansky
26 in violating the Order by agreeing with Umansky to depress the purchase price for
27 the Property far below its fair market value and divert value to themselves from its
28

1 mandated use under the Order for the benefit the people of Equatorial Guinea, and
2 to conceal material information from Plaintiffs and DOJ.

3 85. In exchange for Umansky's agreement to violate the Order, Defendants
4 agreed to pay him secret compensation, including Segal and Hakim agreeing to pay
5 him commissions and Oberfeld agreeing to pay Umansky for finding investors and
6 buyers for Oberfeld and commissions on a resale while he was Plaintiffs' agent in
7 the sale. Umansky, with the help and encouragement of Defendants, intentionally
8 violated his obligation under the Order as listing agent to work to sell the Property
9 for its fair market value. As alleged above, Defendants agreed in writing with
10 Umansky to keep these secret agreements "confidential" from Plaintiffs and DOJ,
11 violating the Order and Umansky's fiduciary and other duties.

12 86. In furtherance of their conspiracy, and with Defendants' agreement and
13 assistance, Umansky misrepresented to the DOJ and Plaintiffs that the only offers he
14 had received were at or less than \$33.5 million, when he knew Hakim actually had
15 offered Umansky at least \$40 million and would pay far more, and he and Oberfeld
16 concealed and misrepresented the nature of their relationship.

17 87. In addition to agreeing to pay Umansky secret compensation for his
18 role, Hakim and Segal actively assisted the conspiracy by agreeing with Umansky to
19 put in writing for the DOJ and Plaintiffs a written offer millions of dollars less than
20 their actual offer to Umansky in order to conceal it from DOJ and Plaintiffs, thereby
21 enabling Oberfeld to acquire the Property for far below market. After Oberfeld was
22 approved as buyer at the artificially low price agreed to with Hakim and Umansky,
23 and further to their agreement to share in the spoils of their wrongdoing, Hakim and
24 Segal sought to share in the benefits by trying to negotiate purchase of assignment
25 of Oberfeld's position as buyer for a price still far below market value.

26 88. As a legal and proximate result of Defendants' conspiracy with him,
27 Umansky concealed higher offers from DOJ and Plaintiffs and actively worked to
28 ensure the Property was sold for far less than its fair market value, all in violation of

1 the Order, resulting in damages in an amount to be proven. Plaintiffs seek an order
2 holding Defendants in contempt of the Order and requiring them to compensate
3 Plaintiffs for all resulting damages in an amount to be proven at trial.

4 **SECOND CAUSE OF ACTION**

5 **(Violation of Section 1 of the Sherman Antitrust Act**
6 **Against All Defendants)**

7 89. Plaintiffs hereby incorporate in this cause of action each and every one
8 of the foregoing paragraphs as though fully set forth herein.

9 90. Defendants participated in a conspiracy in restraint of trade to fix and
10 depress the price for the Property, by way of express or implied agreement between
11 Defendants and other prospective purchasers, directly and through Umansky, to not
12 bid against each other and limit the price to \$33.5 million.

13 91. The conspiracy affected interstate and international commerce, in that
14 the Property was owned by Nguema, who was a resident of a foreign country, and
15 his single member LLC in California, Sweetwater, the actual and potential buyers of
16 the Property and investors with Oberfeld included residents of both other states and
17 countries. The Agency calls itself a “Global Marketing and Sales Organization” in
18 recognition of the global scope of its business and buyers for the properties it sells
19 for clients. The sale had to be approved by Plaintiffs and DOJ and the proceeds of
20 the sale were required to be used to benefit the people of Equatorial Guinea under
21 the direction of a representative of Nguema and a representative of the United States
22 in Washington, D.C., and the conspiracy included misrepresentations to the DOJ
23 representatives located in Washington D.C. For the same reasons, and because the
24 conspiracy prevented other potential buyers from having an opportunity to purchase
25 the Property, the conduct also had a direct, substantial and foreseeable effect on
26 commerce within the United States as well as foreign commerce.

27 92. The conspiracy included Umansky, who purportedly represented
28 Plaintiffs in the sale, but in fact was pursuing his own interests as an investor and

1 interests of prospective buyers including Defendants in depressing the price so as to
2 maximize profits in a resale from which Umansky also planned to benefit, as all
3 Defendants knew at the time they reached agreements with Umansky to restrain
4 competition on price between bidders for the Property.

5 93. In furtherance of that scheme, as discussed above, Hakim and Segal
6 agreed to not put in writing their offer of \$40 million to Umansky and instead to
7 allow Umansky to present a far lower and below market price of \$32 million to
8 Plaintiffs and DOJ, and also to not put in writing their offer of \$40 million or more
9 in response to Plaintiffs' \$33.5 million counter-offer, based on Umansky's promises
10 and assurances that he would make sure neither Oberfeld nor any other buyer would
11 pay more so the price would not be bid up higher.

12 94. On information and belief, Umansky also used his position as agent for
13 the sellers and most buyers, including Oberfeld, to limit their offers for the Property
14 and avoid a bidding war that would dramatically increase the price for the Property
15 making a resale far less profitable for any purchaser. Umansky's firm represented
16 all the other bidders but Hakim, facilitating the scheme.

17 95. Defendants and other buyers knew the Property was worth tens of
18 millions of dollars more than the final price and were prepared to pay much more.
19 Indeed, Hakim had verbally offered Umansky at least \$40 million, but then agreed
20 with him not to put it in writing. Both also believed other bidders for the Property
21 would be willing to pay far higher and that a bidding war would result in a final
22 price that was tens of millions of dollars higher.

23 96. Oberfeld and Hakim each would have offered more, resulting in a
24 competitive bidding war and much higher price, unless they received assurances
25 from Umansky that other bidders also agreed not to bid higher.

26 97. Instead of bidding against each other resulting in a higher price paid to
27 Plaintiffs, each of the Defendants agreed to pay Umansky secret compensation if
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1 they were chosen and offered each other the opportunity to invest with each other,
2 thereby sharing in profits from the agreed lower price.

3 98. As result, even though Plaintiffs had hired Umansky and agreed to pay
4 him a higher than market commission because of his reputation and skill in finding
5 buyers and maximizing the price for high end estates such as this, and even though
6 all Defendants knew the listing price was far below market and were willing to and
7 told Umansky they would pay tens of millions of dollars more for the Property, they
8 did not bid against each other and all ended up with the same final offer of \$33.5
9 million, despite knowing there were other purportedly competing bidders.

10 99. Hakim and Segal have specifically admitted, in lawsuits they filed
11 against Oberfeld and Umansky after the scheme allegedly unraveled and they were
12 unable to share in its benefits, that they entered into an agreement with Umansky to
13 not bid against other prospective buyers. Any claim by Defendants that they were
14 unaware that other buyers had also agreed to limit their offers is not credible and is
15 belied by the parties' conduct and other circumstances.

16 100. By not offering more for the Property, Hakim, Segal and Oberfeld
17 acted contrary to their independent economic interests absent an express or implied
18 agreement not to compete on price to avoid bidding up the final price. Because each
19 of them believed the list price was far below its value and tens of millions of dollars
20 in profits could be earned on resale, they each should have had an incentive to bid
21 higher to maximize their chance of making those profits, unless they had assurances
22 that no other buyer would bid more for the Property unless they did.

23 101. As all Defendants knew, by seeking Hakim's agreement not to put in
24 writing his higher offer and advising Oberfeld not to increase his offer, Umansky
25 also was acting contrary to what his economic interests would be in a competitive
26 auction, because a higher price would have paid a higher commission to Umansky.
27 It was only in his economic interest if he had agreements with buyers that would
28 compensate him for keeping the price lower. In fact, as alleged above, each of the

1 Defendants agreed to compensate Umansky if Hakim were the chosen buyer and he
2 succeeded in depressing the price below its true market value.

3 102. Documents Plaintiffs have obtained also show that Defendants were
4 engaging in discussions about sharing the profits from the anticompetitively reduced
5 price at or immediately after DOJ had approved Oberfeld's offer but long before the
6 close, further supporting an inference that they had an expectation of doing so even
7 before Oberfeld was approved by DOJ and that Hakim and Segal had been assured
8 by Umansky they could do so when they agreed not to bid against Oberfeld.

9 103. That Umansky had such discussions with prospective buyers is further
10 supported by the fact that Umansky was already working to find buyers or investors
11 for Oberfeld before his offer was accepted, and met with Hakim and Segal and also
12 traveled to London to meet face-to-face with Candy during the time he was seeking
13 investors and buyers on Oberfeld's behalf.

14 104. That Hakim and Segal offered Umansky \$40 million while he was
15 helping Oberfeld find a buyer, concealed it from Plaintiffs and did not raise their bid
16 even though they told Umansky they were prepared to do "whatever it takes" to buy
17 the Property, creates a strong inference that they discussed instead paying the \$40
18 million to Oberfeld if he was selected as the buyer.

19 105. As a legal and proximate result of Defendants' conspiracy with each
20 other and Umansky to fix prices in violation of section 1 of the Sherman Act,
21 Plaintiffs suffered antitrust injury consisting of a lower price for the Property in an
22 amount to be proven at trial but in excess of \$10 million. Plaintiffs also are entitled
23 to treble damages and attorneys' fees as provided by the Clayton Act.

24 **THIRD CAUSE OF ACTION**
25 **(Violation of California Cartwright Act**
26 **Against All Defendants)**

27 106. Plaintiff hereby incorporates in this cause of action each and every one
28 of the foregoing paragraphs as though fully set forth herein.

1 113. Umansky’s duties to Plaintiffs did not end with signing of a purchase
2 agreement, but continued until at least the close, especially because he pressured
3 Plaintiffs to (ii) waive the requirement that Oberfeld pay a deposit of \$1 million, (ii)
4 extend deadlines for physical inspection contingencies and close of escrow instead
5 of exercising their right to terminate the sale to Oberfeld due to his breaches and
6 failure to satisfy conditions, and (iii) agree to a \$1 million credit for repairs. Absent
7 those agreements, waivers and extensions, Oberfeld could not have completed the
8 sale, entitling Plaintiffs to terminate and sell the Property for more.

9 114. Umansky conspired with each Defendant to breach his fiduciary duties,
10 as alleged above, including failing to work diligently to maximize the price, instead
11 intentionally working with the prospective buyers to minimize the sale price through
12 unlawful agreements and entering into “confidential” agreements with Defendants
13 to earn secret compensation in exchange for those efforts, which agreements they
14 expressly agreed would be kept secret in violation of his duties.

15 115. Defendants, as licensed real estate brokers, agents and real estate
16 developers, were fully aware of the fiduciary and other duties Umansky and The
17 Agency owed to Plaintiffs.

18 116. Defendants were aware of Umansky’s and The Agency’s breaches
19 of fiduciary duty as outlined above. Defendants knew Umansky was working to
20 minimize the price for the Property and entering into agreements with them and
21 Oberfeld to earn Umansky secret profits that would be increased if the price was
22 reduced and created massive conflicts of interest. They also knew and expressly
23 agreed with Umansky that they would be concealed from his clients.

24 117. Defendants provided both substantial assistance and encouragement to
25 Umansky’s breaches of fiduciary duties, including entering into secret agreements
26 with Umansky to provide compensation in exchange for his efforts to depress the
27 price for the Property, agreeing with each other and other buyers through Umansky
28

1 not to compete on price, and agreeing with Umansky to keep those activities
2 “confidential” in violation of his fiduciary duties.

3 118. If Umansky had not breached his fiduciary duties, Plaintiffs and DOJ
4 would not have agreed to the sale to Oberfeld or would have terminated the sale due
5 to his failure to pay the required deposit, failure to close by the required date, failure
6 to waive the physical inspection contingency, and fraud and would have sold the
7 property to another buyer for tens of millions of dollars more.

8 119. As a proximate and legal result, Plaintiffs have been damaged in an
9 amount to be proven at trial, but in excess of \$10 million. Plaintiffs also are entitled
10 to disgorgement of all profits obtained by Defendants as a result of their breaches
11 and wrongdoing alleged herein, and a constructive trust over such profits.

12 120. Defendants acted with fraud malice and oppression, entitling Plaintiffs
13 to recover punitive or exemplary damages in an amount to be determined at trial.

14 **FIFTH CAUSE OF ACTION**

15 **(Conspiracy to Commit Fraud**

16 **Against All Defendants)**

17 121. Plaintiff hereby incorporates in this cause of action each and every one
18 of the foregoing paragraphs as though fully set forth herein.

19 122. Defendants conspired with Umansky and each other as alleged herein
20 to defraud Plaintiffs into selling the Property for tens of millions of dollars below its
21 true market value, so as to maximize the profits on resale of the Property, with the
22 intention of sharing in those profits.

23 123. In furtherance of conspiracy, and as alleged in greater detail below,
24 Defendants entered into financial arrangements with Umansky that would pay him
25 secret compensation and profits, in exchange for his efforts to defraud Plaintiffs of
26 the Property or its full market value.

27 124. Oberfeld, on his own behalf and on behalf of 3620 Sweetwater, agreed
28 to pay Umansky commissions for resale of the Property, the opportunity to invest in

1 the purchase and share in profits on resale, compensation for finding investors, and
2 commissions in connection with a proposed assignment of Oberfeld's position as
3 buyer to Hakim, knowing that he had a duty to disclose these arrangements to his
4 clients, but agreeing with Umansky to keep them confidential.

5 125. Oberfeld misrepresented in his written offer for the Property, dated
6 August 10, 2015, that he did not need third party financing to complete the sale,
7 when in fact, and as known to Umansky but concealed from Plaintiffs, he needed a
8 loan and investors in order to pay the agreed price, as well as assistance and funding
9 from Umansky and much more time than he agreed to close.

10 126. Oberfeld and Umansky both also misrepresented in a dual agency
11 disclosure that was provided with his August 10, 2015 offer that a different agent at
12 The Agency was advising and representing him in connection with the acquisition of
13 the Property when in fact Umansky was acting as his agent both in connection with
14 the acquisition and efforts to find investors and buyers from Oberfeld while he was
15 supposed to be acting as Plaintiffs' listing agent.

16 127. Oberfeld met directly with federal agents in February 2016 in order to
17 obtain DOJ approval for his purchase of the Property but failed to disclose that the
18 agency disclosure was false and incomplete, that he would not be able to close the
19 purchase without a loan and investments, that he was already using Umansky to
20 seek investors or purchasers at a significantly higher price and that he had entered
21 into secret arrangements to compensate Umansky for his help.

22 128. Oberfeld provided Umansky with an email purportedly dated May 11,
23 2016, that he intended to be provided to DOJ and Plaintiffs, that misrepresented that
24 he only offered Umansky an opportunity to invest after all contingencies cleared,
25 when in fact Oberfeld had agreed to do so much earlier and had also entered into
26 other undisclosed financial arrangements described above also much earlier.

27 129. As Oberfeld intended, Umansky provided a copy of that email to the
28 DOJ on June 13, 2016, as confirmation of his incomplete, false and misleading

1 “disclosure” of the investment and his efforts to conceal his conflicting financial
2 arrangements alleged above. Umansky also made the same misrepresentations and
3 non-disclosure to Plaintiffs on June 16, 2016.

4 130. In February 2016, Oberfeld agreed both verbally and in writing to pay
5 Umansky a commission in connection with efforts to enter into a secret agreement
6 that Umansky agreed not to disclose to Plaintiffs or the DOJ to sell his position as
7 buyer to Hakim, including in a written offer Umansky made on his behalf by email
8 to Segal dated February 21, 2016 that he, Umansky, Hakim and Segal agreed in
9 writing would be kept “confidential” and not disclosed to Plaintiffs.

10 131. In furtherance of the conspiracy, Hakim and Segal submitted a written
11 offer for Umansky to deliver to Plaintiffs on or about July 27, 2015, for \$32 million,
12 that misrepresented and helped him to conceal their actual offer to Umansky of \$40
13 million or more. Hakim and Segal agreed to Umansky’s request not to put their real
14 offer in writing and instead write an offer for \$32 million for him to give Plaintiffs
15 to help him conceal their higher offer from Plaintiffs.

16 132. Hakim and Segal also offered Umansky secret compensation for his
17 role in concealing and misrepresenting material facts alleged below, including the
18 existence of higher offers and the fact that he was actively working to depress the
19 price for the Property below market. For example, on November 4, 2015, Segal
20 agreed to pay Umansky part of Segal’s commission in exchange for his help
21 defrauding Plaintiffs into selling the Property below its value.

22 133. Knowing Umansky had not advised his clients of their \$40 million
23 offer, resulting in an agreement to sell to Oberfeld for \$33.5 million, Hakim and
24 Segal did not withdraw from the conspiracy and advise Plaintiffs and DOJ so they
25 could avoid the below market sale, they instead continued to participate including
26 seeking to financially benefit from the lower price.

27 134. For example, on February 20, 2016, Segal and Hakim offered to pay
28 Oberfeld \$8 million to take over his position as buyer, with a secret commission to

1 Plaintiffs’ agent Umansky, thereby benefiting from the lower purchase price. They
2 did so, even though Oberfeld did not yet own the Property and had not satisfied any
3 of the contingencies. Not only did they offer Umansky secret compensation for his
4 assistance, but they specifically required that the offer “be kept strictly confidential
5 by both [Hakim] and [Oberfeld],” and therefore required Umansky to keep it secret
6 from Plaintiffs as his clients and fiduciaries, and from DOJ.

7 135. In furtherance of his conspiracy with Defendants, Umansky also made
8 material misrepresentations to Plaintiffs and the DOJ in the course of the sale of the
9 Property, failed to disclose agreements with Oberfeld and others providing for secret
10 profits and commissions in addition to commissions paid by Sweetwater under the
11 listing agreement, failed to disclose and misrepresented the amount of the offers he
12 had received for the Property, as well as other material facts, and breached duties of
13 care, integrity, honesty and loyalty to Plaintiffs.

14 136. As alleged in greater detail below, Umansky knowingly misrepresented
15 to Plaintiffs material facts, including that (i) the offer from Oberfeld was “all cash”
16 not contingent on any third party financing, (ii) Umansky was using his best efforts
17 and due diligence to sell the property for Plaintiffs and would disclose to them all
18 offers received for the Property, (iii) Oberfeld was able to close the sale within 60
19 days, (iv) Plaintiffs would be unable to find another buyer at the same price or more
20 if they did not waive the deposit and extend escrow, (v) Umansky was first invited
21 to invest in the Property only after all contingencies were satisfied, and (vi) that no
22 higher offers had been received for the Property.

23 137. As alleged in greater detail below, Umansky also failed to disclose
24 material facts he had duty to disclose, including the (i) the existence of offers for the
25 property significantly higher than the offer from Oberfeld that he advised Plaintiffs
26 to accept, (ii) that Oberfeld was unable to close the purchase if he was unable to not
27 find investors and other third party financing, (iii) that Umansky had been offered
28 additional consideration by Oberfeld and other offerors, and (iv) the nature and

1 existence of arrangements with Oberfeld, Hakim and Segal that would give him
2 secret profits or consideration beyond his disclosed commission.

3 138. In the Listing Agreement Umansky signed with Plaintiffs on or about
4 June 16, 2015, he promised he would use “reasonable effort and due diligence” to
5 sell the Property and disclose all offers. In order to induce Plaintiffs and DOJ to
6 approve him as Listing Agent, Umansky emailed marketing materials highlighting
7 his “notable sales” to Stephen Gibbons of DOJ on March 24, 2015, and touted his
8 skill and results to Plaintiffs in meetings with Plaintiffs’ representatives, including
9 Nguema and Matias Mba Medja in early June in Geneva, Switzerland. Before the
10 Listing Agreement could take effect, it had to be approved by DOJ. To induce DOJ
11 to approve him, Umansky further described his skills and qualifications in a
12 telephone call with Gibbons on or about May 22, 2015.

13 139. On August 16, 2015, Umansky provided Plaintiffs with a written list of
14 all offers he claimed to have received for the Property, but omitted higher offers,
15 including one for \$40 million from Hakim. The list falsely represented that the offer
16 from Oberfeld was “all cash” and he could close within 45 days, and Hakim had
17 offered only \$32 million rather than \$40 million. Umansky also represented that the
18 offer from Hakim was \$32 million in an email to Plaintiffs on July 31, 2015.

19 140. On November 2, 2015, Umansky sent an email to Nguema falsely
20 stating we “have been very diligent in trying to get the deal done with Candy
21 [another buyer]” when the truth was he was not working to get a deal done with
22 Candy, but with Oberfeld. The written offer from Oberfeld that was signed and
23 presented to Plaintiffs by Umansky in August 2015, stated that his offer was “all
24 cash” and that no third party funding was needed, and Oberfeld was able to close
25 within 45 days. Umansky knew these statements were false.

26 141. Despite having received other offers of \$40 million or more that he did
27 not disclose, Umansky recommended by email to Nguema on October 1, 2015 that
28 Plaintiffs counter to all of the offers at the same \$33.5 million price. Umansky did

1 so to keep the price as low as possible for himself and his co-conspirator Oberfeld.
2 At Umansky's recommendation, and in reliance on the above representations and
3 non-disclosures, Plaintiffs agreed to sell the Property to Oberfeld in December 2015,
4 pursuant to the offers and counter-offers for \$33.5 million.

5 142. On March 20, 2016, Umansky verbally advised Plaintiffs' agent
6 Michael Berger that he recommended agreeing to waive a \$1 million the deposit
7 Oberfeld did not want his money tied up indefinitely, without disclosing that he did
8 not have funds available and the other better offers he received. Umansky also
9 recommended that Plaintiffs agree to extend the contingency period because he
10 believed Oberfeld was the "right buyer" for the Property, without disclosing better
11 offers and that Hakim had provided written proof of available funds to close at a
12 much higher price. On March 20, 2016, Berger sent an email to Nguema describing
13 this conversation and Umansky's recommendation that Plaintiffs waive the deposit
14 and sign an extension of the escrow period, which Plaintiffs accepted. On March
15 20, 2016, Umansky emailed Berger to urge him to get the paperwork signed because
16 "the economy is changing and the market is softening so again I repeat time is of the
17 essence." If Plaintiffs and DOJ had not agreed to the extension, the contingency
18 period would have expired the next day, and Plaintiffs could have sold the Property
19 to another buyer for millions or tens of millions of dollars more.

20 143. On April 15, 2016, Umansky sent an email to Nguema and Berger
21 stating that Oberfeld requested a \$1 million credit for repairs, and "my suggestion is
22 to move forward with the credit to the buyer and get this transaction closed before
23 summer season kicks off here." On April 23, 2016, Umansky also sent an email to
24 Stephen Gibbons of the DOJ about the repaid credit and stating that he was "pushing
25 Nguema so hard" and the "property is getting vandalized." On May 5, 2016,
26 Umansky sent an email to Berger and another agent of Plaintiffs forwarding an e-
27 mail of the same date from Oberfeld asking about the status of the repair credit
28 request. The e-mail from Umansky stated: "October is getting close. Let's please

1 close this deal.” Umansky did not tell Plaintiffs that, if they did not agree, Oberfeld
2 could not close and they could sell it for a significantly higher price.

3 144. On June 13, 2016, Umansky sent an email to Gibbons of DOJ stating:
4 “I wanted to express my intention of making an investment into the deal.” Umansky
5 also wrote that this would clarify “any potential conflict of interest,” and was “just
6 for full disclosure.” On June 16, Umansky emailed Berger addressing several topics
7 then stating at the end “for the sake of full disclosure”: “[Oberfeld] invited me to
8 invest about one month ago after we removed all contingencies. I do intend to make
9 an investment with him.” These statements were false and misleading, because
10 Oberfeld in fact had invited Umansky to invest much earlier, and they did not
11 disclose all conflicts of interest, because the omitted the other conflicts described
12 above, including the fact that Oberfeld was simultaneously looking for a buyer for
13 Oberfeld at significantly higher prices, while he was supposed to be working to get
14 the highest price for Plaintiffs. The June 13 email to Gibbons also falsely stated that
15 “Nguema picked the order of which I was to accept the offers,” when in fact
16 Umansky had selected the order and chose Oberfeld.

17 145. As Plaintiffs’ agent, and as Defendants knew, Umansky had a duty to
18 disclose all material facts affecting the purchase and Property, including all offers he
19 received. In furtherance of the conspiracy with Defendants and with their active
20 assistance, Umansky intentionally concealed Hakim’s higher offer from Plaintiffs.
21 Umansky also had a duty to disclose all financial arrangements including offers of
22 compensation other than his commission from Plaintiffs, but failed to disclose them
23 and instead misrepresented the existence and timing of his financial arrangements
24 by stating that they consisted only of an offer to invest he claimed was made in May
25 2015, after contingencies had cleared and the sale was about to close.

26 146. As alleged above, Defendants and Umansky knew the falsity of these
27 misrepresentations and non-disclosures and made or conspired to make them with
28

1 the intent to induce Plaintiffs to sell the Property at a price far below other offers
2 and its market value.

3 147. Plaintiffs were unaware of the falsity of these representations or of the
4 facts that were not disclosed and relied on such representations and non-disclosures
5 in agreeing to sell the Property for \$33.5 million and agreeing to reduce it by a \$1
6 million repair credit.

7 148. If Defendants had disclosed these offers and facts, Plaintiffs would not
8 have entered into the purchase agreement with Oberfeld or would have terminated
9 the purchase due to his failure to pay the agreed deposit, failure to close by the
10 agreed date, failure to timely satisfy the inspection contingency or fraud, and would
11 have sold the Property to another buyer for millions of dollars more than Oberfeld.
12 Alternatively, if Oberfeld timely cured those breaches, Plaintiffs would not have
13 agreed to the demand for a \$1 million repaid credit.

14 149. As a proximate and legal result, Plaintiffs have been damaged in an
15 amount to be proven at trial, and deprived of material consideration, rights and
16 benefits under the Listing Agreement, Settlement Agreement and Order as alleged
17 herein. Plaintiffs also are entitled to disgorgement of all secret profits obtained by
18 Defendants and their co-conspirators as a result of their breaches and wrongdoing
19 alleged herein, and a constructive trust over such profits.

20 150. Defendants acted with fraud malice and oppression, entitling Plaintiffs
21 to recover punitive or exemplary damage in an amount to be determined at trial.

22 151. As a proximate and legal result, Plaintiffs have been damaged in an
23 amount to be proven at trial, and deprived of material consideration, rights and
24 benefits under the Listing Agreement, Settlement Agreement and Order as alleged
25 herein. Plaintiffs also are entitled to disgorgement of all secret profits earned as a
26 result of their breaches and wrongdoing alleged herein.

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SIXTH CAUSE OF ACTION
(Breach of Duties of Honesty and Fairness
Against Hakim, Segal and BHHC)

152. Plaintiff hereby incorporates in this cause of action each and every one of the foregoing paragraphs as though fully set forth herein.

153. As real estate agents and brokers, Segal and BHHC owed a duty of honesty and fairness to all parties to the transaction, including Plaintiffs.

154. Segal and BHHC breached that duty by actively and knowingly assisting Umansky and The Agency in their breaches of fiduciary duty and fraud alleged above, agreeing to pay secret compensation to Umansky in exchange for his efforts to depress the price for the Property, agreeing with other buyers directly and through Umansky not to compete on price, and giving to Umansky for delivery to Plaintiffs a signed written offer millions of dollars lower than the offer they had made to Plaintiffs' agent to assist him in concealing their higher offer.

155. Hakim is vicariously liable for the breaches of duties of honest and fair dealing of his agents Segal and BHHC. Hakim also is liable for adding and abetting his agents' breaches of their duties of honest and fair dealing as alleged above.

156. If Defendants had not breached their fiduciary duties, Plaintiffs would not have agreed to sell the Property to Oberfeld or would have terminated the sale due to Oberfeld's failure to pay the required deposit, failure to close by the required date, failure to waive the physical inspection contingency, or fraud and would have sold the property to another buyer for tens of millions of dollars more.

157. As a proximate and legal result, Plaintiffs have been damaged in an amount to be proven at trial, but in excess of \$10 million.

158. Defendants acted with fraud malice and oppression, entitling Plaintiffs to recover punitive or exemplary damages in an amount to be determined at trial.

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PRAYER FOR RELIEF

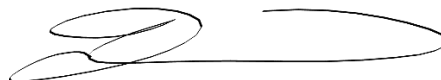
Plaintiffs Sweetwater Malibu CA, LLC and Teodoro Nguema Obiang

Mangue pray for the following relief:

- 1. For damages in an amount to be proven at trial;
- 2. For treble damages for violation of the Sherman Act;
- 3. For disgorgement of profits and a constructive trust over such profits;
- 4. For prejudgment interest according to proof;
- 5. For punitive or exemplary damages according to proof;
- 6. For costs of suit; and
- 7. For such other relief as is deemed appropriate at trial.

DATED: December 7, 2020

By:



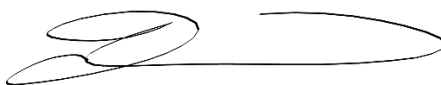
Julian Brew
Attorneys for Plaintiffs
SWEETWATER MALIBU CA, LLC and
TEODORO NGUEMA OBIANG
MANGUE

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DEMAND FOR JURY TRIAL

Plaintiffs Sweetwater Malibu CA, LLC and Teodoro Nguema Obiang Mangue hereby demand a trial by jury on all claims herein.

DATED: December 7, 2020

By: 

Julian Brew
Attorneys for Plaintiffs
SWEETWATER MALIBU CA, LLC and
TEODORO NGUEMA OBIANG
MANGUE