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E-FILED
2/10/2017
FRESNO COUNTY SUPERIOR COURT
By: S. Garcia, Deputy

Attorneys for: Plaintiffs RICHARD V. GUNNER AND MARGARET S. GUNNER, INDIVIDUALLY AND AS TRUSTEES OF THE RICHARD V. GUNNER AND MARGARET S. GUNNER COMMUNITY PROPERTY TRUST, UNDER THE TRUST AGREEMENT DATED MARCH 11, 2002

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO, UNLIMITED DIVISION

RICHARD V. GUNNER AND MARGARET S. GUNNER, INDIVIDUALLY AND AS TRUSTEES OF THE RICHARD V. GUNNER AND MARGARET S. GUNNER COMMUNITY PROPERTY TRUST, UNDER THE TRUST AGREEMENT DATED MARCH 11, 2002,

Plaintiffs,

v.

GEORGE T. ANDROS, INDIVIDUALLY AND AS TRUSTEE OF THE GEORGE T. ANDROS 2011 LIVING TRUST, EXECUTED ON OCTOBER 28, 2011, and DOES 1 to 20,

Defendants.

Case No. 17CECG00445

COMPLAINT FOR BREACH OF FIDUCIARY DUTY, DISSOLUTION OF PARTNERSHIP, ACCOUNTING, APPOINTMENT OF RECEIVER, BREACH OF CONTRACT, EXPULSION OF PARTNER, PARTITION OF REAL PROPERTY; DEMAND FOR JURY TRIAL

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COME NOW Plaintiffs RICHARD V. GUNNER AND MARGARET S. GUNNER, individually and as trustees of THE RICHARD V. GUNNER AND MARGARET S. GUNNER COMMUNITY PROPERTY TRUST, UNDER THE TRUST AGREEMENT DATED MARCH 11, 2002 ("Gunner Trust") (collectively referred to herein as "Plaintiffs") who allege as follows:

I.

PARTIES AND JURISDICTION.

1. Plaintiff the Gunner Trust is a general partner with a 50% partnership interest in the Gunner & Andros Investments Partnership ("GAIP") which currently does and, at all times relevant times, has done business in Fresno, California.

2. Defendant GEORGE T. ANDROS ("Andros") resides in Monterey County, California. Andros, at all relevant times, has been the trustee of Defendant the GEORGE T. ANDROS 2011 LIVING TRUST, EXECUTED ON OCTOBER 28, 2011("the Andros Trust"). The Andros Trust is also a general partner with a 50% partnership interest in GAIP. At all relevant times, the Andros Trust has done business in Fresno, California.

3. From 2011 through the present, GAIP has had its principal place of business at 555 West Shaw Avenue, Suite B, Fresno, California.

4. The true names and capacities of the Defendants named herein as DOES 1 through 20, inclusive, whether an individual, corporation, or otherwise, are unknown to the Plaintiffs who, therefore, sue such Defendants by fictitious names pursuant to Code of Civil Procedure §474. Alternatively, such DOE Defendants are persons or entities whose identities are known to Plaintiffs but about whom sufficient facts are not known that would support the assertion by Plaintiffs of a claim at this time. When Plaintiffs obtain information supporting a claim against any such DOE Defendants, they will seek leave to amend this complaint and will allege appropriate charging allegations.

5. Plaintiffs are informed and believe, and thereon allege, that the Defendants, and each of them, are agents and/or employees and/or parents, subsidiaries or sister

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corporations of each other, and are responsible for the acts complained of herein, unless otherwise alleged in this complaint.

II.

BACKGROUND ALLEGATIONS.

6. Richard V. Gunner and Andros have done business together since the late 1960's. (And Plaintiffs Richard and Margaret S. Gunner, after their marriage in 1980, have done business together with Andros since their marriage through the present.) Their business investments have included buildings and financial assets that have historically been treated as partnership property. In December 2011, the partners executed a General Partnership Agreement memorializing their various historical partnership interests, reaffirming their partnership and designating their general partnership name. That agreement is attached hereto as Exhibit "A" ("the Partnership Agreement").

7. As recited in the Partnership Agreement, from approximately 1983 through 2011, the partners had been engaged in the development, management, and leasing of commercial properties, including those properties located at 5200, 5250, and 5260 North Palm Avenue, Fresno, California ("Fig Garden Financial Center") and at 499/555 West Shaw Avenue, Fresno California, which properties the partnership continues to own. As evidenced by the Partnership Agreement, in December 2011, the partners, the Gunner Trust and the Andros Trust, settled upon the general partnership name of Gunner and Andros Investments Partnership ("GAIP"). The restated purpose of GAIP was and is to own, operate and manage the Fig Garden Financial Center and other properties which include 499/555 West Shaw Avenue.

8. Over several decades, GAIP has constructed, operated, and eventually sold various office buildings. In addition, Gunner, individually, and Andros, individually, own, as tenants in common, a residential mixed use development site of approximately 4.53 acres adjoining Fig Garden Financial Center in Fresno, which is currently improved with 44 vacant multi-family units and one single-family unit. (Fresno County APNs 417-240-03; 417-240-37; 417-231-16; 417-231-17 ("the 4.53 Acre Development Site").

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9. In late 2011, the Gunner Trust suspended its own monthly draws to help with GAIP's diminishing cash flow. The Andros Trust made it clear that it needed its entire draw and, therefore, its $50,000 monthly draws continued. Later, by August 2015, as cash flow concerns persisted and became a growing problem, the Gunner Trust objected to further draws by the Andros Trust. By then, the imbalance in capital accounts had grown to approximately $4.3 million in favor of the Andros Trust, to the detriment of the Gunner Trust. Currently, the imbalance stands at approximately $3.16 million.

10. Within the last few years, the Gunner Trust has been required to contribute money to fund ongoing GAIP capital needs but has not been receiving any draws. In most instances, the Andros Trust has been unable to make equal contributions, if any at all. As it stands for the Andros Trust to return its excess draws back to GAIP and restore equilibrium to the GAIP capital account, the Andros Trust would need to contribute at least $3.16 million back to GAIP. Alternatively, the Andros Trust would need to pay the Gunner Trust one-half this amount outside of the partnership. Plaintiffs are informed and believe that, because of the Andros Trust's feeble financial condition, it cannot pay to GAIP and/or the Gunner Trust what is needed to restore equilibrium to the partnership capital account.

11. A real estate loan from Northwestern Mutual Life Insurance Company to GAIP in the amount of $38,500,000, which it secured by the Fig Garden Financial Center in Fresno, California, comes due on June 15, 2017. Given the Andros Trust's current feeble financial condition, refinancing is not possible and, worse, the Andros Trust has resisted efforts to come to terms with both its own financial condition and that of the partnership to permit the sale of the Fig Garden Financial Center that would be in the best interests of GAIP and of its partners.

12. The parties have come to an impasse. Moreover, the Andros Trust now refuses to acknowledge that it owes the Gunner Trust at least $1.58 million on account of its excess draws and to repay the Gunner Trust's excess financial contributions to GAIP. The Andros Trust refuses to sign a revised Partnership Agreement acknowledging its debts and giving priority out of the proceeds from the sale of the Fig Garden Financial Center to the repayment of

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its debt owed to the Gunner Trust. The disagreements between the partners cannot be resolved absent Court intervention. The Andros Trust has agreed with the Gunner Trust to liquidate the partnership properties and to dissolve the partnership. However, though the parties are in agreement that the partnership must be dissolved, the Andros Trust has been unable and/or unwilling to take appropriate action to accomplish the timely sale of the partnership assets and to dissolve the partnership, which places GAIP and its partners in jeopardy of suffering severe waste and loss. Without consulting Plaintiffs, Andros is marketing the GAIP properties to third parties outside the listing agreement. To make matters worse, Andros does not communicate with Plaintiffs and refuses to respond personally to repeated calls from his partner. Plaintiffs are informed and believe that the Andros Trust is stalling and deferring the necessary sale of partnership assets in order to forestall what are believed to be substantial negative tax consequences that the Andros Trust will experience following the sale of the partnership assets. In addition to all of the above, liens based on Andros's personal liabilities and judgment liens against him personally have been recorded against and/or are being threatened to be recorded against partnership property.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty.)

13. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 12, above, as though fully set forth herein.

14. As a partner, the Andros Trust owes a fiduciary duty to Plaintiffs. Those duties include, without limitation, the obligation to treat Plaintiffs with good faith and to deal fairly with them, to make full disclosures to its partner of all material relevant information bearing upon the partnership and not to engage in actions that have the intent or effect of impairing the value of the partnership assets. The Andros Trust also has a duty of loyalty to the Gunner Trust to ensure the equitable distribution of partnership assets to its partner.

15. Through the actions and inaction of the Andros Trust, as described above, it has breached its fiduciary duty and duty of loyalty to Plaintiffs. Specifically, in attempting to stall the sale of the Fig Garden Financial Center, in refusing to acknowledge its debt owed to the

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Gunner Trust, and in refusing to equalize the partnership capital account, the Andros Trust has breached its fiduciary duty owed to Plaintiffs.

16. As a result of the breaches of Defendant's fiduciary duty, Plaintiffs have suffered compensatory damages, in an amount according to proof, for the diminution in value of the partnership assets, the adverse tax and financial consequences that Plaintiffs will suffer as a result of the inaction by Defendant, and the loss caused by virtue of the imbalance in the partners' contributions and the imbalance in the parties' capital account.

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17. These actions and the inaction on the part of Defendant were undertaken in conscious disregard of Plaintiffs' rights, with malice, oppression, and fraud. As a result, Plaintiffs are entitled to an award of punitive damages, in an amount according to proof.

SECOND CAUSE OF ACTION

(Dissolution and Accounting.)

18. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 17, above, as though fully set forth herein.

19. As a result of the Andros Trust's conduct, as described above, GAIP should be dissolved. Plaintiffs are informed and believe, and thereon allege, that the Andros Trust is in agreement that the partnership should be dissolved as a result of the parties' impasse. As part of the dissolution of the partnership, an accounting should be ordered by the Court to determine the proper status of the capital and other accounts in the partnership. To the extent said accounting shows that there is an imbalance in the financial contributions made by the respective partners, the Andros Trust must be compelled to account for and to pay monies back to the Gunner Trust.

20. There is no adequate remedy at law for an accounting and the losses cannot be properly ascertained without a court-ordered accounting.

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THIRD CAUSE OF ACTION

(Receivership Against Defendant The Andros Trust, as a Partner in GAIP.)

21. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 20, above, as though fully set forth herein.

22. Plaintiffs and Defendant are the sole general partners of GAIP. Because the financial difficulties that Defendant the Andros Trust is experiencing has negatively impacted the partnership, GAIP has suffered financially and must sell its assets.

23. Due to the acts of Defendant, including the refusal to cooperate with the sale of the partnership properties, the value of the partnership assets are iminently in danger of significant diminution in value.

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24. The funds and property associated with GAIP are in further danger of loss or waste due to the fact that Defendant has refused to comply with the terms of the Partnership Agreement and with the original business strategy charted by the partners. Unless a receiver is appointed and instructed to take control of the financial management of GAIP, the partnership will be materially injured through waste caused by mismanagement of the remaining assets. Consequently, a receiver should be appointed immediately to prevent further damage to GAIP's assets and to Plaintiffs' interest, as a general partner in GAIP.

FOURTH CAUSE OF ACTION

(Breach of Contract.)

25. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 24, above, as though fully set forth herein.

26. In the four years last past, Plaintiffs have supplied capital to the partnership in a manner consistent with the Partnership Agreement requirements and have ceased drawing partnership funds. Plaintiffs have performed all of their obligations required of them under the Partnership Agreement.

27. Defendant the Andros Trust has breached the Partnership Agreement by failing to bring the GAIP capital account into balance, by failing to repay its partner, Plaintiffs,

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for their capital contributions, and by failing and refusing to cooperate in a business-like fashion with the orderly liquidation of the partnership assets.

28. As a result of the breach of the Partnership Agreement by the Andros Trust, Plaintiffs are owed compensatory damages in an amount according to proof, but not less than $1,580,000.00.

FIFTH CAUSE OF ACTION

(Judicial Expulsion of Partner.)

29. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 28, above, as though fully set forth herein

30. Plaintiffs have tried to proceed with the profitable operation of the partnership despite reoccurring disagreements with Defendant the Andros Trust over business strategy and other fundamental management decisions. However, because of reoccurring disagreements and dissension between the partners over the operation, sale, tax consequences, and management of partnership assets, the partners have become deadlocked. For months, the parties have attempted to work out accounting discrepancies without final resolution and have been unable to cooperate with the sale of the Fig Garden Financial Center. Because of this impasse, it is not reasonably practical to carry on business in conformity with the Partnership Agreement.

31. Consequently, pursuant to Corporations Code §16601, Defendant the Andros Trust, as a general partner of GAIP, should be expelled as a partner by judicial determination.

SIXTH CAUSE OF ACTION

(Partition of Real Property.)

32. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 31, above, as though fully set forth herein.

33. The 4.53 Acre Development Site is owned individually by Gunner and by Andros as 50/50 tenants in common and is contiguous to the Fig Garden Financial Center, owned by GAIP. Gunner and Andros are unable to agree with regard to the proper management of the

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4.53 Acre Development Site. Accordingly, as a 50% owner of the 4.53 Acre Development Site, Gunner hereby seeks equitable partition of the real property to sever the tenancy in common that now exists.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a receiver to be appointed until such time as the partnership is dissolved;

2. For dissolution of the GAIP partnership and an accounting of all of its financial affairs;

3. For consequential damages suffered by Plaintiffs in an amount according to proof, but not less than $1,580,000.00;

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4. For interest under Civil Code § 3289 and under any other statute by which interest may be recovered, for all amounts owed by Defendant to Plaintiffs;

5. For a judicial determination that Defendant the Andros Trust be expelled from GAIP as a general partner;

6. For punitive damages, in an amount according to proof;

7. For reasonable attorney's fees and costs as permitted under the Partnership Agreement and under any applicable statute; and

8. For such other and further relief as the Court deems just.

Dated: February 10, 2017

WHELAN LAW GROUP,
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By Walter W. Whelan,
Attorneys for RICHARD V. GUNNER AND MARGARET S. GUNNER, INDIVIDUALLY AND AS TRUSTEES OF THE RICHARD V. GUNNER AND MARGARET S. GUNNER COMMUNITY PROPERTY TRUST, UNDER THE TRUST AGREEMENT DATED MARCH 11, 2002

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JURY DEMAND

Plaintiffs request that each and every factual issue raised by each cause of action alleged above be tried by a jury, to the extent permitted by law.

Dated: February 10, 2017

WHELAN LAW GROUP,
A Professional Corporation

By Walter W. Whelan,
Attorneys for RICHARD V. GUNNER AND MARGARET S. GUNNER, INDIVIDUALLY AND AS TRUSTEES OF THE RICHARD V. GUNNER AND MARGARET S. GUNNER COMMUNITY PROPERTY TRUST, UNDER THE TRUST AGREEMENT DATED MARCH 11, 2002

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EXHIBIT "A"

GENERAL
PARTNERSHIP
AGREEMENT
GUNNER & ANDROS INVESTMENTS

This General Partnership Agreement is entered into on December 27, 2011 by RICHARD V. GUNNER and MARGARET S. GUNNER, AS TRUSTEES OF THE RICHARD V. GUNNER and MARGARET S. GUNNER COMMUNITY PROPERTY TRUST under the Trust Agreement dated March 11, 2002 (a "Partner") and GEORGE T. ANDROS, AS TRUSTEE OF THE GEORGE T. ANDROS 2011 LIVING TRUST executed on October 28, 2011 (a "Partner").

Since approximately 1983, the Partners have been engaged in an office development, management, and leasing business at 5200, 5250, and 5260 North Palm Avenue, Fresno, California as a California general partnership (the "Partnership") using various names, including, without limitation Gunner & Andros Investments, Shaw-Palm Property Partnership, Fig Garden Financial Center, Richard V. Gunner and George Andros, and other names involving the individual names of the above-named Trustees of the Partners or their revocable trusts. The Partnership is about to become the surviving entity in a merger with other partnerships owned by the Partners and the Partners now accordingly desire to clarify, restate, and memorialize the terms of their agreement concerning the Partnership, including, without limitation, the name of the Partnership.

The Partner's acknowledge that they have been and are a general partnership under the laws of the State of California and agree as follows:

1. Name. The name of the Partnership is Gunner & Andros Investments.

2. Office. The Partnership's place of business is 555 West Shaw Avenue, Suite B-4, Fresno, California.

3. Purpose. The purpose of the Partnership has been and is to own, operate, and manage those certain office buildings located at 5200, 5250, and 5260 North Palm Avenue, Fresno, California located on Fresno County Assessor's Parcel Numbers 417-140-27, 417-140-26, and 417-231-19 (the "Real Property"). The Real Property has been and is Partnership property. It is acknowledged that additional office properties owned by related partnerships will soon be added to the Partnership through the aforementioned mergers.

4. Capital. The Partnership's capital consists of all assets currently reflected on the books and records of the Partnership and includes the Real Property.

5. Ownership; Control. The partners each equally divide profits and losses, each have a one-half (1/2) interest in the capital of the Partnership, and each have the same vote as the other partner in exercising control, management, and direction of the Partnership.

6. Incorporation of Other Provisions. All other rights, powers, obligations, and duties of the partners shall be governed by the California version of the Uniform Partnership Act, Corporations Code, Sections 15001-15045, as the same may be amended from time to time.

7. Notice. The Partnership shall give appropriate notice to governmental agencies and third parties of its name and file a GP-1 with the California Secretary of State.

IN WITNESS WHEREOF, the partners have executed this agreement as of the date first shown above.

RICHARD V. GUNNER and MARGARET S. GUNNER, AS TRUSTEES OF THE RICHARD V. GUNNER and MARGARET S. GUNNER COMMUNITY PROPERTY TRUST under the Trust Agreement dated March 11, 2002

By: _____
RICHARD V. GUNNER, Trustee

By: _____
MARGARET S. GUNNER, Trustee

THE GEORGE T. ANDROS 2011 LIVING TRUST executed on October 28, 2011

By: _____
GEORGE ANDROS, Trustee