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4 Attorney for Defendants Todd Mikles, Etienne  
Locoh, SCMG Liquidation, Inc. (formerly known as  
5 Sovereign Capital Management Group, Inc.), SSMF  
Liquidation, LLC, (formerly known as Sovereign  
6 Strategic Mortgage Fund, LLC),  
GCL, LLC, Infinity Urban Century, LLC and  
7 Sovereign Capital Management Holdings, LLC

8  
9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF ORANGE, CIVIL COMPLEX CENTER

12 ROHINTON T. ARESH, a.k.a. ROY ARESH as )  
beneficiary of GREIT Liquidating Trust, a )  
13 terminated Maryland Trust on behalf of himself )  
and all others similarly situated, )

14 Plaintiffs. )

15 v. )

16 GARY H. HUNT, et al., )

17 Defendants. )

Case No. 30-2018-00982195

Assigned for All Purposes to:  
Hon. Randall J. Sherman  
Department CX-105

ANSWER OF DEFENDANTS TODD  
MIKLES, ETIENNE LOCOH, SCMG  
LIQUIDATION, INC., SSMF  
LIQUIDATION, LLC, INFINITY URBAN  
CENTURY, LLC, GCL, LLC, AND  
SOVEREIGN CAPITAL MANAGEMENT  
HOLDINGS, LLC TO PLAINTIFFS' FIFTH  
AMENDED CLASS ACTION [PROPOSED]  
COMPLAINT

Complaint filed: March 3, 2018

1 **GENERAL DENIAL**

2 Pursuant to Code Civ. Proc. §431.30, Defendants Todd Mikles, Etienne Locoh, SCMG  
3 Liquidation, Inc. (fka Sovereign Capital Management Group, Inc.), SSMF Liquidation, LLC (fka  
4 Sovereign Strategic Mortgage Fund, LLC), Infinity Urban Century, LLC, GCL, LLC, and Sovereign  
5 Capital Management Holdings, LLC, generally deny each and every allegation contained in Plaintiffs’  
6 Fifth Amended Class Action [Proposed] Complaint (“5AC”), and deny that Plaintiffs state a claim upon  
7 which relief can be granted, that Plaintiffs have been damaged in the sums alleged, or in any sum, or at  
8 all, and deny that Plaintiffs are entitled to any relief from these answering Defendants.

9 **AFFIRMATIVE DEFENSES**

10 By way of affirmative defenses to the allegations of the 5AC, this answering Defendant allege as  
11 follows:

12 **FIRST AFFIRMATIVE DEFENSE**

13 (Failure to State a Cause of Action)

14 1. The 5AC and each cause of action alleged therein fails to state facts sufficient to constitute a  
15 cause of action upon which relief may be granted against these answering Defendants. Discovery is still  
16 ongoing, and Defendants reserve the right to supplement or amend this defense.

17 **SECOND AFFIRMATIVE DEFENSE**

18 (Statute of Limitations)

19 2. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the applicable  
20 statute of limitations. Plaintiffs were informed of the risks and the terms related to Plaintiffs  
21 investment, Plaintiffs were informed of the roles of NNN Realty Investors, LLC and Daymark  
22 Properties Realty, Inc. and the facts regarding the subject transactions leading up to the transaction, at  
23 the time of the transaction, and after the transactions through numerous written disclosures made  
24 directly to Plaintiffs including informational letters to the investors, an informational website set up for  
25 the investors for the express purpose of keeping the investors informed as to the transactions of the  
26 Trust, and/or public filings with the Securities and Exchange Commission (“SEC”), and Plaintiffs  
27 accepted distributions related to the Trustees’ decisions regarding the subject transactions under the  
28 Trust Agreement without objection. Plaintiffs filed this lawsuit in 2018 and each of the alleged sales of

1 interests in real property occurred in 2012; therefore, Plaintiffs failed to bring a breach of fiduciary duty  
2 claim against NNN Realty Investors, LLC, Daymark Properties Realty, Inc., and these answering  
3 Defendants within two (CCP §339(1)), three (CCP §338(d)), or four years (CCP §343) under California  
4 law, three years under Virginia law (Va. Code Ann. §8.01-248), four years under Texas law (TEX.  
5 CIV. PRAC. & REM. CODE §16.004(a)(5)), and five years under Illinois law (735 ILCS 5/13-205).  
6 On April 12, 2021, Plaintiffs filed 7 securities claims based on the SSMF Note (as that term is defined  
7 in the 5AC, and attached to the 5AC as Exhibit B) more than 5 years after the alleged acts or  
8 transaction in April 15, 2015, and more than 2 years after Plaintiffs alleged they discovered the claims  
9 (Cal. Corp. Code §25506(b)) when Plaintiff previously alleged that his attorney discovered the “true  
10 facts” regarding the SSMF Note in December 2017. (Plaintiffs’ Complaint, ¶112 [“The true facts  
11 remained unknown to Plaintiffs and the Class until December 2017 when Plaintiffs’ counsel  
12 investigated the \$12,000,000 promissory note which remained outstanding.”]). Plaintiff’s securities  
13 claims based on federal law were filed outside of the three-year statute of repose (15 U.S.C. §78r(c))  
14 which cannot be tolled. Plaintiffs’ claim for fraudulent transfer was filed outside of four years of the  
15 transfer (Civ. Code §3439.09) and outside of one year after the alleged discovery (Civ. Code  
16 §3439.09); claims based on transfers seven years after the transfer are barred by the statute of repose  
17 (Civ. Code §3439.09(c)). Discovery is still ongoing, and Defendants reserve the right to supplement or  
18 amend this defense.

### 19 **THIRD AFFIRMATIVE DEFENSE**

20 (Damages Caused by Others)

21 3. Plaintiffs’ alleged damages, if any, were caused by persons other than these answering  
22 Defendants. Discovery is still ongoing, and Defendants reserve the right to supplement or amend this  
23 defense.

### 24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Unjust Enrichment)

26 4. Plaintiffs made a highly speculative investment whereby they agreed to terms in an offering  
27 memorandum that included the appointment of directors, which became trustees, and Plaintiffs received  
28 distributions related to their investment based on decisions made by those directors/trustees without

1 objection. Plaintiffs would be unjustly enriched in any recovery on the 5AC, or any cause of action  
2 alleged therein, against these answering Defendants. Discovery is still ongoing, and Defendants reserve  
3 the right to supplement or amend this defense.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Indemnification)

6 5. To the extent Plaintiffs suffered the injuries alleged or any injuries, these answering  
7 Defendants are entitled to full indemnification. Defendants are alleged to have acted by, through, or for  
8 NNN Realty Investors, LLC and Daymark Properties Realty, Inc. as the result of IUC-SOV, LLC's  
9 purchase of the stock of Daymark Realty Advisors, Inc. from Grubb & Ellis Company on August 11,  
10 2011, and to the extent Defendants acted by, through or for NNN Realty Investors, LLC or Daymark  
11 Properties Realty, Inc. for anything involving Plaintiffs, Defendants are entitled to indemnification  
12 from NNN Realty Investors, LLC, Daymark Properties Realty, Inc., Daymark Residential  
13 Management, Inc., Daymark Realty Advisors, Inc., IUC-SOV, LLC, or any agents of Plaintiffs for any  
14 actions related to Plaintiffs. Discovery is still ongoing, and Defendants reserve the right to supplement  
15 or amend this defense.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 (Laches)

18 6. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the doctrine of  
19 laches. Given the disclosures regarding the transactions alleged in the 5AC through informational  
20 letters to the investors, an informational website set up for the investors for the express purpose of  
21 keeping the investors informed as to the transactions of the Trust, and/or public filings with the United  
22 States Securities and Exchange Commission at the time of the transactions, Plaintiffs unreasonably  
23 delayed in asserting Plaintiffs' rights related to these transactions, and because of this delay Defendants  
24 are prejudiced in their ability to defend the claims, including but not limited to, the impact to the  
25 availability of evidence and witnesses. Discovery is still ongoing, and Defendants reserve the right to  
26 supplement or amend this defense.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 (Lack of Standing)

3 7. Plaintiffs lack standing to bring claims on behalf of the G REIT Liquidating Trust, Inc., on  
4 behalf of other beneficiaries, and on behalf of themselves against these answering Defendants based on  
5 the terms provided in the Agreement and Declaration of Trust dated January 22, 2008 (the “Trust  
6 Agreement”). Further, any claims alleged against these Defendants belong to the Trust, the real party in  
7 interest, and not the beneficiaries of the Trust, such that the beneficiaries are not the proper parties to  
8 bring these claims. Moreover, there was no collusion between the Trustees and these answering  
9 Defendants with the intent to violate any fiduciary duties of the Trustees for their own financial  
10 advantage, such that the beneficiaries are not the proper parties to bring this lawsuit. Discovery is still  
11 ongoing, and Defendants reserve the right to supplement or amend this defense.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 (Consent)

14 8. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the doctrine of  
15 consent. Plaintiffs were informed of the risks and the terms related to Plaintiffs investment, Plaintiffs  
16 were informed of the roles of NNN Realty Investors, LLC and Daymark Properties Realty, Inc. and the  
17 facts regarding the subject transactions leading up to the transaction, at the time of the transaction, and  
18 after the transactions through numerous written disclosures made directly to Plaintiffs including  
19 informational letters to the investors, an informational website set up for the investors for the express  
20 purpose of keeping the investors informed as to the transactions of the Trust, and/or public filings with  
21 the SEC, and Plaintiffs accepted distributions related to the Trustees’ decisions regarding the subject  
22 transactions under the Trust Agreement without objection. Discovery is still ongoing, and Defendants  
23 reserve the right to supplement or amend this defense.

24 **NINTH AFFIRMATIVE DEFENSE**

25 (Waiver)

26 9. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the doctrine of  
27 waiver. Plaintiffs were informed of the risks and the terms related to Plaintiffs investment, Plaintiffs  
28 were informed of the roles of NNN Realty Investors, LLC and Daymark Properties Realty, Inc. and the

1 facts regarding the subject transactions leading up to the transaction, at the time of the transaction, and  
2 after the transactions through numerous written disclosures made directly to Plaintiffs including  
3 informational letters to the investors, an informational website set up for the investors for the express  
4 purpose of keeping the investors informed as to the transactions of the Trust, and/or public filings with  
5 the SEC, and Plaintiffs accepted distributions related to the Trustees' decisions regarding the subject  
6 transactions under the Trust Agreement without objection. Discovery is still ongoing, and Defendants  
7 reserve the right to supplement or amend this defense.

8 **TENTH AFFIRMATIVE DEFENSE**

9 (Ratification)

10 10. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the doctrine of  
11 ratification. Plaintiffs were informed of the risks and the terms related to Plaintiffs investment,  
12 Plaintiffs were informed of the roles of NNN Realty Investors, LLC and Daymark Properties Realty,  
13 Inc. and the facts regarding the subject transactions leading up to the transaction, at the time of the  
14 transaction, and after the transactions through numerous written disclosures made directly to Plaintiffs  
15 including informational letters to the investors, an informational website set up for the investors for the  
16 express purpose of keeping the investors informed as to the transactions of the Trust, and/or through  
17 public filings with the SEC, and Plaintiffs accepted distributions related to the Trustees' decisions  
18 regarding the subject transactions under the Trust Agreement without objection. Discovery is still  
19 ongoing, and Defendants reserve the right to supplement or amend this defense.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 (Estoppel)

22 11. Any recovery on the 5AC, or any cause of action alleged therein, is barred by the doctrine of  
23 estoppel. Plaintiffs were informed of the risks and the terms related to Plaintiffs investment, Plaintiffs  
24 were informed of the roles of NNN Realty Investors, LLC and Daymark Properties Realty, Inc. and the  
25 facts regarding the subject transactions leading up to the transaction, at the time of the transaction, and  
26 after the transactions through numerous written disclosures made directly to Plaintiffs including  
27 informational letters to the investors, an informational website set up for the investors for the express  
28 purpose of keeping the investors informed as to the transactions of the Trust, and/or public filings with

1 the SEC, and Plaintiffs accepted distributions related to the Trustees' decisions regarding the subject  
2 transactions under the Trust Agreement without objection. At all times Plaintiffs understood that  
3 Defendants were not parties to any agreements or in any relationship with Plaintiffs related to their  
4 investment, and knew at all times that Defendants were separate from NNN Realty Investors, LLC,  
5 Daymark Properties Realty, Inc., Daymark Realty Advisors, Inc. IUC-SOV, LLC, and the trustee  
6 defendants, and that Defendants had no personal liability to Plaintiffs. Plaintiffs claimed that they  
7 received distributions from the subject transactions, and they did not object or return those  
8 distributions, and that they have relied upon Tyrone Wynfield and Kenneth Catanzarite as it relates to  
9 Plaintiffs' investment, not NNN Realty Investors, LLC, Daymark Properties Realty, Inc., or any of the  
10 trustees, or Defendants. Discovery is still ongoing, and Defendants reserve the right to supplement or  
11 amend this defense.

#### 12 **TWELFTH AFFIRMATIVE DEFENSE**

13 (Authority to Act)

14 12. For any acts alleged in the 5AC by NNN Realty Investors, LLC, Daymark Properties Realty,  
15 Inc., or any of these answering Defendants, to the extent these answering Defendants acted, they had  
16 authority to act. Plaintiffs were informed of the risks and the terms related to Plaintiffs investment,  
17 Plaintiffs were informed of the roles of NNN Realty Investors, LLC and Daymark Properties Realty,  
18 Inc. and the facts regarding the subject transactions leading up to the transaction, at the time of the  
19 transaction, and after the transactions through numerous written disclosures made directly to Plaintiffs  
20 including informational letters to the investors, an informational website set up for the investors for the  
21 express purpose of keeping the investors informed as to the transactions of the Trust, and/or public  
22 filings with the SEC, and Plaintiffs accepted distributions related to the Trustees' decisions regarding  
23 the subject transactions under the Trust Agreement without objection. Discovery is still ongoing, and  
24 Defendants reserve the right to supplement or amend this defense.

#### 25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 (Actions Justified)

27 13. For any acts alleged in the 5AC by NNN Realty Investors, LLC, Daymark Properties Realty,  
28 Inc., or any of these answering Defendants, to the extent these answering Defendants acted, their

1 actions were justified. Plaintiffs were informed of the risks and the terms related to Plaintiffs  
2 investment, Plaintiffs were informed of the roles of NNN Realty Investors, LLC and Daymark  
3 Properties Realty, Inc. and the facts regarding the subject transactions leading up to the transaction, at  
4 the time of the transaction, and after the transactions through numerous written disclosures made  
5 directly to Plaintiffs including informational letters to the investors, an informational website set up for  
6 the investors for the express purpose of keeping the investors informed as to the transactions of the  
7 Trust, and/or public filings with the SEC, and Plaintiffs accepted distributions related to the Trustees'  
8 decisions regarding the subject transactions under the Trust Agreement without objection. Discovery is  
9 still ongoing, and Defendants reserve the right to supplement or amend this defense.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (Privilege)

12 14. For any acts alleged in the 5AC by NNN Realty Investors, LLC, Daymark Properties Realty,  
13 Inc., or any of these answering Defendants, to the extent these answering Defendants acted, their  
14 actions were privileged to the extent Defendants acted in the marketplace as a buyer, seller, or agent for  
15 a buyer or seller of real estate or real estate interests in competition with Plaintiffs, Defendants acted in  
16 good faith to protect their own financial interest. Discovery is still ongoing, and Defendants reserve the  
17 right to supplement or amend this defense.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 (Failure to Mitigate Damages)

20 15. Any recovery on the 5AC, or any cause of action alleged therein, is barred because Plaintiffs  
21 failed to mitigate damages. Plaintiffs were informed of the risks and the terms related to Plaintiffs  
22 investment, Plaintiffs were informed of the roles of NNN Realty Investors, LLC and Daymark  
23 Properties Realty, Inc. and the facts regarding the subject transactions leading up to the transaction, at  
24 the time of the transaction, and after the transactions through numerous written disclosures made  
25 directly to Plaintiffs including informational letters to the investors, an informational website set up for  
26 the investors for the express purpose of keeping the investors informed as to the transactions of the  
27 Trust, and/or public filings with the SEC, and Plaintiffs accepted distributions related to the Trustees'  
28



1 decisions regarding the subject transactions under the Trust Agreement without objection. Discovery is  
2 still ongoing, and Defendants reserve the right to supplement or amend this defense.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 (Lack of Adequate Investigation)

5 16. Any recovery on the 5AC, or any cause of action alleged therein, is barred because Plaintiffs  
6 filed without adequate investigation, and the claims are unreasonable, frivolous, and meritless.  
7 Defendants are entitled to an award of reasonable attorneys' fees and costs incurred in defending  
8 against this action as alleged alter egos of NNN Realty Investors, LLC and Daymark Properties Realty,  
9 Inc. Discovery is still ongoing, and Defendants reserve the right to supplement or amend this defense.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 (Settlement and Release)

12 17. Plaintiffs' claims have been settled and released in the separate purchase and sale agreements  
13 for the transactions alleged in the 5AC sellers and buyers alleged in the 5AC, and in the Settlement  
14 Agreement between G REIT Liquidating Trust, Inc. and SSMF related to the SSMF Note. Discovery is  
15 still ongoing, and Defendants reserve the right to supplement or amend this defense.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 (Distribution of Payments)

18 18. Plaintiffs received a distribution of all payments made under each of the subject purchase and  
19 sale agreements related to the transactions alleged in the 5AC, and the settlement agreement related to  
20 the SSMF Note. Discovery is still ongoing, and Defendants reserve the right to supplement or amend  
21 this defense.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 (Parol Evidence Rule)

24 19. Any recovery on the 5AC, or any cause of action alleged therein related to the SSMF Note, is  
25 barred by the parol evidence rule. At the time the parties entered into the SSMF Note it was intended to  
26 be the full agreement between the parties. Discovery is still ongoing, and Defendants reserve the right  
27 to supplement or amend this defense.  
28

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 (Reservation of Additional Defenses)

3 20. Defendants reserve the right to raise additional affirmative defenses. The parties have not  
4 completed discovery or the investigation of the claims. Therefore, Defendants could discover additional  
5 information that support additional affirmative defenses and reserve the right to raise those affirmative  
6 defenses.

7 **RELIEF REQUESTED**

8 WHEREFORE, Defendants pray for judgment as follows:

- 9 1. Plaintiffs take nothing by the Fifth Amended Complaint;  
10 2. The Fifth Amended Complaint be dismissed with prejudice and judgment entered for  
11 Defendants;  
12 3. Defendants be awarded attorneys' fees and costs in defending Plaintiffs' claims; and  
13 4. For such further relief that the Court deems proper.  
14

15 Dated: December 27, 2022

16 By: /s/ Thomas E. Walling  
17 Thomas E. Walling

18 Attorney for Defendants Todd Mikles, Etienne Locoh,  
19 SCMG Liquidation, Inc. (formerly known as Sovereign  
20 Capital Management Group, Inc.), SSMF Liquidation, LLC,  
21 (formerly known as Sovereign Strategic Mortgage Fund,  
22 LLC), GCL, LLC, Sovereign Capital Management Holdings,  
23 LLC, and Infinity Urban Century, LLC  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County aforesaid, over the age of eighteen years, and not a party to the  
4 within entitled action. My business address is 27201 Puerta Real, Mission Viejo, CA 92691. On  
December 27, 2022, I served the following documents:

5 ANSWER OF DEFENDANTS TODD MIKLES, ETIENNE LOCOH, SCMG  
6 LIQUIDATION, INC., SSMF LIQUIDATION, LLC, INFINITY URBAN CENTURY, LLC,  
GCL, LLC, AND SOVEREIGN CAPITAL MANAGEMENT HOLDINGS, LLC TO  
7 PLAINTIFFS' FIFTH AMENDED CLASS ACTION [PROPOSED] COMPLAINT

8 on the parties in this action as follows:

<p>9 Kenneth J. Catanzarite kcatanzarite@catanzarite.com Catanzarite Law Corporation 2331 West Lincoln Avenue Anaheim, CA 92801</p>	<p>Attorneys For Plaintiffs</p>
<p>10 Joseph C. Campo, Esq. Daniel G. Bath, PC, Esq. LEWIS BRISBOIS BISGAARD &amp; SMITH LLP 633 West 5th Street, Suite 4000 Los Angeles, California 90071 Facsimile: (213) 250-7900 Joe.Campo@lewisbrisbois.com Daniel.Bath@lewisbrisbois.com (Via Electronic Service Only)</p>	<p>11 Attorneys for Defendants Gary H. Hunt; W. Brand Inlow; Edward A. Johnson; D. Fleet Wallace and Gary Wescombe</p>

12  **(BY MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons  
13 at the addresses listed above:

14  deposited the sealed envelope with the United States Postal Service, with the postage fully  
15 prepaid

16  placed the envelope for collection and mailing, following our ordinary business practices. I  
17 am readily familiar with this business's practice for collecting and processing  
18 correspondence for mailing. On the same day that correspondence is placed for collection  
19 and mailing, its deposited in the ordinary course of business with the United States Postal  
20 Service, in a sealed envelope with postage fully prepaid.

21  **(BY EMAIL)** I caused such document(s) to be transmitted, without error, to the email addresses(s) set  
22 forth above on the same date as herein stated.

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[X] (BY ELECTRONIC SERVICE) I served the documents on the persons set forth above by electronic-service at the addresses listed below through One Legal, LLC, the authorized vendor of the Superior Court.

Executed on December 27, 2022, at Mission Viejo, California.



Electronically signed 12-27-22

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THOMAS E. WALLING