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11
12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
14

15 In re

16 RUBY'S DINER, INC., a California
17 corporation, et al.,

18 Debtor(s).

19 Affects:

- 20 All Debtors
- 21 RUBY'S DINER, INC., ONLY
- 22 RUBY'S SOCAL DINERS, LLC,
ONLY
- 23 RUBY'S QUALITY DINERS,
LLC,
ONLY
- 24 RUBY'S HUNTINGTON
BEACH,
LTD., ONLY
- 25 RUBY'S LAGUNA HILLS,
LTD.
ONLY
- 26 RUBY'S OCEANSIDE, LTD.,
ONLY
- 27 RUBY'S OCEANSIDE, LTD.,
ONLY
- 28 RUBY'S OCEANSIDE, LTD.,
ONLY

CASE NO. 8:18-bk-13311-SC

Chapter 7

(Jointly Administered With Case Nos.
8:18-bk-13197-SC; 8:18-bk-13198-SC;
8:18-bk-13199-SC; 8:18-bk-13200-SC;
8:18-bk-13201-SC; 8:18-bk-13202-SC)

COMPLAINT FOR:

- 1) **BREACH OF FIDUCIARY DUTY;**
- 2) **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY;**
- 3) **AVOIDANCE OF ACTUAL FRAUDULENT TRANSFERS UNDER 11 U.S.C. § 548(a)(1)(A);**
- 4) **AVOIDANCE OF CONSTRUCTIVE FRAUDULENT TRANSFERS**

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RUBY'S PALM SPRINGS,
LTD.,
ONLY

- 5) **RECOVERY OF FRAUDULENT TRANSFERS UNDER 11 U.S.C. §§ 550 and 551;**
- 6) **AVOIDANCE AND RECOVERY OF ACTUALLY FRAUDULENT TRANSFERS UNDER 11 U.S.C. § 544 AND CAL. CIV. CODE § 3439.04;**
- 7) **AVOIDANCE AND RECOVERY OF CONSTRUCTIVELY FRAUDULENT TRANSFERS UNDER 11 U.S.C. § 544 AND CAL. CIV. CODE § 3439.05;**
- 8) **RECOVERY OF ILLEGAL DIVIDENDS UNDER CAL. CORP. CODE §§ 500, 501 and 506;**
- 9) **EQUITABLE SUBORDINATION OF CLAIMS UNDER 11 U.S.C. § 510(c);**
- 10) **PERMANENT INJUNCTION UNDER CAL. CIV. CODE § 3439.07(a)(3)(A);**
- 11) **PERMANENT INJUNCTION UNDER CAL. CIV. CODE § 3439.07(a)(3)(C);**
- 12) **BREACH OF CONTRACT;**
- 13) **MONEY LENT;**
- 14) **OPEN BOOK ACCOUNT;**
- 15) **VIOLATION OF CAL. PENAL CODE § 496(c);**
- 16) **ACCOUNTING;**
- 17) **CONSTRUCTIVE TRUST; AND**
- 18) **MISAPPROPRIATION OF TRADE SECRETS**

[DEMAND FOR JURY TRIAL]

RICHARD A. MARSHACK, Chapter 7
Trustee,

Plaintiff,

v.

1 DOUGLAS CAVANAUGH, an
2 individual; RALPH KOSMIDES, an
3 individual; BEACHCOMBER
4 MANAGEMENT CRYSTAL COVE,
5 LLC, F/K/A RUBY'S
6 MANAGEMENT LLC, a California
7 Limited Liability Company;
8 LIGHTHOUSE CAFÉ, LLC, a
9 California Limited Liability Company;
10 BEACHCOMBER AT CRYSTAL
11 COVE, LLC, a California Limited
12 Liability Company; and SHAKE
13 SHACK CRYSTAL COVE, LLC,
14 F/K/A RUBY'S SHAKE SHACK,
15 LLC, a California Limited Liability
16 Company,

17 Defendants.

18 Plaintiff Richard Marshack, solely in his capacity as Chapter 7 Trustee (the
19 "Trustee") of the Bankruptcy Estate (the "Estate") of Ruby's Diner, Inc., a
20 California corporation, *et al.* jointly administered on September 5, 2018, as lead
21 case no. 8:18-bk-1331-SC ("RDI" or the "Company"), with the following
22 associated bankruptcy cases: (a) 8:18-bk-13197-SC – Ruby's SoCal Diners, LLC, a
23 Delaware limited liability company ("SoCal Diners"); (b) 8:18-bk-13198-SC- Ruby
24 Quality Diners, LLC., a Delaware limited liability company; (c) 8:18-bk-13199-SC
25 – Ruby's Huntington Beach, Ltd., a California limited partnership; (d) 8:18-bk-
26 13200-SC – Ruby's Laguna Hills, Ltd., a California limited partnership; (e) 8:18-
27 bk-13201-SC – Ruby's Oceanside Ltd., a California limited partnership; and
28 (f) 8:18-bk-13202-SC – Ruby's Palm Springs, Ltd., a California limited partnership
(collectively referred to as the "Debtors") alleges as follows:

JURISDICTION AND VENUE

1 This Court has jurisdiction over this adversary proceeding and the
2 parties thereto under 28 U.S.C. §§ 157 and 1334. This adversary proceeding arises
3 out of and is related to the Chapter 7 bankruptcy case of *In re Ruby's Diner, Inc.*,
4 Case No. 8:18-bk-13311-SC, filed on September 5, 2018, and currently pending in

1 the United States Bankruptcy Court for the Central District of California, Santa
2 Ana Division. This action is a core proceeding within the meaning of 28 U.S.C.
3 § 157(b). The Trustee consents to the entry of a final judgment by the bankruptcy
4 court.

5 2. Venue is proper in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408
6 and 1409 because the RDI bankruptcy case is pending in this district and division.
7 Pursuant to 28 U.S.C. § 1391, venue is also appropriate in this district and division
8 because each of the Defendants either resides in or is authorized to and regularly
9 does carry out business in this district and many if not all of their wrongful acts,
10 omissions and/or conduct as complained of in this Complaint took place within this
11 district.

12 3. These same facts constitute additional grounds for this Court to
13 exercise personal jurisdiction over each of the Defendants.

14 NATURE OF THE ACTION

15 4. RDI owned and operated the Ruby's Diner restaurant chain. Ruby's
16 Diners are marked by a 1940s aesthetic and serve classic Americana diner fare.
17 The first Ruby's Diner opened in Southern California in 1982; Ruby's quickly grew
18 to encompass over 40 locations.

19 5. RDI was founded by Defendants Doug Cavanaugh ("Cavanaugh") and
20 Ralph Kosmides ("Kosmides"), its only shareholders. Cavanaugh and Kosmides
21 have also served as RDI's key officers since its inception and controlled RDI's
22 Board of Directors at all relevant times. In short, Cavanaugh and Kosmides have
23 exercised exclusive control and direction over RDI for the entirety of its existence.

24 6. Up until the appointment of the Trustee, RDI was akin to an
25 incapacitated child, with no means, because of the control exerted over it, to protect
26 itself from Cavanaugh and Kosmides' corporate looting and malfeasance. Pursuant
27 to the adverse domination doctrine, claims against Cavanaugh and Kosmides are
28 tolled during the time they controlled the Company, as they would not be expected

1 to sue themselves. As a result, up until the appointment of the Trustee in April
2 2020, the statute of limitations tolled as to any and all claims RDI has against
3 Cavanaugh and Kosmides. In addition, because the IRS is a creditor, the statute of
4 limitations for the claims alleged herein as to all parties is at least ten years from
5 the date of the bankruptcy filing.

6 7. The victims of Cavanaugh and Kosmides' malfeasance are creditors
7 owed in excess of fourteen million dollars.

8 8. Cavanaugh and Kosmides placed RDI assets into other personal
9 ventures owned in their individual capacities, deliberately stripping RDI of assets
10 without adequate consideration and in breach of their fiduciary duties to RDI and
11 the Debtors so they could wrongfully enrich themselves. Cavanaugh and Kosmides
12 diverted the best corporate opportunities to themselves while leaving RDI and the
13 Debtors liable for debts incurred regarding these stolen opportunities. According to
14 Cavanaugh in one email, he needed to be a "free agent" when it came to the ability
15 to personally pursue opportunities presented to RDI.

16 9. For example, Cavanaugh used RDI's know-how, history, personnel,
17 and money to obtain an opportunity from the State of California to develop two
18 restaurants, The Beachcomber and The Shake Shack, both located in Crystal Cove
19 State Park in Newport Coast, California. The bid documents submitted to the State
20 of California state that "Ruby's" or "Ruby Restaurant Group" was pursuing the
21 opportunity and would operate the restaurants. But after the bids were won and the
22 time came to create the entities that would hold these two restaurants, Cavanaugh
23 and Kosmides inexplicably put the restaurants in their personal ownership. They
24 did similar things with respect to the restaurants Lighthouse and Malibu
25 Beachcomber.

26 10. After usurping these opportunities from RDI, Cavanaugh and
27 Kosmides continued to use significant RDI resources and personnel to run these
28 restaurants in which RDI had no interest. RDI paid insurance premiums, wages,

1 and other expenses for these restaurants and continued to do so even post-petition.
2 The result of this structure is that RDI has incurred significant liabilities over the
3 years propping up restaurants it has no interest in. Cavanaugh and Kosmides did
4 this to boost the profits of their other restaurants. That way they could distribute
5 more money to themselves from these other restaurants rather than pay RDI
6 creditors what they are owed.

7 11. Cavanaugh and Kosmides also used RDI funds to pay their personal
8 medical expenses, travel and meals.

9 12. And Cavanaugh and Kosmides took over \$1.5 million in loans from
10 RDI, which sat on the books of the Company for more than a decade. Then two
11 months before they put RDI into bankruptcy, Cavanaugh and Kosmides tried to
12 hide this significant asset from the bankruptcy court by wiping their personal loans
13 off the books for no consideration. This was a fraudulent transfer and, with
14 prejudgment interest, Cavanaugh and Kosmides owe in excess of \$3 million as a
15 result.

16 13. In total, Cavanaugh and Kosmides caused damages in excess of \$35
17 million. It is time for them to take responsibility for their actions.

18 **PARTIES**

19 14. Plaintiff is the Chapter 7 bankruptcy trustee of the Debtors, as detailed
20 in the introductory paragraph above. The Trustee brings this adversary proceeding
21 on behalf of the Debtors' respective bankruptcy estates. The Trustee does not have
22 personal knowledge of the pre-bankruptcy facts alleged in this Complaint and
23 therefore alleges those facts on information and belief.

24 15. Defendant Douglas Cavanaugh ("Cavanaugh") is an individual who, on
25 information and belief, resides in California.

26 16. Defendant Ralph Kosmides ("Kosmides") is, on information and belief,
27 an individual who resides in Orange County, California.

28 17. On information and belief, Defendant Beachcomber Management

1 Crystal Cove, LLC, f/k/a Ruby’s Management LLC, is a limited liability company
2 with its principal place of business in Newport Beach, California.

3 18. On information and belief, Defendant Lighthouse Café, LLC is a
4 limited liability company with its principal place of business in Newport Beach,
5 California.

6 19. On information and belief, Defendant Beachcomber at Crystal Cove,
7 LLC is a limited liability company with its principal place of business in Newport
8 Beach, California

9 20. On information and belief, Defendant Shake Shack Crystal Cove, LLC,
10 f/k/a Ruby’s Shake Shack, LLC, is a limited liability company with its principal
11 place of business in Newport Beach, California.

12 21. Defendants Beachcomber Management Crystal Cove, LLC; Lighthouse
13 Café, LLC; Beachcomber at Crystal Cove, LLC; and Shake Shack Crystal Cove,
14 LLC may be referred to collectively as the “Non-Debtor Entities.”

15 22.

16 **GENERAL ALLEGATIONS**

17 **A. Overview Of RDI**

18 23. The original Ruby’s Diner opened in 1982 in Newport Beach,
19 California. The diner was intended to re-create the mood and décor of a 1940s
20 diner. The restaurant was successful, and the company began to open additional
21 locations throughout California and expand into other states.

22 24. RDI is the owner of the Ruby’s® trademarks, system and intellectual
23 property (the “Marks and Intellectual Property”). RDI granted an exclusive license
24 of the Marks and Intellectual Property for lack of reasonably equivalent value to
25 Ruby’s Franchise Services, Inc. (“RFS”), which at all relevant times was owned by
26 Cavanaugh and Kosmides. RFS, in turn, at all relevant times, served as the
27 franchisor to the Ruby’s® franchisees/licensees (the “Franchisees”) and licensed
28 the Marks and Intellectual Property from RDI as licensor to Ruby’s® Diner

1 franchisees.

2 25. RDI owns varying percentages of and operates diners in Southern
3 California through its subsidiaries, including through its wholly owned subsidiary,
4 SoCal Diners. RDI and its affiliates own, operate and manage restaurants under
5 trade names such as “Ruby’s®,” “Ruby’s® Diner,” and “The Ruby Restaurant
6 Group.”

7 26. One of RDI’s primary purposes is to test out new restaurant concepts.
8 It has, under the direction of Cavanaugh, tested out numerous restaurants over the
9 years.

10 **B. RDI’S Longtime Insolvency**

11 27. From the point of at least 2005, RDI’s debts exceeded its assets. In or
12 about 2005, RDI began to issue unsecured notes in an effort to raise funds,
13 ultimately raising about \$5.6 million from over 200 noteholders, who were
14 primarily retail investors solicited by Cavanaugh and Kosmides about RDI’s
15 prospects. The noteholders generally are comprised of retirees.

16 28. Cavanaugh and Kosmides took actions to conceal RDI’s precarious
17 financial condition. RDI:

- 18 • Never had its financial statements audited by an independent certified
19 public accounting firm.
- 20 • Lacked qualified personnel to serve as full-time, sophisticated internal
21 finance and accounting personnel (including persons qualified to act as
22 the Company’s chief financial officer and internal auditor) to monitor
23 RDI’s business and financial books and records.
- 24 • Kept two separate, and inconsistent, sets of books for the Company.
- 25 • Lacked sufficient funds to continue its operations.
- 26 • Lacked a bank revolving line of credit to cover operating costs, as
27 needed.
- 28 • As least as early as 2009, had an ongoing gift card program
(representing a \$4.4 million obligation) for meals at Ruby’s®
Restaurants sold through third-party retailers (primarily Costco) for
which RDI was unable to reimburse its franchisees for the costs
imposed by these gift cards.

1 29. By February 2010, Cavanaugh was informed by RDI personnel that
2 “Ruby’s is literally living on borrowed time and each day it gets worse.” That
3 email was sent on a day that RDI’s accounts started with a balance of negative
4 \$137,000.

5 30. By early 2012, RDI lacked sufficient cash flow to pay its unsecured
6 notes, in part because of significant litigation liabilities that it incurred. RDI
7 restructured the unsecured notes.

8 31. At about the same time, in February 2012, RDI borrowed \$2.9 million
9 more, secured by RDI’s assets, from 90 of the original noteholders.

10 32. Several years of continuing losses resulted in RDI suspending interest
11 payments on both the secured and unsecured notes in early 2015, resulting in a
12 default. The noteholders, still hoping to see a return on their investments,
13 restructured the notes in June 2016. Under the terms of the restructuring, the
14 maturity of the notes was extended until June 30, 2026, and interest in the amount
15 of 2.23% was to be paid on the notes each June and December until maturity.

16 33. By July 2015, Defendants conceded that “the equity in RDI is
17 hopelessly buried today.”

18 34. Though RDI made the required interest payments in June and
19 December 2017, it defaulted on the notes again in June 2018.

20 35. At the time of bankruptcy, RDI owed approximately \$5.54 million to
21 its unsecured noteholders, and approximately \$2.985 million to its secured
22 noteholders.

23 36. As explained in detail below, the financial condition of RDI was
24 preventable. Cavanaugh and Kosmides systematically misappropriated the
25 Debtors’ most significant assets and inappropriately placed liabilities from their
26 other business ventures onto RDI.

27 **C. Allegations Regarding Tolling**

28 37. The allegations in this Complaint arise from Cavanaugh and Kosmides’

1 breaches of fiduciary duties.

2 38. At all relevant times, Cavanaugh and Kosmides controlled RDI by
3 virtue of their majority status of the board of directors, as CEO of RDI
4 (Cavanaugh), and as the majority shareholders. Today, Cavanaugh owns 60% of
5 RDI shares, while Kosmides owns 40%.

6 39. In particular, in 1991, Cavanaugh and Kosmides entered into an
7 agreement with each other that the majority shareholder (Cavanaugh) would always
8 vote the majority of the board of directors, which he did at all relevant times. RDI
9 has been wholly under the domination of Cavanaugh and Kosmides throughout the
10 entirety of its existence.

11 40. As a result, the doctrine of adverse domination tolls any statutes of
12 limitations for the claims for relief alleged below. RDI was akin to an
13 incapacitated child for the decades that Cavanaugh and Kosmides looted its assets,
14 with no legal ability to protect itself from its owners' misconduct. *San Leandro*
15 *Canning Co. v. Perillo*, 211 Cal. 482, 487 (1931) (in allowing corporation to pursue
16 claims against former directors, recognizing "what we deem to be a well-settled
17 principle of law, that the statute of limitations does not commence to run against
18 unlawful acts and expenditures made by or under the direction of the directors of
19 the corporation while they were in full control of its affairs and of the expenditure
20 of its funds"); *In re Cecchi Gori Pictures*, 607 B.R. 351, 355 (Bankr. N.D. Cal.
21 2019) (accord).

22 41. In addition, the Internal Revenue Service (the "IRS") was a creditor of
23 the Debtor as of the Petition Date. On September 11, 2018, the IRS filed a claim
24 against RDI for unpaid taxes totaling \$85,260.35. Plaintiff, as Chapter 7 trustee,
25 may exercise all of the rights and remedies available to a qualifying creditor of the
26 Debtor pursuant to 11 U.S.C. § 544(b), including the IRS. The IRS may recover a
27 fraudulent transfer of a taxpayer for ten years after the date of assessment.
28 *Mukamal v. Citibank N.A. (In re Kipnis)*, 555 B.R. 877, 881 (Bankr. S.D. Fla.

1 2016); 26 U.S.C. § 6901(a); 26 U.S.C. § 6502(a)(1). Plaintiff may stand in the
2 shoes of the IRS to recover fraudulent transfers.

3 **D. Cavanaugh And Kosmides Usurp RDI's Opportunity At Crystal**
4 **Cove**

5 42. Crystal Cove State Park is located on the coast in Orange County
6 between the communities of Newport Beach and Laguna Beach. It includes more
7 than three miles of scenic coastline. The Park contains some of the last remaining
8 undeveloped coastal property in Orange County, historic beach cottages, scenic
9 upland canyons and ridges, coastal bench landers and bluffs, excellent swimming
10 beaches, and significant offshore marine features.¹

11 43. Until 1979, the Crystal Cove State Park land was privately owned by the
12 Irvine Company. Community members were concerned that the Irvine Company
13 would build a massive high-end resort on the property destroying the historic beach
14 cottages and limiting public access. The community successfully persuaded the
15 State of California to acquire the land. In December 1979, the land was deeded by
16 the Irvine Company to the State of California. In the early 1980s, the mid-point of
17 the Park's three-mile line coastline, which consists of 46 cottages on 12.3 acres,
18 was put on the National Register of Historic Places.

19 44. In 2005, the State of California Resources Agency, Department of Parks
20 and Recreation, issued a Request for Proposals for Historic District Lodging and
21 Restaurants at Crystal Cove State Park (the "Request for Proposals"). The Request
22 for Proposals solicited proposals for an award of a twenty (20) year concession
23

24 ¹ The allegations in paragraphs 42 to 55 are substantially, and often verbatim, taken
25 from a complaint filed by Beachcomber Management in 2017, which was controlled
26 by Cavanaugh and Kosmides at the time and which Cavanaugh refers to as "my
27 entity." These allegations are therefore binding allegations as to Beachcomber
28 Management, Cavanaugh, and Kosmides. The usurpation of these opportunities also
could not have been discovered until these stunning admissions were made in a
public pleading in 2017.

1 agreement to: (1) restore the historic beach cottages in a manner preserving their
2 look and feel for rental to the public at a reasonable price on an overnight basis;
3 (b) develop and operate two restaurants reflecting the period of 1935-55; and
4 (c) provide related visitor services.

5 45. As stated in the Request for Proposals, the State’s intent was “to provide
6 the public with high-quality, reasonably priced goods and services in an authentic
7 manner and atmosphere that enhances the visitor’s experience and understanding of
8 the historic period of 1935-55” The State required that all concession facilities
9 and services reflect the look, feel, and ambiance of Southern California during this
10 era, and indicated its intent to evaluate proposals based on the extent to which they
11 successfully recreated this era.

12 46. In light of RDI’s success and expertise with Ruby’s Diners from that
13 same era, Cavanaugh decided to respond to the State’s Request for Proposals.
14 Cavanaugh initially pursued this opportunity in the name of RDI.

15 47. Before submitting his own bid to the State, however, Cavanaugh learned
16 that the Crystal Cove Association (“CCA”) also intended to respond to the Request
17 for Proposals. Cavanaugh had several meetings with CCA to discuss the possibility
18 of working together to submit a joint response to the State’s Request for Proposals.

19 48. Cavanaugh conducted these negotiations on behalf of RDI. For example,
20 in an email dated July 29, 2005, CCA advised Cavanaugh and Kosmides, “GREAT
21 job on the questions! We will copy you back on the final submittal to State Parks.
22 We will state that these are coming jointly from CCA and Ruby’s.” In an email
23 dated December 20, 2005, Dan Gee of CCA stated that, “For the first year or
24 longer, I will act as the interface between NewCo, RRG, and State Parks.”

25 49. RRG is a short form moniker for Ruby’s Restaurant Group, a name
26 Cavanaugh and Kosmides used for RDI. Ruby’s, Ruby’s Diners, RRG and Ruby’s
27 Restaurant Group were used interchangeably throughout the bidding process and all
28 refer to RDI.

1 50. RDI's involvement was further reflected in a Memorandum of
2 Understanding dated October 7, 2005, which stated in part: "Crystal Cove Alliance
3 (CCA) and the Ruby Restaurant Group (RRG) have agreed to cooperate and jointly
4 bid on the concession contract for the Crystal Cove Historic District which is being
5 offered by the State of California-Resource Agency for the Department of Parks
6 and Recreation (DPR)."

7 51. RDI and CCA submitted a joint bid to the State in October 2005.
8 Among other things, the joint bid included: (a) a proposed operation plan
9 emphasizing the role of RDI in food service operations and feting RDI's track
10 record in developing and operating historically-accurate high-quality diners; (b) a
11 proposed facility plan telling the story of the original Ruby's Diner on the Balboa
12 Pier as relevant and analogous to the situation at the Historic District; and (c) a
13 proposed education/interpretative plan which described RDI as "uniquely qualified
14 to meet the requirements for food service under the contract," citing RDI's lengthy
15 and successful history in developing and operating diners from the same historical
16 period as the Historic District.

17 52. All of these documents reflect RDI's involvement in the bidding. The
18 Operating Plan states:

- 19 • "The Ruby's Restaurant Group will be subcontracted by NewCo to
20 perform all of the food service operations under the contract."
- 21 • "CCA and Ruby's are uniquely qualified to implement an effective
22 customer service plan. Ruby's is known for their very successful
23 customer service. Also, the Ruby's Diner theme is the same time
24 period that CCA will be establishing in the Historic District. As a
25 result, Ruby's already demonstrates on a day to day basis their ability
26 to operate an effective customer service program that focuses on the
27 same historical period."
- 28 • "Good service. Due to the remote location . . . , Ruby's plans on an

1 aggressive marketing and public relations campaign. Ruby’s also
2 firmly believes that high quality operations foster positive word of
3 mouth. When you combine this attractive venue with high quality
4 food and operations, you have a combination that will sell itself. The
5 number one trust mark of the Ruby’s Diner brand is the milkshake.
6 Ruby’s is confident that the Shake Shack² co-branded with the Ruby’s
7 Diner brand will significantly increase sales without significant
8 advertising.”

9 53. The Facilities Plan emphasized RDI’s experience and importance to the
10 Historic District as well:

- 11 • Includes a photograph of the original Ruby’s Diner on Balboa Pier.
- 12 • Expressly provides, in relevant part: “The Ruby’s Diner Balboa story
13 is relevant, because it is fairly analogous to the situation At
14 Ruby’s in Balboa, people have to brave an equivalently long walk out
15 a long, and often, very cold pier That didn’t stop them because
16 the venue was unique, the food was good, and they got a good value
17 for their dollar. RRG firmly believes this same principle can
18 work”

19 54. The Interpretative Plan similarly emphasizes RDI’s involvement: “The
20 Ruby Restaurant Group (RRG) is also uniquely qualified to meet the requirements
21 for food service under the contract. Following is a brief history of RRG The
22 Ruby’s Restaurant Group is self-contained in nearly all aspects of restaurant
23 operations, recruitment and personnel training, product development The
24 founding partners, Doug Cavanaugh and Ralph Kosmides, take an active role in the
25 operation of each restaurant”

26 _____
27 ² The Shake Shack restaurant located at Crystal Cove was not and is not affiliated
28 with the Shake Shack national chain of fast casual restaurants.

1 55. Paragraph 58 of the Concession Agreement expressly provides for RRG
2 to operate all food service operations under the Concession Agreement:
3 “Assignments and Subconcessions. . . . Subject to the approval by State, Ruby’s
4 Restaurant Group will operate all food service obligations of this contract and will
5 be a subcontractor.”

6 56. On March 10, 2006, Cavanaugh established Ruby’s Crystal Cove, LLC
7 to act as the management company to handle the food services and other operations
8 for The Beachcomber restaurant, as anticipated by the Concession Agreement.

9 57. However, in a breach of Cavanaugh and Kosmides’ fiduciary duties, and
10 notwithstanding the fact that RDI’s marks, know-how, history, personnel, resources
11 and money were used to win the bid from the State and to develop these
12 restaurants, Cavanaugh and Kosmides put themselves personally as members of
13 Ruby’s Crystal Cove, LLC rather than making RDI the member. Shortly thereafter,
14 Ruby’s Crystal Cove, LLC’s name was changed to Beachcomber Management
15 Crystal Cove, LLC.

16 58. On March 17, 2006, Cavanaugh established Beachcomber at Crystal
17 Cove, LLC to act as the entity that owned The Beachcomber restaurant itself. Like
18 with Beachcomber Management, Cavanaugh and Kosmides put ownership for
19 themselves. In particular, they put the ownership of the restaurant in the name of
20 Beachcomber Management, called Ruby’s Crystal Cove, LLC at the time, an entity
21 they owned personally. This meant both the equity and right to management fees
22 went to them personally rather than RDI, as it should have.

23 59. Similarly, Cavanaugh and Kosmides established the entity currently
24 known as Shake Shack Crystal Cove, LLC to own The Shake Shack at Crystal
25 Cove restaurant, in which Cavanaugh and Kosmides both hold or have held
26 ownership interests. However, unlike as with Beachcomber, RDI was made the
27 Manager of this entity entitled to management fees (for a time).

28 60. The Beachcomber and Shake Shack went on to become critically and

1 financially successful. For example, OpenTable, an independent surveyor of its
2 dining members, has rated The Beachcomber at Crystal Cove as one of the top ten
3 restaurants in Orange County, and has presented it with at least 18 awards,
4 including awards for “Best Overall,” “Best Service,” “Best Value,” and “Most
5 Booked.” The Beachcomber at Crystal Cove has been named as one of the “Top 10
6 Outdoor Dining Restaurants in the US” by Fox News and among “America’s Best
7 Outdoor Restaurants” by Travel & Leisure magazine. In its first five years alone,
8 Beachcomber grossed approximately \$27.5 million in sales.

9 61. In 2007, Douglas Salisbury (“Salisbury”), the only other shareholder of
10 RDI at the time, threatened litigation against Cavanaugh and Kosmides for
11 usurping the Beachcomber opportunity—but he was bought off. Cavanaugh,
12 Kosmides and Salisbury reached an agreement on or around December 31, 2007 in
13 which Salisbury personally received equity in Beachcomber Management Crystal
14 Cove, LLC in exchange for his silence on the corporate opportunity issue. In sum,
15 all of the shareholders of RDI were in on the scheme to put this asset in their
16 personal ownership rather than RDI’s ownership.

17 62. Indeed, Cavanaugh would later accuse Salisbury of misusing “the
18 ‘corporate opportunity doctrine’ to garner additional equity out of the Beachcomber
19 in Crystal Cove with the threat of litigation if we didn’t see things your way.”

20 63. When Salisbury made requests to view Beachcomber’s books and
21 records, Cavanaugh threatened him again, saying that his “right to free equity in the
22 Beachcomber will come into question should we go any further.”

23 64. With Salisbury paid off, silenced, and continuing to profit himself from
24 Cavanaugh’s bad acts, there remained no shareholder who had the knowledge,
25 ability, or motivation to discover the wrongdoing or bring suit on behalf of RDI for
26 the usurped corporate opportunity.

27 65. Thus, RDI continued to be deprived of the opportunity to own and
28 manage The Beachcomber restaurant.

1 **E. Cavanaugh And Kosmides Fraudulently Transfer Management Of**
2 **Shake Shack To Themselves**

3 66. Initially, The Shake Shack restaurant was named “Ruby’s Shake Shack,”
4 with RDI serving as a Managing Member, entitled to receive management fees.
5 These fees were set at 8% of the restaurant’s net sales, paid monthly.

6 67. Ruby’s Shake Shack used RDI’s logo, likeness, and trade secrets to
7 operate.

8 68. In 2013, however, RDI was replaced as Managing Member by
9 Beachcomber Management Crystal Cove, LLC, the same Cavanaugh-owned entity
10 tasked with managing The Beachcomber Café and which Cavanaugh referred to as
11 “my entity.”

12 69. No consideration was received by RDI when it was replaced as
13 Managing Member of Ruby’s Shake Shack.

14 **F. Cavanaugh And Kosmides Continued To Usurp RDI’s Corporate**
15 **Opportunities At Crystal Cove**

16 70. The Concession Agreement negotiated by CCA with the State, under
17 which Beachcomber and Shake Shack operate as subconcessionaires, was
18 originally set to expire in 2026. Notably, this is the Concession Agreement under
19 which two restaurants were to be run by Ruby’s Restaurant Group, but Cavanaugh
20 and Kosmides took the opportunity for themselves rather than putting the
21 opportunity into RDI.

22 71. In 2015, the State and CCA agreed to amend the Concession
23 Agreement, by which (among other things) its term was extended for 30 years,
24 through 2056.

25 72. No similar extension was granted at that time, however, to The
26 Beachcomber and Shake Shack’s Sub-SubConcession Agreement with
27 CCA. Accordingly, The Beachcomber and Shake Shack would not be permitted to
28 operate at Crystal Cove after 2026.

1 73. In response, Cavanaugh and Kosmides (again) chose to take this
2 opportunity for themselves. They immediately began to negotiate with CCA –
3 again, on behalf of Beachcomber and Shake Shack, not RDI – regarding an
4 extension to the term of the Sub-SubConcession Agreement. The negotiations went
5 poorly, even resulting in litigation.

6 74. The parties eventually reached agreement in late 2017, however,
7 agreeing to an amendment to the Sub-SubConcession Agreement by which The
8 Beachcomber and Shake Shack would continue to operate at Crystal Cove, under
9 Cavanaugh’s management, until 2056.

10 75. This opportunity to run Shake Shack and Beachcomber through 2056
11 should have been presented to RDI, just like the initial opportunity.

12 **G. Defendants’ Breaches As To Malibu Restaurant Group**

13 76. In or about 2007, Cavanaugh and Kosmides formed Malibu Restaurant
14 Group, LLC (“MRG”).

15 77. The purpose of MRG was to open up a Beachcomber Café, a full-
16 service, high-quality restaurant, as well as a Shake Shack, a family-style restaurant
17 with a malt shop/diner theme, on the Malibu Pier. The restaurants opened in or
18 around 2009.

19 78. The Managing Member of MRG was Beachcomber Management, LLC,
20 the entity controlled by Cavanaugh and Kosmides that manages Beachcomber and
21 Shake Shack. RDI was not a member of MRG.

22 79. From their inception, Cavanaugh and Kosmides used RDI resources,
23 manpower, and services to establish and build up the MRG restaurants.

24 80. Cavanaugh and Kosmides used RDI funds to pay MRG’s debts. RDI
25 expended substantial funds, for example, to pay the premiums for MRG’s health
26 and worker’s compensation insurance. RDI even paid the management fees that
27 MRG owed to Beachcomber Management, LLC – funds that went directly to
28 Cavanaugh and Kosmides.

1 81. Ultimately, MRG owed documented debts to RDI totaling at least
2 \$249,573.27. This did not include payments for services and resources that went
3 undocumented.

4 82. From their opening, the MRG restaurants suffered from lackluster
5 business and poor performance. MRG was sued by its construction contractor for
6 breach of contract and other claims, and was later sued by its landlord. Though
7 there was no reason for RDI to be involved in this litigation, RDI nonetheless
8 incurred substantial legal fees and costs in connection therewith.

9 83. RDI received either inadequate or nonexistent compensation in exchange
10 for these resources and services.

11 84. As early as February 2010, Cavanaugh was informed by RDI personnel
12 that he should not “put another dime into Malibu as it will likely be lost.”
13 Moreover, the attention Cavanaugh was paying to MRG was actively harming RDI:
14 “Malibu is a traumatic distraction and that distraction is impacting Ruby’s”

15 85. The MRG restaurants shuttered in 2011, leaving their substantial debts
16 to RDI unpaid.

17 **H. Cavanaugh And Kosmides Usurp An Opportunity As To**
18 **Lighthouse Café**

19 86. In 2015, Cavanaugh and Kosmides set up Lighthouse Café, LLC, a
20 separate entity, to open the Lighthouse Café in Newport Beach, California.

21 87. On February 13, 2014, the Newport Beach Restaurant Association sent
22 out a Request for Proposal solicitation to qualified firms interested in operating and
23 managing a commercial restaurant space to be constructed at a new Marina Park
24 location on the Balboa Peninsula. The objective of the Request for Proposal was to
25 identify the most qualified applicants who could best use their restaurant expertise
26 to manage the new restaurant.

27 88. Chris Seevers of The Beachcomber at Crystal Cove forwarded the
28 Request for Proposal to Cavanaugh. Cavanaugh did not present the opportunity to

1 RDI but instead sought to exploit the opportunity for himself and Kosmides.

2 89. Cavanaugh knew the corporate opportunity should have gone to RDI.
3 On August 17, 2014, he wrote that he “need[s] to have the board meeting for the
4 Corporate Opportunity Doctrine matter during the week of August 25th” because
5 he did not want “to get too far over my skis on these projects before this matter is
6 addressed.”

7 90. The Managing Member of the Lighthouse Café, the entity to which
8 management fees were paid, was Beachcomber Management Crystal Cove, LLC,
9 the same Cavanaugh-owned entity that manages The Beachcomber at Crystal Cove
10 and Shake Shack at Crystal Cove.

11 91. At all relevant times, Cavanaugh and Kosmides used RDI resources to
12 obtain the Lighthouse Café opportunity. For example, Tad Belshe, the Executive
13 Vice President of RDI, actively devoted his time and energy into securing the
14 Lighthouse Café. He spoke with representatives of the City of Newport Beach and
15 worked with contractors to design the restaurant. Cavanaugh also specifically
16 directed Belshe to assist him in getting the Lighthouse Café up and running.

17 **I. Defendants Prop Up Their Personal Ventures With RDI Funds**

18 92. As if it were not enough to use RDI’s resources to obtain opportunities
19 like Beachcomber, Shake Shack, and Lighthouse only to misappropriate them from
20 RDI, Defendants also regularly propped up these entities with RDI assets and
21 funds, even though Cavanaugh and Kosmides (and not RDI) received the profits
22 from such entities.

23 93. With RDI insolvent, and additional funds going to creditors instead of to
24 them, Cavanaugh and Kosmides designed a plan to shift liabilities of Beachcomber,
25 RFS, Shake Shack, and Lighthouse to RDI, which had the effect of substantially
26 boosting profits at these other entities that they owned while inappropriately
27 saddling RDI with even more liabilities.

28 94. Examples of this improper dumping of liabilities on RDI include:

- 1 • RDI inexplicably made hundreds of thousands of dollars in payments
- 2 on a regular basis to Beachcomber and Shake Shack.
- 3 • RDI employees would devote substantial time on Beachcomber,
- 4 Lighthouse and Shake Shack matters, while all or a disproportionate
- 5 portion of their salaries were paid by RDI. For example, Cavanaugh
- 6 directed RDI's Chief Financial Officer, Matt Panek, to work with
- 7 Beachcomber's CFO on a variety of financial projects that inured to
- 8 the benefit of The Beachcomber at Crystal Cove. Tad Belshe, RDI's
- 9 Executive Vice President, also consulted with and provided advisory
- 10 services in support of The Beachcomber at Crystal Cove.
- 11 • Beachcomber and Shake Shack were placed on RDI's general liability,
- 12 worker's compensation and health insurance policies, with RDI paying
- 13 the premiums.
- 14 • RDI paid for messenger expenses on behalf of Shake Shack and
- 15 Beachcomber.
- 16 • RDI paid for payroll expenses on behalf of Shake Shack and
- 17 Beachcomber.
- 18 • RDI sold one of its food trucks to satisfy a debt of RFS.
- 19 • Cavanaugh and Kosmides conducted extensive business for these
- 20 restaurants on the RDI server.

21 95. Cavanaugh and Kosmides also used their own time and energies in the
22 operation of these personal endeavors.

23 96. Cavanaugh and Kosmides were and continue to be personally enriched
24 as a result of this arrangement.

25 97. RDI also covered other administrative and operating expenses of The
26 Beachcomber at Crystal Cove, including loans believed to be in excess of
27 \$600,000.

28 98. Though Cavanaugh and Kosmides caused RDI to make these and other

1 significant contributions to the success of these restaurants, RDI did not benefit in
2 any way from the restaurants' success.

3 **J. RDI's Insider Payments To Kono Enterprises**

4 99. RDI made recurring monthly payments of approximately \$6,250 for
5 "consulting" from September 20, 2017 through the date of the bankruptcy petition
6 to Kono Enterprises, LLC ("Kono"), a limited liability company registered in the
7 State of California that is controlled by Kosmides.

8 100. Prior to that, RDI made recurring, biweekly payments of approximately
9 \$2,884.62 for "consulting" from August 2015 through September 2017 to Kono.

10 101. Prior to that, RDI paid Kono recurring, biweekly payments of
11 \$1,923.08 for "consulting" up through August 2015.

12 102. In total, Kono received no less than \$200,000 from RDI.

13 103. It is unclear what, if any, benefits RDI derived in exchange for these
14 payments to Kono. Nor is it clear how much money RDI steered into Kono.
15 Indeed, it is unclear what Kono's business is, though it is notable that Kosmides has
16 a racing team that bears the name Kono.

17 **K. Cavanaugh And Kosmides' Excessive And Unjustified Spending**
18 **Billed To The Company**

19 104. Cavanaugh and Kosmides engaged in a longstanding practice of using
20 RDI funds for personal expenditures unrelated to the business purpose of RDI and
21 Debtors.

22 105. Both Cavanaugh and Kosmides, for example, frequently expensed their
23 own medical treatment to RDI. On one expense report from December 2017,
24 Cavanaugh expensed costs relating to at least three separate medical visits (and put
25 another one on the Company credit card), including almost \$700 for a rental car
26 and a stay at the Marriott. RDI spent nearly \$60,000 per year on medical bills for
27 Cavanaugh and Kosmides.

28 106. There was no oversight for these expenses. When his assistant

1 questioned a \$3,500 charge for a surgery in November 2016, Cavanaugh refused to
2 answer any questions and told her to “Just reimburse.”

3 107. In fact, per the terms of his compensation package (which he himself
4 set), Cavanaugh was permitted to expense up to \$10,000 of “business expenses” per
5 month.

6 108. Cavanaugh granted himself liberal and unsupervised access to the
7 Company credit card.

8 109. Cavanaugh regularly authorized reimbursements for himself for
9 expensive meals, classified as “business meals,” to justify the expense on any
10 documentation.

11 110. In September 2017, Cavanaugh was reimbursed over \$14,000 for
12 artwork.

13 **L. Cavanaugh And Kosmides’s Unpaid Personal Loans From RDI**
14 **And Fraudulent Distributions**

15 111. To finance their lavish lifestyles, Cavanaugh and Kosmides used their
16 control of RDI to repeatedly grant sweetheart loans and “executive advances” to
17 themselves or for their own personal benefit.

18 112. As of December 3, 2017, the following advances, loans, and loan
19 interest to Cavanaugh and Kosmides appeared as “assets” on RDI’s balance sheet
20 (the “Personal Loans”):

Description	Balance Sheet as of 12/3/2017
DOUG CAVANAUGH	\$106,018.44
RALPH KOSMIDES	\$16,808.38
EXEC ADV-RLK 96&97 INCLUSIVE	\$18,567.55
EXECUTIVE ADVANCES	\$70,581.85
LOAN TO SHAREHOLDER-DC	\$349,839.31
LOAN TO SHAREHOLDER-RK	\$277,685.97
INTEREST ON DSC LOANS	\$187,782.84
EXEC ADV-DSC PRIOR YEARS	\$123,545.15
EXEC ADV-RLK-CURRENT	\$136,720.90

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1	INTEREST ON RLK LOANS	\$116,486.13
2	EXEC ADV-RLK PRIOR YEARS	\$95,314.98
3	EXEC ADV-DSC-CURRENT	\$191,431.37
4	Total	\$1,690,782.87

5 113. On or around July 25, 2018, less than two months before RDI initiated
6 bankruptcy proceedings, Cavanaugh and Kosmides caused RDI to alter its books to
7 re-characterize \$1,529,991.45 of the Personal Loans as capital distributions and to
8 “zero out” thousands of dollars in additional outstanding shareholder loans and
9 interest. Cavanaugh and Kosmides purported to backdate these alterations to
10 January 2, 2017.

11 114. This re-characterization was done without formal board action and
12 approval. Moreover, the purported reason for this re-characterization, that these
13 were distributions all along, is contradicted by other evidence, including the fact
14 that Cavanaugh and Kosmides did not pay taxes on these monies when they took
15 them from RDI.

16 115. At the time this reclassification occurred, Cavanaugh and Kosmides
17 knew RDI was insolvent and that they planned to file for bankruptcy. They took
18 these actions to try to conceal a significant asset of RDI from the bankruptcy court.
19 None of the schedules or other filings submitted by Cavanaugh and Kosmides
20 disclosed these loans or their removal from the books of the Company to the Court.

21 116. Neither Cavanaugh nor Kosmides has repaid any of the Personal Loans,
22 which remain due notwithstanding Cavanaugh and Kosmides’ efforts to reclassify
23 their personal borrowing as capital distributions in July 2018.

24 117. Moreover, Cavanaugh and Kosmides purported to take these insider
25 loans interest free, which is improper. RDI is entitled to prejudgment interest at the
26 statutory rate for these loans. *See, e.g., Home Sav. Bank, F.S.B. by Resolution Tr.*
27 *Corp. v. Gillam*, 952 F.2d 1152, 1161 (9th Cir. 1991) (upholding award of
28 prejudgment interest for “money improperly removed during a critical shortage of

1 capital,” noting that “[f]ailure to assess such interest would effectively award
2 [defendant] a severance benefit in the amount of interest gained on the money since
3 its removal from the Bank”); *United States v. Cal. State Bd. of Equalization*, 650
4 F.2d 1127, 1132 (9th Cir. 1981) (“Awards of pre-judgment interest are governed by
5 considerations of fairness, and are awarded when it is necessary to make the
6 wronged party whole.” (citation omitted)), *aff’d*, 456 U.S. 901 (1982); *Monsanto*
7 *Co. v. Hodel*, 827 F.2d 483, 485 (9th Cir. 1987) (“The effect of a refusal to grant
8 prejudgment interest in this case would be to allow an interest free loan to
9 appellants on funds belonging to [another]. Disallowance of interest would
10 encourage delay in payment.”).

11 118. Moreover, the books for RDI in 2017 that Cavanaugh and Kosmides
12 prepared, while RDI was insolvent and on the verge of bankruptcy, reflect
13 additional distributions of \$2,542,348.26 to Cavanaugh and \$1,696,929.30 to
14 Kosmides.

15 CAUSES OF ACTION

16 FIRST CLAIM FOR RELIEF

17 **(Against Cavanaugh and Kosmides)**

18 ***Breach of Fiduciary Duty***

19 119. The Trustee hereby incorporates all of the foregoing and subsequent
20 paragraphs as if alleged herein.

21 120. As the senior officers, directors, and controlling shareholders of RDI, at
22 all relevant times Cavanaugh and Kosmides each owed the duties of a fiduciary to
23 RDI and (because RDI was insolvent at all relevant times) its creditors. These
24 fiduciary duties prohibited Cavanaugh and Kosmides from undertaking or
25 participating in activities adverse to the interests of RDI and its creditors, and
26 obligated them to keep RDI and its creditors fully informed as to all matters
27 pertaining to their interests.

28 121. Because Cavanaugh and Kosmides were ultimately responsible for

1 overseeing the day-to-day business operations and financial performance of RDI,
2 and supervised all aspects of its financial affairs, at all relevant times, they were
3 aware of RDI's insolvent financial condition.

4 122. Cavanaugh and Kosmides nevertheless breached their fiduciary duties
5 to RDI and its creditors by engaging in misconduct including, but not limited to, the
6 following:

- 7 • Usurping the corporate opportunity to own and manage The
8 Beachcomber at Crystal Cove restaurant;
- 9 • Usurping the corporate opportunity to own The Shake Shack at Crystal
10 Cove restaurant;
- 11 • Usurping the opportunity to extend the lease in the Sub-
12 SubConcession Agreement;
- 13 • Transferring management of Shake Shack, along with the right to its
14 management fees, from RDI to Beachcomber Management;
- 15 • Using RDI funds and resources to prop up the Beachcomber Café at
16 the Malibu Pier;
- 17 • Usurping the corporate opportunity to own and manage the Lighthouse
18 Café;
- 19 • Devoting and/or transferring RDI financial resources, personnel and
20 assets to operate other restaurants, including Beachcomber, Shake
21 Shack, Lighthouse and Malibu Beachcomber;
- 22 • Devoting a significant portion of their time, energy, and resources to
23 the operation of the Non-Debtor Entities, to the detriment and neglect
24 of their duties at RDI;
- 25 • Expensing their excessive personal spending to RDI;
- 26 • Providing improper distributions to themselves;
- 27 • Granting themselves personal loans and salary advances in a manner
28 that was not in the best interest of and that damaged RDI and its

1 creditors and failing to repay their debts to the Company, and even
2 attempting to hide those debts and mischaracterize them as
3 distributions after the fact; and

- 4 • Granting an exclusive license agreement to RFS for lack of reasonably
5 equivalent value.

6 123. In so doing, Cavanaugh and Kosmides caused damages to RDI in
7 excess of \$35 million, plus prejudgment interest.

8 124. The wrongful conduct of Cavanaugh and Kosmides as alleged in this
9 cause of action was willful, wanton, malicious, oppressive, outrageous and
10 fraudulent, and justifies an award of punitive damages in an amount sufficient to
11 punish said defendants and deter future conduct of this type.

12 **SECOND CLAIM FOR RELIEF**

13 **(Against the Non-Debtor Entities)**

14 *Aiding and Abetting Breach of Fiduciary Duty*

15 125. The Trustee hereby incorporates all of the foregoing and subsequent
16 paragraphs as if alleged herein.

17 126. As set forth above, Cavanaugh and Kosmides breached their fiduciary
18 duties to RDI and its creditors by engaging in misconduct including, but not limited
19 to, the following:

- 20 • Usurping the corporate opportunity to own and manage The
21 Beachcomber at Crystal Cove restaurant;
- 22 • Usurping the corporate opportunity to own The Shake Shack at Crystal
23 Cove restaurant;
- 24 • Usurping the opportunity to extend the lease in the Sub-
25 SubConcession Agreement;
- 26 • Transferring management of Shake Shack, along with the right to its
27 management fees, from RDI to Beachcomber Management;
- 28 • Using RDI funds and resources to prop up the Beachcomber Café at

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- 1 the Malibu Pier;
- 2 • Usurping the corporate opportunity to own and manage the Lighthouse
- 3 Café;
- 4 • Devoting and/or transferring RDI financial resources, personnel and
- 5 assets to operate other restaurants, including Beachcomber, Shake
- 6 Shack, Lighthouse and Malibu Beachcomber;
- 7 • Devoting a significant portion of their time, energy, and resources to
- 8 the operation of the Non-Debtor Entities, to the detriment and neglect
- 9 of their duties at RDI;
- 10 • Expensing their excessive personal spending to RDI; and
- 11 • Granting an exclusive license agreement to RFS for lack of reasonably
- 12 equivalent value.

13 127. In so doing, Cavanaugh and Kosmides caused damages to RDI in

14 excess of \$35 million, plus prejudgment interest.

15 128. Cavanaugh and Kosmides collectively held controlling interests in, and

16 exercised complete control over the operations of, each of the Non-Debtor Entities.

17 Cavanaugh and Kosmides' knowledge of and participation in these breaches of

18 fiduciary duties may thus be attributed to each of the Non-Debtor Entities.

19 129. The breaches of fiduciary duties referenced herein were committed for

20 the benefit of the Non-Debtor Entities as well as for Cavanaugh and Kosmides.

21 Each of the Non-Debtor Entities accepted the benefits stemming from these

22 breaches.

23 130. The Non-Debtor Entities' participation in Cavanaugh and Kosmides'

24 breaches of fiduciary duty, as well as their acceptance of the benefits thereof, was a

25 substantial factor in causing harm to RDI. Indeed, without the Non-Debtor

26 Entities, Cavanaugh and Kosmides could not have committed the breaches of

27 fiduciary duties enumerated herein.

28 131. The wrongful conduct of the Non-Debtor Entities as alleged in this

1 cause of action was willful, wanton, malicious, oppressive, outrageous and
2 fraudulent, and justifies an award of punitive damages in an amount sufficient to
3 punish said defendants and deter future conduct of this type.

4 **THIRD CLAIM FOR RELIEF**

5 **(Against Cavanaugh and Kosmides)**

6 ***Avoidance of Actually Fraudulent Transfers Pursuant to 11 U.S.C. §***

7 ***548(a)(1)(A)***

8 132. The Trustee hereby incorporates all of the foregoing and subsequent
9 paragraphs as if alleged herein.

10 133. As described herein, Cavanaugh and Kosmides caused RDI to make
11 transfers of Company property to themselves or for their benefit, including their
12 other restaurants, and for other purposes that were not in the best interest of RDI
13 and that damaged RDI and its creditors, including but not limited to the following
14 (collectively, the “Transferred Assets”):

- 15 • The corporate opportunity to own and manage The Beachcomber at
16 Crystal Cove restaurant;
- 17 • Their own time and efforts, as well as the time and efforts of other
18 RDI personnel, for use in establishing and operating The Beachcomber
19 at Crystal Cove restaurant;
- 20 • Cash and resources for use in establishing and operating The
21 Beachcomber at Crystal Cove restaurant;
- 22 • The corporate opportunity to own The Shake Shack at Crystal Cove
23 restaurant;
- 24 • The corporate opportunity to manage The Shake Shack at Crystal
25 Cove restaurant;
- 26 • Usurping the opportunity to extend the lease in the Sub-
27 SubConcession Agreement;
- 28 • Their own time and efforts, as well as the time and efforts of other

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- 1 RDI personnel, for use in establishing and operating The Shake Shack
2 at Crystal Cove restaurant;
- 3 • Cash and resources for use in establishing and operating The Shake
4 Shack at Crystal Cove restaurant;
 - 5 • Their own time and efforts, as well as the time and efforts of other
6 RDI personnel, for use in establishing and operating the Beachcomber
7 Café at the Malibu Pier;
 - 8 • Cash and resources for use in establishing and operating the
9 Beachcomber Café at the Malibu Pier;
 - 10 • The corporate opportunity to own the Lighthouse Café;
 - 11 • The corporate opportunity to manage the Lighthouse Café;
 - 12 • Their own time and efforts, as well as the time and efforts of other
13 RDI personnel, for use in establishing and operating the Lighthouse
14 Café;
 - 15 • Cash and resources for use in establishing and operating the
16 Lighthouse Café;
 - 17 • Excessive salaries and benefits to themselves that were not in the best
18 interest of and that damaged RDI and its creditors;
 - 19 • Distributions to themselves or for their benefit and for other purposes
20 that were not in the best interest of and that damaged RDI and its
21 creditors;
 - 22 • Granting an exclusive license agreement to RFS for lack of reasonably
23 equivalent value.
 - 24 • Expenses to cover their personal spending in a manner that was not in
25 the best interest of and that damaged RDI and its creditors; and
 - 26 • Personal loans and salary advances to themselves in a manner that was
27 not in the best interest of and that damaged RDI and its creditors and
28 purportedly discharging this obligation and re-characterizing the loans

1 as distributions just two months before the bankruptcy filing.

2 134. These Transferred Assets should have, and would have, been property
3 of the RDI Estate, and the debts were incurred against property that should have, or
4 would have, been property of the RDI Estate.

5 135. RDI has been insolvent since at least 2005; that is, its debts exceeded
6 its assets since at least that time. Cavanaugh and Kosmides were both well aware
7 that RDI was insolvent – they exercised complete control over RDI’s finances.
8 Thus, at the time of the transfer of each of the Transferred Assets, RDI was
9 insolvent, or such transfers rendered RDI insolvent.

10 136. Cavanaugh and Kosmides knew that each of the Transferred Assets
11 constituted valuable assets that could have been used to build up RDI, or, at a
12 minimum, pay off its debts.

13 137. Rather than use the Transferred Assets for the benefit of RDI, however,
14 Cavanaugh and Kosmides used the Transferred Assets to enrich themselves and/or
15 build up other business enterprises in which they held a controlling interest.

16 138. As detailed herein, RDI did not receive reasonably equivalent value in
17 exchange for any of the Transferred Assets. Indeed, there was no legitimate
18 business purpose for RDI to transfer these assets.

19 139. Cavanaugh and Kosmides’ fraudulent intent is further evidenced by
20 their brazen and improper bookkeeping practices. RDI, under the direction of
21 Cavanaugh and Kosmides, kept two sets of financial records – one that was
22 accurate, and another that painted a rosier picture of the companies’ financial
23 wellbeing.

24 140. Further, Cavanaugh and Kosmides had fraudulent intent when they, for
25 example, unilaterally recharacterized more than one and a half million dollars’
26 worth of loans to themselves as “distributions,” thus “zeroing out” money they
27 themselves owed to the Company. They made these recharacterizations at a time
28 when they already knew that RDI was headed for bankruptcy, in an attempt to hide

1 these assets from the bankruptcy court.

2 141. The circumstances surrounding the transfers and fraudulent
3 bookkeeping practices as described herein evidence that the transfers were made,
4 and these debts incurred, with actual intent to hinder, delay or defraud RDI's
5 creditors.

6 142. These transfers and debts are thus avoidable pursuant to 11 U.S.C.
7 section 548(a)(1)(A). The transfers are believed to be an amount in excess of \$35
8 million, subject to proof.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Against Cavanaugh and Kosmides)**

11 ***Avoidance of Constructively Fraudulent Transfers Pursuant to 11 U.S.C.***

12 ***§ 548(a)(1)(B)***

13 143. The Trustee hereby incorporates all of the foregoing and subsequent
14 paragraphs as if alleged herein.

15 144. As described herein, Cavanaugh and Kosmides caused RDI to make
16 transfers of Company property to themselves or for their benefit and for other
17 purposes that were not in the best interest of RDI and that damaged RDI and its
18 creditors, including but not limited to the Transferred Assets.

19 145. The Transferred Assets should have, and would have, been property of
20 the RDI Estate, and the debts were incurred against property that should have, or
21 would have, been property of the RDI Estate.

22 146. RDI received less than reasonably equivalent value in exchange for the
23 Transferred Assets.

24 147. For reasons described herein, RDI was insolvent at all times relevant
25 for this action.

26 148. These transfers and debts had a prejudicial effect on RDI's financial
27 condition.

28 149. The transfers are thus avoidable pursuant to 11 U.S.C. section

1 548(a)(1)(B). The transfers are believed to be an amount in excess of \$35 million,
2 subject to proof.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Against All Defendants)**

5 ***Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 550 and 551***

6 150. The Trustee hereby incorporates all of the foregoing and subsequent
7 paragraphs as if alleged herein.

8 151. The avoidable transfers described in the Third and Fourth Causes of
9 Action, to the extent that the Trustee prevails in such causes of action, should be
10 avoided, recovered, and preserved for the benefit of the Estate as provided in 11
11 U.S.C. sections 550 and 551. In particular, RDI has a right to the transferred
12 property itself—including ownership and management of the Beachcomber, Shake
13 Shack, and Lighthouse restaurants, including all LLC interests, and to the lease
14 extension in the Sub-SubConcession Agreement—and all such property should be
15 held in constructive trust.

16 **SIXTH CLAIM FOR RELIEF**

17 **(Against All Defendants)**

18 ***Avoidance and Recovery of Actually Fraudulent Transfers Pursuant to 11 U.S.C.***
19 ***§ 544 and Cal. Civ. Code § 3439.04***

20 152. The Trustee hereby incorporates all of the foregoing and subsequent
21 paragraphs as if alleged herein.

22 153. Pursuant to 11 U.S.C. section 544, the Trustee may allege any cause of
23 action available under applicable state law to a creditor of the debtor, including
24 claims for relief under the California Uniform Voidable Transfers Act.

25 154. As described herein, Cavanaugh and Kosmides caused RDI to make
26 transfers of company property to themselves or for their benefit and for other
27 purposes that were not in the best interest of RDI and that damaged RDI and its
28 creditors, including but not limited to the Transferred Assets.

1 155. These Transferred Assets should have, and would have, been property
2 of the RDI Estate, and the debts were incurred against property that should have, or
3 would have, been property of the RDI Estate.

4 156. RDI has been insolvent since at least 2005; that is, its debts exceeded
5 its assets since at least that time. Cavanaugh and Kosmides were both well aware
6 that RDI was insolvent – they exercised complete control over RDI’s finances.

7 157. Cavanaugh and Kosmides knew that each of the Transferred Assets
8 constituted valuable assets that could have been used to build up RDI, or, at a
9 minimum, pay off its debts.

10 158. Rather than use the Transferred Assets for the benefit of RDI, however,
11 Cavanaugh and Kosmides used the Transferred Assets to enrich themselves and/or
12 build up other business enterprises in which they held a controlling interest.

13 159. As detailed herein, RDI did not receive reasonably equivalent value in
14 exchange for any of the Transferred Assets. Indeed, there was no legitimate
15 business purpose for RDI to transfer these assets.

16 160. Cavanaugh and Kosmides’ fraudulent intent is further evidenced by
17 their brazen and improper bookkeeping practices. RDI, under the direction of
18 Cavanaugh and Kosmides, kept two sets of financial records – one that was
19 accurate, and another that painted a rosier picture of the companies’ financial
20 wellbeing.

21 161. Further, Cavanaugh and Kosmides knew exactly what they were doing
22 when they, for example, unilaterally recharacterized more than one and a half
23 million dollars’ worth of loans to themselves as “distributions,” thus “zeroing out”
24 money they themselves owed to the Company. They made these
25 recharacterizations at a time when they already knew that RDI was headed for
26 bankruptcy, in an attempt to hide these assets from the bankruptcy court.

27 162. The circumstances surrounding the transfers and fraudulent
28 bookkeeping practices as described herein evidence that the transfers were made,

1 and these debts incurred, with actual intent to hinder, delay or defraud RDI's
2 creditors.

3 163. These transfers and debts are thus avoidable pursuant to California
4 Civil Code section 3439.04.

5 164. As a result of Cavanaugh and Kosmides's conduct, the Estate has been
6 damaged in an amount to be proven at trial, but believed to be in excess of \$35
7 million, and is entitled to the remedies set forth under California Civil Code section
8 3439.07, including but not limited to, provisional remedies and avoidance of the
9 transfers.

10 165. The wrongful conduct of Cavanaugh and Kosmides as alleged in this
11 cause of action, was willful, wanton, malicious, oppressive, outrageous and
12 fraudulent, and justifies an award of punitive damages in an amount sufficient to
13 punish said defendants and deter future conduct of this type.

14 **SEVENTH CLAIM FOR RELIEF**

15 **(Against All Defendants)**

16 ***Avoidance and Recovery of Constructively Fraudulent Transfers Pursuant to 11***
17 ***U.S.C. § 544 and Cal. Civ. Code § 3439.05***

18 166. The Trustee hereby incorporates all of the foregoing and subsequent
19 paragraphs as if alleged herein.

20 167. Pursuant to 11 U.S.C. section 544, the Trustee may allege any cause of
21 action available under applicable state law to a creditor of the debtor, including
22 claims for relief under the California Uniform Voidable Transfers Act.

23 168. As described herein, Cavanaugh and Kosmides caused RDI to make
24 transfers of company property to themselves or for their benefit and for other
25 purposes that were not in the best interest of RDI and that damaged RDI and its
26 creditors, including but not limited to the Transferred Assets.

27 169. These Transferred Assets should have, and would have, been property
28 of the RDI Estate, and the debts were incurred against property that should have, or

1 would have, been property of the RDI Estate.

2 170. RDI received less than reasonably equivalent value in exchange for
3 these transfers and debts.

4 171. For reasons described herein, RDI was insolvent at all times relevant
5 for this action.

6 172. These transfers and debts had a prejudicial effect on RDI's financial
7 condition.

8 173. These transfers and debts are thus avoidable pursuant to California
9 Civil Code section 3439.05.

10 174. As a result of Cavanaugh and Kosmides's conduct, the Estate has been
11 damaged in an amount to be proven at trial, but believed to be in excess of \$15
12 million, and is entitled to the remedies set forth under California Civil Code section
13 3439.07, including but not limited to, provisional remedies and avoidance of the
14 transfers.

15 175. The wrongful conduct of Cavanaugh and Kosmides as alleged in this
16 cause of action, was willful, wanton, malicious, oppressive, outrageous and
17 fraudulent, and justifies an award of punitive damages in an amount sufficient to
18 punish said defendants and deter future conduct of this type.

19 **EIGHTH CLAIM FOR RELIEF**

20 **(Against Cavanaugh and Kosmides)**

21 ***Recovery of Illegal Dividends under Cal. Corp. Code §§ 500, 501 and 506***

22 176. The Trustee hereby incorporates all of the foregoing and subsequent
23 paragraphs as if alleged herein.

24 177. At all times through the date on which RDI filed its Disclosure
25 Statement, Cavanaugh and Kosmides caused RDI to make shareholder distributions
26 to themselves or for their personal benefit (the "Distributions") in excess of the
27 amount allowable under California Corporations Code sections 500 *et seq.* In
28 doing so, at all relevant times Cavanaugh and Kosmides had knowledge of facts

1 indicating that RDI then was, or as a result of such distributions would be, unable
2 to meet its liabilities as they matured, and were aware of the impropriety of those
3 distributions given the insolvent financial state of RDI. *Fed. Sav. & Loan Ins.*
4 *Corp. v. Molinaro*, 901 F.2d 1490, 1493 (9th Cir. 1990).

5 **NINTH CLAIM FOR RELIEF**

6 **(Against All Defendants)**

7 ***Equitable Subordination of Claims Pursuant to 11 U.S.C. § 510(c)***

8 178. The Trustee hereby incorporates all of the foregoing and subsequent
9 paragraphs as if alleged herein.

10 179. As the key officers and persons in charge of RDI's business and
11 financial affairs, at all relevant times Cavanaugh and Kosmides each owed the
12 duties of a fiduciary to RDI, including the duties of undivided loyalty to RDI and to
13 act in its best interest, which prohibited them from undertaking or participating in
14 activities adverse to the interests of RDI and its creditors, and the duty to account to
15 RDI and keep it fully informed as to all matters pertaining to its interests. Because
16 Cavanaugh and Kosmides were ultimately responsible for overseeing the day-to-
17 day business operations and financial performance of RDI and directly supervised
18 all aspects of RDI's financial affairs, at all relevant times, they were aware of its
19 dire financial condition and insolvency. Despite this knowledge, Cavanaugh and
20 Kosmides caused RDI to make the above-described distributions to themselves or
21 for their benefit and to the other defendants in violation of RDI's rights and
22 obligations to its creditors. In so doing, Cavanaugh and Kosmides each breached
23 his fiduciary duties to RDI, and directly and proximately caused, or was a
24 substantial factor in causing, damage to RDI and its creditors in the amount of the
25 transfers made by RDI to them or for their own benefit and to the other defendants.

26 180. 11 U.S.C. section 510(c) provides:

27 Notwithstanding subsections (a) and (b) of this section,
28 after notice and a hearing, the court may--(1) under
principles of equitable subordination, subordinate for

1 purposes of distribution all or part of an allowed claim to
2 all or part of another allowed claim or all or part of an
3 allowed interest to all or part of another allowed interest.

4 181. At all relevant times, Cavanaugh and Kosmides engaged in inequitable
5 conduct toward RDI by pilfering the assets of an undercapitalized and insolvent
6 corporation for their own benefit, including the wrongful conduct described
7 throughout this Complaint, which has resulted in injury to RDI and its creditors.
8 Among other wrongful conduct, in breach of their fiduciary duties to RDI and its
9 creditors, Cavanaugh and Kosmides improperly placed their own interests (and the
10 interests of the Non-Debtor Entities) over the interests of RDI and its creditors.
11 This inequitable conduct has resulted in harm to RDI, its creditors and the RDI
12 Debtors' Estates in that RDI's general unsecured creditors are less likely to recover
13 the full amounts owed to them because of Cavanaugh and Kosmides' wrongful
14 conduct.

15 182. Principles of equitable subordination require that any and all claims,
16 whether or not yet filed of record, of Cavanaugh and Kosmides (and the Non-
17 Debtor Entities) against the RDI Debtors' Estates be equitably subordinated to the
18 allowed general unsecured claims against those Estates, and such equitable
19 subordination is consistent with the provisions and purposes of the Bankruptcy
20 Code.

21 183. Therefore, the Court should equitably subordinate any and all claims of
22 Cavanaugh, Kosmides, the Non-Debtor Entities against the RDI Debtors' Estates to
23 the allowed general unsecured claims against those Estates.

24 **TENTH CLAIM FOR RELIEF**

25 **(Against all Defendants)**

26 ***Permanent Injunction Pursuant to Cal. Civ. Code § 3439.07(a)(3)(A)***

27 184. The Trustee hereby incorporates all of the foregoing and subsequent
28 paragraphs as if alleged herein.

1 185. The applicable principles of equity dictate that Defendants be
2 permanently enjoined from directly or indirectly transferring, selling, assigning,
3 pledging, hypothecating, encumbering, dissipating, distributing or moving the
4 assets of the RDI Debtors' Estates which have been transferred to Defendants by
5 RDI via the machinations of Cavanaugh and Kosmides.

6 186. Therefore, the Court should permanently enjoin Defendants from
7 directly or indirectly transferring, selling, assigning, pledging, hypothecating,
8 encumbering, dissipating, distributing or moving the Transferred Assets of the RDI
9 Estates.

10 **ELEVENTH CLAIM FOR RELIEF**

11 **(Against all Defendants)**

12 ***Permanent Injunction Pursuant to Cal. Civ. Code § 3439.07(a)(3)(C)***

13 187. The Trustee hereby incorporates all of the foregoing and subsequent
14 paragraphs as if alleged herein.

15 188. The applicable principles of equity dictate that Defendants be
16 permanently enjoined from directly or indirectly transferring, selling, assigning,
17 pledging, hypothecating, encumbering, dissipating, distributing or moving their
18 own personal assets, except as necessary in the ordinary course of business or to
19 fulfill normal living expenses, until judgment in this proceeding has been satisfied.

20 189. Therefore, the Court should permanently enjoin Defendants from
21 directly or indirectly transferring, selling, assigning, pledging, hypothecating,
22 encumbering, dissipating, distributing or moving their own personal assets, except
23 as necessary in the ordinary course of business or to fulfill normal living expenses,
24 until judgment in this proceeding has been satisfied.

25 **TWELFTH CLAIM FOR RELIEF**

26 **(Against Cavanaugh and Kosmides)**

27 ***Breach of Contract***

28 190. The Trustee hereby incorporates all of the foregoing and subsequent

1 paragraphs as if alleged herein.

2 191. RDI entered into contracts with each of Cavanaugh and Kosmides,
3 whereby RDI agreed, at Defendants' request, to provide the Personal Loans to
4 Cavanaugh and Kosmides in exchange for their promise to repay the loans.

5 192. This agreement, whether express or implied, is evidenced by the
6 recording of salary advances and loans to Cavanaugh and Kosmides on RDI's
7 financial statements (during the time period that Cavanaugh and Kosmides
8 controlled RDI and prepared its financial statements), as well as communications
9 between Cavanaugh and Kosmides and RDI employees.

10 193. Cavanaugh and Kosmides have failed to repay the salary advances,
11 loans, and interest due to RDI under the agreements for the Personal Loans, and are
12 therefore in default.

13 194. Although Cavanaugh and Kosmides purported to discharge the
14 Personal Loans approximately two months prior to the bankruptcy filing when they
15 purported to re-characterize and backdate the loans, this conduct was a fraudulent
16 transfer. As such, it is voidable and these monies remain due and owing.

17 195. RDI is entitled to an amount to be proven at trial, but believed to be in
18 excess of \$1,690,782.87—\$1,029,198.96 as to Cavanaugh and \$661,583.91 as to
19 Kosmides. An accounting is necessary to ascertain the full amounts owed.

20 196. Moreover, RDI is entitled to prejudgment interest on these loans at the
21 statutory rate.

22 **THIRTEENTH CLAIM FOR RELIEF**

23 **(Against Cavanaugh and Kosmides)**

24 ***Money Lent***

25 197. The Trustee hereby incorporates all of the foregoing and subsequent
26 paragraphs as if alleged herein.

27 198. RDI is entitled to an amount to be proven at trial, but believed to be in
28 excess of \$1,690,782.87—\$1,029,198.96 as to Cavanaugh and \$661,583.91 as to

1 Kosmides. An accounting is necessary to ascertain the full amounts owed.

2 199. Accordingly, the Trustee seeks damages in an amount to be proven at
3 trial for the Personal Loans.

4 200. Moreover, RDI is entitled to prejudgment interest on these loans at the
5 statutory rate.

6 **FOURTEENTH CLAIM FOR RELIEF**

7 **(Against Cavanaugh and Kosmides)**

8 ***Open Book Account***

9 201. The Trustee hereby incorporates all of the foregoing and subsequent
10 paragraphs as if alleged herein.

11 202. Throughout the course of its relationship with Cavanaugh and
12 Kosmides, RDI has recorded the amounts due and the amounts paid by the parties
13 on the Personal Loans in RDI's financial records. The detailed statements recorded
14 by RDI were entered in the regular course of business in a reasonably permanent
15 manner.

16 203. RDI is entitled to an amount to be proven at trial, but believed to be in
17 excess of \$1,690,782.87—\$1,029,198.96 as to Cavanaugh and \$661,583.91 as to
18 Kosmides. An accounting is necessary to ascertain the full amounts owed.

19 204. Cavanaugh and Kosmides have not repaid the Personal Loans.

20 205. Moreover, RDI is entitled to prejudgment interest on these loans at the
21 statutory rate.

22 **FIFTEENTH CLAIM FOR RELIEF**

23 **(Against all Defendants)**

24 ***Violation of Cal. Penal Code § 496(c)***

25 206. The Trustee hereby incorporates all of the foregoing and subsequent
26 paragraphs as if alleged herein.

27 207. California Penal Code section 496(a) imposes criminal penalties
28 against any person “who buys or receives any property that has been stolen or that

1 has been obtained in any manner constituting theft or extortion, knowing the
2 property to be so stolen or obtained, or who conceals, sells, withholds, or aids in
3 concealing, selling, or withholding any property from the owner, knowing the
4 property to be so stolen or obtained.”

5 208. California Penal Code section 496(c) permits “[a]ny person who has
6 been injured by a violation of subdivision (a) . . . [to] bring an action for three times
7 the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and
8 reasonable attorney’s fees.”

9 209. As set forth above, Cavanaugh and Kosmides stole the Transferred
10 Assets.

11 210. Cavanaugh and Kosmides have received and withheld the Transferred
12 Assets from Debtors.

13 211. RDI Debtors’ Estates were damaged by the theft and withholding of the
14 Transferred Assets.

15 212. The foregoing conduct was the direct and proximate cause of the RDI
16 Debtors’ Estates’ damages in an amount to be determined at trial. Under California
17 Penal Code section 496(c), the RDI Debtors’ Estates are entitled to three times the
18 amount of their actual damages, plus costs and attorneys’ fees.

19 **SIXTEENTH CLAIM FOR RELIEF**

20 **(Against All Defendants)**

21 ***Accounting***

22 213. The Trustee hereby incorporates all of the foregoing and subsequent
23 paragraphs as if alleged herein.

24 214. The intermingling of funds and assets was substantial as between RDI
25 and all Defendants. There are frequent transfers of funds between the Parties.
26 RDI, under the direction of Cavanaugh and Kosmides, kept two sets of financial
27 records which further complicates determining the financial relationships among
28 the Parties. And generally acceptable principles of accounting were not followed.

1 215. A full and complete accounting is therefore necessary to determine the
2 amount of money, assets and property belonging to RDI and owed respectively to
3 RDI by each Defendant.

4 **SEVENTEENTH CLAIM RELIEF**

5 **(Against All Defendants)**

6 ***Constructive Trust***

7 216. The Trustee hereby incorporates all of the foregoing and subsequent
8 paragraphs as if alleged herein.

9 217. The Court should impose a constructive trust over all property
10 fraudulently transferred or business opportunities usurped by RDI. This
11 constructive trust necessarily includes ownership and management of the
12 Beachcomber, Shake Shack and Lighthouse restaurants, as permitted by applicable
13 law, including under California Civil Code section 2224.

14 **EIGHTEENTH CLAIM FOR RELIEF**

15 **(Against All Defendants)**

16 ***Misappropriation of Trade Secrets***

17 218. The Trustee hereby incorporates all of the foregoing and subsequent
18 paragraphs as if alleged herein.

19 219. RDI's trade secrets include its know-how, pricing, methods for
20 obtaining restaurant opportunities, and other insider knowledge for operating
21 period-specific restaurant operations.

22 220. These trade secrets derive independent economic value from not being
23 generally known to the public or to other persons who can obtain economic value
24 from its disclosure or use. These trade secrets are neither generally known nor
25 easily discoverable by RDI's competitors.

26 221. RDI developed these trade secrets through substantial time, expense,
27 effort and labor.

28 222. Defendants misappropriated trade secrets to develop and run competing

1 restaurants including Beachcomber, Shake Shack, and Lighthouse.

2 223. As a direct and proximate result of these misappropriations, Defendants
3 have been unjustly enriched and the Estate is entitled to recover that unjust
4 enrichment pursuant to Civil Code section 3426.3(a).

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, the Trustee, on behalf of the RDI Estate, prays for judgment
7 against the Defendants, and each of them, as follows:

- 8 1) Judgment against Defendants for compensatory and exemplary
9 damages in amounts to be determined at trial;
- 10 2) Avoidance and recovery of all fraudulent transfers as described
11 herein;
- 12 3) Judgment against Defendants for the recovery of the amount of
13 improper distributions to them or for their personal benefit in
14 amounts to be determined at trial;
- 15 4) Judgment equitably subordinating any and all claims, whether filed
16 of record or hereafter asserted, of the named and hereafter named
17 Defendants against the Estate to the allowed general unsecured
18 claims against the Estate;
- 19 5) A permanent injunction preventing the named and hereafter named
20 Defendants from directly or indirectly transferring, selling, assigning,
21 pledging, hypothecating, encumbering, dissipating, distributing, or
22 moving assets of the RDI Estate until judgment in this proceeding
23 has been satisfied;
- 24 6) A permanent injunction preventing the named and hereafter named
25 Defendants from directly or indirectly transferring, selling, assigning,
26 pledging, hypothecating, encumbering, dissipating, distributing, or
27 moving their personal assets, except as necessary in the ordinary
28 course of business or for normal living expenses, until judgment in

- 1 this proceeding has been satisfied;
- 2 7) For treble damages;
- 3 8) For punitive damages;
- 4 9) For prejudgment and post-judgment interest at the legal rate on all
- 5 damages and sums awarded to the Trustee, for the benefit of the
- 6 Estate;
- 7 10) For constructive trust, including over all transferred assets and
- 8 opportunities, to be held for the benefit of RDI;
- 9 11) For attorneys' fees and costs; and
- 10 12) For such other relief as the Court deems proper.

11

12 DATED: March 11, 2021

Respectfully submitted,

13 MILLER BARONDESS, LLP

14

15

16 By: /s/ Christopher D. Beatty

17 CHRISTOPHER D. BEATTY

18 Attorneys for Plaintiff Richard A.

19 Marshack, in his capacity as the duly

20 appointed Chapter 7 Trustee of the

21 Bankruptcy Estate of RUBY'S DINER,

22 INC.

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DEMAND FOR JURY TRIAL

1
2 Plaintiff Richard A. Marshack, in his capacity as the duly appointed Chapter 7
3 Trustee of the Bankruptcy Estate of Ruby’s Diner, Inc., hereby demands a trial by
4 jury.

5
6 DATED: March 11, 2021 Respectfully submitted,

7
8 MILLER BARONDESS, LLP

9
10 By: /s/ Christopher D. Beatty
11 CHRISTOPHER D. BEATTY
12 Attorneys for Plaintiff Richard A.
13 Marshack, in his capacity as the duly
14 appointed Chapter 7 Trustee of the
15 Bankruptcy Estate of RUBY’S DINER,
16 INC.

MILLER BARONDESS, LLP

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