

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 0:17-cv-61019-Williams/Torres

ARTURO RUBINSTEIN, individually, FAB
ROCK INVESTMENTS, LLC, a Nevada limited
liability company, and OCEANSIDE MILE, LLC,
a Florida limited liability company,

Plaintiffs,

v.

THE KESHET INTER VIVOS TRUST, YORAM
YEHUDA, individually, SHARONA YEHUDA,
individual, KARIN YEHUDA, individually, THE
MAYO GROUP, LLC, a Florida limited liability
company, MAZLIACH GAMLIEL, individually,
EYAL GAMLIEL, individually, YORAM
ELIYAHU, individually, BRIDGE TO THE
FUTURE, LLC, a Florida limited liability
company, MIKE SEDAGHATI, individually,
ORIT MAIMON, individually, STONEGATE
BANK, a Florida corporation, BNH HM TRI,
LLC, a Florida limited liability company, and
1159 HILLSBORO MILE, LLC, a Florida limited
liability company,

Defendants.

DEFENDANTS' SECOND AMENDED ANSWER AND DEFENSES

Pursuant to this Court's Paperless Order (DE 434), Defendants the Keshet Inter Vivos Trust, Yoram Yehuda, Sharona Yehuda, (the "Yehuda Defendants"), along with Defendants the Mayo Group, LLC, Mazliach Gamliel, Eyal Gamliel, Yoram Eliyahu, Mike Sedaghati, Bridge to the Future, LLC, and Orit Maimon (the "Minority Member Defendants") (collectively, "Defendants"), by and through undersigned counsel, hereby submit their Second Amended Answer And Defenses, and respond to the correspondingly numbered paragraphs of the Second Amended Complaint (DE

149) (“SAC”) filed by Plaintiffs Arturo Rubinstein, Fab Rock Investments, LLC, and Oceanside Mile, LLC (“Plaintiffs”).

JURISDICTION AND VENUE

1. Denied. As of November 15, 2018, Plaintiffs claims for Federal RICO have been dismissed with prejudice, thereby divesting this Court of jurisdiction under 18 U.S.C. § 1964.

2. Admitted.

PARTIES

3. Denied that Arturo Rubinstein (“Rubinstein”) is the managing member of Oceanside Mile, LLC (“Oceanside”). Otherwise without knowledge and therefore denied.

4. Without knowledge and therefore denied.

5. Admitted.

6. Admitted.

7. Denied as phrased. Yoram Yehuda (“Mr. Yehuda”) also resided in Florida during relevant periods of time.

8. Denied as phrased. Sharona Yehuda (“Mrs. Yehuda”) also resided in Florida during relevant periods of time.

9. Admitted that Karin Yehuda resides in Los Angeles, California. Otherwise denied.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.
17. Without knowledge and therefore denied.
18. Without knowledge and therefore denied.
19. Without knowledge and therefore denied.

FACTS COMMON TO ALL COUNTS

20. Admitted that Exhibit A to the SAC speaks for itself. Otherwise denied as phrased. Oceanside was not formed “for the purpose of purchasing, renovating, and operating the Seabonay Beach Resort.”

21. Admitted that Exhibit B to the SAC speaks for itself. Admitted that Yoram and Sharona Yehuda (the “Yehudas”) transferred their interest in Oceanside to the Keshet Inter Vivos Trust (“Keshet”). Admitted that Keshet maintained a 50.5% interest in Oceanside, the Mayo Group, LLC (“Mayo Group”) maintained 33%, and Orit Maimon (“Maimon”) and Bridge to the Future, LLC (“Bridge”) each maintained 8.25%. Otherwise denied as phrased.

22. Admitted that Oceanside received a loan for approximately \$6.5 million from Sun America Bank, which was later assigned to First Citizens Bank, and that this loan was secured by a mortgage against the Hotel and the property beneath the Hotel. Otherwise denied as phrased.

23. Denied as phrased.

24. Denied as phrased. The statements in SAC ¶ 24 do not reflect the agreement between the Yehudas and Rubinstein.

25. Denied.

26. Admitted that Exhibits C and D to the SAC speak for themselves and admitted that same were executed at some point in 2013. Otherwise denied.

27. Admitted that Exhibit E to the SAC speaks for itself. Otherwise denied as phrased.

28. Admitted.

29. Admitted that Fab Rock Investments, LLC (“Fab Rock”) executed bankruptcy-related documents at the Yehudas’ instruction and on their behalf. Otherwise denied.

30. Admitted that Oceanside received an offer of refinancing from Stonegate Bank (“Stonegate”) in 2014, and that Mayo Group and that the remaining two additional members of Oceanside—Maimon and Bridge—contributed approximately \$333,500 and \$166,500, respectively. Denied that Fab Rock contributed \$500,000, and denied that this payment was used “to pay down” the loan from First Citizens Bank due to a \$1,000,000 difference between the loan from First Citizens and the loan from Stonegate.

31. Admitted that Exhibit I to the SAC speaks for itself. Otherwise denied.

32. Admitted that Exhibit J to the SAC speaks for itself, and otherwise admitted.

33. Admitted.

34. Denied.

35. Denied.

36. Denied as phrased. Admitted that Exhibit L to the SAC speaks for itself.

37. Denied as phrased. Admitted that Exhibit M to the SAC speaks for itself.

38. Denied.

39. Denied.

40. Admitted that Exhibits O, P, Q, R, S, and T to the SAC speak for themselves. Otherwise denied as to both SAC ¶ 40 and SAC ¶¶ 40(a)–(e).

41. Admitted that an in-person meeting occurred on November 18, 2015 with Rubinstein, Eyal Gamliel, Mazliach Gamliel, and Ray Asher in attendance. Otherwise without knowledge and therefore denied.

42. Admitted that at the November 18, 2015 meeting the attendees discussed “various topics,” and that one such topic was the management of the Hotel, but otherwise denied.

43. Admitted that Ray Asher emailed Eyal Gamliel, but that the email speaks for itself. Otherwise without knowledge and therefore denied.

44. Admitted that Exhibit U to the SAC speaks for itself. Otherwise denied.

45. Admitted that Exhibit V to the SAC speaks for itself.

46. Admitted that Exhibits W and X to the SAC speak for themselves. Otherwise denied, including as to Plaintiffs’ allegations of forgery and “false claims of ownership” found in SAC ¶ 46 and SAC ¶¶ 46(a)–(b).

47. Admitted that Exhibit Y to the SAC speaks for itself. Denied that Rubinstein had the authority to act on behalf of Oceanside and otherwise denied.

48. Admitted that Exhibit Z to the SAC speaks for itself. Otherwise denied.

49. Admitted that Exhibit AA to the SAC speaks for itself. Denied that Rubinstein had the authority to initiate a lawsuit on behalf of Oceanside.

50. Admitted that Exhibit BB to the SAC speaks for itself. Otherwise without knowledge and therefore denied.

51. Admitted that Mrs. Yehuda executed a Commercial Contract for the sale of the Seabonay Beach Resort (the “Hotel”) on December 7, 2016, and that the Commercial Contract was later assigned to BNH IV HM TRI LLC and 1159 Hillsboro Mile LLC (the “Buyers”). Otherwise denied as phrased.

52. Admitted that Exhibit CC to the SAC speaks for itself.

53. Denied that Oceanside was authorized to file the Motion for Preliminary Injunction referenced in SAC ¶ 53 and seek such relief in the California Action. Admitted that Rubinstein,

purportedly acting on behalf of Oceanside, filed a Motion for Preliminary Injunction in the California Action.

54. Admitted that Exhibits DD and EE to the SAC, as well as the Opposition to the Injunction Motion, speak for themselves. Denied that “these foregoing papers were transmitted via Federal Express carrier,” and otherwise denied.

55. Admitted that Exhibit FF to the SAC speaks for itself. Otherwise denied.

56. Denied.

57. Denied.

58. Admitted that Exhibit GG to the SAC speaks for itself and that the Hotel was sold to the Buyers on April 28, 2017 for \$13,500,000. Denied that Fab Rock was or is the manager of Oceanside and denied that Mrs. Yehuda had no authority to sign the deed on Oceanside’s behalf.

59. Admitted.

60. Admitted that the net sales proceeds from the sale of the Hotel were paid to Oceanside and deposited in Oceanside’s bank accounts. Otherwise denied as phrased.

61. Denied that Chicago Title Insurance Company (“Chicago Title”) was the Buyers’ agent in connection with the Buyers’ acquisition of the Hotel. Admitted that Exhibit II to the SAC speaks for itself. Otherwise without knowledge and therefore denied.

62. Admitted that Exhibit JJ to the SAC speaks for itself. Otherwise without knowledge and therefore denied.

63. Denied that Steven Braverman was the attorney for the Yehudas—Steven Braverman was the attorney for Oceanside. Otherwise admitted.

64. Admitted that Exhibit LL to the SAC speaks for itself. Denied that Oceanside was authorized to subpoena Chicago Title and otherwise denied.

- 65. Admitted that Exhibit MM to the SAC speaks for itself. Otherwise denied.
- 66. Admitted that Exhibit NN to the SAC speaks for itself. Otherwise denied.
- 67. Admitted that Exhibit OO to the SAC speaks for itself. Otherwise denied.
- 68. Denied.

COUNT I: CIVIL CONSPIRACY UNDER FEDERAL RICO, 18 U.S.C. § 1962(c)
(KESHET INTER VIVOS TRUST, YORAM YEHUDA, and SHARONA YEHUDA)

- 69. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.
- 70. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 71. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 72. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 73. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 74. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 75. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 76. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.
- 77. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

78. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

79. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

80. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

81. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT II: CIVIL CONSPIRACY UNDER FLORIDA RICO, Fla. Stat. § 895.03(3)
(KESHET INTER VIVOS TRUST, YORAM YEHUDA, and SHARONA YEHUDA)

82. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

83. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

84. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

85. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

86. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

87. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

88. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

89. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

90. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

91. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT III: FRAUD
(KESHET INTER VIVOS TRUST, YORAM YEHUDA, and SHARONA YEHUDA)

92. Defendants The Keshet Inter Vivos Trust, Yoram Yehuda, and Sharona Yehuda incorporate Defendants' responses to ¶¶ 1–68 as if fully set forth herein.

93. Denied.

94. Denied.

95. Denied that Fabrock One, LLC was created in furtherance of any fraud. Denied that Fabrock One, LLC was substituted for Fab Rock as the purported owner of the 50.5% Oceanside interest.

96. Denied.

97. Denied.

98. Denied.

Defendants the Keshet Inter Vivos Trust, Yoram Yehuda, and Sharona Yehuda deny that Plaintiffs are entitled to any of the relief contained in their prayer for relief in Count III, including Plaintiffs' claims for damages, punitive damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

COUNT IV: UNJUST ENRICHMENT
(ORIT MAIMON)

99. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

100. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

101. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

102. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

103. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

104. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

105. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT V: UNJUST ENRICHMENT
(THE MAYO GROUP, LLC)

106. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

107. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

108. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

109. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

110. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

111. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

112. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT VI: UNJUST ENRICHMENT
(BRIDGE TO THE FUTURE)

113. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

114. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

115. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

116. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

117. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

118. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

119. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT VII: UNJUST ENRICHMENT
(THE KESHET INTER VIVOS TRUST)

120. Defendant The Keshet Inter Vivos Trust incorporates Defendants' responses to ¶¶ 1–68 as if fully set forth herein.

121. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

122. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

123. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

124. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

125. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

126. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response to

Plaintiffs' prayer for relief is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to any of the relief contained in their prayer for relief in Count VII, including Plaintiffs' claims for compensatory damages, treble damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

COUNT VIII: UNJUST ENRICHMENT
(SHARONA YEHUDA)

127. Defendant Sharona Yehuda incorporates Defendants' responses to ¶¶ 1–68 as if fully set forth herein.

128. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that "Plaintiffs will not pursue [] unjust enrichment." Accordingly, no response is required. To the extent a response is required, denied.

129. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that "Plaintiffs will not pursue [] unjust enrichment." Accordingly, no response is required. To the extent a response is required, denied.

130. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that "Plaintiffs will not pursue [] unjust enrichment." Accordingly, no response is required. To the extent a response is required, denied.

131. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that "Plaintiffs will not pursue [] unjust enrichment." Accordingly, no response is required. To the extent a response is required, denied.

132. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that "Plaintiffs will not pursue [] unjust enrichment." Accordingly, no response is required. To the extent a response is required, denied.

133. On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response is required. To the extent a response is required, denied.

On July 1, 2019, Plaintiffs informed Defendant that they are withdrawing this claim, advising that “Plaintiffs will not pursue [] unjust enrichment.” Accordingly, no response to Plaintiffs’ prayer for relief is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to any of the relief contained in their prayer for relief in Count VIII, including Plaintiffs’ claims for compensatory damages, treble damages, injunctive relief, attorneys’ fees and costs, and pre-judgment interest.

COUNT IX: UNJUST ENRICHMENT
(EYAL GAMLIEL)

134. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

135. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

136. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

137. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

138. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

139. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

140. On November 15, 2018, this Count was dismissed by the Court with prejudice and, accordingly, no response is required. To the extent a response is required, denied.

COUNT X: CONVERSION
(KESHET INTER VIVOS TRUST, YORAM YEHUDA, SHARONA YEHUDA,
KARIN YEHUDA, THE MAYO GROUP, LLC, MAZLIACH GAMLIEL,
EYAL GAMLIEL, YORAM ELIYAHU, BRIDGE TO THE FUTURE,
MIKE SEDAGHATI, and ORIT MAIMON)

141. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

142. On July 10, 2019, the Court granted summary judgment in the Minority Members’ favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

143. On July 10, 2019, the Court granted summary judgment in the Minority Members’ favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants admit that Oceanside was entitled to receive the net proceeds from the sale of the Hotel, but deny that Fab Rock or Rubinstein are entitled to any such proceeds.

144. On July 10, 2019, the Court granted summary judgment in the Minority Members’ favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

145. On July 10, 2019, the Court granted summary judgment in the Minority Members’ favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

146. On July 10, 2019, the Court granted summary judgment in the Minority Members’ favor on this Count and, accordingly, no response from the Minority Members is required. To the

extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

147. On July 10, 2019, the Court granted summary judgment in the Minority Members' favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

148. On July 10, 2019, the Court granted summary judgment in the Minority Members' favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants admit that Mayo, Bridge, and Maimon submitted Declarations in the California Action, the content of which stand for themselves, but deny the allegations in SAC ¶ 148 and SAC ¶¶ 148(a)–(c) in all other respects.

149. On July 10, 2019, the Court granted summary judgment in the Minority Members' favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny this allegation. The Yehuda Defendants also deny this allegation.

On July 10, 2019, the Court granted summary judgment in the Minority Members' favor on this Count and, accordingly, no response from the Minority Members is required. To the extent a response is required, the Minority Members deny that Plaintiffs are entitled to the relief contained in their prayer for relief in Count X. The Yehuda Defendants also deny that Plaintiffs are entitled to any of the relief contained in this prayer for relief, including Plaintiffs' claims for damages, punitive damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

COUNT XI: BREACH OF FIDUCIARY DUTY
(EYAL GAMLIEL)

150. Defendant Eyal Gamliel incorporates Defendants' responses to ¶¶ 1–68 as if fully set forth herein.

151. On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required. To the extent a response is required, Defendant Eyal Gamliel denies this allegation.

152. On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required. To the extent a response is required, Defendant Eyal Gamliel denies this allegation.

153. On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required. To the extent a response is required, Defendant Eyal Gamliel denies this allegation.

154. On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required. To the extent a response is required, Defendant Eyal Gamliel denies this allegation.

155. On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required. To the extent a response is required, Defendant Eyal Gamliel denies this allegation.

On July 10, 2019, the Court granted summary judgment in Defendant Eyal Gamliel's favor on this Count and, accordingly, no response from Defendant Eyal Gamliel is required as to Plaintiffs' prayer for relief. To the extent a response is required, Defendant Eyal Gamliel denies that Plaintiffs are entitled to any of the relief contained in their prayer for relief in Count XI,

including Plaintiffs' claims for compensatory damages, punitive damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

COUNT XII: RESCISSION OF THE SALE OF THE HOTEL
(BNH IV HM TRI, LLC, 1159 HILLSBORO MILE, LLC, THE KESHET INTER VIVOS
TRUST, YORAM YEHUDA, SHARONA YEHUDA, THE MAYO GROUP, LLC,
MAZLIACH GAMLIEL, EYAL GAMLIEL, YORAM ELIYAHU, BRIDGE TO THE
FUTURE, LLC, MIKE SEDAGHATI, ORIT MAIMON, and STONEGATE BANK)

156. Defendants incorporate their responses to ¶¶ 1–68 as if fully set forth herein.

157. Admitted that Plaintiffs assert a claim for rescission in equity. Denied that Plaintiffs state a claim for rescission or are otherwise entitled to such relief.

158. Admitted.

159. Admitted that Mrs. Yehuda signed and delivered the Deed and that at the time Mrs. Yehuda signed and delivered the Deed, Oceanside was not a member-managed company. Otherwise denied.

160. Admitted that at the time Mrs. Yehuda signed and delivered the Deed, the records of the Florida Department of State, Division of Corporations reflected that Mrs. Yehuda was the manager of Oceanside. Otherwise denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Admitted that the loan from Stonegate bank was satisfied by the proceeds from the sale of the Hotel. Otherwise denied that Plaintiffs are entitled to the relief sought and that the relief sought is at all feasible.

167. Admitted that the net sales proceeds from the sale of the Hotel were paid to Oceanside and deposited in Oceanside's bank accounts. Otherwise denied that Plaintiffs are entitled to the relief sought and that the relief sought is at all feasible.

Defendants deny that Plaintiffs are entitled to any of the relief contained in their prayer for relief in Count XII, including Plaintiffs' claim that the deed be rescinded, as well as Plaintiffs' claims for compensatory damages, treble damages, injunctive relief, attorneys' fees and costs, and pre-judgment interest.

COUNT XIII: QUIET TITLE
(BNH IV HM TRI, LLC AND 1159 HILLSBORO MILE, LLC)

168. Defendants incorporate their responses to ¶¶ 1-68 as if fully set forth herein.

169. This Count does not seek relief from Defendants and, therefore, no response is required. To the extent a response is required, denied.

170. This Count does not seek relief from Defendants and, therefore, no response is required. To the extent a response is required, denied.

171. This Count does not seek relief from Defendants and, therefore, no response is required. To the extent a response is required, denied.

PLAINTIFFS' JURY DEMAND

Defendants deny that Plaintiffs are entitled to a trial by jury as to any of the allegations raised in Plaintiffs' claims for equitable relief, specifically, Counts XII (Rescission) and Count XIII (Quiet Title). Defendants will be filing a motion to strike Plaintiffs' demand for jury trial as it relates to Counts XII (Rescission) and Count XIII (Quiet Title) pursuant to Rule 39 of the Federal Rules of Civil Procedure.

SECOND AMENDED DEFENSES

GENERAL ALLEGATIONS

Plaintiffs allege that Yoram and Sharona Yehuda (individually, “Mr. Yehuda” and “Mrs. Yehuda,” collectively, the “Yehudas”) made an agreement with Plaintiff Arturo Rubinstein (“Rubinstein”) to permanently transfer their majority ownership in a \$13.5 million beachfront hotel, the Seabonay Beach Resort (the “Hotel”)—a property in which they had already invested \$3 million of their own money—for the mere opportunity to be able to continue managing the Hotel and to collect a management fee. Specifically, Plaintiffs assert that the Yehudas, acting through their family trust, the Keshet Inter Vivos Trust (“Keshet”), gratuitously and permanently assigned their 50.5% interest in Oceanside, an entity they founded in 2006.

The Yehudas did no such thing. In or around September of 2013—*i.e.*, the same time period Rubinstein alleges that the parties entered into the “Oral Agreement” referenced in SAC ¶¶ 24 through 26—Rubinstein and the Yehudas agreed that the assignment was to be temporary. The Yehudas and Rubinstein agreed that Keshet would *temporarily* transfer its 50.5% ownership interest to Rubinstein’s LLC, Fab Rock, to leverage Rubinstein’s credit to refinance the Hotel’s pre-existing loan from First Citizens Bank. The Yehudas did not forfeit their considerable capital contribution and “*gratuitously*” assign their majority stake in the Hotel. It was understood between the Yehudas and Rubinstein that the Yehudas would temporarily assign their interest to Rubinstein, and the Yehudas would continue to operate and manage Oceanside and the Hotel behind the scenes (as their true owners), infusing their 50.5% share of any funds necessary to sustain the Hotel’s operation. Nevertheless, Rubinstein’s allegations in this lawsuit make clear that Rubinstein’s representations were false, and that Rubinstein fraudulently induced the Yehudas to assign

Keshet's 50.5% interest in Oceanside, knowing that he intended to try and steal said interest years down the road.

The understanding between the Yehudas and Rubinstein was memorialized in three documents, all of which were executed in 2013: (1) an "Assignment of LLC Interest" ("Assignment"); (2) an "Agreement re: Sale of Membership Interest and Profit Sharing" (the "Agreement"); and (3) a "Modification/Amendment to the Agreement re: Sale of Membership Interest" (the "Modification"). The Agreement and Modification were based on written agreements Rubinstein had utilized with respect to other transactions, both with the Yehudas and with other individuals. Originals of the Agreement and Modification were provided to Rubinstein, who thereafter provided the Yehudas with signed copies.

The Yehudas' behavior after the temporary assignment is consistent with the parties' oral and written agreements. From 2013 through 2017, in accord with the parties' understanding, and as reflected in the written agreements, the Yehudas continued to operate and manage Oceanside, contributing millions of dollars as necessary. This includes the very funds Rubinstein alleges that he contributed to the Hotel—a payment of \$500,000 to pay down the pre-existing mortgage on the Hotel and paying \$237,000 to Oceanside's bankruptcy counsel, Creim Macias Koenig & Frey LLP. Pursuant to the terms of the Agreement, as modified by the Modification, these funds were sent by other individuals to Fab Rock on behalf of the Yehudas—specifically, Nestor Schatzky ("Schatzky") and Capital Construction Remodeling. As to the \$500,000, Schatzky confirmed in his testimony, both in this action and others, that although the \$500,000 was wired to Fab Rock, these were funds provided to the Yehudas as a loan for Oceanside. The \$500,000 loan was indeed paid back, with interest, by Mr. Yehuda. Likewise, the \$237,000 allegedly paid by Fab Rock to Oceanside's bankruptcy counsel came first from Capital Construction Remodeling, a company

affiliated with Mrs. Yehuda's sister, Rachel Zlich. Thus, these funds neither belonged to Rubinstein nor Fab Rock. At all times it was the Yehudas who contributed the necessary funds to Oceanside pursuant to the 50.5% ownership interest. Neither Rubinstein nor Fab Rock contributed any money towards Oceanside or the Hotel.

From 2006 through 2013, the Yehudas made all necessary filings with the Florida Department of State, Division of Corporations (the "Department"). In October 2014, Oceanside obtained an offer of refinancing from Stonegate. The purpose of the temporary transfer having been achieved—and consistent with the agreements and the understanding between Rubinstein and the Yehudas—Mrs. Yehuda filed (or caused to be filed) an Amended Annual Report on November 24, 2015. The November 24, 2015 replaced Fab Rock with Mrs. Yehuda as the managing member and the person authorized to act on behalf of Oceanside. In total rebuke of the agreement between him and the Yehudas, however, on December 1, 2015, Rubinstein filed (or caused to be filed) an Amended Annual Report inserting Fab Rock back into Oceanside's public records as its managing member. Fearful that her long-time friend was now trying to renege on their understanding and the contemporaneous written agreements, Mrs. Yehuda formally exercised the option found in the Modification on December 11, 2015 and reclaimed the 50.5% interest in Oceanside for Keshet.

At that point, the agreement between the Yehudas and Rubinstein was complete. But by August 2016, the Yehudas' initial fears were confirmed: Rubinstein had swindled them back in 2013. On August 9, 2016, Rubinstein and/or Fab Rock, purportedly (but not actually) acting on behalf of Oceanside, commenced an action in Los Angeles County Superior Court against the Yehudas (the "California Action"). By bringing the California Action in Oceanside's name, Rubinstein and Fab Rock sent a clear message and confirmed what the Yehudas feared when

Rubinstein filed the December 1, 2015 Amended Annual Report. Rubinstein had successfully manipulated his close friends, agreeing to a temporary transfer of Oceanside's ownership while simultaneously laying the groundwork for fake claims of fraud by, on information and belief, having another individual sign the Agreement and/or the Modification so he could later disclaim the temporariness of the assignment and seek to steal the Yehudas' interest in Oceanside, along with the millions of dollars they invested along the way.

Nevertheless, in line with her majority ownership of Oceanside through Keshet, Mrs. Yehuda continued to comply with Oceanside's obligations under Florida's Revised LLC Act, specifically, Fla. Stat. § 605.0212. On February 9, 2016, Mrs. Yehuda filed (or caused to be filed) Oceanside's 2016 Annual Report. Oceanside's 2016 Annual Report properly listed Mrs. Yehuda as managing member and authorized person to act on behalf of Oceanside. In 2017, when the next annual report became due, Mrs. Yehuda again filed (or caused to be filed), Oceanside's 2017 Annual Report. On the other hand, Rubinstein and Fab Rock did nothing with respect to Oceanside's obligations under the Florida Revised LLC Act, despite their present allegations that Fab Rock is the manager of Oceanside.

Rubinstein and Fab Rock assert that these filings were "false, fictitious, or fraudulent." *See* SAC ¶ 40. But neither Rubinstein nor Fab Rock did anything to correct the allegedly "false, fictitious, or fraudulent" filings with the Department after the filing of the December 1, 2015 Amended Annual Report. This was in total derogation of their obligations as the alleged managers of Oceanside, including, but not limited to: the obligation that Oceanside deliver to the Department for filing an annual report that states, *inter alia*, the name of the entity, the address of its principal office, and "[t]he name, title or capacity, and address of at least one person who has the authority to manage the company," Fla. Stat. § 605.0212(1); and the obligation to correct any "inaccurate

information in [the] filed record, Fla. Stat. §§ 605.0205(1), 605.0202(5). Nor did Fab Rock or Rubinstein file and record a certified statement of authority pursuant to Fla. Stat. § 605.0302, either limiting Mrs. Yehuda's authority or identifying Rubinstein or Fab Rock as the sole person and/or entity authorized to transact business on Oceanside's behalf. Rubinstein and Fab Rock did *nothing*.

As early as June 2016, Rubinstein and Fab Rock were aware that the Yehudas were allegedly mismanaging the Hotel and collecting Oceanside's profits for themselves, as alleged by Rubinstein and Fab Rock in the California Action. Still, Rubinstein and Fab Rock did nothing with respect to the Department's records. By October 2016, Plaintiffs indisputably knew the Yehudas were asserting that Rubinstein and Fab Rock held no interest in Oceanside as of December 11, 2015, when Keshet exercised its option to reacquire the 50.5% interest. Again, Rubinstein and Fab Rock did nothing with respect to the Department's records. In February 2017, the Yehudas again asserted that neither Fab Rock nor Rubinstein held any interest in Oceanside. And yet again, Rubinstein and Fab Rock did nothing, despite knowing that Mrs. Yehuda was holding herself out as the person authorized to transact business on behalf of Oceanside and was maintaining exclusive control of Oceanside's asset, the Hotel.

A mere week after the Hotel was sold, Rubinstein and Fab Rock threatened Defendants with the present lawsuit. But by that point, Plaintiffs had already entirely neglected their statutory duties as the alleged managers of Oceanside under the Florida Revised LLC Act. Put simply, Rubinstein and Fab Rock's allegations are belied by the parties' agreements, their course of dealing, and the parties' post-assignment conduct.

FIRST DEFENSE **Recoupment**

In 2007, Oceanside purchased the Hotel. The Yehudas—through Keshet—contributed approximately \$3,000,000 towards this purchase, as reflected in Oceanside's capital accounts.

Thereafter, the Yehudas—either individually or through Keshet—contributed an additional \$2,500,000 (estimated) to Oceanside in order to keep the Hotel operational. Thus, in total, the Yehudas and/or Keshet contributed approximately \$5,500,000 to Oceanside. Any recovery by Plaintiffs in this matter must be set-off by the aforementioned amount, as well as the amounts contributed by fellow members, Mayo Group, Maimon, and Bridge.

SECOND DEFENSE
Fraud in the Inducement

In or around September 2013—*i.e.*, the same time period Rubinstein alleges that the parties entered into the “Oral Agreement” referenced in SAC ¶¶ 24 through 26—in Los Angeles, California, Rubinstein represented to the Yehudas that he would agree to hold Keshet’s 50.5% interest in Oceanside on a nominal, temporary basis for the limited purpose of helping the Yehudas refinance the existing loan on the Hotel. At this time, Rubinstein represented and agreed that he would allow for Keshet to reclaim its 50.5% interest in Oceanside pursuant to the terms of the written agreements, the Agreement re: Sale of Membership Interest and Profit Sharing (“Agreement”), and the Modification to the Agreement re: Sale of Membership Interest and Profit Sharing (“Modification”). Rubinstein (and through him, Fab Rock) knew at the time these representations were made that they were false. Rubinstein and Fab Rock intended to later rebuke the aforementioned written agreements and claim full entitlement to the Keshet’s 50.5% interest while allowing the Yehudas to do everything with respect to that interest, including allowing them to continue investing their own monies. On information and belief, Rubinstein intentionally took steps to ensure that he could later challenge his signatures on the Agreement and Modification.

The Yehudas relied upon Rubinstein’s representation that he understood the assignment to be temporary, that he would only be a nominal member, and that the Yehudas would be able to retake Keshet’s interest in Oceanside at the appropriate time. The Yehudas’ reliance on these

representations caused them to change their position to their detriment by assigning Keshet's 50.5% interest in Oceanside to Fab Rock—an assignment they only intended to be temporary in accord with the parties' oral agreement (that was thereafter reduced to writing in the Agreement and Modification), but one Rubinstein now alleges was permanent so as to falsely claim ownership over the Yehudas' valuable personal property and any proceeds from the April 2017 sale of the Hotel to Defendants BNH IV HM TRI, LLC and 1159 Hillsboro Mile, LLC.

THIRD DEFENSE
Unjust Enrichment

In 2007, Oceanside purchased the Hotel. The Yehudas—through Keshet—contributed approximately \$3,000,000 towards this purchase, as reflected in Oceanside's capital accounts. Thereafter, the Yehudas—either individually or through Keshet—contributed an additional \$2,500,000 (estimated) to Oceanside in order to keep the Hotel operational, including various sums contributed during the period after 2013 when Rubinstein and/or Fab Rock alleges they became the manager and/or managing member of Oceanside. The Yehudas made these contributions based on Rubinstein's misrepresentation in late 2013 that he consented to the temporary assignment of Keshet's 50.5% interest in Oceanside and would permit the Yehudas to retake that interest after the purpose of the temporary assignment—the refinancing of the existing loan from First Citizens Bank—was realized. In total, the Yehudas and/or Keshet contributed approximately \$5,500,000 to Oceanside. To permit Plaintiffs to retain the benefit of these funds would be inequitable and, accordingly, the Yehudas are entitled to a return of their contributions under a theory of unjust enrichment.

FOURTH DEFENSE

Laches

The doctrine of laches operates to bar Plaintiffs' claims because Plaintiffs sat idly by and did nothing as Mrs. Yehuda continued to be listed on Oceanside's records on file with the Department as the person authorized to act on behalf of Oceanside. Indeed, as early as November 2015, Plaintiffs were aware that Mrs. Yehuda was holding herself out as the person authorized to act on behalf of Oceanside. In response, Plaintiffs did nothing other than file a single Amended Annual Report for Oceanside. In complete derogation of their statutory obligations under the Florida Revised LLC Act to correct such information and ensure that their purported management of Oceanside was reflected in the public record, Plaintiffs did nothing further in 2016 or 2017. This notwithstanding the fact that Plaintiffs were, as the putative owners and/or managers of Oceanside, required to file 2016 and 2017 Annual Reports with the Department. Plaintiffs declined to do so, and instead permitted Mrs. Yehuda—who they had (allegedly) provided unfettered authority—to file Oceanside's 2016 and 2017 Annual Reports. By June 2016, Plaintiffs were indisputably aware that the Yehudas were making a contradictory claim of ownership in Oceanside, as evidenced by the filings made in the California Action. Yet again, Plaintiffs did nothing with respect to the Florida public record. Only after the Hotel was sold to their benefit—being that the Stonegate mortgage was satisfied with the proceeds from the sale of the Hotel, thereby eliminating Rubinstein's liability with respect to the same by virtue of his personal guaranty of the Stonegate loan—did Plaintiffs take any action, *i.e.* this lawsuit.

Plaintiffs' decision to remain silent in the face of inaccurate information on file with the Department, as well as their choice to disregard their obligations under the Florida Revised LLC Act, for nearly two years until the sale of the Hotel in April 2017, evidences an unreasonable and untenable delay in asserting their claim of ownership in Oceanside and that Mrs. Yehuda lacked

authority to convey the Hotel. Plaintiffs were presented with more than sufficient opportunities to correct the public record, but chose not to, allowing Mrs. Yehuda to continue to be held out as Oceanside's manager and person with statutory apparent authority to act on behalf of Oceanside from late 2015 through the date of the Hotel's sale in April 2017. Plaintiffs cannot sit idly by and delay asserting their claim of ownership, all while knowing that Mrs. Yehuda was simultaneously asserting a contradictory claim of ownership.

FIFTH DEFENSE
Lack of Consideration

Plaintiffs first alleged that, in exchange for Rubinstein's "personal guaranty of the First Citizens' loan," the Yehudas agreed to transfer Keshet's 50.5% interest in Oceanside. *See* Complaint (DE 1) ¶¶ 26–27. Plaintiffs confirmed this allegation in their First Amended Complaint. *See* (DE 66) ¶¶ 25–26. Rubinstein never gave a guaranty to First Citizens Bank. Nevertheless, according to Plaintiffs, the Yehudas gratuitously assigned Keshet's 50.5% interest in Oceanside to Fab Rock in exchange for Fab Rock allowing the Yehudas to continue to manage the Hotel—a task which they were already doing. Plaintiffs also allege that Fab Rock paid \$737,000 to Oceanside, in the form of a \$500,000 "pay down" of the First Citizens loan and \$237,000 paid to Oceanside's bankruptcy counsel, Creim Macias Koenig & Frey LLP. However, these funds neither belonged to Rubinstein nor Fab Rock. Instead, they were contributions made by the Yehudas. Thus, neither Rubinstein nor Fab Rock paid any money in connection with the alleged acquisition of Keshet's 50.5% interest in Oceanside. Consequently, Rubinstein and Fab Rock should be barred from seeking recovery based on a purported interest for which no consideration was given.

SIXTH DEFENSE
Failure to Mitigate

Plaintiffs failed to mitigate their damages by sitting idly by for two years with the knowledge that Mrs. Yehuda was asserting a claim of ownership contrary to the one asserted by Plaintiffs. Indeed, as early as November 2015, Plaintiffs were aware that Mrs. Yehuda was holding herself out as the person authorized to act on behalf of Oceanside. In response, Plaintiffs did nothing other than file a single Amended Annual Report for Oceanside. In complete derogation of their statutory obligations under the Florida Revised LLC Act to correct such information and ensure that their purported management of Oceanside was reflected in the public record, Plaintiffs did nothing further in 2016 or 2017. This includes not filing an annual report with the Department, as they were required to do under the Revised LLC Act. Rather, in neglecting their duties under the Revised LLC Act, Plaintiffs allowed Mrs. Yehuda to file Oceanside's 2016 and 2017 Annual Reports, both of which confirmed that Mrs. Yehuda was the person authorized to act on behalf of Oceanside. By June 2016, Plaintiffs were indisputably aware that the Yehudas had made a contradictory claim of ownership in Oceanside, as evidenced by the filings made in the California Action. Yet again, Plaintiffs did nothing with respect to the Florida public record. Only after the Hotel was sold to their benefit—being that the Stonegate mortgage was satisfied with the proceeds from the sale of the Hotel, thereby eliminating Rubinstein's liability with respect to the same by virtue of his personal guaranty of the Stonegate loan—did Plaintiffs take any action, *i.e.* this lawsuit. Plaintiffs' failure to act during the two years preceding the sale of the Hotel evidences their failure to mitigate.

SEVENTH DEFENSE
Election of Remedies

Plaintiffs seek both monetary damages and equitable relief. The two are incompatible. Specifically, on the one hand, Plaintiffs seek monetary damages from various Defendants in the form of monies Rubinstein and/or Fab Rock allegedly contributed to Oceanside and, apparently—but not expressly—net proceeds from the sale of the Hotel. On the other hand, Plaintiffs also seek to unwind the sale of the Hotel through the equitable relief of rescission. Plaintiffs are not entitled to the net proceeds from the sale of the Hotel and the Hotel itself.

Dated this 25th day of July, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 25, 2019, I electronically served the foregoing document on all counsel of record or pro se parties identified on the attached Service List.

By: /s/ William V. Roppolo
William V. Roppolo

SERVICE LIST

Case No. 17-cv-61019-Williams/Torres

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

ARTURO RUBINSTEIN, FAB ROCK INVESTMENTS, LLC.,
AND OCEANSIDE MILE, LLC.,

v.

THE KESHET INTER VIVOS TRUST, YORAM YEHUDA, SHARONA YEHUDA, KARIN YEHUDA, THE MAYO GROUP, LLC., EYAL GAMLIEL, MAZLIACH GAMLIEL, YORAM ELIYAHU, BRIDGE TO THE FUTURE, LLC., MIKE SEDAGHATI, ORIT MAIMON, STONEGATE BANK, BNH IV HM TRI, LLC., and 1159 HILLSBORO MILE, LLC.

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