STAN ROMAN (State Bar No. 87652)
FREDRICK C. CROMBIE (State Bar No. 244051)
VICTOR H. YU (State Bar No. 325411)
EMILY LENTZ (State Bar No. 348720)
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500
Telephone: 415.391.4800
Facsimile: 415.989.1663
Email: ef-sgr@cpdb.com
ef-fcc@cpdb.com
ef-vhy@cpdb.com
ef-erl@cpdb.com

Attorneys for Defendant
TIMOTHY J. LEFEVER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

RICHARD ALLEN CLARIDGE, individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; CAPRI LYNN WINSER; individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; TODD MICHERO, an individual; LORI MICHERO, an individual; SCOTT A. WALKER, individual and trustee of The Walker Family Living Trust; and ELIZABETH L. WALKER, individual and trustee of The Walker Family Living Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TIMOTHY J. LEFEVER, an individual; KENNETH W. MATTSON, an individual; KS MATTSON PARTNERS, LP, a limited partnership; and SPECIALTY PROPERTIES PARTNERS, LP, a limited partnership,

Defendants.

Case No. 3:24-cv-04093-JST

NOTICE OF MOTION AND MOTION OF TIMOTHY LEFEVER TO DISMISS PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: January 16, 2025
Time: 2:00pm
Crtrm.: 6

Judge: The Honorable Jon S. Tigar

Trial Date: None Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on January 16, 2025 at 2:00 p.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Jon S. Tigar, located in the United States Courthouse, Oakland Courthouse, Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, California 94612, Timothy J. LeFever ("LeFever") will and hereby does move this Court to dismiss Plaintiffs' First Amended Class Action Complaint ("FAC").

This Motion is made upon the following grounds: the FAC must be dismissed against LeFever. Under Federal Rules of Civil Procedure, Rule 12(b)(6) and Rule 8(a)(2), the FAC fails to state any claim for relief against LeFever. Further, despite being required to under Rule 9(b), Plaintiffs fails to allege with "particularity" that LeFever committed any fraudulent conduct.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

DATED: November 12, 2024 COBLENTZ PATCH DUFFY & BASS LLP

By: */s/ Stan Roman*
STAN ROMAN
Attorneys for Defendant
TIMOTHY J. LeFEVER

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TABLE OF CONTENTS

Page

INTRODUCTION 1

BACKGROUND 2

ARGUMENT 4

I. The FAC Fails to Allege that LeFever Committed Fraud (Claim One) 4

A. The FAC Does Not Allege Particularized Facts Showing LeFever Made Any False Representations. 5

B. The FAC Fails to Allege Specific Facts Showing LeFever Knew About Mattson's Fraud and Intended to Defraud Investors. 7

C. The FAC Fails to Allege LeFever Committed Fraud After Mattson Resigned. 8

D. The FAC Fails to Allege Plaintiffs Relied Upon Anything LeFever Did or Said. 9

II. The FAC Fails to Allege that LeFever Aided and Abetted Fraud (Claim Five). 9

III. The FAC Fails to Allege that LeFever Breached a Fiduciary Duty (Claim Two). 11

IV. The FAC Fails to Allege LeFever Made A Negligent Misrepresentation (Claim Ten). 13

V. The FAC Fails to Allege an Elder Abuse Claim Against LeFever (Claim Six). 14

VI. The FAC Fails to Allege a Claim Against LeFever for Conversion (Claim Three). 15

VII. The FAC Fails to Allege that LeFever Violated the UCL (Claim Eight). 16

VIII. Plaintiffs' Claims for Unjust Enrichment, Constructive Trust, and Accounting Fail Because LeFever Is Not Alleged To Possess Any of Plaintiffs' Investment Monies. 17

A. Plaintiffs Cannot Seek a Constructive Trust Against LeFever (Claim Four). 17

B. The FAC Fails to State a Claim for an Accounting Against, or Receiver Over, LeFever (Claim Nine). 18

C. The FAC Fails to State a Claim for Unjust Enrichment Against LeFever (Claim Seven). 18

IX. The FAC Fails to Plead Any Specific Facts Showing That Plaintiffs Were

Damaged by Anything LeFever Did. 19

CONCLUSION 20

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TABLE OF AUTHORITIES

Page(s)

Cases

A.B. Concrete Coating Inc. v. Wells Fargo Bank, Nat'l Ass'n,
491 F.Supp.3d 727 (E.D. Cal. 2020) 17

Ablaza v. Sanofi-Aventis U.S. LLC,
2022 WL 19517298 (N.D. Cal. July 12, 2022) 7

Allen v. ConAgra Foods, Inc.,
2013 WL 4737421 (N.D. Cal. Sept. 3, 2013) 18

Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC,
158 Cal.App.4th 226 (2007) 12, 13

Bortz v. JP Morgan Chase Bank, N.A.,
2022 WL 1489832 (S.D. Cal. May 10, 2022) 15

Bradshaw v. SLM Corp.,
652 F. App'x 593 (9th Cir. 2016) 10

Campbell v. Superior Court,
132 Cal.App.4th 904 (2005) 17

Castro v. Home Cap. Funding,
2009 WL 3618898 (S.D. Cal. Oct. 28, 2009) 6

Chevron Prods. Co. v. Advanced Corrosion Techs. & Training, LLC,
2021 WL 2156467 (N.D. Cal. May 27, 2021) 13

City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
68 Cal.App.4th 445 (1998) 12

City of Oakland v. Oakland Raiders,
83 Cal.App.5th 458 (2022) 19

Civic W. Corp. v. Zila Indus., Inc.,
66 Cal.App.3d 1 (1977) 18

Conrad v. Bank of Am.,
45 Cal.App.4th 133 (1996) 19

Cornielsen v. Infinium Cap. Holdings, LLC,
2016 WL 6822659 (N.D. Ill. Nov. 18, 2016) 5

Destfino v. Kennedy,
2009 WL 743048 (E.D. Cal. Mar. 18, 2009) 5, 7

Ecological Rts. Found. v. PacifiCorp,
2024 WL 3186566 (N.D. Cal. June 26, 2024) 4

Elgindy v. AGA Serv. Co.,
2021 WL 1176535 (N.D. Cal. Mar. 29, 2021) 4, 7, 8

Eurosemillas, S.A. v. Uttarwar,
854 Fed. App'x 137 (2021) 4, 19, 20

F.T.C. v. Lights of Am., Inc.,
760 F.Supp.2d 848 (C.D. Cal. 2010) 19

Facebook, Inc. v. MaxBounty, Inc.,
274 F.R.D. 279 (N.D. Cal. 2011) 10

Formic Ventures LLC v. SomaLogic, Inc.,
2023 WL 6037899 (N.D. Cal. Sept. 15, 2023) 16

George v. New Century Mortg. Corp.,
2010 WL 4056014 (N.D. Cal. Oct. 14, 2010) 18

Haddock v. Countrywide Bank, N.A.,
2014 WL 12597043 (C.D. Cal. Dec. 22, 2014) 18

Hadley v. Kellogg Sales Co.,
243 F.Supp.3d 1074 (N.D. Cal. 2017) 16

Hart v. Bayview Loan Servicing,
2016 WL 3921139 (C.D. Cal. July 18, 2016) 5

Heredia v. Wells Fargo Bank,
2016 WL 4608238 (N.D. Cal. Sept. 6, 2016) 9

Hoffman v. Tarnol,
2015 WL 13919455 (C.D. Cal. Oct. 7, 2015) 19

Impac Warehouse Lending Group v. Credit Suisse First Boston LLC,
270 Fed. App'x 570 (9th Cir. 2008) 11

Int'l Env't Mgmt., Inc. v. United Corp. Servs., Inc.,
858 F.3d 1121 (8th Cir. 2017) 12

Kaui Scuba Center, Inc. v PADI Americas, Inc.,
2011 WL 13225132 (C.D. Cal. 2011) 20

Kearns v. Ford Motor Co.,
567 F.3d 1120 (9th Cir. 2009) 4

Lazar v. Grant,
2017 WL 4805067 (C.D. Cal. June 22, 2017) 15

Lord Abbett Mun. Income Fund, Inc. v. Asami,
2014 WL 3417941 (N.D. Cal. July 11, 2014) 14

McGraw Co. v. Aegis Gen. Ins. Agency, Inc.,
2016 WL 3745063 (N.D. Cal. July 13, 2016) 11

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

Moran v. Bromma,
675 F. App'x 641 (9th Cir. 2017) 14

Nacarino v. Chobani, LLC,
668 F.Supp.3d 881 (N.D. Cal. 2022) 16

Nathanson v. Polycom, Inc.,
87 F.Supp.3d 966 (N.D. Cal. 2015) 7

Pellerin v. Honeywell Int'l, Inc.,
877 F.Supp.2d 983 (S.D. Cal. 2012) 16

In re Real Est. Assocs. Ltd. P'ship Litig.,
223 F.Supp.2d 1109 (C.D. Cal. 2002) 12

Schreiber Distrib. Co. v. Serv-Well Furniture Co.,
806 F.2d 1393 (9th Cir. 1986) 6

Sollberger v. Wachovia Sec., LLC,
2010 WL 11595839 (C.D. Cal. Feb. 22, 2010) 11

Spates v. Dameron Hosp. Ass'n,
114 Cal.App.4th 208 (2003) 15

Stansfield v. Starkey,
220 Cal.App.3d 59 (1990) 17

Swartz v. KPMG LLP,
476 F.3d 756 (9th Cir. 2007) 4, 5

Talece Inc. v. Zheng Zhang,
2020 WL 6205241 (N.D. Cal. Oct. 22, 2020) 13

Velazquez v. General Motors LLC,
2024 WL 3617486 (E.D. Cal. Aug. 1, 2024) 16

Vess v. Ciba-Geigy Corp. USA,
317 F.3d 1097 (9th Cir. 2003) 4, 19

Welco Elecs., Inc. v. Mora,
223 Cal.App.4th 202 (2014) 15

Statutes

Cal. Corp. Code
§ 1505(a) 12
§ 15901.16(b) 12
§ 15904.08(d) 11

Cal. Welf. & Inst. Code
§ 15610.27 14
§ 15610.30 ..... 14, 15

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs' First Amended Complaint ("FAC") should be dismissed as to Defendant Timothy LeFever ("LeFever") because it does not plead sufficient facts to support any claim that he engaged in wrongdoing. The FAC paints a clear picture that Defendant Kenneth Mattson ("Mattson") defrauded investors. It attaches and relies heavily upon LeFever's explanation of how Mattson's misconduct was discovered, investigated, and reported to authorities. Nonetheless, the FAC uses group pleading to charge LeFever for Mattson's wrongdoing, without pleading facts to support the notion that LeFever defrauded anyone, was complicit in Mattson's misconduct, or was aware of any wrongdoing.

Plaintiffs filed their original Complaint on July 8, 2024. LeFever moved to dismiss it, arguing that while that Complaint provided details about how Mattson had engaged in fraud, it did not plead sufficient facts to state a claim against LeFever. Rather than defend the adequacy of their Complaint, Plaintiffs filed the FAC.

The original Complaint ran afoul of the group pleading rule by alleging throughout that "Defendants" engaged in the acts of misconduct pled. The FAC attempts to mask that group pleading problem simply by deleting the word "Defendants" and replacing it with the names of all the Defendants. That is still impermissible group pleading.

Plaintiffs also add a new section to address "Defendant LeFever's Role in the Investment Scheme." The few scattered facts in that section do not support any claim. Plaintiffs do not identify any representations made by LeFever to any specific plaintiff that were false, much less knowingly or negligently so. Nor are there facts that any Plaintiff relied on anything LeFever allegedly did, or facts about how any Plaintiff was damaged by the acts of LeFever that are alleged.

Perhaps recognizing that they do not have the facts for a viable primary liability claim against LeFever, Plaintiffs add a secondary liability claim against him for aiding and abetting Mattson's fraud. But the basis of the claim is that LeFever "had sufficient information to have reasonably suspected Defendant Mattson's fraudulent transfers and self-serving transactions." What LeFever knew about an ongoing fraud is not identified, nor are there any specific allegations of what LeFever

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

did to knowingly aid and abet Mattson's "fraudulent transfers and self-serving transactions."

Finally, the FAC fails to plead with requisite particularity the nature or amount of any damages that were proximately caused by the few acts of LeFever that they do allege.

In addition to these shortcomings on their damages claims, Plaintiffs' causes of action for a constructive trust (Claim 4), a receivership and accounting (Claim 9), unjust enrichment (Claim 7), and declaratory judgment (Claim 5) should also be dismissed because there are no allegations that LeFever personally received any of Plaintiffs' investment monies. Moreover, those claims are largely mooted by the fact that the LeFever Mattson partnerships in which Plaintiffs invested, as well as LeFever Mattson and its related property management and brokerage companies, are all under the control of the Bankruptcy Court where Plaintiffs will be entitled to pursue claims.

BACKGROUND

In the early 1990s, Mattson and LeFever formed a real-estate investment corporation known as LeFever Mattson ("LM"). Mattson and LeFever were each 50% owners of LM, and its only two board members. FAC ¶ 16. Until early 2024, Mattson was LM's CEO. *Id.* ¶ 17. LeFever had the title of Secretary. *Id.* ¶ 16. Mattson also maintained his own real estate investment business, KS Mattson Partners, in which LeFever is not alleged to have had any role. *Id.* ¶¶ 17–18.[1]

LM created limited partnerships ("LP's") and limited liability companies ("LLC's") to purchase and operate investment properties. LM, not LeFever, was the general partner or managing member of the LPs and LLC's. *Id.* ¶ 37. Limited partner and non-managing member interests were sold to outside investors. *Id.* The FAC quotes a statement by LeFever that, "most of the outside investors were Mattson's current or former clients or other Mattson contacts," *id.* ¶ 37, and indeed, each named Plaintiff made their investments through Mattson, not LeFever, ¶¶ 137–176.

The FAC alleges that Mattson abused his relationships with investors and his control over LM to perpetrate two frauds. *First*, the FAC alleges that "Mattson and KS Mattson Partners made fraudulent sales of purported equity interests in at least twenty five of the LeFever Mattson LPs and LLCs to hundreds of investors, including Plaintiffs and the Class and Subclass, that were not

[1] Since LeFever is not alleged to have had a role in KS Mattson Partners, this brief will ignore the allegations concerning that entity, and focus solely on the allegations concerning LM's business.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

recorded with LeFever Mattson or the appropriate LP or LLC." *Id.* ¶ 7. LeFever is not alleged to have had any role in that scheme or knowledge of it, and in fact, the FAC alleges that "LeFever Mattson has no record of those sales or the tens of millions of dollars raised by Mattson and KS Mattson Partners." *Id.*; *see also id.* ¶ 102 ("Mattson, KS Mattson Partners, and LeFever Mattson [not LeFever] fraudulently sold the Walker Plaintiffs, and the Michero Plaintiffs purported equity interests in Divi Divi Tree LP"). The FAC also alleges that only Mattson, KS Mattson Partners, and Specialty Properties Partners (not LeFever) know "the location and precise amount" of what Mattson stole. *Id.* ¶ 7.

Second, the FAC alleges that "Mattson caused certain of the LeFever Mattson LPs and LLCs to purchase properties owned by KS Mattson Partners by executing the transactions himself on behalf of both buyer and seller" at inflated prices and/or encumbered by high-interest loans many of which Mattson and KS Mattson Partners subsequently defaulted. *Id.* ¶ 8. LeFever is not alleged to have had a role in any of Mattson's self-enriching transactions and is not alleged to have had knowledge of any such transactions. *See id*. ¶¶ 8, 36–49.

Underscoring LeFever's lack of participation in "Mattson's years-long fraudulent conduct[,]" (*id.* ¶ 9), the FAC relies on LeFever's own allegations against Mattson in a separate lawsuit (the "LeFever Complaint" or "LC")[1] to explain the fraud. *Id.* ¶¶ 103–05. The LeFever Complaint alleges that Mattson sold purported interests in Divi Divi to new investors and convinced those investors to transfer their purchase money into an account that he used to hide his fraud. *See* FAC ¶¶ 98–105 (citing from LeFever Complaint); *see also* LC ¶¶ 60, 68. Mattson pocketed those proceeds. *Id.* ¶¶ 60–62. The LeFever Complaint alleges that, to hide his misconduct, Mattson withheld sales information from LeFever, gave new investors "fake K-1 forms," and paid distributions from his own money or the account he used to hide his fraud. *See id.* ¶¶ 65–67.

The FAC alleges that, in 2024, LeFever discovered Mattson's unlawful conduct, and directly confronted Mattson about it. FAC ¶ 108. According to a letter that LeFever later sent memorializing the conversation, Mattson admitted wrongdoing. *Id.* Mattson resigned as CEO and LeFever took over for a brief period as LM's CEO and CFO. *Id.* ¶¶ 108–09. In anticipation of LM's bankruptcy, LeFever and LM hired a "leading" financial advisor, Bradley Sharp, to actively manage LM and its

portfolio. *Id.* ¶ 136. Once LM filed for bankruptcy protection, LeFever stepped down as CEO and Mr. Sharp became LM's Chief Restructuring Officer. *Id.*

According to the FAC, the Federal Bureau of Investigation raided Mattson's Sonoma County home, and the Department of Justice, the U.S. Attorney for the Northern District of California, and the Postal Service's Inspector General are all allegedly investigating Mattson. *Id.* ¶ 112.

ARGUMENT

Under Federal Rule of Civil Procedure 12(b)(6), the facts alleged in a complaint must be "enough to raise a right to relief above the speculative level," i.e., "more than a sheer possibility that a defendant has acted unlawfully." *Ecological Rts. Found. v. PacifiCorp,* 2024 WL 3186566, at *4 (N.D. Cal. June 26, 2024) (citation omitted). When fraud is an "essential element" of a plaintiff's allegations—as it is in all of plaintiffs' claims here—the complaint must fulfill Rule 9(b)'s heightened pleading standards. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003). Rule 9(b) requires fraud allegations be pled with "particularity" and "be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge[.]" *Elgindy v. AGA Serv. Co.*, 2021 WL 1176535, at *4 (N.D. Cal. Mar. 29, 2021) (citation omitted). As such, fraud allegations must include "an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (citation omitted).

I. The FAC Fails to Allege that LeFever Committed Fraud (Claim One).

To state a claim for fraud, a plaintiff must allege with particularity: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. *Eurosemillas, S.A. v. Uttarwar*, 854 Fed. App'x 137, 139 (2021) (quoting *Conrad v. Bank of Am.*, 45 Cal.App.4th 133, 156 (1996) ["In order to establish a cause of action for fraud a plaintiff must plead and prove in full, factually and specifically, *all of the elements of the cause of action*." (emphasis in *Eruosemillas*)]; *see also Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009). The FAC does not plead particularized facts sufficient to establish any element (much less all of them) as to LeFever.

///

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

A. The FAC Does Not Allege Particularized Facts Showing LeFever Made Any False Representations.

A plaintiff pleading a fraud claim "must associate a particular defendant with a particular set of statements and specify the contents of the statement." *Destfino v. Kennedy*, 2009 WL 743048, at *7 (E.D. Cal. Mar. 18, 2009). Indeed, "Rule 9(b) does not allow a complaint to merely lump multiple defendants together" but instead "require[s] plaintiffs to differentiate their allegations when suing more than one defendant . . . and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." *Swartz*, 476 F.3d at 764–65 (citation omitted).

There are four purportedly false statements alleged in the FAC that are attributed to LeFever (and all other defendants): (1) that "money invested with LeFever Mattson, KS Mattson Partners, Mattson, LeFever, Special Properties Partners, or any of the affiliated LeFever Mattson LPs and LLCs, would be applied to the acquisition of a specific real property owned by the partnership" (2) that "the percentage of the purported partnership an investor received for a particular investment was based on the value of the property," (3) that "the partnership would maintain a separate bank account in the name of the partnership into which the proceeds would be deposited"; and (4) that "payments to investors would come from the partnership's proceeds through the management and sale of those properties, consistent with their purported partnership interest." *See* FAC ¶¶ 3, 40, 188.

Despite identifying these four alleged misrepresentations, the FAC still does not adequately allege *who* made the representations to Plaintiffs. The original Complaint improperly attributed those statements to the collective "Defendants." *See* Orig. Comp. ¶ 35, 138. Replacing "Defendants" with "LeFever Mattson, Defendant KS Mattson Partners, Defendant Mattson, and Defendant LeFever" might be a clever pleading trick, but it is still group pleading that improperly attributes the allegedly fraudulent statements to an undifferentiated group of defendants and it still fails to put LeFever on notice of the specific statements that he, as opposed others, supposedly made. *See Hart v. Bayview Loan Servicing*, 2016 WL 3921139, at *7 (C.D. Cal. July 18, 2016) (allegations that "all defendants" participated in fraudulent scheme was insufficient to plead fraud with specificity.); *Cornielsen v. Infinium Cap. Holdings, LLC*, 2016 WL 6822659, at *4 (N.D. Ill. Nov. 18, 2016) ("Simply naming all of the Individual Defendants in place of the [term "Defendant"] does not

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

convert Plaintiffs' previous allegations into ones that sufficiently particularly identify who of the Individual Defendants made each of the alleged misstatements.").

Equally important, the FAC still fails to allege to whom LeFever made any of the allegedly false statements, or the "time" when or "place" where he made the alleged misrepresentations, leaving Mr. LeFever to guess the context of the alleged misrepresentations. *See* FAC ¶¶ 3, 40, 188; *see also Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *Castro v. Home Cap. Funding*, 2009 WL 3618898, at *6 (S.D. Cal. Oct. 28, 2009) (dismissing fraud claim because the complaint failed to identify "the specific content of the false representations as well as the identities of the parties to the misrepresentations[]") (citation omitted).

In the absence of any specific allegations against LeFever, it is implausible to infer that he made any of the allegedly fraudulent representations. The FAC alleges that "most of the outside investors were *Mattson's* current or former clients or other contacts," FAC ¶ 37 (emphasis added), and does not identify a single investor who made his or her investment through LeFever. There are no allegations that any of the Plaintiffs had any contact with LeFever that played a part in their investment decisions. The only detailed allegations in the FAC show that *Mattson*, not LeFever solicited investments from each of the Plaintiffs:

TABLE 1

Plaintiff	Representations by LeFever	Representations by Mattson
Claridge and Wisner	• **No allegation** that LeFever induced them to invest in Mattson-affiliated entities. *See* FAC ¶¶137–49.	• Wisner and Claridge committed their life savings to "Mattson's portfolios." FAC ¶ 137. • For a KS Mattson Partners LP Property, "Defendant Mattson always implied that [Claridge and Wisner] were still invested in this property." *Id.* ¶ 145
Michero	• **No allegation** that LeFever induced them to invest in Mattson-affiliated entities. *See* FAC ¶¶150–59	• Allegedly invested in a LP with a "limited partnership agreement [that] Mattson drafted and provided the Micheros" and based on information that "Mattson represented". FAC ¶ 152. • After liquidating their ownership interest, "Mattson represented" that the amount paid was "their ownership interest" in the LP. "Mattson" allegedly also provided "conclusory information" about monthly distributions and

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

		remaining ownership value to Plaintiffs. *Id.* ¶ 153. • Was "solicited" by Mattson to invest in Divi Divi Tree with a partnership agreement "signed by Mattson" *Id.* ¶ 155.
Walkers	• **No allegation** LeFever induced them to invest in Mattson-affiliated entities. *See* FAC ¶¶160–77. • LeFever sent letters to Walkers *after* they made investments, or towards the end of the negotiation process. *See id.* ¶¶56-59. But nothing said in those letters is alleged to be false. *Id.*	• Allegedly purchased LM-affiliated investment entities from transfer agreements "signed by Defendant Mattson" (*Id.* ¶ 167) and through investments "acquired through and from KS Mattson Partners LP" (*Id.*¶ 168). • "Mattson subsequently asked Walker Plaintiffs to allow a personal interest-only loan" against a separate house purchase that was secured by Socotra Capital. *Id.* ¶ 171. • "Mattson also took over Scott Walkers' invested IRAs" to invest in a separate LLC. *Id.* ¶ 172.

B. <u>The FAC Fails to Allege Specific Facts Showing LeFever Knew About Mattson's Fraud and Intended to Defraud Investors.</u>

The FAC does not allege that LeFever had the requisite scienter or intent to aid in Mattson's Investment Scheme. A complaint cannot merely assert that a defendant "knew or should have known" of a fraudulent act. *Elgindy*, 2021 WL 1176535, at *14. Allegations of scienter must be "plausible" and "conclusory allegations" that "representations or omissions were intentional and for the purpose of defrauding and deceiving [an individual] are insufficient" and justify dismissal. *Ablaza v. Sanofi-Aventis U.S. LLC*, 2022 WL 19517298, at *5 (N.D. Cal. July 12, 2022) (citations omitted). A complaint that merely alleges in "general terms that the defendants inspired, encouraged, and condoned" fraud must be dismissed. *Destfino*, 2009 WL 743048, at *7.

The FAC fails to allege facts suggesting that LeFever knew of Mattson's fraud before he discovered and reported it. Instead, the FAC group pleads that all of the defendants "intended to deceive Plaintiffs." FAC ¶ 191. Such conclusory allegations are insufficient. *Cf Nathanson v. Polycom, Inc.*, 87 F.Supp.3d 966, 980 (N.D. Cal. 2015) ("generalized claims about corporate knowledge [that] offer[] no reliable personal knowledge concerning the individual defendants' mental state are insufficient to satisfy the scienter requirement"). The FAC also asserts that LeFever

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

signed paperwork for some transactions as a broker of record but does not allege that he did so on any fraudulent transactions, or that if he did he knew the transaction was fraudulent when he signed. *See* FAC ¶ 62.[2] Similarly, the FAC asserts that LeFever signed checks to investors from a Bank of the West Account, but doing so does not show that LeFever knew of Mattson's scheme, his alleged statements to Plaintiffs, or that Mattson's statements were false when Mattson made them. *Id*. ¶ 47.

Ultimately, the FAC's scienter allegations against LeFever boil down to the assertion that he "as [a] 50% owner and Vice President of LeFever Mattson had sufficient information to have reasonably suspected Defendant Mattson's fraudulent transfers and self-serving transactions." *Id*. ¶ 55. The FAC fails to identify any specific piece of information that LeFever supposedly possessed regarding Mattson's fraud. *See id.* ¶¶ 55–63 (alleging "LeFever's Role in the Investment Scheme"). That is not enough to allege scienter. *Elgindy*, 2021 WL 1176535, at *14.

C. <u>The FAC Fails to Allege LeFever Committed Fraud After Mattson Resigned.</u>

Plaintiffs assert that, after Mattson left LM in April 2024, LeFever continued to perpetuate Mattson's fraudulent scheme. *See* FAC ¶¶ 127–28 The sole factual support pled for this theory is a June 27 letter from LeFever to LM investors. In that letter, LeFever updated investors that LM was attempting to unwind the "chaos" created by Mattson, and that to do so, LM would be selling properties and informing relevant investors about their sale when "appropriate." *Id.* ¶ 122; *see also* FAC Ex. B (attaching June 27 email). From this, Plaintiffs leap to the illogical conclusion that, notwithstanding the promise to "inform [relevant investors] concerning a property sale" (emphasis added), LeFever and LM were continuing to "improperly commingl[e]" proceeds in an effort to continue the very fraud as to which LeFever blew the (very public) whistle. FAC ¶¶ 122–23.

Notably, the FAC does not allege that any statement made in the June 27 letter was false or misleading. The gist of the letter was that, after recognizing the "chaos caused" by Mattson, LM had engaged in selling some properties and paying the sales proceeds to investors. *See* FAC ¶ 122, Ex. B. The FAC does not dispute—and actually accepts as true—that LM actually was in the process of

[2] The only specific transaction LeFever allegedly brokered was Windtree L.P.'s acquisition of 333-411 Wilkerson Avenue, Perris, California. FAC ¶ 62. The FAC does not allege anything fraudulent about that transaction and asserts only it is "unclear" whether Windtree's investors approved it. *Id.*

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

selling properties and paying proceeds to the corresponding investors. FAC ¶¶ 127–28.

The FAC speculates that LeFever was improperly comingling funds to fraudulently deprive investors of their monies, but the June 27 letter provides no basis for that assertion. The letter does not (i) state what investors were, or would be, paid nor (ii) the procedures by which those investors were, or would be, paid, nor (iii) the manner in which sales proceeds would be held until paid to investors. The FAC does not even allege that investors who were purportedly owed a share of proceeds from sales did not receive their shares. *See* FAC ¶¶ 122–23. It offers no basis from which to draw the conclusion that LeFever was doing anything improper, much less continuing Mattson's fraud. Indeed, a claim that LeFever was continuing Mattson's fraud is implausible because, by the time of his June 27, 2024 letter, LeFever had already filed a public lawsuit against Mattson disclosing Mattson's fraud in great detail. FAC Ex. C [LeFever Complaint] (filed on June 6, 2024).

D. The FAC Fails to Allege Plaintiffs Relied Upon Anything LeFever Did or Said.

To plead '"a bona fide claim of actual reliance', Plaintiffs 'must allege the specifics of [their] reliance on the misrepresentation[s].'" *Heredia v. Wells Fargo Bank*, 2016 WL 4608238, at *3 (N.D. Cal. Sept. 6, 2016) (quoting *Cadlo v. Owens-Illinois, Inc.*, 125 Cal.App.4th 513, 519 (2004)). The FAC fails to do so. Each of the Plaintiffs alleges that they made their investments through Mattson, not LeFever. *See, supra,* at Table 1. None of the Plaintiffs allege that in making their investments they relied upon anything that LeFever (as opposed to Mattson) said to them.

There is similarly no allegation that Plaintiffs later relied upon anything said in LeFever's June 27, 2024, letter to investors. FAC ¶ 122. '"Actual reliance occurs when the defendant's misrepresentation is an immediate cause of the plaintiff's conduct, altering his legal relations, and when, absent such representation, the plaintiff would not, in all reasonable probability, have entered into the transaction."' *Heredia*, 2016 WL 4608238, at *3 (quoting *Cadlo*, 125 Cal.App.4th at 519.) By the time LeFever sent his June 27, 2024, letter to investors, Plaintiffs had already made their investments with Mattson, and the FAC does not plead that they did or did not take any specific action in reliance on anything said in that June 27, 2024, letter.

II. The FAC Fails to Allege that LeFever Aided and Abetted Fraud (Claim Five).

The FAC fail to allege that LeFever aided and abetted the commission of a fraudulent act.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

"A claim for aiding and abetting requires (1) the existence of an independent primary wrong, (2) actual knowledge by the alleged aider and abettor of the wrong and his or her role in furthering it, and (3) substantial assistance in the wrong." *Facebook, Inc. v. MaxBounty, Inc.*, 274 F.R.D. 279, 285 (N.D. Cal. 2011) (citations omitted). Here, Plaintiffs (a) have not alleged that LeFever had actual knowledge of any fraudulent conduct; and (b) have not alleged that LeFever substantially assisted in the commission of a fraudulent act.

***Actual Knowledge*:** In alleging an aiding-and-abetting claim, "[g]eneral allegations" that a defendant had knowledge of an unlawful act are "too generic to satisfy the requirements of actual knowledge of a specific primary violation." *Bradshaw v. SLM Corp.*, 652 F. App'x 593, 594 (9th Cir. 2016) (citing *Casey v. U.S. Nat'l Ass'n*, 127 Cal.App.4th 1138, 1153 (2005)). Nor will "conclusory allegations of 'actual knowledge' suffice." *Id.*; *Facebook*, 274 F.R.D. at 285 (conclusory allegations that defendant provided "support" and "financial incentives" were insufficient to allege knowledge).

The FAC fails to allege specific facts supporting a claim that LeFever knew of Mattson's fraud. It alleges in conclusory fashion, without any identification of "time," "place," or "specific content," that LeFever knew Mattson "did not properly value the properties for investors," "that investors' contribution of money to the purchase of real properties was not accurately reflected in the assigned partnership interests[,]" that the other defendants "did not provide accurate and complete financial statements[,]" that "distribution payments to investors did not reflect the profits and losses of the real properties owned by the LPs and LLC," "that some investors were not reflected on the LeFever Mattson books and records," and that the defendants maintained the Bank of the West Account and used it to "make distribution payments." FAC ¶¶ 212–16. But those conclusory allegations of knowledge are not supported by any specific factual allegations showing how it is LeFever supposedly came to know those things. *Id.* They rest instead upon the insufficient assertion that, "as a 50% owner and Vice President of LeFever Mattson," LeFever must have known of Mattson's fraud. Actual knowledge cannot be inferred from LeFever's corporate position alone. *See, supra,* at § I.B (citing *Nathanson*, 87 F.Supp.3d at 980).

Substantial Assistance: A party substantially assists in the commission of an act when his

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

actions are "a substantial factor in causing the plaintiff's injury." *Impac Warehouse Lending Group v. Credit Suisse First Boston LLC*, 270 Fed. App'x 570, 572 (9th Cir. 2008) (citation omitted). "Federal courts have held that the substantial assistance prong of a claim that defendant aided and abetted the commission of a fraud must be pled with heightened specificity" under Rule 9(b). *McGraw Co. v. Aegis Gen. Ins. Agency, Inc*., 2016 WL 3745063, at *6 (N.D. Cal. July 13, 2016). Plaintiffs' aiding-and-abetting claim fails because LeFever himself is not alleged to have done anything to assist Mattson in accomplishing his Investment Scheme.

Plaintiffs do not allege that LeFever aided Mattson in soliciting investors or that LeFever facilitated fraudulent transactions. Instead, the FAC alleges that LeFever substantially assisted Mattson by "operating as co-owner of LeFever Mattson, signing checks on behalf of LeFever Mattson, and operating LeFever Mattson and the associated LPs and LLCs." FAC ¶ 218. The problem with this allegation is that the FAC does not allege any well-pled facts showing that the entirety of LeFever Mattson's business was fraudulent. *See*, *e.g.*, FAC ¶ 215 (noting that only "some investors were not reflected in LeFever Mattson's records"); *id.* ¶ 92 (alleging that "[s]ome" sales were at inflated prices or encumbered with loans, but not all sales). As to its record investors, LeFever Mattson, as the general partner of the LPs and LLCs, had a duty to operate the LPs and LLCs and manage their businesses. Cal. Corp. Code § 15904.08(d); Request for Judicial Notice ISO Motion Ex. 1 at § 5.1 ("The business of the Partnership shall be managed by the General Partner."). Administering LeFever Mattson's duty cannot, standing alone, be substantial assistance to Mattson in the conduct of his fraud. But even if such regular business operations could suffice, Plaintiffs have not alleged that LeFever took such activity with knowledge that he was assisting Mattson's fraud. *Compare Sollberger v. Wachovia Sec., LLC*, 2010 WL 11595839, at *5 (C.D. Cal. Feb. 22, 2010) (In bank-fraud cases, "ordinary business transactions" are a form of substantial assistance "only if the bank actually knew those transactions were assisting the customer in committing a specific tort." (citations and brackets omitted)).

III. The FAC Fails to Allege that LeFever Breached a Fiduciary Duty (Claim Two).

Plaintiffs do not allege that LeFever was a General Partner of any LPs or a managing member of any LLCs. *See* FAC ¶16. The corporation LM was. The FAC nonetheless accuses LeFever

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

individually of violating a purported fiduciary duty. *Id.* ¶ 198. No facts are pled to support it.

A breach of fiduciary duty claim has three elements: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) resulting damage. *See City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal.App.4th 445, 483 (1998). A fiduciary duty may arise (a) from a legal relationship that gives rise to a fiduciary duty by operation of law or (b) when parties' relationship is close enough there is "control by a person over the property of another." *Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC*, 158 Cal.App.4th 226, 246 (2007) (citation omitted).

Plaintiffs do not allege that LeFever had any formal, fiduciary relationship with the Plaintiffs that arose by operation of law. Officers and directors of the general partner of a limited partnership do not owe individual, fiduciary duties to the limited partners. *In re Real Est. Assocs. Ltd. P'ship Litig.*, 223 F.Supp.2d 1109, 1134 (C.D. Cal. 2002) (dismissing fiduciary duty claim against officers and directors of the general partner of a limited partnership). LeFever is not alleged to have been an officer, director, or general partner of any LM-affiliated LP or LLC.[3]

The FAC also does not allege facts supporting the existence of an informal fiduciary relationship with the Plaintiffs during the course of Mattson's misconduct. To establish such a relationship, Plaintiffs must allege sufficient facts to show that LeFever had control over the Plaintiffs' investments. For example, in *Apollo*, 158 Cal.App.4th at 245, the plaintiff did not allege that "investors were [defendant's] customers or had any other preexisting relationship with [defendant]." The mere fact that the defendant (a broker-dealer) had communicated with the plaintiffs about the terms of their investment in a bridge note—without more—could not establish a fiduciary relationship between the parties. *See id* at 246. *Apollo* applies here. The FAC's allegations establish that Plaintiffs made their investments through Mattson—not LeFever. *See supra* Table 1. While LeFever allegedly had various communications with investors and allegedly

[3] Plaintiffs allege that LeFever was a registered agent of some of the LM-affiliates. *See* FAC Ex. A. But while a corporation or partnership may appoint a registered agent for purposes of service of process (*see* Cal. Corp. Code § 1505(a); *id.* § 15901.16(b)), "[t]he scope of a registered agent's agency is to receive and transmit notices and process." *Int'l Env't Mgmt., Inc. v. United Corp. Servs., Inc.*, 858 F.3d 1121, 1125 (8th Cir. 2017) (citation omitted). A registered agent would have no fiduciary duties related to the managing of any investment monies, making that relationship irrelevant to Plaintiffs' claims.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

played some routine role in brokering real property transactions, the FAC does not allege that he was entrusted with "control" over Plaintiffs' investments at any point prior to Mattson's resignation.

Even if such a fiduciary relationship existed—and it did not—Plaintiffs have failed to allege that LeFever breached any fiduciary duty owed to them. Plaintiffs' fiduciary duty claim relies on the same allegations as the fraud claim. *See* FAC ¶¶ 196–200. As such, Plaintiffs' fiduciary-duty claim must satisfy Rule 9(b)'s requirement to allege their claim with "particularity." *Talece Inc. v. Zheng Zhang*, 2020 WL 6205241, at *4 (N.D. Cal. Oct. 22, 2020) (applying Rule 9(b) pleading requirements to fiduciary duty claim sounding in fraud). The FAC does not meet that pleading requirement. There are no non-conclusory allegations establishing that LeFever ever had a role in improperly managing Plaintiffs' investments. *See, supra*, Arg. §§ I.A–C. There are no well-pled facts showing that LeFever breached any duty in connection with the property sales and investor payments described in his June 27 letter. The FAC does not allege that any specific LM-affiliate sold any property, or that any sales proceeds were not returned to the investors in that LM-affiliate. As such, Plaintiffs' fiduciary-duty claim against LeFever must be dismissed.

IV. The FAC Fails to Allege LeFever Made A Negligent Misrepresentation (Claim Ten).

To state a negligent misrepresentation claim, a plaintiff must allege "(1) a misrepresentation of a past or existing material fact, (2) made without reasonable ground for believing it to be true, (3) made with the intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." *Chevron Prods. Co. v. Advanced Corrosion Techs. & Training, LLC*, 2021 WL 2156467, at *2 (N.D. Cal. May 27, 2021) (quoting *Ragland v. U.S. Bank National Ass'n*, 209 Cal.App.4th, 182, 196 (2012)). The FAC's negligent misrepresentation claim is premised on the same allegations as its fraud theory, and as such, is also subject to Rule 9b's pleading standard. *Chevron Prods. Co.*, 2021 WL 2156467, at *3 (allegations of explicit misrepresentation and the allegations of nondisclosure here are subject to the heightened pleading standard under Rule 9(b)).

The FAC does not allege with particularity that LeFever made a false statement to any Plaintiff that he had no reasonable basis for believing (*see, supra*, Arg. §§ I.A–C.), or that any Plaintiff justifiably relied on any such statement. (*see, supra*, Arg. § I.D.). *See Lord Abbett Mun.*

Income Fund, Inc. v. Asami, 2014 WL 3417941, *7–8 (N.D. Cal. July 11, 2014) (failure to attribute specific misrepresentations against defendant justified dismissal of claim against that party).

V. The FAC Fails to Allege an Elder Abuse Claim Against LeFever (Claim Six).

Plaintiffs' elder-abuse claim should be dismissed because the FAC fails to allege facts showing that LeFever engaged in any actions to mislead or abuse an elder Plaintiff. A financial-elder-abuse claim arises pursuant to California Welfare and Institutions Code § 15610.30 when (1) a person or entity "takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both"; (2) "assists in" the aforementioned conduct "for a wrongful use or with intent to defraud, or both"; or (3) commits either of the above actions "by undue influence." Cal. Welf. & Inst. Code § 15610.30(a)(1)–(3) (cleaned up).

The elder-abuse claim fails because the FAC does not allege that any Plaintiff was an "elder" under the Welfare and Institutions Code. An elder is "any person residing in this state, 65 years of age or older." Cal. Welf. & Inst. Code § 15610.27 (emphasis added). But the Claridge, Winser, and Michero Plaintiffs plead that "at all relevant times" they resided in Virginia and Oklahoma, but not California. FAC ¶¶ 11–14. Elizabeth Walker pleaded that she moved out of California before she turned 65. *Id*. ¶ 15 (alleging she is now 68 but moved out of California at more than four years ago, in June 2020). And while Scott Walker is now 69 years old, the failure to plead his birthdate leaves it uncertain whether he was 65 years old when he moved outside of California. *Id.*

Further "to bring a claim for elder abuse, the plaintiff must have been sixty-five *when the alleged financial abuse occurred*." *Moran v. Bromma*, 675 F. App'x 641, 646 (9th Cir. 2017) (dismissing elder abuse claim because plaintiff was not 65 until after the alleged abuse occurred (emphasis added)). But all Plaintiffs were allegedly under 65 when they invested:

///

///

///

///

///

///

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TABLE 2		
Plaintiff	**Age When FAC Was Filed**	**Approximate Age When Plaintiffs Allegedly First Invested**
Claridge	58 (FAC ¶ 12)	50 (*Id.* ¶137 — invested in September 2016)
Winser	68 (*Id.* ¶ 13)	52 (*Id.* ¶ 137 — invested in 2016)
Micheros	65 (*Id.* ¶ 14)	49 (*Id.* ¶ 151 — invested in 2008)
Walkers	68 and 69 (*Id.* ¶ 12)	51 (*Id.* ¶ 117 — invested in 2007)

Further, even if the Plaintiffs were "elders" under the Welfare and Institutions Code, the FAC impermissibly group pleads the elder-abuse claim, asserting that the "Defendants" collectively took property "for a wrongful use," "by undue influence" and with an "intent to defraud." *See, e.g.*, FAC ¶ 223. As with a fraud claim, a financial-abuse plaintiff cannot "lump[] Defendants together in a conclusory fashion." *Bortz v. JP Morgan Chase Bank, N.A.*, 2022 WL 1489832, at *4 (S.D. Cal. May 10, 2022) (dismissing Cal. Welf. & Inst. Code § 15610.30 claim because plaintiffs failed to plead elements "with particularity").

VI. The FAC Fails to Allege a Claim Against LeFever for Conversion (Claim Three).

A conversion claim is based on the "wrongful exercise of dominion over the property of another." *Welco Elecs., Inc. v. Mora*, 223 Cal.App.4th 202, 208 (2014) (citation omitted). The elements of a conversion are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. *Id.* Mirroring their claim for fraud, Plaintiffs assert that "Defendants" interfered in their property by allegedly (a) "misusing it" and (b) refusing to return it. FAC ¶ 203. Because Plaintiffs' claim relies on the same allegations giving rise to their fraud claim, their conversion claim must also fulfill Rule 9(b)'s requirements. *See Lazar v. Grant*, 2017 WL 4805067, at *3 (C.D. Cal. June 22, 2017) (conversion claim must fulfill Rule 9(b)'s requirements because it was based on averments of fraudulent conduct).

The FAC fails to allege that LeFever committed a "wrongful act" that converted Plaintiffs' investments or otherwise "dispossessed" them of their investments. Plaintiffs must point to some "affirmative act[s taken] to deprive another of property, not lack of action." *Spates v. Dameron*

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

Hosp. Ass'n, 114 Cal.App.4th 208, 222 (2003). LeFever is not alleged to have affirmatively participated in any taking or misappropriation of Plaintiffs' investments. *See supra*.[4]

VII. The FAC Fails to Allege that LeFever Violated the UCL (Claim Eight).

Plaintiffs' UCL claim should be dismissed because the FAC does not allege facts showing LeFever engaged in any unlawful or unfair conduct. The UCL claim group pleads that "Defendants" engaged in "an ongoing course of fraudulent, unlawful or unfair business acts and practices[.]" FAC ¶ 232. There are no allegations specific to LeFever that explain what he did that was unlawful or unfair.

Unlawful: The "unlawful" prong "borrows violations of other laws and treats [them] as unlawful practices independently actionable under [the UCL] and subject to the distinct remedies provided thereunder." *Nacarino v. Chobani, LLC*, 668 F.Supp.3d 881, 891 (N.D. Cal. 2022). The FAC does not plead with any degree of specificity the underlying violations of law that LeFever supposedly committed. *See* FAC ¶¶ 232–39. That is fatal because a "UCL claim must be dismissed if the plaintiff has not stated a claim for the predicate acts upon which he bases the claim." *Pellerin v. Honeywell Int'l, Inc.,* 877 F.Supp.2d 983, 992 (S.D. Cal. 2012). Here, Plaintiffs' "unlawful" claim is based on fraud and other related causes of action in the FAC. It should also be dismissed because those underlying causes of action fail for all of the reasons discussed herein. *See supra*, Arg. § I.; *Velazquez v. General Motors LLC*, 2024 WL 3617486, at *7 (E.D. Cal. Aug. 1, 2024) ("[T]o the extent plaintiff intends for his UCL claim to borrow from his insufficiently alleged fraud claims, his UCL claim under the 'unlawful' prong clearly fails.").

Unfair: The unfair prong of the UCL prohibits a business practice that '"violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits."' *Hadley v. Kellogg Sales Co.*, 243 F.Supp.3d 1074, 1104 (N.D. Cal. 2017). While courts have adopted different tests for "unfair" conduct, "[r]egardless of

[4] Alternatively, Plaintiffs do not assert that LM or LeFever were contractually obligated to return monies invested in the LM-affiliates after Mattson was ousted. Nor could they, as such a claim would undermine their conversion theory. *See Formic Ventures LLC v. SomaLogic, Inc.*, 2023 WL 6037899, at *2 (N.D. Cal. Sept. 15, 2023) (conversion claims must be based on an independent duty separate from contract not to maintain possession of funds).

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

the test" if "the unfair business practices alleged under the unfair prong of the UCL overlap entirely with the business practices addressed in the fraudulent and unlawful prongs of the UCL, the unfair prong of the UCL cannot survive if the claims under the other two prongs of the UCL do not survive." *Id.* at 1104–05. That is the case here. The unfair business practices alleged are the same business practices alleged to be unlawful. Because Plaintiffs' claim against LeFever under the unlawful prong of the UCL fails, so too does Plaintiffs' claim under the unfair prong.

VIII. Plaintiffs' Claims for Unjust Enrichment, Constructive Trust, and Accounting Fail Because LeFever Is Not Alleged To Possess Any of Plaintiffs' Investment Monies.

Each of the FAC's claims for constructive trust, accounting, and unjust enrichment suffers from unique pleading defects detailed below. But they also all suffer from one underlying flaw: Plaintiffs do not allege that LeFever possesses or has access to any of Plaintiffs' investment monies. The claims rest on the speculative assertion LeFever may possess investment monies that have yet to be returned. *See, e.g.*, FAC ¶ 157 (alleging that the Micheros believe that "some combination of Mattson, LeFever" and other Defendants "control and are improperly withholding the Micheros' investment."). But LeFever is not alleged to have actually received any investor's money.

A. Plaintiffs Cannot Seek a Constructive Trust Against LeFever (Claim Four).

Constructive trust is a remedy, not a standalone cause of action. A constructive trust is "created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner." *Campbell v. Superior Court*, 132 Cal.App.4th 904, 920 (2005). While a constructive trust can be "a form of relief for one or more of its substantive claims" it is "not an independent cause of action." *A.B. Concrete Coating Inc. v. Wells Fargo Bank, Nat'l Ass'n*, 491 F.Supp.3d 727, 736 (E.D. Cal. 2020); *Stansfield v. Starkey*, 220 Cal.App.3d 59, 76 (1990). On this ground alone, the Court should dismiss this cause of action.

Even if constructive trust could be maintained as a cause of action – and it cannot – Plaintiffs have not alleged that LeFever possesses any of Plaintiffs' investment monies. A "constructive trust may be imposed where there is '"(1) the existence of a res (property or some interest in property); (2) the right of a complaining party to that res; and (3) some wrongful acquisition or detention of the res by another party who is not entitled to it."' *A.B. Concrete*, 491 F.Supp.3d at 736. The FAC

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

does not plead any specific facts tending to show that LeFever committed any "wrongful" act, nor—as explained above—does it sufficiently allege that LeFever possess Plaintiffs' property.

B. The FAC Fails to State a Claim for an Accounting Against, or Receiver Over, LeFever (Claim Nine).

Typically, "[t]he appropriate place to seek an accounting is in the prayer for relief," not as a cause of action. *Haddock v. Countrywide Bank, N.A.*, 2014 WL 12597043, at *4 (C.D. Cal. Dec. 22, 2014). Only in "rare cases" can "accounting can be a cause of action." *Id.* That "rare case" is "when a defendant has a fiduciary duty to a plaintiff which requires an accounting" and "that some balance is due to the plaintiff that can only be ascertained by an accounting." *Id.* (cleaned up).

The accounting claim fails because Plaintiffs have not alleged that LeFever has any of Plaintiffs' monies or owes them any fiduciary duty. *See id.* at *4 (dismissing accounting claim for failing to allege that the defendant was actually in possession of the plaintiff's money or property); *see also George v. New Century Mortg. Corp.*, 2010 WL 4056014, at *4 (N.D. Cal. Oct. 14, 2010).

Separately, Plaintiffs have failed to allege that any investment monies at issue could not be calculated based on a legal remedy. An accounting is only appropriate if "the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable." *Civic W. Corp. v. Zila Indus., Inc.*, 66 Cal.App.3d 1, 14 (1977) (citations omitted). Here, Plaintiffs allege no facts to suggest that an accounting would be necessary to determine their damages claim.

Plaintiffs also cannot request the appointment of a receiver over LeFever because there are no allegations that the possesses or controls any of their money or other property. Additionally, the FAC explains that the LeFever Mattson entities are currently in bankruptcy. *See* FAC ¶¶ 133, 22–24. It makes no sense for Plaintiffs to proceed with a claim for an accounting and the appointment of a receiver under these circumstances.

C. The FAC Fails to State a Claim for Unjust Enrichment Against LeFever (Claim Seven).

"[I]n California there is no standalone cause of action for unjust enrichment." *Allen v. ConAgra Foods, Inc.*, 2013 WL 4737421, at *11 (N.D. Cal. Sept. 3, 2013). "'Rather, unjust enrichment is a basis for obtaining restitution based on quasi–contract or imposition of a constructive trust.'" *Id.* (citation omitted). As such, most federal courts have dismissed causes of

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

actions for unjust enrichment "so long as another cause of action is available that permits restitutionary damages." *Hoffman v. Tarnol*, 2015 WL 13919455, at *3 (C.D. Cal. Oct. 7, 2015). On this basis alone, the Court may dismiss the unjust enrichment claim against LeFever.

Even if Plaintiffs could maintain a separate claim for unjust enrichment, they have not alleged that LeFever was unjustly enriched. "The equitable doctrine of unjust enrichment 'is based on the idea that 'one person should not be permitted unjustly to enrich himself at the expense of another . . . .'" *City of Oakland v. Oakland Raiders*, 83 Cal.App.5th 458, 478 (2022) (citations omitted). Plaintiffs have failed to allege any facts showing that LeFever was enriched (much less unjustly so) at Plaintiffs' expense. *See supra*.[5]

IX. The FAC Fails to Plead Any Specific Facts Showing That Plaintiffs Were Damaged by Anything LeFever Did.

Plaintiffs' causes of action, other than those that seek a constructive trust, a receivership, and an accounting, seek damages allegedly caused by LeFever. Plaintiffs' UCL claim, although seeking restitution, also alleges the loss of money and property. FAC ¶ 236. All of these causes of action are fraud-related. They are based upon alleged intentional and negligent misrepresentations, and the alleged aiding and abetting of fraudulent conduct. But as the Ninth Circuit recently stated, to state a claim for fraud, a plaintiff must allege with particularity: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. *Eurosemillas*, 854 Fed. App'x at 139; *see Conrad*, 45 Cal.App.4th at 156 ("In order to establish a cause of action for fraud a plaintiff must plead and prove in full, factually and specifically, all of the elements of the cause of action."). This requirement of pleading causation and damages with particularity extends to any claim that is "grounded in fraud," *Vess*, 317 F.3d at 1104, or to "allegations of fraudulent conduct." *F.T.C. v. Lights of Am., Inc.*, 760 F.Supp.2d 848, 852 (C.D. Cal. 2010). "For example, in a case where the plaintiff based a claim under the UCL for fraudulent conduct, the Ninth Circuit held that because the plaintiff's fraud cause of action was not pled with particularity, the UCL claim

[5] LeFever's conduct stands in stark contrast to Mattson's. The FAC alleges that Mattson engaged in unlawful conduct to enrich himself. *See, e.g.*, FAC ¶ 66 (alleging that Mattson had a "strategy" of purchasing properties, closing down the business to the detriment of local citizens, and holding onto it until the land value went up); *id.* ¶ 113 (alleging that "Mattson had purchased property for his own personal use and then put the property in his own name or that of KS Mattson Partners").

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

also failed. *Eurosemillas*, 854 Fed. App'x at 141 ("[W]hen the underlying legal claim fails, so too will a derivative [UCL] claim[.]) (citation omitted).

Plaintiffs did not plead either causation or damages with the requisite particularity. As to causation, the FAC does not specifically say how anything LeFever said or did proximately caused them to suffer a financial loss. Plaintiffs accuse LeFever of engaging in routine business tasks like signing cover letters or checks, or being a broker of record in a transaction, or being designated as an agent for service of process. *See, e.g.*, FAC ¶¶ 56–60; 139. Plaintiffs do not attempt to explain how these acts themselves caused them any financial harm. LeFever must be given adequate notice of what harm he caused to allow him to defend.

As to damages, the FAC does not allege the nature or amount of any recoverable loss, much less plead the element of damages with particularity. It makes allegations such that Plaintiffs did not receive disclosures or investment information they should have, that their money was commingled with other funds, and that the interim distributions they received did not correlate to the operations of the partnerships. *See* FAC ¶ 3. But the FAC does not actually say that Plaintiffs' investments have been unprofitable or have lost money as a result of anything LeFever did.

It may be that Plaintiffs did not plead damages with particularity (particularly any damages caused by LeFever) because they do not actually know if they have lost money, or if so how or how much. The LeFever Mattson partnerships in which they invested and the LeFever Mattson entities that acted as general partner of the partnerships, property manager and broker are all in a Chapter 11 reorganization. At the end of the day Plaintiffs may or may not be made whole out of the bankruptcy. At this point, the existence and amount of damages are entirely speculative and, for that reason, not pled with the required specificity. *See Kaui Scuba Center, Inc. v PADI Americas, Inc.*, 2011 WL 13225132, at *2 (C.D. Cal. 2011) (dismissing fraud claim in part because allegations that plaintiff may have suffered losses due to false representations were made "without factual support" and did not "rise beyond the level of pure speculation") (citation omitted).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that having failed in two attempts to state valid claims against Lefever, the FAC should be dismissed as to LeFever with prejudice.

DATED: November 12, 2024

COBLENTZ PATCH DUFFY & BASS LLP

By: */s/ Stan Roman*
STAN ROMAN
Attorneys for Defendant
TIMOTHY J. LEFEVER

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

STAN ROMAN (State Bar No. 87652)
FREDRICK C. CROMBIE (State Bar No. 244051)
VICTOR H. YU (State Bar No. 325411)
EMILY LENTZ (State Bar No. 348720)
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500
Telephone: 415.391.4800
Facsimile: 415.989.1663
Email: ef-sgr@cpdb.com
ef-fcc@cpdb.com
ef-vhy@cpdb.com
ef-erl@cpdb.com

Attorneys for Defendant
TIMOTHY J. LEFEVER

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

RICHARD ALLEN CLARIDGE, individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; CAPRI LYNN WINSER; individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; TODD MICHERO, an individual; LORI MICHERO, an individual; SCOTT A. WALKER, individual and trustee of The Walker Family Living Trust; and ELIZABETH L. WALKER, individual and trustee of The Walker Family Living Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TIMOTHY J. LEFEVER, an individual; KENNETH W. MATTSON, an individual; KS MATTSON PARTNERS, LP, a limited partnership; and SPECIALTY PROPERTIES PARTNERS, LP, a limited partnership,

Defendants.

Case No. 3:24-cv-04093-JST

DECLARATION OF FREDRICK C. CROMBIE IN SUPPORT OF DEFENDANT TIMOTHY LEFEVER'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

Date: January 16, 2025
Time: 2:00 p.m.
Crtrm.: 6 - 2nd Floor

Judge: The Honorable Jon S. Tigar

Trial Date: None Set

I, Fredrick C. Crombie, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner of Coblentz Patch Duffy & Bass LLP, attorneys of record for Defendant Timothy J. LeFever ("LeFever"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Attached as **Exhibit 1** is a true and correct copy of a document that I received from Mark Bennett at LeFever Mattson, Inc. and which purports to be a Limited Partnership agreement for Buckeye Tree, L.P. To protect their personal financial information, counsel for LeFever has redacted the names, and percentage member interests, of other investors who signed this agreement but are not parties to this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 12th day of November, 2024, at San Francisco, California.

Fredrick C. Crombie

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

EXHIBIT 1

LIMITED PARTNERSHIP AGREEMENT

OF BUCKEYE TREE, LP

A CALIFORNIA LIMITED PARTNERSHIP

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS....1
ARTICLE II CERTIFICATE OF LIMITED PARTNERSHIP....4
ARTICLE III CAPITALIZATION....5
ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS....7
ARTICLE V MANAGEMENT....9
ARTICLE VI ACCOUNTS AND RECORDS....12
ARTICLE VII PARTNERS AND VOTING....14
ARTICLE VIII TRANSFERS OF PARTNERSHIP INTERESTS....14
ARTICLE IX DISSOLUTION AND WINDING UP....18
ARTICLE X ARBITRATION....18
ARTICLE XI GENERAL PROVISIONS....19

LIMITED PARTNERSHIP AGREEMENT

OF

BUCKEYE TREE, LP

This Limited Partnership Agreement (this "*Agreement*") of Buckeye Tree, LP, a California limited partnership (the "*Partnership*"), is entered into effective as of June 6, 2022 (the "*Effective Date*"), by LeFever Mattson, a California corporation (the "*General Partner*") and the other individuals and/or entities who are or become signatories hereto (referred to individually as a "*Limited Partner*" and collectively with the General Partner as the "*Partners*").

RECITALS

WHEREAS, the partnership was formed pursuant to the California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900 et seq, of the California Corporations Code upon the filing of the Certificate of Limited Partnership with the Secretary of State of California (the "*Secretary of State*") on May 26, 2022;

WHEREAS, the Partners desire to enter into this Agreement, which as of the Effective Date, shall provide for the governance of the Partnership, the conduct of its business, and specify the Partners' relative rights and obligations with respect to the Partnership and their respective interests therein, all effective as of the Effective Date.

NOW THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

ARTICLE I

DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Act.

1.1 "*Act*" means the California Uniform Limited Partnership Act of 2008, as set forth in Sections 15900, et seq., of the California Corporations Code, including amendments from time to time.

1.2 "*Assignee*" means a Person who has acquired a Partner's Economic Interest in the Partnership, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Partner.

1.3 "*Assigning Partner*" means a Partner who by means of a Transfer has transferred an Economic Interest in the Partnership to an Assignee.

1.4 "*Capital Account*" means, as to any Partner, a separate account maintained and adjusted in accordance with Article Three, Section 3.5.

1.5 "*Capital Contribution*" means, with respect to any Partner, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take "subject to" under IRC Section 752) in consideration of a Percentage Interest held by such Partner. A Capital Contribution shall not be deemed a loan.

1.6 "*Capital Event*" means a sale or disposition of any of the Partnership's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Partnership property, the receipt of proceeds from a refinancing of Partnership property, or a similar event with respect to Partnership property or assets.

1.7 "*Cause*" means (i) insubordination, (ii) breach of this Agreement, (iii) any act or omission which is injurious to the Partnership or an affiliate or subsidiary of the Partnership, or the business or reputation of the Partnership or an affiliate or subsidiary of the Partnership, as determined by the Partners in their sole and absolute discretion, (iv) dishonesty, fraud, malfeasance, gross negligence or misconduct, (v) failure to satisfactorily perform his or her duties under this Agreement or any other agreement with the Partnership or an affiliate or subsidiary of the Partnership, (vi) failure to follow the direction of the Partnership or any individual to whom such individual reports, or to follow the policies, procedures, and rules of the Partnership, (vii) conviction of, or entry of a plea of guilty or no contest to, a felony or crime involving moral turpitude, or (viii) any other circumstances that would be recognized as cause at law.

1.8 "*Code*" or "IRC" means the Internal Revenue Code of 1986, as amended, and any successor provision.

1.9 "*Economic Interest*" means a Person's right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Partnership, but does not include any other rights of a Partner, including the right to vote or to participate in management.

1.10 "*Encumber*" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.11 "*Encumbrance*" means, with respect to any Partnership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.12 "*Gross Asset Value*" means, with respect to any item of property of the Partnership, the item's adjusted basis for federal income tax purposes, except as follows:

1.12.1 The Gross Asset Value of any item of property contributed by a Partner to the Partnership shall be the fair market value of such property, as mutually agreed by the contributing Partner and the Partnership; and

1.12.2 The Gross Asset Value of any item of Partnership property distributed to any Partner shall be the fair market value of such item of property on the date of distribution.

1.13 "*Initial Partner*" or "Initial Partners" means those Persons whose names are set forth in Exhibit A, attached. A reference to an "Initial Partner" means any of the Initial Partners.

1.14 "*Involuntary Transfer*" means, with respect to any Partnership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.15 "*Losses*." See "Profits and Losses."

1.16 "*Majority of Partners*" means a Partner or Partners whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Partners.

1.17 "*Notice*" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express or United Parcel Service for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.18 "*Partner*" means an Initial Partner or a Person who otherwise acquires a Partnership Interest, as permitted under this Agreement, and who remains a Partner.

1.19 "*Partnership*" means BUCKEYE TREE, LP, a California limited partnership.

1.20 "*Partnership Interest*" means a Partner's entire interest in the Partnership, including the Partner's Economic Interest, Percentage Interest, Voting Interest and all other interests of a Partner in the Partnership.

1.21 "*Percentage Interest*" means a fraction, the numerator of which is the total of a Partner's Capital Account and the denominator of which is the total of all Capital Accounts of all Partners.

1.22 "*Person*" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.23 "*Profits and Losses*" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with IRC Section 703(a).

1.24 "*Property*" means the real property currently or hereafter owned by the Partnership.

1.25 "*Proxy*" has the meaning set forth in the first paragraph of California Corporations Code Section 15901(ab). A Proxy may not be transmitted orally.

1.26 "*Regulations*" or "*Reg*" means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.27 "*Successor in Interest*" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.28 "*Super Majority of Partners*" means a Partner or Partners whose Percentage Interests represent 75 percent or more of the Percentage Interests of all the Partners.

1.29 "*Transfer*" means, with respect to a Partnership Interest, or any element of a Partnership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of all or any portion of a Partnership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.30 "*Vote*" means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

1.31 "*Voting Interest*" means, with respect to a Partner, the right to Vote or participate in management and any right to information concerning the business and affairs of the Partnership provided under the Act, except as limited by the provisions of this Agreement. A Partner's Voting Interest shall be directly proportional to that Partner's Percentage Interest.

ARTICLE II

CERTIFICATE OF LIMITED PARTNERSHIP

2.1 Filing with Secretary of State. The Certificate was filed with the California Secretary of State on May 26, 2022, file number 202250904184.

2.2 Partnership Name. The name of the Partnership shall be Buckeye Tree, LP.

2.3 Principal Office. The principal executive office of the Partnership shall be 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621, or such other place or places as may be determined by the General Partner from time to time.

2.4 Agent for Service. The initial agent for service of process on the Partnership shall be Tim LeFever, at 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621. A Majority of Partners may from time to time change the Partnership's agent for service of process.

2.5 Partnership Purpose. The Partnership has been formed for the purposes of engaging in the business of real estate investment, and any other act or activity incidental to the foregoing. In furtherance of the foregoing, the Partnership has acquired an interest in the Property.

2.6 Partnership Taxation. The Partners intend the Partnership to be a limited partnership under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither a General Partner nor any Partner shall take any action inconsistent with the express intent of the parties to this Agreement.

2.7 Term. The term of existence of the Partnership commenced on the effective date of filing of Certificate with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

2.8 General Partners. The General Partner and the management of the Partnership is set forth in Article Five of this Agreement.

ARTICLE III

CAPITALIZATION

3.1 Partner Contribution.

3.1.1 Each Partner has contributed to the capital of the Partnership as the Partner's Capital Contribution the money and property specified in Exhibit A attached hereto. Each Partner's Percentage Interest in the Partnership is listed on Exhibit A attached hereto.

3.1.2 At the discretion of the General Partner, an Initial Partner may substitute an interest-bearing note for his or her Capital Contribution. Such note shall be due immediately upon the call of the General Partner.

3.1.3 The Fair Market Value of each item of contributed property as agreed between the Partnership and the Partner contributing such property is set forth in Exhibit A attached hereto.

3.2 Failure To Make Contribution. If a Partner fails to make a required Capital Contribution within the later of 30 days after the contribution date agreed upon by all the Partners, that Partner's entire Partnership Interest shall terminate and that Partner shall indemnify and hold the Partnership and the other Partners harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make such Capital Contribution.

3.3 Additional Capital Contributions. Two types of Additional Capital Contributions may be needed to enable the Partnership to conduct its business: (1) Discretionary Additional Capital Contributions and (2) Mandatory Additional Capital Contributions.

3.3.1 Discretionary Additional Capital Contributions. A Majority of the Partners may, with the General Partner's consent, determine from time to time that Capital Contributions in addition to the Partners' initial Capital Contributions would allow the Partnership to enhance and improve its investment objectives. Upon such determination by a Majority of the Partners that is agreed to by the General Partner, the President shall give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

3.3.2 Mandatory Additional Capital Contributions. The President may reasonably determine that the Partnership's capital is or is presently likely to become insufficient for the conduct of its business as now conducted or as proposed by the General Partner to be conducted and that Capital Contributions in addition to the Partners' initial Capital Contributions are necessary to enable the Partnership to so conduct its business. On making such a determination, the President may give notice to all Partners in writing at least 90 days before the date on which such additional Capital Contribution is due, setting forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Partners shall contribute. Purposes for which additional Capital Contributions may called include, but are not limited to: the improvement, repair, maintenance, operation and management of existing Partnership assets and the acquisition, improvement and development of new assets. Each Partner shall be required to make an additional Capital Contribution in an amount that bears the same proportion to the total additional Capital Contribution that such Partner's Capital Account balance bears to the total Capital Account balances of all Partners.

3.3.3 Alternative to Additional Capital Contributions. In addition or as an alternative to making an additional capital call to the Partners, or if all of the additional capital called for in any notice referred to above is not raised through additional contributions by all or some of the Partners, the President shall have the right to obtain such additional capital by the sale of additional Partnership Interests to existing Partners and/or persons other than the existing Partners, on the same or more favorable terms and conditions offered to the Partners as set forth herein. Capital raised in connection with the offer and sale of additional Partnership Interests shall be used in furtherance of the Partnership's purpose and for general working capital purposes. In the event that additional Partner interests are sold in order to raise additional capital, Schedule A and the Percentage Interests of all Partners shall be adjusted accordingly, with the Percentage Interests of all Partners who do not participate in connection with such sale being adjusted downward. No additional consent shall be required, and no right of first offer or right of first refusal need be offered, in connection with any such offer and sale of additional Partnership Interests. Any purchaser of additional Partnership Interests shall only become a Partner upon executing a counterpart signature page to this Agreement and agreeing to be bound by all of its terms.

3.3.4 No Voluntary Additional Capital Contributions. No Partner may voluntarily make any additional Capital Contribution without the written consent of a Majority of Partners.

3.4 Remedies When Partner Fails To Make Additional Capital Contributions. If a Partner fails to make an additional Capital Contribution required under Section 3 within 30 days after it is required to be made (a "*Defaulting Partner*") the President shall within five days after said failure notify each other Partner (a "*Nondefaulting Partner*") in writing of the total amount of Defaulting Partner Capital Contributions not made (the "*Additional Capital Shortfall*"), and shall specify a number of days within which each Nondefaulting Partner may make an additional Capital Contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Nondefaulting Partner's Capital Account balance bears to the total Capital Accounts of all Nondefaulting Partners. If the total amount of Additional Capital Shortfall is not so contributed, the President may (i) use any reasonable method to provide Partners the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible, and (ii) attempt to raise additional capital through the means set forth in Section 3.3.3 above. Following the Nondefaulting Partners' and any new Partners' making of such additional Capital Contributions, each Partner's Percentage Interest shall be adjusted to reflect the ratio that the Partner's Capital Account bears to the total Capital Accounts of all of the Partners.

3.5 Capital Accounts. An individual Capital Account shall be maintained for each Partner consisting of that Partner's Capital Contribution (1) increased by that Partner's share of Profits, (2) decreased by that Partner's share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

3.6 Withdrawal or Distribution of Capital Contribution. A Partner shall not be entitled to withdraw any part of the Partner's Capital Contribution or to receive any distributions, whether of money or property from the Partnership except as provided in this Agreement.

3.7 No Interest on Contribution. No interest shall be paid on funds or property contributed to the capital of the Partnership or on the balance of a Partner's Capital Account.

3.8 Priority Over Other Partners. No Partner shall have priority over any other Partner, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

ARTICLE IV

ALLOCATIONS AND DISTRIBUTIONS

4.1 Profits and Losses. The Profits and Losses of the Partnership and all items of Partnership income, gain, loss, deduction, or credit shall be allocated for Partnership book purposes and for tax purposes, to a Partner in accordance with the Partner's Percentage Interest.

4.2 Qualified Income Offset. If any Partner unexpectedly receives any adjustment, allocation, or distribution described in Reg. Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership gross income and gain shall be specially allocated to that Partner in an amount and manner sufficient to eliminate any deficit balance in the Partner's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account

in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

4.3 Allocations Respecting Asset Distributions. Any unrealized appreciation or unrealized depreciation in the values of Partnership property distributed in kind to all the Partners shall be deemed to be Profits or Losses realized by the Partnership immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Partners' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Partners to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "*unrealized appreciation*" or "*unrealized depreciation*" shall mean the difference between the Fair Market Value of such property and the Partnership's basis for such property.

4.4 Allocations Between Assignor and Assignee. In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Partner and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

4.5 Distributions. All cash resulting from the normal business operations of the Partnership and from a Capital Event shall be distributed as and when determined by the General Partner, in its sole discretion. With respect to cash resulting from a Capital Event, the General Partner shall have the power and authority to cause the Partnership to reinvest such cash as determined by the General Partner and in accordance with this this Agreement. If the General Partner determines that cash resulting from the normal business operations of the Partnership or from a Capital Event is to be distributed among the Partners, then such distribution shall be made among the Partners in proportion to their Percentage Interests.

4.6 Non-Cash Proceeds. If the proceeds from a sale or other disposition of a Partnership asset consists of property other than cash, the value of such property shall be as determined by the General Partner. Such non-cash proceeds shall then be allocated among all the Partners in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Partner in accordance with Section 4.5.

4.7 Liquidating Proceeds. Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Partnership, or when any Partner's interest is liquidated, all items of income and loss first shall be allocated to the Partners' Capital Accounts under this Article Four, and other credits and deductions to the Partners' Capital Accounts shall be made before the final distribution is made. The final distribution to the Partners shall be made to the Partners to the extent of and in proportion to their positive Capital Account balances.

ARTICLE V

MANAGEMENT

5.1 General Partner.

5.1.1 The business of the Partnership shall be managed by the General Partner. The General Partner shall oversee and govern the direction, management and control of the business and assets of the Partnership to the best of the General Partner's ability. The General Partner shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Partnership, including, without limitation, the power to exercise on behalf and in the name of the Partnership all of the powers described in the Act. The General Partner may appoint one (1) or more officers and, subject to the terms and conditions of this Agreement, may delegate to those officers the authority to manage the day-to-day operations of the Partnership. The General Partner shall serve as General Partner until the earlier of its resignation or its removal for Cause by a Super Majority of Partners at a meeting called expressly for that purpose. A new General Partner shall be appointed by a Majority of Partners on the occurrence of any of the foregoing events.

5.1.2 Notwithstanding any other provisions of this Agreement, the General Partner shall have authority hereunder to cause the Partnership to engage in the following transactions without the approval of the Partners:

(a) The sale, exchange or other disposition of all, or substantially all, of the Partnership's assets occurring as part of a single transaction or plan, or in multiple transactions, in the ordinary course of business or in the orderly liquidation and winding up of the business of the Partnership upon its duly authorized dissolution;

(b) The purchase or sale of real property and/or other assets now belonging to or hereafter acquired by the Partnership;

(c) Any and all investments to be made by the Partnership;

(d) Loaning money to the Limited Partners, the General Partner, any officer or employee or the Partnership or any affiliate or other party related to any of the foregoing;

(e) The borrowing of money from any source; provided that any such borrowing by the Partnership shall be non-recourse to the Limited Partners and is deemed necessary or prudent by the General Partner;

(f) The entry into any contract, arrangement or commitment in furtherance of the business and purpose of the Partnership;

(g) The formation of any subsidiary or affiliate for any reason related to the Partnership's business or purpose;

(h) The entry into and performance under any co-tenancy agreement between the Partnership and any co-owner of property; and

(i) The creation of any mortgage, lien, charge, encumbrance, or other security interest of any nature in respect of all or any portion of the Partnership's real property.

5.2 President. The Partnership shall have a President as chosen by the General Partner.

5.2.1 Term. The President shall serve until the earlier of (1) the President's resignation, retirement, death, or disability or (2) the President's removal by the General Partner (which may be with or without Cause), or for Cause by a vote of a Majority of Partners at a meeting called expressly for that purpose.

5.2.2 Authority and Duties. The President shall serve at the pleasure of the General Partner, and shall have all powers expressly delegated to it by the General Partner, including the day-to-day supervision of the business and affairs of the Partnership. The President shall preside at all meetings of Partners and of the General Partner.

5.2.3 Election of President. The General Partner hereby elects Kenneth W. Mattson as President of the Partnership.

5.2.4 Officers, Compensation. The General Partner and the President shall be entitled to reasonable compensation for their services and reimbursement for expenses incurred on behalf of the Partnership, including but not limited to reimbursement for office space leased by the General Partner and/or the President at below market rates.

5.3 Authority to Contract. The authority to contract on behalf of the Partnership is vested in (a) the General Partner, and (b) the President, who may each act separately to the extent of the authority provided to them in Sections 5.1 and 5.2, above. The General Partner and President are each individually authorized to enter into maintenance, repair, construction, marketing, administration and professional service contracts (including contracts for accounting and legal services) on behalf of the Partnership relating to the management and operation of the Partnership and its assets. The General Partner and the President shall also each individually have the authority to pay all amounts owed by the Partnership under such contracts as well as amounts owed to other vendors and service providers in connection with Partnership operations. Amounts so paid shall be paid from Partnership accounts or if paid directly by the General Partner or President, reimbursed to the General Partner or the President by the Partnership immediately upon written request from the General Partner or the President that is accompanied with receipts and/or other evidence of payment. As of the effective date of this Agreement, Partners acknowledge that General Partner and/or President have entered into an apartment property management agreement for day-to-day management of the Property with LeFever Mattson Property Management in the form attached hereto as Exhibit B. No Partner who is not also the General Partner and/or the President shall have the authority to bind the Partnership or execute any instrument on behalf of the Partnership. Each Partner shall indemnify, defend, and save harmless the General Partner, the President and each other Partner and the Partnership from

and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by any Partner in contravention of this Section.

5.4 Meetings, Procedure for Action by Partners.

5.4.1 Meetings; Written Consent. The Partners are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among a Majority of Partners, provided that all Partners are consulted (although all Partners need not be present during a particular consultation), or by a written consent signed by a Majority of Partners. In the event that Partners wish to hold a formal meeting (a "*Meeting*") for any reason, the following procedures shall apply:

5.4.2 Calling and Notice of Meetings. Any two Partners may call a Meeting of the Partners by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Partnership.

5.4.3 Quorum. A Majority of Partners shall constitute a quorum for the transaction of business at any Meeting of the Partners.

5.4.4 Waiver of Notice. The transactions of the Partners at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Partner not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

5.4.5 Consent Required if No Meeting. Any action required or permitted to be taken by the Partners under this Agreement may be taken without a Meeting if the requisite consent or approval of the Partners (as set forth in this Agreement or required by law) is obtained in writing, individually or collectively, for such action.

5.4.6 Teleconference. Partners may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Partners participating in the Meeting can hear one another.

5.4.7 Records of Meetings. The Partners shall keep or cause to be kept with the books and records of the Partnership full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.5 Compensation. The General Partner and the President shall be entitled to reasonable compensation for their services including but not limited to office space at below market rates.

5.6 Personal Liability. No General Partner or Partner or officer shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Partnership except as otherwise provided in the Act or in this Agreement.

5.7 No Active Participation. No Partner shall participate in the Partnership's business for more than 500 hours during the Partnership's taxable year without written consent from a Majority of Partners.

5.8 Title to Assets. All assets of the Partnership, whether real or personal, shall be held in the name of the Partnership.

5.9 Banking. All funds of the Partnership shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Partnership, at such locations as shall be determined by the General Partner. Withdrawal from such accounts shall require the signature of the General Partner, or the President and another officer of the Partnership authorized in writing by the General Partner to effect such withdrawal.

5.10 Indemnification; Insurance.

5.10.1 Indemnification. The Partnership shall indemnify the General Partner and any employees and agents of the General Partner (collectively, the "Indemnified Parties") from any liability or damage; shall defend, save harmless, and pay all judgments against the Indemnified Parties incurred by reason of any act or omission or alleged act or omission in connection with the business of the Partnership (including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred); and shall indemnify the Indemnified Parties for such liabilities under Federal and State Securities Laws (including the Securities Act of 1933) as the law permits. All judgments against the Partnership or the Indemnified Parties, wherein the Indemnified Parties are entitled to indemnification, must first be satisfied from Partnership assets before the Indemnified Parties are responsible for these obligations. Any Partner guarantying a loan on the Property in accordance with the provisions of Section 7.4 shall be deemed an Indemnified Party under this Section 5.10 and shall be entitled to indemnification by the Partnership from any liability or damage incurred in connection with or arising from such guaranty.

5.10.2 Insurance. The Partnership shall have the authority to purchase and maintain directors and officers liability insurance, and to the extent commercially reasonable (as determined by the General Partner), purchase and maintain insurance on behalf of any Person who is or was an agent of the Partnership against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Partnership would have the power to indemnify such Person against such liability under the provisions of this Section 5.10 or under applicable law.

ARTICLE VI

ACCOUNTS AND RECORDS

6.1 Accounts. Complete books of account of the Partnership's business, in which each Partnership transaction shall be fully and accurately entered, shall be kept at the Partnership's principal executive office and shall be open to inspection and copying by each Partner or the Partner's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Partner.

6.2 Accounting. Financial books and records of the Partnership shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Partnership for federal income tax purposes. A balance sheet and income statement of the Partnership shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Partnership's business and for carrying out the provisions of this Agreement. The fiscal year of the Partnership shall be January 1 through December 31.

6.3 Records. At all times during the term of existence of the Partnership, and beyond that term if a Majority of the Partners deem it necessary, the Partners shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

6.3.1 A current list of the full name and last known business or residence address of each Partner, together with the Capital Contribution and the share in Profits and Losses of each Partner;

6.3.2 A copy of the Certificate, as amended;

6.3.3 Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

6.3.4 Executed counterparts of this Agreement, as amended;

6.3.5 Any powers of attorney under which the Certificate or any amendments thereto were executed;

6.3.6 Financial statements of the Partnership for the six most recent fiscal years; and

6.3.7 The Books and Records of the Partnership as they relate to the Partnership's internal affairs for the current and past four fiscal years.

6.4 Income Tax Returns. Within 90 days after the end of each taxable year of the Partnership the Partnership shall send to each of the Partners all information necessary for the Partners to complete their federal and state income tax or information returns, and a copy of the Partnership's federal, state, and local income tax or information returns for such year.

ARTICLE VII

PARTNERS AND VOTING

7.1 Partners and Voting Rights. There shall be only one class of partnership interest and no Partner shall have any rights or preferences in addition to or different from those possessed by any other Partner. Each Partner shall Vote in proportion to the Partner's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. Any action that may or that must be taken by the Partners shall be by a Majority of Partners, except as otherwise expressly provided herein.

7.2 Record Dates. The record date for determining the Partners entitled to Notice of any Meeting, to vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by a Majority of Partners, provided that such record date shall not be more than 60, nor less than 10 days prior to the date of the Meeting, nor more than 60 days prior to any other action. In the absence of any action setting a record date the record date shall be determined in accordance with California Corporations Code Section 15637(l).

7.3 Proxies. At all Meetings of Partners, a Partner may Vote in person or by Proxy. Such proxy shall be filed with any Partner before or at the time of the Meeting, and may be filed by facsimile transmission to a Partner at the principal executive office of the Partnership or such other address as may be given by a Majority of Partners to the Partners for such purposes.

7.4 Partner Participation in Connection with Refinance of Property. Current or future financing on the Property may require a payoff and refinance of existing indebtedness. If such a refinance requires guarantors in addition to the General Partner, all Partners acknowledge and agree to provide such financial information as may be reasonably requested by any proposed lender, and to execute such documents, including but not limited to guarantees, to affect such refinance.

ARTICLE VIII

TRANSFERS OF PARTNERSHIP INTERESTS

8.1 Withdrawal of Partner. Except as expressly authorized in writing by the General Partner, no Limited Partner may withdraw as a Partner of the Partnership. In addition, no Limited Partner shall be required to withdraw from the Partnership, and except as expressly authorized in writing by the General Partner, no Limited Partner shall be permitted to borrow or withdraw any portion of its Capital Account from the Partnership.

8.2 Restrictions on Transfer.

8.2.1 A Partner shall not Transfer all or any part of the Partner's Partnership Interest in the Partnership, whether now owned or hereafter acquired, unless (1) the General Partner approves the Transfer and the admission of the transferee (the "*Transferee*") to the Partnership, in writing and in advance of the Transfer, and (2) the Partnership Interest to be transferred, when added to the total of all other Partnership Interests transferred in the preceding

12 months, will not cause the termination of the Partnership under the Code. It shall be a further condition to any Transfer that the General Partner, Transferee and transferring Partner execute an agreement, including a consent to transfer, which agreement shall provide, among other things, that: (a) the transferring Partner shall indemnify General Partner and the Partnership for any and all claims, causes of action, damages, costs, injuries and liabilities existing with respect to such Partnership Interest prior to the Transfer or resulting from the Transfer of such Partner's Partnership Interest in the Partnership; (b) both Transferee and transferring Partner provide such representations and warranties in favor of General Partner and the Partnership as General Partner deems reasonable, including but not limited to representations as to due authorization, compliance with all laws, no litigation, no bankruptcy, etc.; (c) both Transferee and transferring Partner acknowledge that they are not relying on the Partnership, General Partner or other Partners for real estate advice or tax advice or to assure compliance with securities laws; (d) Transferee executes a counterpart to and agrees to be bound by all of the provisions of this Agreement; (e) Transferee acknowledges that the Partnership Interests (A) are being acquired for investment purposes only and not for resale, transfer or distribution, and (B) may not be further offered for sale, sold, or transferred other than pursuant to an effective registration under applicable state and federal securities laws, and/or in transactions otherwise in compliance with, or pursuant to an available exemption from registration under such laws, and upon evidence satisfactory to the General Partner of compliance with such laws, as to which General Partner may rely upon an opinion of counsel satisfactory to the General Partner.

8.2.2 No Partner may Encumber or permit or suffer any Encumbrance of all or any part of the Partner's Partnership Interest in the Partnership without the prior written consent of the General Partner. Any Transfer or Encumbrance of a Partnership Interest without such approval of the General Partner shall be null and void.

8.2.3 Any Transferee of a Partner's Partnership Interest shall only become a Partner upon satisfaction of all of the terms and conditions set forth above.

8.3 Triggering Events. On the happening of any of the following events ("*Triggering Events*") with respect to a Partner, the General Partner, for its own account or for the account of any other Partner(s), shall have the option to purchase all or any portion of the Partnership Interest in the Partnership of such Partner (a "*Selling Partner*") at the price and on the terms provided in Section 8.7 of this Agreement:

8.3.1 the death or incapacity of a Partner;

8.3.2 the bankruptcy of a Partner;

8.3.3 the winding up and dissolution of a corporate Partner, or merger or other corporate reorganization of a corporate Partner as a result of which the corporate Partner does not survive as an entity;

8.3.4 the withdrawal of a Partner; or

8.3.5 except for the events stated in Section 8.4, the occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Partner agrees to promptly give Notice of a Triggering Event to all other Partners.

8.4 Marital Dissolution or Death of Spouse. Notwithstanding any other provisions of this Agreement:

8.4.1 If, in connection with the divorce or dissolution of the marriage of a Partner, any court issues a decree or order that transfers, confirms, or awards a Partnership Interest, or any portion thereof, to that Partner's spouse (an "*Award*"), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Partner shall have the right to purchase from his or her former spouse the Partnership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Partnership Interest or portion thereof to that Partner at the price set forth in Section 8.7 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the Award (the "*Award Transfer Date*"), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the former spouse the Partnership Interest or portion thereof pursuant to Section 8.5 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Award Transfer Date, or (2) the date of actual notice of the Award.

8.4.2 If, by reason of the death of a spouse of a Partner, any portion of a Partnership Interest is transferred to a Transferee other than (1) that Partner or (2) a trust created for the benefit of that Partner (or for the benefit of that Partner and any combination between or among the Partner and the Partner's issue) in which the Partner is the sole Trustee and the Partner, as Trustee or individually possesses all of the Voting Interest included in that Partnership Interest, then the Partner shall have the right to purchase the Partnership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Partnership Interest or portion thereof at the price set forth in Section 8.7 of this Agreement. If the Partner has failed to consummate the purchase within 180 days after the date of death (the "*Estate Transfer Date*"), the General Partner shall have the first option to purchase, followed by the Partnership and the other Partners, from the estate or other successor of the deceased spouse the Partnership Interest or portion thereof pursuant to Section 8.5 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Estate Transfer Date, or (2) the date of actual notice of the death.

8.5 Option Periods. On the receipt of Notice by the Partners as contemplated by Section 8.1, and on receipt of actual notice of any Triggering Event (the date of such receipt is hereinafter referred to as the "*Option Date*"), the General Partner shall promptly give notice of the occurrence of such a Triggering Event to each Partner, and the General Partner and the Partnership shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.7, to purchase the Partnership Interest in the Partnership to which the option relates, at the price and on the terms provided in Section 8.7, and the other Partners, pro rata in accordance with their prior Partnership Interests in the Partnership, shall then have the option, for a period of 30 days thereafter, to purchase the Partnership Interest in the Partnership not purchased by the Partnership, on the same terms and conditions as apply to the Partnership. If all other Partners do not elect to purchase the entire remaining Partnership Interest in the Partnership, then the Partners electing to purchase shall

have the right, pro rata in accordance with their prior Partnership Interest in the Partnership, to purchase the additional Partnership Interest in the Partnership available for purchase. The Transferee of the Partnership Interest in the Partnership that is not purchased shall hold such Partnership Interest in the Partnership subject to all of the provisions of this Agreement.

8.6 Nonparticipation of Interested Partner. No Partner shall participate in any Vote or decision in any matter pertaining to the disposition of that Partner's Partnership Interest in the Partnership under this Agreement.

8.7 Option Purchase Price. The purchase price of the Partnership Interest that is the subject of an option under this Agreement shall be the Fair Market Value of such Partnership Interest as determined under this Section 8.7. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree on the Fair Market Value. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree on and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Market Value of the Partnership Interest in writing and submit their report to all the parties. The Fair Market Value shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations shall be the Fair Market Value. Each purchasing party shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser. The option purchase price as so determined shall be payable in cash.

8.8 Substituted Partner. Except as expressly permitted under Section 8.2, a prospective Transferee (other than an existing Partner) of a Partnership Interest may be admitted as a Partner with respect to such Partnership Interest (a "*Substituted Partner*") only (1) on the approval of the General Partner of the prospective Transferee's admission as a Partner, and (2) on such prospective Transferee's executing a counterpart of this Agreement as a party hereto. Any prospective Transferee of a Partnership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective Transferee has been admitted as a Substituted Partner.

8.9 Duties of a Substituted Partner. Any Person admitted to the Partnership as a Substituted Partner shall be subject to all provisions of this Agreement.

8.10 Securities Laws. The initial sale of Partnership Interests in the Partnership to the Initial Partners has not been qualified or registered under the securities laws of any state, or registered under the Securities Act of 1933, as amended, in reliance upon exemptions from the registration provisions of those laws. No attempt has been made to qualify the offering and sale of Partnership Interests to Partners under the California Corporate Securities Law of 1968, as amended, also in reliance upon an exemption from the requirement that a permit for issuance of securities be procured. Notwithstanding any other provision of this Agreement, Partnership Interests may not be Transferred or Encumbered unless registered or qualified under applicable state and federal securities law or unless, in the opinion of legal counsel satisfactory to the Partnership, such qualification or registration is not required. The Partner who desires to transfer

a Partnership Interest shall be responsible for all legal fees incurred in connection with said opinion.

ARTICLE IX

DISSOLUTION AND WINDING UP

9.1 Events of Dissolution. The Partnership shall be dissolved on the first to occur of the following events:

9.1.1 The written agreement of the General Partner and a Majority of Partners to dissolve the Partnership.

9.1.2 Entry of a decree of judicial dissolution pursuant to Section 15908 of the Act.

9.2 Winding Up. On the dissolution of the Partnership, the Partnership shall engage in no further business other than that necessary to wind up the business and affairs of the Partnership. The Partners who have not wrongfully dissolved the Partnership shall wind up the affairs of the Partnership. The General Partner shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Partnership whose addresses appear in the records of the Partnership. After paying or adequately providing for the payment of all known debts of the Partnership (except debts owing to Partners) the remaining assets of the Partnership shall be distributed or applied in the following order of priority:

9.2.1 To pay the expenses of liquidation.

9.2.2 To repay outstanding loans to Partners. If there are insufficient funds to pay such loans in full, each Partner shall be repaid in the ratio that the Partner's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Partners, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.

9.2.3 Among the Partners in accordance with the provisions of Article Four, Section 4.7.

9.3 Deficits. Each Partner shall look solely to the assets of the Partnership for the return of the Partner's investment, and if the Partnership property remaining after the payment or discharge of the debts and liabilities of the Partnership is insufficient to return the investment of any Partner, such Partner shall have no recourse against any other Partners for indemnification, contribution, or reimbursement.

ARTICLE X

ARBITRATION

Any action to enforce or interpret this Agreement or to resolve disputes between the Partners or by or against any Partner shall be settled by arbitration in accordance with the rules

of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of California. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at San Francisco, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE XI

GENERAL PROVISIONS

11.1 General Provisions. This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Partners or any of them.

11.2 Counterpart Executions. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.3 Governing Law; Severability. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

11.4 Benefit. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

11.5 Number and Gender. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

11.6 Further Assurances. The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties,

including but not limited to taking any and all actions reasonably required to comply with any mortgage or encumbrance with respect to the Property.

11.7 Partner's Other Business. Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Partners or General Partner in the carrying on of their own respective businesses or activities.

11.8 Agent. Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Partner, in the Partner's capacity as such, the agent of any other Partner.

11.9 Authority to Contract. Each Partner represents and warrants to the other Partners that the Partner has the capacity and authority to enter into this Agreement.

11.10 Titles and Headings. The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

11.11 Amendment. Except as otherwise provided herein, all amendments to this Agreement will be in writing and approved and executed by a Majority of the Partners; provided that any amendment that would materially and adversely affect the rights of any Partner(s) disproportionately as compared to any other Partner shall require the prior consent of such Partner(s). Notwithstanding the foregoing, this Agreement may be amended by the signature of the General Partner (i) as necessary to reflect the sale of limited partnership interests and the admission of additional Partners, (ii) to correct typographical errors, inconsistencies and any ambiguity, and (iii) as required to comply with applicable law.

11.12 Time is of the Essence. Time is of the essence of every provision of this Agreement that specifies a time for performance.

11.13 No Third Party Beneficiary Intended. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person shall have or acquire any right by virtue of this Agreement.

11.14 Sale of the Property. Upon the purchase or sale of any real property or any interest therein owned by the Partnership, or the purchase of any additional real property or interest therein by the Partnership, LeFever Mattson shall have exclusive authorization and right to make such sale or purchase of real property interests on behalf of the Partnership and shall be compensated at least three percent (3%) of the sale or purchase price for its services, or such greater amount as may be agreed.

11.15 Financing of the Property. Upon the financing or refinancing of any real property or any interest therein owned by the Partnership, as well as upon obtaining financing for any purchase of additional real property or any interest therein on behalf of the Partnership, LeFever Mattson shall be compensated in an amount equal to not less than one-half percent (0.5%) of the loan amount for its services in effectuating such financing.

11.16 Limited Partnership. The Partners intend the Partnership to be a limited partnership under the Act. No member shall take any action inconsistent with the express intent of the parties to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: DocuSigned by: Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: [redacted]

By: [redacted]

By: [redacted]

By: [redacted]

By: [redacted]

"LeFever Mattson, Inc. a California Corporation"

By: DocuSigned by: Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____
[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____
[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____
[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____
[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

GENERAL PARTNER:

"LeFever Mattson, Inc." a California corporation"

By: _____
Tim LeFever, Vice-President

LIMITED PARTNERS:

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____
[redacted]

"LeFever Mattson, Inc. a California Corporation"

By: _____
Tim LeFever, Vice-President

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

By: _____
[redacted]

[redacted]

By: _____
[redacted]

[redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted] [redacted]

By: _____ _____
[redacted] [redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

By: _____
[redacted]

[redacted]

By: _____
[redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

By: _____
[redacted]

[redacted]

By: _____
[redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

By: _____
[redacted]

[redacted]

By: _____
[redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted] [redacted]

By: _____ _____
[redacted] [redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

By: _____
[redacted]

[redacted]

By: _____
[redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

[redacted]

By: _____ _____
[redacted] [redacted]

Walker "The Walker Family Trust dated Dec. 15, 2006"

By: _____ _____
Scott Walker, Trustee Elizabeth Walker, Trustee

[redacted]

EXHIBIT A

BUCKEYE TREE, LP

DRAFT

Exhibit A
Owner Percentages

SCHEDULE A
Carmichael Apartments, Buckeye Tree, LP
5800 Engle Rd.
Carmichael, CA 95608
February 2007 Property Purchase
Updated 6/6/22

Owner's Name	Investment Percent
[redacted]	
Walker: The Walker Family Trust dated Dec. 15, 2006	14.440%
[redacted]	
Total Captial	100.000%

6/6/2022
1:45 PM

1294547.1

EXHIBIT B

Form of Property Management Agreement

AMENDED AND RESTATED

APARTMENT PROPERTY MANAGEMENT AGREEMENT

In consideration of the covenants herein contained, the party named in this contract as Owner, and the party named in this contract as Agent, "Home Tax Services of America, Inc. dba LeFever Mattson Property Management", agree as follows:

WHEREAS, the Property (as defined below) was previously owned by various individuals as tenants in common (collectively, the "Tenants in Common");

WHEREAS, in connection with the refinancing of certain indebtedness with respect to the Property, each of the Tenants in Common have effected the transfer of their entire right, title and interest in and to the Property to Buckeye Tree, LP ("Owner"); and

WHEREAS, in connection with such transfer Owner and Agent desire to amend and restate the Apartment Property Management Agreement with respect to the Property in its entirety, as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Owner hereby engages the Agent to have the exclusive management of the Property known as:

   Property Name & Address: Carmichael Apartments, 5804 Engle Rd, Carmichael, CA 95608

   Property Description: 52 Unit Apartment Complex

   Additional Properties: None

   Upon the terms hereinafter set forth, for the period commencing June 6, 2022 and expiring June 6, 2023, and automatically renewed for like periods, subject to either party having the right to cancel this Agreement by giving the other party (30) thirty day written notice of their intention to do so at any time after the initial period described above. Termination of this agreement for any reason, except for gross negligence as later described, shall result in a termination fee of (3) three times the normal monthly management fee payable prior to relinquishing of management documents.

   The Agent hereby accepts the management of said property (together with the furniture, furnishing or personal property therein or used in connection therewith) as provided herein.

2. The Agent, in accepting the management of said property, will perform the duties as herein provided, using its best judgment, effort and ability relative to the following for and on behalf of the Owner:

A. Placing advertising, at Owner's expense, for property or portions of property for rent or lease; selecting and obtaining tenants; executing tenancies and leases as well as extensions and renewals of leases in the name of LEFEVER MATTSON.

B. For and on behalf of the Owner, engaging and discharging employees and others needed for service in or maintenance of the premises up to the authority in paragraph 3 below, or with Owner approval.

C. Effecting contracts for on-site management, utilities or other services in name of Owner, purchasing supplies and equipment for operation of the premises, with Owner approval.

D. Effecting insurance, when instructed in writing by Owner, and paying the premiums from the Owner's account.

E. Paying taxes and payment of interest and principal encumbrances can be accomplished, provided Agent receives such written instructions from Owner and provided funds are available in property account.

F. Collecting and managing legal counsel for suing for rents and other moneys due; obtaining possession, terminating tenancies or leases, arranging and consenting to assignments or subletting of premises (Agent's or Owner's attorneys' fees for service pertaining to the property shall be an expense of the Owner).

G. Assisting in obtaining settlements on insurance or other claims. Employing attorneys as and when needed.

H. Paying all of the above expenses incurred for the Owner's account and at the Owner's expense, including the fees for Agent, moneys advanced by Agent, and reimbursable expenses of Agent which includes but is not limited to property supplies and property operating forms.

3. Notwithstanding anything herein contained to the contrary, the Agent shall not have the authority to do any of the following things without the consent of the Owner:

A. Effect a lease or contract for a period longer than one (1) year.

B. Incur any expense for a single repair, alteration, decoration cost, purchase or replacement of equipment or chattels in excess of the amount held in the subject property bank account without the consent of Owner, unless it is an emergency.

4. The following fee schedule shall apply to the services rendered:

A. Our mutually agreed upon fee for management is 3.5% of the gross rent collected.

B. Our mutually agreed upon fee for asset management is 1.5% of the gross rent collected. Payment of the Asset Management Fee is subordinate to all payments due for all operating expenses and debt service payments

C. As compensation for additional costs of collection of late rents and returned checks LEFEVER MATTSON will retain all Late Fees and NSF fees paid by tenants as related to their tenancy.

D. Management / Maintenance Database Accounting system annual license fee. $40.00 per dwelling unit. (Subject to annual cpi increases as charged by software vendor)

E. Such other fee or fees may be agreed to, from time to time, to compensate Agent for making contracts and supervising repairs, alterations, replacements, improvements, remodeling, additions, decorating or otherwise, pertaining to the premises, which are not part of normal operations. These fees include but are not limited to; Rental Application Fees, (applicants are charged a $35.00 application fee which cover the cost of credit reporting and tenant screening. Credit reporting is generally less than $10.00 per applicant.); Lawn Fees, (LeFever Mattson utilizes an outside landscape maintenance company to service many of the properties we manage. Lawn Fees are charged to Owner including an administrative charge of approximately 20% over the direct cost); LeFever Mattson Property Management retains Tenant Late Fees and NSF fees to offset the cost of processing notices, evictions, and collection efforts. Tenant Late Fees and NSF Fees charged to Tenants are generally $35.00 unless set by previous ownership) Renovations, Construction Projects, Insurance Claims Administration and other Projects are outside the normal scope of the monthly management contract. These services generally require a fee of up to 10% of the cost of the work performed for project administration. Fees charged for maintenance and maintenance stock include a profit to LeFever Mattson averaging 15% to 20%.

F. LEFEVER MATTSON provides maintenance to you, the client, at three different rates. The basic rate of $35.90 per work hour includes general maintenance; the lower rate of $29.90 per work hour includes unskilled labor, and the last rate of $45.90 per work hour includes special skills such as electrical, plumbing, etc. These rates are subject to change with notice.

G. It is understood by all parties that LEFEVER MATTSON operates its management and maintenance departments in order to earn a profit.

H. Agent may increase the management fee at renewal time with 30-day notice to Owner.

5. Owner shall establish and maintain a separate bank account in Owner's name ("Owner's Account"). Owner's Account shall be used for the receipt of all funds collected and received by Agent (or otherwise) with respect to the Property, for all payments to Agent for services hereunder, and for all expenses and costs otherwise arising out of this contract and/or in connection with the Property. Agent shall cause any and all monies received by it with respect to the Property to be deposited into and held in Owner's Account as soon as reasonably practicable. Owner will maintain all of its records, books of account, bank accounts (including Owner's Account), financial statements, accounting records and other

entity documents separate and apart from those of any other person, including Agent. Owner will not commingle its assets or the assets in the Owner's Account with the assets of any other person and will hold all of its assets in its own name. Monies from Owner's Account will not be loaned by Agent to other properties managed by Agent.

6. The Agent shall establish a reserve in the Owner's account to make necessary funds available for necessary payments and withdrawals to maintain the property as herein outlined. Said reserve shall be maintained at $20,000.00 per property under management.

7. The Owner has created a reserve account to provide funds for property improvements as well as any operating expense not covered by income in the initial phase of ownership. It is assumed that these funds will not be depleted in the short term and might best be used to generate additional income for the Owner through investment.

   To maximize the return on investment to the Owner, the property manager is authorized to invest reserve funds for the benefit of the Owner. Investments should allow for reasonable access to principal so that operation of the apartments is not jeopardized.

8. The Agent agrees at all times to keep and maintain, in accordance with customary business practices, suitable records and receipts pertaining to the supervision, management, care and operation of the said premises including all correspondence and data pertaining to, or in any matter related to the said premises, and to permit said Owner to inspect said records and other matters and to make copies or extracts therefrom, during the term of this Agreement.

9. The Agent shall render to the Owner monthly, a statement of receipts and disbursements incurred in connection with the management and operation of the said premises, and shall check and approve all invoices and other items of expense including operating and management expenses, and if applicable, shall remit moneys to Owner by approximately the eighth day of the following month. Statements sent are approved by Owner unless Agent is notified in writing within thirty (30) days from date of said statements, setting forth the errors.

10. LeFever Mattson Property Management will provide property due diligence services, in conjunctions with potential sale/purchase/refinance, during the escrow period in order to assist the Owner in assessing the physical and financial factors of the property. These services can included but are not limited to; physical property inspections, physical needs assessment, deferred maintenance assessment, financial pro-formas, cash flow projections, capital budgeting, monitoring property operations...

    LeFever Mattson Property Management will charge a fee $40.00 per unit or $1,750.00, whichever is greater, for due diligence services as outlined above. These fees will be paid from the property operating account subsequent to close of escrow.

11. The Owner agrees to save the Agent harmless from all damage suits, costs and expenses incurred therefrom in connection with the management of the premises and from liability suffered by any employee or other person whomsoever and to carry, at Owner's expense, adequate liability, and compensation insurance in amounts to protect the Agent in the same

manner and to the extent as the Owner. Owner shall name LeFever Mattson Property Management as an "Additional Insured", on said policy. Agent shall have the right to effect said insurance at the expense of Owner; however, Agent shall not be liable for failure to effect or to renew said insurance.

12. Nothing herein contained shall relieve the Agent from responsibility to the Owner for gross negligence; however, the Owner agrees: (1) to hold and save the Agent from and harmless from damages sustained by person or property due to any cause whatsoever either in and about the premises or elsewhere when the Agent is carrying out the provisions of this contract or the express or implied directions of the Owner; (2) to reimburse the Agent for moneys the latter is required to pay out for any reason whatsoever, either in connection with or as an expense in defense of any civil or criminal action, proceeding, charge or prosecution instituted or maintained against the Agent or the Owner and Agent jointly, affecting omissions of Agent or employees of the Owner; (3) to defend promptly any such action, proceeding, charge or prosecution instituted or maintained against the Agent or the Owner and Agent jointly.

13. If the Owner shall fail or refuse to comply with or abide by any rule, order, determination, ordinance or law of any Federal, State, Municipal or Governmental authority, the Agent upon giving twenty-four (24) hour written notice mailed to the Owner at the address to which Owner's remittances are sent, may terminate this Agreement.

14. Unless the Owner, in writing, expressly directs and the Agent, in writing, agrees so to do, the Agent shall not be required to file any reports other than the rendering of said monthly statements.

15. In the event the Owner terminates the Agreement (other than pursuant to Paragraph No. 1 as herein above provided), the Agent shall be entitled to compensation at a rate of three times the average monthly fee on each additional period of the contract. Said fees are to be paid to Agent before termination becomes effective. The above fees will be waived by Agent for the following circumstances: (1) if the subject property is sold and the Agent is given a thirty (30) day notice of the termination of this Agreement; (2) in the event there has been a material breach of contract by Agent and notice has been given in writing by Owner to Agent and Agent has not made a diligent effort in starting to cure said breach within fourteen (14) days after notice by Owner.

16. Should any provision of the Management Agreement be declared invalid by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect regardless of such declaration.

17. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Owner, and on the successors and assigns of the Agent.

18. Notices: Any written notice to Owner or Property Manager required under this Agreement shall be served by sending such notice by first class mail to that party at the address below, or at any different address which the parties may later designate for this purpose, and shall be deemed received three business days after deposit into the United States mail.

19. Equal Housing Opportunity: All property shall be offered in compliance with federal, state and local antidiscrimination laws.

20. Attorney's Fees: In any action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the Owner and LEFEVER MATTSON Property Management have signed and delivered this Agreement in duplicate this 21 day of February, 2019.

Owner:

Buckeye Tree, LP
a California Limited Partnership

By: LeFever Mattson
a California corporation
Its: General Partner

By: Tim LeFever
Its: Vice President

By: DocuSigned by: Jim LeFever
6EE55D705008479...

Agent:

HOME TAX SERVICES OF AMERICA, INC., a California corporation d/b/a/ LEFEVER MATTSON Property Management

By:_____

IN WITNESS WHEREOF, the Owner and LEFEVER MATTSON Property Management have signed and delivered this Agreement in duplicate this 21 day of February, 2019.

Owner:

Buckeye Tree, LP
a California Limited Partnership

By: LeFever Mattson
a California corporation
Its: General Partner

By: Tim LeFever
Its: Vice President

By: _____

Agent:

HOME TAX SERVICES OF AMERICA, INC.,
a California corporation d/b/a/ LEFEVER MATTSON Property Management

By: _____

IN WITNESS WHEREOF, the Owner and LEFEVER MATTSON Property Management have signed and delivered this Agreement in duplicate this 21 day of February, 2019.

Owner:

Buckeye Tree, LP
a California Limited Partnership

By: LeFever Mattson
a California corporation
Its: General Partner

By: Tim LeFever
Its: Vice President

By: _____

Agent:

HOME TAX SERVICES OF AMERICA, INC., a California corporation d/b/a/ LEFEVER MATTSON Property Management

By: _____

STAN ROMAN (State Bar No. 87652)
FREDRICK C. CROMBIE (State Bar No. 244051)
VICTOR H. YU (State Bar No. 325411)
EMILY LENTZ (State Bar No. 348720)
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500
Telephone: 415.391.4800
Facsimile: 415.989.1663
Email: ef-sgr@cpdb.com
ef-fcc@cpdb.com
ef-vhy@cpdb.com
ef-erl@cpdb.com

Attorneys for Defendant
TIMOTHY J. LEFEVER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

RICHARD ALLEN CLARIDGE, individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; CAPRI LYNN WINSER; individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; TODD MICHERO, an individual; LORI MICHERO, an individual; SCOTT A. WALKER, individual and trustee of The Walker Family Living Trust; and ELIZABETH L. WALKER, individual and trustee of The Walker Family Living Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TIMOTHY J. LEFEVER, an individual; KENNETH W. MATTSON, an individual; KS MATTSON PARTNERS, LP, a limited partnership; and SPECIALTY PROPERTIES PARTNERS, LP, a limited partnership,

Defendants.

Case No. 3:24-cv-04093-JST

DEFENDANT TIMOTHY LEFEVER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Date: January 16, 2025
Time: 2:00 p.m.
Crtrm.: 6 - 2nd Floor

Judge: The Honorable Jon S. Tigar

Trial Date: None Set

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Evidence 201(b), Defendant Timothy LeFever (LeFever), through their undersigned counsel, respectfully request that the Court take judicial notice of, and/or deem as incorporated by reference, an exhibit filed in support of his Motion to Dismiss Plaintiffs' First Amended Complaint ("FAC"), which is attached to the accompanying Declaration of Frederick C. Crombie ("Crombie Declaration").

ARGUMENT

When ruling on a motion to dismiss, the Court may look beyond the four corners of the complaint to matters subject to judicial notice and to documents incorporated in the complaint by reference. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018); *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). Here, LeFever respectfully requests that this Court take judicial notice of Exhibit 1 to the Crombie Declaration. This document purports to be a copy of an LP agreement for Buckeye Tree, L.P.

A district court may, when ruling on a motion to dismiss, "consider materials incorporated into the complaint," including "where the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint, the document's authenticity is not in question and there are no disputed issues as to the document's relevance." *Free Speech Sys., LLC v. Menzel*, 390 F. Supp. 3d 1162, 1167 n.1 (N.D. Cal. 2019) (Orrick, J.) (quoting *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010)). Incorporation by reference "prevent[s] plaintiffs from selectively citing 'only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.'" *In re Talis Biomedical Corp. Sec. Litig.*, 2022 WL 17551984, at *10 (N.D. Cal. Dec. 9, 2022) (quoting *Khoja*, 899 F.3d at 1002).

Here, the Buckeye Tree LP agreement is directly referenced and incorporated into the Complaint. Plaintiffs allege that LeFever was associated with "nearly all" of LeFever Mattson's LPs and LLCs. FAC ¶ 75; *see id.* Ex. A (chart listing Buckeye Tree LP as an entity affiliated with LeFever). And Plaintiffs make various references to the partnership agreements associated with those LPs. *See, e.g.*, FAC ¶¶ 152, 155. Indeed, the Walker Plaintiffs directly allege that they

maintained an interested in an entity called Buckeye Tree, L.P. *See* FAC ¶ 164. But despite referencing the existence and importance of these LP agreements, Plaintiffs do not attach any of those agreements to its pleadings, including the Buckeye Tree agreement. Accordingly, it is proper to consider the full terms of one of these agreements.

CONCLUSION

For the reasons stated above, the Court should consider Exhibit 1 to the accompanying Crombie Declaration when ruling on LeFever's Motions to Dismiss the FAC.

DATED: November 12, 2024

COBLENTZ PATCH DUFFY & BASS LLP

By: */s/ Stan Roman*
STAN ROMAN
Attorneys for Defendant
TIMOTHY J. LeFEVER

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

STAN ROMAN (State Bar No. 87652)
FREDRICK C. CROMBIE (State Bar No. 244051)
VICTOR H. YU (State Bar No. 325411)
EMILY LENTZ (State Bar No. 348720)
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500
Telephone: 415.391.4800
Facsimile: 415.989.1663
Email: ef-sgr@cpdb.com
ef-fcc@cpdb.com
ef-vhy@cpdb.com
ef-erl@cpdb.com

Attorneys for Defendant
TIMOTHY J. LEFEVER

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

RICHARD ALLEN CLARIDGE, individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; CAPRI LYNN WINSER; individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winser; TODD MICHERO, an individual; LORI MICHERO, an individual; SCOTT A. WALKER, individual and trustee of The Walker Family Living Trust; and ELIZABETH L. WALKER, individual and trustee of The Walker Family Living Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TIMOTHY J. LEFEVER, an individual; KENNETH W. MATTSON, an individual; KS MATTSON PARTNERS, LP, a limited partnership; and SPECIALTY PROPERTIES PARTNERS, LP, a limited partnership,

Defendants.

Case No. 3:24-cv-04093-JST

[PROPOSED] ORDER GRANTING DEFENDANT TIMOTHY LEFEVER'S REQUEST FOR JUDICIAL NOTICE

Date: January 16, 2025
Time: 2:00 p.m.
Judge: The Honorable Jon S. Tigar
Crtrm.: Courtroom 6 – 2nd Floor

Trial Date: None Set

Having reviewed the papers submitted in support of, and in opposition to, LeFever's November 12, 2024 Request for Judicial Notice, and having heard the oral arguments of counsel, and finding good cause, the Court hereby takes judicial notice of Exhibit 1 to the Declaration of Frederick C. Crombie.

IT IS SO ORDERED.

DATED: _____ ___, 2025

_____
The Honorable Jon S. Tigar

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663