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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE**
14

15 BEACH ORANGETHORPE HOTEL, LLC)

16 Plaintiff,)

17 vs.)

18)
19 EVERTRUST BANK; M&D REGIONAL)
CENTER, LLC; and M+D PROPERTIES,)

20)
21 Defendants.)
22)
23)
24)

Case No.: 30-2022-01252985-CU-BT-CJC

VERIFIED COMPLAINT FOR:

- 1. **BREACH OF FIDUCIARY DUTY;**
- 2. **AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY;**
- 3. **UNJUST ENRICHMENT; AND**
- 4. **BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.**

DEMAND FOR JURY TRIAL

Assigned for All Purposes

Judge James Crandall

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REQUEST FOR RELIEF 15

1 Plaintiff Beach Orangethorpe Hotel, LLC (“BOH1”) hereby sues Defendants Evertrust Bank
2 (“Evertrust”), M&D Regional Center, LLC (“M&D Regional Center”), and M+D Properties (“M+D
3 Properties”) (collectively, “Defendants”) and alleges as follows:

4 **PRELIMINARY STATEMENT**

5 1. This case concerns the loss of Plaintiff’s loan investment in a hotel being developed
6 by non-party The Source Hotel LLC (“TSH”). TSH was wholly (indirectly) owned by non-parties
7 Donald Chae and Min Chae (the “Chaes”).¹ TSH and Donald Chae have both filed for bankruptcy.
8 Min Chae is deceased.

9 2. To raise capital for the development of the hotel, the Chaes established Plaintiff as a
10 vehicle to attract and receive investment funds from foreign individual investors (“BOH1
11 Investors”) under the United States EB-5 Program. Plaintiff would then lend these investment funds
12 to TSH. Defendants M&D Regional Center and M+D Properties, which were both wholly owned
13 by the Chaes,² were established by the Chaes as the entities to manage and control the affairs of
14 BOH1. Accordingly, the Chaes controlled both the lender (*i.e.*, BOH1) and the borrower (*i.e.*, TSH).

15 3. In total, through Plaintiff BOH1, the Chaes raised \$10 million from the BOH1
16 Investors.

17 4. For purposes of attracting the investments by the BOH1 Investors, the Chaes and
18 Defendants M&D Regional Center and M+D Properties (collectively, the Developer Group”)
19 represented to the BOH1 Investors, in seven different places in BOH1’s private placement
20 memorandum (“PPM”), that BOH1’s \$10 million secured loan to TSH (“BOH1 Loan”) would be
21 junior only to a construction loan in the approximate amount of just \$16 million. Instead, the
22 Developer Group obtained a senior construction loan in the amount of **\$29.5 million** from Defendant
23 Evertrust (“Evertrust Loan”), nearly twice the size of what was represented. No one in the Developer
24 Group obtained the consent of, or even informed, the BOH1 Investors with respect to this loan.
25 M&D Regional Center, the sole manager for BOH1, breached its fiduciary duties of loyalty and care

26 _____
27 ¹ Upon the death of Min Chae, his equity interest in TSH was transferred to Donald Chae, who is currently
the sole owner of TSH, which he owns indirectly.

28 ² Upon the death of Min Chae, his equity interests in M&D Regional Center and M+D Properties were
transferred to Donald Chae, who is currently the sole owner of both entities.

1 to BOH1 by facilitating this outrageous subordination, which was an improper self-dealing
2 transaction that harmed the interests of BOH1 as a secured creditor.

3 5. This egregious subordination could not have been achieved without the knowing
4 participation of Defendant Evertrust. As the lending bank making the Evertrust Loan, Evertrust
5 reviewed documents relating to all known prior loans, such as the BOH1 Loan, and therefore knew
6 of the existence of the prior BOH1 Loan, as well as the Developer Group’s representations regarding
7 the amount by which it could be subordinated.

8 6. Moreover, Evertrust provided financing despite flagrant signs of misconduct.
9 Evertrust knew that the Developer Group had failed to record BOH1’s lien, despite the fact that the
10 BOH1 Loan was entered into approximately two years prior to the Evertrust Loan. In fact, the
11 Developer Group never recorded UCC-1 financing statements against TSH’s personal property, and
12 the Developer Group did not even record BOH1’s lien (deeds of trust) against the Hotel until
13 approximately one year after the lien for Evertrust was recorded. When the lien was finally recorded,
14 Evertrust entered into an agreement to reaffirm the subordination of the BOH1 Loan to the Evertrust
15 Loan. Further (“Subordination Agreement”), despite the fact that the BOH1 Loan was purportedly
16 entered into approximately two years prior to the Evertrust Loan, the BOH1 Loan Agreement
17 expressly references the \$29.5 million Evertrust Loan. The BOH1 Loan Agreement even references
18 the Subordination Agreement, defined as “that certain Subordination Agreement of even date
19 herewith among [BOH1], [TSH], and EverTrust Bank.” In other words, the Developer Group either
20 concealed the original version of the BOH1 Loan Agreement, and/or created the BOH1 Loan
21 Agreement after obtaining the Evertrust Loan and then backdated it, potentially with the assistance,
22 or at the request, of Evertrust.

23 7. In short, Evertrust knew that the \$29.5 million loan sought by the Developer Group
24 was improperly large, and that the Developer Group was taking advantage of and abusing their
25 control over BOH1 in connection with such loan, such as concealing or otherwise altering the terms
26 and conditions of the BOH1 Loan that were represented and designed to protect BOH1 and the
27 BOH1 Investors. Nevertheless, Evertrust decided to provide a loan in that amount to TSH and to
28 collude with the Developer Group to subordinate the BOH1 Loan by that entire amount, for its own

1 benefit and the benefit of the Chaes, and at the sole expense of BOH1. In this manner, Evertrust
2 enabled and facilitated the abuse of BOH1 by the Developer Group.

3 8. After all this, Evertrust sold its interest in the Evertrust Loan to non-party Shady Bird
4 Lending, LLC (“Shady Bird”).

5 9. In February 2021, TSH filed for bankruptcy. The Bankruptcy Court permitted Shady
6 Bird to proceed with a non-judicial foreclosure on TSH’s assets, thereby extinguishing the lien for
7 the BOH1 Loan. BOH1 received nothing from the foreclosure sale and was left with essentially no
8 assets.

9 10. Through this action, BOH1 seeks to recover from the parties responsible for
10 orchestrating the total loss of its assets.

11 **PARTIES**

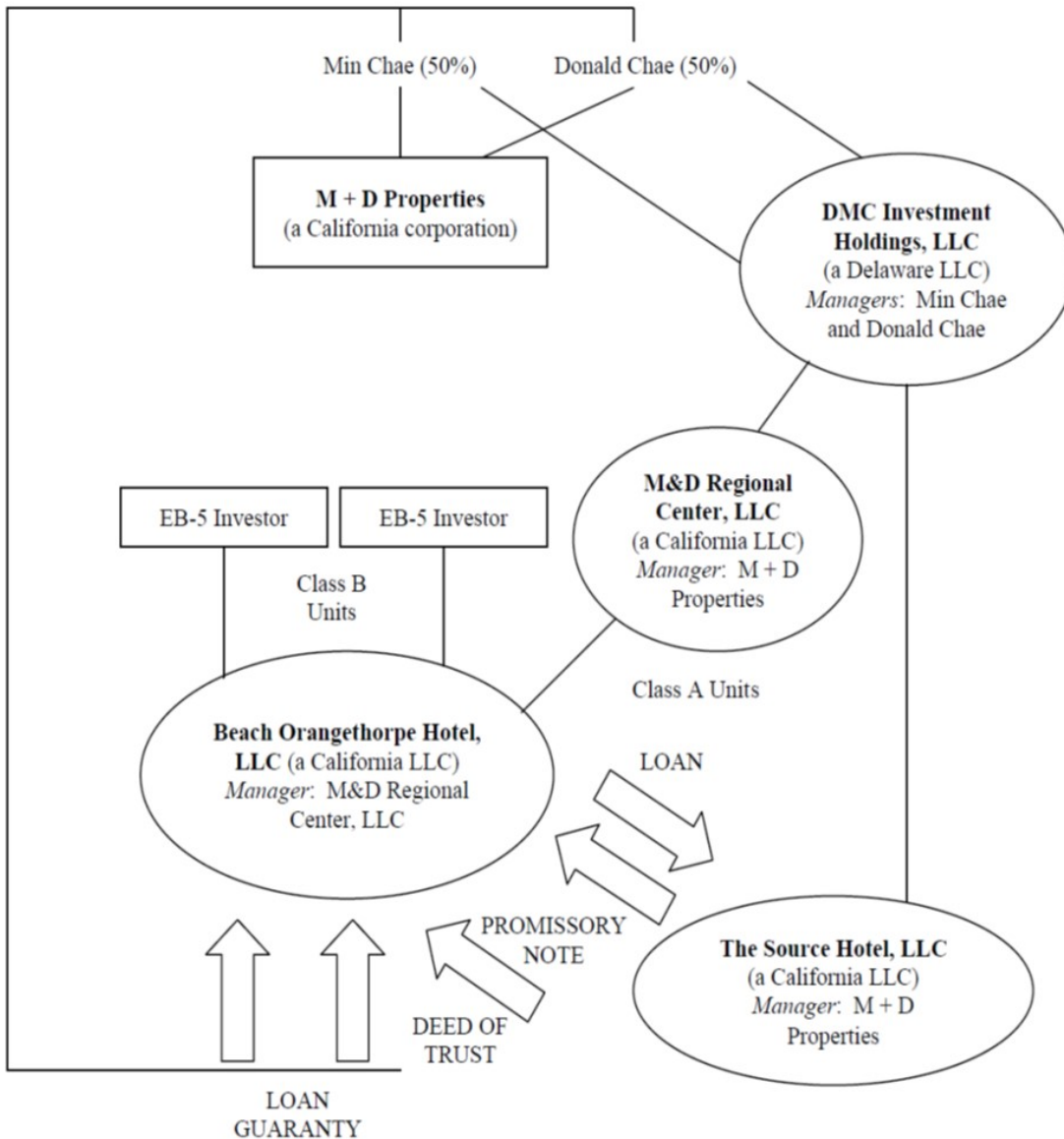
12 11. Plaintiff BOH1 is a California limited liability company. Upon information and
13 belief, BOH1’s principal place of business is 6988 Beach Blvd. B-215, Buena Park, California
14 90621.

15 12. Defendant Evertrust is a California banking corporation. Upon information and
16 belief, Evertrust’s principal place of business is 2 N. Lake Ave., Suite 1030, Pasadena, California
17 91101.

18 13. Defendant M&D Regional Center is a California limited liability company. Upon
19 information and belief, its principal place of business is 6988 Beach Blvd. B-215, Buena Park,
20 California 90621. M&D Regional Center has been the manager of BOH1 since the formation of
21 BOH1. Currently, Donald Chae indirectly owns 100% of the equity interest in M&D Regional
22 Center.

23 14. Defendant M+D Properties is a California corporation. Upon information and belief,
24 its principal place of business is 6988 Beach Blvd. B-215, Buena Park, California 90621. M+D
25 Properties is the manager of M&D Regional Center. M+D Properties is also the manager of TSH.
26 Currently, Donald Chae directly owns 100% of the equity interest in M+D Properties.

27 15. Below is an organizational chart that sets forth the relationship among the various
28 entities comprising the Developer Group, BOH1, and TSH:



JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this dispute. In addition, the amount in controversy exceeds the minimum jurisdictional amount of this Court’s unlimited jurisdiction.

17. This Court has general jurisdiction over each defendant under Code of Civil Procedure § 410.10 because each defendant is a resident of California.

18. Venue is proper in this Court because Plaintiff and Defendants M&D Regional Center and M+D Properties maintain their principal executive offices in this County and are otherwise residents of this County. Also, a substantial portion of the transactions and wrongs complained of herein, including Defendants’ primary participation in the wrongful acts alleged

1 herein and Defendants’ conduct in aiding and abetting these primary violations alleged herein,
2 occurred in this County. In addition, Defendants have received substantial compensation in this
3 County by doing business here and engaging in numerous activities that had an effect in this County.

4 **SUBSTANTIVE ALLEGATIONS**

5 **I. THE EB-5 IMMIGRANT INVESTOR PROGRAM**

6 19. The EB-5 Immigrant Investor Program was created by Congress in 1992 to stimulate
7 the U.S. economy through job creation and capital investment by foreign investors. The United
8 States Citizenship and Immigration Services (“USCIS”) administers the program. The program sets
9 aside EB-5 immigrant visas for participants who invest in commercial enterprises approved by
10 USCIS, which are sometimes administered by entities called “regional centers.”

11 20. The investments offered by regional centers to EB-5 foreign investors are typically
12 offered as an interest in an investment vehicle such as a limited partnership or limited liability
13 company. These investment vehicles are managed by a person or entity other than the foreign
14 investor, specifically, the general partner or managing member of the investment vehicle.

15 21. To be eligible for an EB-5 visa through a regional center, a foreign investor is
16 required to invest money (at least \$500,000 during the relevant time period), and put this money at
17 risk for the purpose of generating a return. The investor may then petition the USCIS for conditional
18 permanent residency for a two-year period through an application called an I-526 petition. If at least
19 ten U.S. jobs are created as a result of the foreign investor’s investment, the investor may apply to
20 have the conditions removed from her/his visa and live and work in the United States permanently
21 (an I-829 petition).

22 **II. BOH1 WAS FORMED TO RAISE FUNDS FROM EB-5 INVESTORS AND LEND
23 THOSE FUNDS TO TSH**

24 22. Until it filed for bankruptcy, TSH had been developing a hotel located at 6986 Beach
25 Blvd., Buena Park, CA 90621 (the “Hotel”).

26 23. In order to finance the construction of the Hotel, TSH obtained financing from three
27 sources: (i) BOH1, on or about June 1, 2014, in the form of a secured loan in the principal amount
28 of \$10 million (the BOH1 Loan); (ii) Beach Orangethorpe Hotel II, LLC (“BOH2”), on or about

1 December 31, 2015, in the form of a secured loan in the principal amount of \$11.5 million (the
2 “BOH2 Loan”); (iii) Evertrust, on or about May 24, 2016, in the form of a loan in the principal
3 amount of \$29.5 million (the Evertrust Loan); and (iv) Beach Orangethorpe Hotel III (“BOH3”), on
4 or about June 11, 2016, in the form of a preferred equity investment of \$14.5 million.³

5 24. Each of the entities in the Developer Group was involved in raising capital for the
6 development of the Hotel.

7 25. BOH1 was formed by the Developer Group to raise money from investors under the
8 EB-5 program, for the purpose of providing financing in the form of a \$10 million loan to TSH. The
9 \$10 million loan that was provided by BOH1 to TSH was funded by 20 individual foreign investors
10 (the BOH1 Investors), each of whom contributed \$500,000, and paid an administrative fee of
11 \$45,000.

12 26. After BOH1 was formed, M&D Regional Center served as the sole manager for
13 BOH1. As the sole manager of BOH1, M&D Regional Center owed fiduciary duties of loyalty and
14 care to both BOH1 and the BOH1 Investors.

15 27. In connection with raising capital from the BOH1 Investors, the Developer Group
16 prepared and issued offering documents, including the PPM.

17 28. The PPM states that the construction budget to develop TSH’s hotel consists of (i)
18 the BOH1 Loan, in the amount of \$10 million, to be secured by substantially all of TSH’s assets,
19 and (ii) an as yet to be obtained senior construction loan, in the approximate amount of \$16 million,
20 to be secured by a senior security interest in substantially all of TSH’s assets.

21 29. The PPM states in seven different places that only approximately \$16 million would
22 be senior to the BOH1 Loan.

23 **III. DESPITE CLEAR SIGNS OF FLAGRANT MISCONDUCT, EVERTRUST**
24 **PROVIDES A GROSSLY IMPROPER LOAN TO THE DETRIMENT OF BOH1**

25 30. Although the BOH1 Loan was entered into on or about June 1, 2014, no party in the
26 Developer Group recorded BOH1’s lien on TSH’s assets at that time.

27
28 ³ The loan documents for the Evertrust Loan expressly require TSH to obtain financing from BOH3.

1 31. Instead, the Developer Group then obtained \$11.5 million of additional EB-5
2 financing (the BOH2 Loan) from additional foreign investors under the EB-5 program. The
3 Developer Group represented to these investors that the BOH2 Loan would be secured by
4 substantially all of TSH's assets, and would be *parri passu* with the BOH1 Loan.

5 32. No party in the Developer Group obtained the consent of, or even informed, the
6 BOH1 Investors with respect to the BOH2 Loan.

7 33. After the BOH2 Loan was entered into on or about December 31, 2015, the
8 Developer Group still did not record the lien for BOH1.

9 34. On or about May 24, 2016, the Developer Group obtained the Evertrust Loan, which
10 was in the principal amount of \$29.5 million and secured by substantially all of TSH's assets. The
11 Evertrust Loan was nearly double the size of the \$16 million figure that the PPM stated would be
12 senior to the BOH1 Loan. No party in the Developer Group obtained the consent of, or even
13 informed, the BOH1 Investors with respect to the Evertrust Loan.

14 35. Upon information and belief, prior to entering into the Evertrust Loan, Evertrust
15 reviewed documents relating to the financing of the BOH1 Loan, such as the PPM, because as a
16 bank, Evertrust would not have provided financing to TSH without reviewing documents relating
17 to known prior loans. Indeed, the BOH1 Loan is expressly referenced in the Evertrust Loan
18 Agreement. Prior to entering into the Evertrust Loan, Evertrust was aware that the Evertrust Loan
19 was improper and would unduly and unlawfully harm BOH1 and the BOH1 Investors.

20 36. For example, the PPM for BOH1 states that the BOH1 Loan would be junior only to
21 a construction loan in the approximate amount of just \$16 million. Evertrust knew that the Developer
22 Group was seeking a senior loan in the amount of \$29.5 million—nearly twice the permissible size
23 of the loan—yet agreed to provide a loan in that amount.

24 37. Further, the PPM for BOH1 states that the approximate construction budget for the
25 Hotel would be \$26 million, and also states that the Hotel would have approximately 150 rooms.
26 The private placement memorandum for BOH2 states that the approximate construction budget for
27 the Hotel would be \$55.8 million, and also states that the Hotel would have approximately 172
28 rooms. The private placement memorandum for BOH3 states that the approximate construction

1 budget for the Hotel would be \$65.5 million, and also states that the Hotel would have approximately
2 174 rooms. No one sought the consent of, or even informed, the BOH1 Investors of the foregoing
3 changes to the construction budget or size of the Hotel. However, Evertrust was aware of the changes
4 in the construction budget and the number of rooms set forth in the private placement
5 memorandums.

6 38. Evertrust knew that the Chaes were controlling BOH1. Evertrust further knew that
7 M&D Regional Center was the manager of BOH1 and accordingly owed fiduciary duties to BOH1
8 and the BOH1 Investors.

9 39. Evertrust further knew that the Evertrust Loan provided financing for the benefit of
10 TSH, which was wholly, indirectly, owned by the Chaes. Evertrust knew that the capital provided
11 by BOH1 to TSH pursuant to the BOH1 Loan was provided by the BOH1 Investors (rather than the
12 Chaes or any entity in the Developer Group).

13 40. Nevertheless, despite its knowledge of the improprieties and irregularities
14 surrounding the BOH1 Loan and the unlawful, self-dealing actions taken by the Developer Group,
15 including the unlawful nature of the Evertrust Loan itself, Evertrust entered into the Evertrust Loan
16 with the Developer Group.

17 41. At the time that the Evertrust Loan was made, Evertrust knew that the lien for the
18 BOH1 Loan was not recorded, and that the Developer Group was responsible for failing to record
19 that lien. Yet, Evertrust recorded its lien before the BOH1 lien.

20 42. Evertrust even required BOH1 to enter into the Subordination Agreement, which it
21 knew was improper in light of the excessive size of the Evertrust Loan, the self-dealing nature of
22 the transaction, and the Developer Group's egregious unilateral decision to fundamentally change
23 the nature of the investment for which BOH1 bargained.⁴ Donald Chae personally signed the
24 Subordination Agreement on behalf of (i) BOH1, as the subordinating lender, (ii) TSH, as the
25 borrower, and (iii) himself, in his capacity as guarantor.

26
27
28 ⁴ BOH1 bargained for a hotel with just 150 rooms with a construction budget of \$26 million rather than a
more far more expansive and riskier project to develop a 174 room hotel with a budget of \$65.5 million.

1 43. The Developer Group did not record the BOH1 lien on TSH’s assets until August
2 28, 2017, or approximately three years after the BOH1 Loan was entered into and one year after the
3 lien for Evertrust was recorded.

4 44. After the BOH1 lien was finally recorded, Evertrust required BOH1 and the
5 Developer Group to enter into an agreement, dated June 29, 2018 (the “Reaffirmation Agreement”),
6 to reaffirm the subordination of the BOH1 Loan vis-à-vis the Evertrust Loan. The Reaffirmation
7 Agreement was again signed by Donald Chae on behalf of (i) BOH1, as the subordinating lender,
8 (ii) TSH, as the borrower, and (iii) himself, in his capacity as guarantor.

9 45. Upon information and belief, in December 2020, Evertrust sold its interest in the
10 Evertrust Loan to Shady Bird.

11 **IV. TSH FILES FOR BANKRUPTCY, PROMPTING THE BOH1 INVESTORS TO**
12 **INSTALL A SPECIAL MANAGER AND LEARN FOR THE FIRST TIME OF THE**
13 **IMPROPER NATURE OF THE EVERTRUST LOAN**

14 46. Unsurprisingly, in light of the abusive practices of the Developer Group, and despite
15 the original construction budget of \$26 million, the Hotel remains uncompleted even after the
16 Developer Group obtained over \$60 million to finance its development.

17 47. On February 26, 2021, TSH filed for chapter 11 bankruptcy. *See In re The Source*
18 *Hotel, LLC*, Case No. 8:21-bk-10525 (Bankr. C.D. Cal.). It was during this case that the BOH1
19 Investors first became aware of the possibility of the improper acts of the Developer Group and the
20 improper nature of the Evertrust Loan.

21 48. After the filing of TSH’s bankruptcy case, Plaintiff’s counsel, in its capacity as
22 counsel to three individual BOH1 Investors, requested certain information from the Developer
23 Group, including the contact information for the investors of BOH1 for the purpose of soliciting a
24 vote to appoint a Special Manager for BOH1 to protect the interests of the BOH1 Investors during
25 TSH’s chapter 11 case.

26 49. The Developer Group ignored the repeated requests for such information until, on
27 September 2, 2021, the Bankruptcy Court ordered TSH to request that the Developer Group provide
28 the contact information of the BOH1 Investors to Plaintiff’s counsel.

1 50. Shortly after Plaintiff’s counsel received the contract information, on or about
2 September 9, 2021, sufficient votes were received to duly appoint Jian Hua, an investor of BOH1,
3 as the Special Manager for BOH1.

4 51. Plaintiff’s counsel, in its capacity as counsel to the Special Manager for BOH1, then
5 requested from the Developer Group the loan documents for the BOH1 Loan. In response, the
6 Developer Group finally provided the BOH1 Loan Agreement. This was the first time that the
7 Special Manager and the other BOH1 Investors became aware of the terms of the BOH1 Loan
8 Agreement, including its improperly large size, and the irregularities regarding the subordination of
9 the BOH1 Loan.

10 52. The BOH1 Loan Agreement does not contain any statement that would indicate that
11 there was any previous version of the BOH1 Loan Agreement. However, the BOH1 Loan
12 Agreement, dated June 1, 2014, expressly references the \$29.5 million Evertrust Loan, dated nearly
13 two years later on or about May 24, 2016. Moreover, the BOH1 Loan Agreement references a
14 “Subordination Agreement,” which is defined in the BOH1 Loan Agreement to mean “that certain
15 Subordination Agreement of even date herewith among [BOH1], [TSH], and EverTrust Bank,” and
16 which is also dated on or about May 24, 2016. The reference to Evertrust in the BOH1 Loan
17 Agreement establishes that the Developer Group either concealed the original version of the BOH1
18 Loan Agreement, and/or created the BOH1 Loan Agreement after obtaining the Evertrust Loan and
19 then backdated it, potentially with the assistance, or at the request, of Evertrust.

20 53. The BOH1 Loan Agreement was signed by Donald Chae on behalf of both TSH (as
21 the borrower) and BOH1 (as the lender).

22 **V. SHADY BIRD FORECLOSES ON THE EVERTRUST LOAN, RESULTING IN THE**
23 **TOTAL LOSS OF BOH1’S ASSETS**

24 54. During the time the Developer Group was resisting Plaintiff’s counsel’s repeated
25 requests for information, TSH and Shady Bird reached a settlement to lift the bankruptcy stay and
26 permit the sale of TSH’s assets, including the Hotel and associated ground lease. Among other
27 things, this settlement allowed Shady Bird to credit bid for TSH’s assets up to the amount
28 outstanding on the Evertrust Loan and to foreclose on TSH’s assets if no qualified bid was received.

1 55. On August 12, 2021, the Bankruptcy Court entered an order approving the
2 settlement.

3 56. On August 25, 2021, TSH filed a motion seeking to establish bidding procedures for
4 the sale of its assets. The Bankruptcy Court granted this motion on September 3, 2021, which
5 scheduled an auction to take place just three weeks later on September 30, 2021.

6 57. No qualified bidders were received by the bid deadline or by the time of the auction.
7 Accordingly, on October 4, 2021, Shady Bird proceeded with its non-judicial foreclosure sale and
8 obtained ownership of TSH's assets, including the Hotel, the associated ground lease, and other
9 related assets. BOH1 did not receive any money from the foreclosure sale while its lien was
10 extinguished, and TSH had no other appreciable assets. Accordingly, BOH1 essentially suffered a
11 total loss of its assets.

12 **CAUSES OF ACTION**

13 **COUNT I – BREACH OF FIDUCIARY DUTY**
14 **(Against M&D Regional Center)**

15 58. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth
16 herein.

17 59. Until Jian Hua was appointed as the Special Manager of BOH1 on or about
18 September 9, 2021, M&D Regional Center was the sole manager of BOH1.

19 60. As the sole manager of a limited liability company, M&D Regional Center owed
20 fiduciary duties of loyalty and care to BOH1. M&D Regional Center breached its fiduciary duties
21 by engaging in intentional and gross misconduct, including, but not limited to:

- 22 a. Agreeing to permit the BOH1 Loan to be subordinated to the Evertrust Loan
23 in an amount that was nearly twice the size represented to the BOH1 Investors
24 in the PPM.
- 25 b. Failing to consult or even notify the BOH1 Investors that M&D Regional
26 Center was seeking to subordinate the BOH1 Loan to such extent.
- 27 c. Agreeing to permit the BOH1 Loan to be *parri passu* with the BOH2 Loan.
- 28

- d. Failing to record and/or failing to timely record BOH1's liens on TSH's property.
- e. Failing to properly prepare loan documents on behalf of BOH1.
- f. Failing to properly protect BOH1's interest as a secured creditor of TSH.
- g. Facilitating self-dealing transactions for the benefit of the Developer Group.
- h. Refusing to provide BOH1 Investors with the contact information of other BOH1 Investors for the purpose of appointing a Special Manager to resolve the inherent conflicts of interest faced by M&D Regional Center.

61. By breaching its fiduciary duties to BOH1, M&D Regional Center caused substantial monetary damages to BOH1.

62. The wrongful conduct of M&D Regional Center was willful, wanton, malicious, oppressive, and outrageous, and justifies an award of punitive damages in an amount sufficient to punish M&D Regional Center and deter future conduct of this type.

COUNT II – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Evertrust and M+D Properties)

63. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

64. M+D Properties knew that M&D Regional Center owed fiduciary duties to BOH1 because it is the manager of M&D Regional Center (as well as the manager for TSH). M+D Properties knew that BOH1 was formed for the purpose of making the BOH1 Loan to TSH, because it participated in the formation of BOH1.

65. M+D Properties provided substantial assistance to M&D Regional Center to breach its fiduciary duties because it controlled M&D Regional Center and caused it to breach its fiduciary duties.

66. Evertrust knew that M&D Regional Center owed fiduciary duties to BOH1 because Evertrust was a party to the Subordination Agreement, wherein M&D Regional Center is set forth in the signature block as the manager of BOH1. Moreover, prior to making the Evertrust Loan, Evertrust reviewed documents and conducted due diligence relating to the financing of the BOH1

1 Loan. Evertrust knew that Donald Chae and the Developer Group were controlling BOH1 because
2 Donald Chae signed the Subordination Agreement on behalf of BOH1 and M&D Regional Center
3 (as well on behalf of TSH), and Evertrust was a direct party and beneficiary of the Subordination
4 Agreement.

5 67. Evertrust provided substantial assistance in breach of M&D Regional Center's
6 fiduciary duties by providing financing to TSH and seeking the subordination of the BOH1 Loan
7 despite recognizing flagrant irregularities, including, but not limited to:

- 8 a. The repeated references in the PPM that only approximately \$16 million
9 would be senior to the BOH1 Loan.
- 10 b. The failure of M&D Regional Center and the Developer Group to record the
11 BOH1 liens.
- 12 c. The decision by the Developer Group to cause BOH2 to be *parri passu* with
13 BOH1.
- 14 d. The egregious and impermissible decision by the Developer Group to
15 fundamentally change the investment that BOH1 (and the BOH1 Investors)
16 bargained for (by increasing the number of hotel rooms and construction
17 budget for the Hotel).
- 18 e. The obvious self-dealing nature of the transaction whereby the Developer
19 Group caused BOH1 to be subordinated to Evertrust in order to obtain
20 financing for the benefit of TSH (which was owned by the Chaes).
- 21 f. The control and domination of BOH1 by the Developer Group despite the
22 fact that the capital from the BOH1 Loan was provided by the BOH1
23 Investors rather than from the Developer Group.
- 24 g. Irregularities in the documentation of the BOH1 Loan, such as the reference
25 in the BOH1 Loan Agreement to the Evertrust Loan despite the fact that the
26 BOH1 Loan Agreement was dated approximately two years prior to the date
27 of the Evertrust Loan.

1 **COUNT IV – VIOLATION OF CAL. BUS. & PROF. CODE § 17200**
2 **(Against All Defendants)**

3 76. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth
4 herein.

5 77. The California Unfair Competition Law (“UCL”), set forth in California Business
6 and Professions Code Section 17200 *et seq.*, prohibits “any unlawful, unfair or fraudulent business
7 act or practice.” Section 17200 incorporates violations of other laws and treats those transgressions,
8 when committed as a business activity, as “unlawful” business practices. Thus, the “unlawful”
9 practices prohibited by Section 17200 include any practices forbidden by law, whether civil or
10 criminal, federal, state, or municipal, statutory, regulatory, or court-made.

11 78. M&D Regional Center committed unlawful business practices by breaching its
12 fiduciary duties owed to BOH1 and engaging in various acts of self-dealing.

13 79. M+D Properties and Evertrust committed unlawful business practices by aiding and
14 abetting, and enabling, M&D Regional Center’s breach of fiduciary duties.

15 80. As a result of Defendants’ unlawful business practices, Defendants received monies,
16 and Plaintiff suffered injury. Pursuant to Section 17200 of the UCL, Plaintiff is entitled to restitution.

17 **JURY TRIAL DEMANDED**

18 81. Plaintiff demands a trial by jury.

19 **REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiff requests the following relief:


- 21 A. Actual and compensatory damages in an amount to be determined at trial;
- 22 B. Equitable relief requiring restitution and disgorgement of the monies
23 wrongfully received and/or retained as a result of Defendants’ wrongful
24 conduct;
- 25 C. Punitive damages;
- 26 D. Pre-judgment and post-judgment interest at the legal rate on all damages and
27 sums awarded to Plaintiff;
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- E. Attorneys' fees, costs and disbursements for this action, as allowable by law;
- and
- F. Such other relief as this Court deems just and proper.

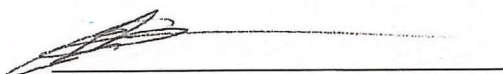
DATED: April 1, 2022

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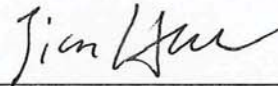
*Attorneys for Plaintiff
Beach Orangethorpe Hotel, LLC*

1 VERIFICATION

2 I, JIAN HUA, declare:

3 I am the Special Manager of Beach Orangethorpe Hotel, LLC, and have held that title from
4 on or about September 9, 2021 through the present. I declare under penalty of perjury that I have read
5 and reviewed the Verified Complaint, and that the contents of that pleading are true to the extent they
6 are based on my personal knowledge, and as to all other matters which are therein stated to be based
7 on information or belief, I also believe them to be true. I have authorized the filing of the Verified
8 Complaint.

9
10 Dated: March 31, 2022

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12 _____
13 JIAN HUA
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