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<p>YIN YEE ETHEL CHOI,</p> <p>Plaintiff,</p> <p>v.</p> <p>ACCULUX CONSTRUCTION LLC, C LAND REALTY CO, C LAND REFERRAL AGENCY LLC, THOMAS CHOI and JASMINE CHOI</p> <p>Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY</p> <p>DOCKET #: BER-L-_____-23</p> <p><u>CIVIL ACTION</u></p> <p>COMPLAINT WITH JURY DEMAND</p>
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Plaintiff Yin Yee Ethel Choi (“Plaintiff”), by way of her attorneys Kates, Nussman, Ellis, Farhi & Earle, LLP, brings this Complaint against Acculux Construction LLC, C Land Realty Co, C Land Referral Agency LLC, Thomas Choi a/k/a Tom Choi and Jasmine Choi:

THE PARTIES

1. Plaintiff Yin Yee Ethel Choi is an individual residing in Bergen County, New Jersey.¹
2. Defendant Acculux Construction LLC (“Acculux”) is a New Jersey limited liability company with a business address of 25 C Legion Drive, Bergenfield, New Jersey and is a licensed New Jersey home improvement contractor.

¹ The Plaintiff is of no relation to Defendant Thomas Choi or Defendant Jasmine Choi

3. Defendant Thomas Choi a/k/a Tom Choi is an individual who upon information and belief resides in Leonia, New Jersey and is the Managing Member of Defendant Acculux Construction, LLC.

4. Defendant C Land Realty Co is a New Jersey corporation with a business address of 222 Bridge Plaza South, Suite 580, Fort Lee, New Jersey, is a licensed New Jersey real estate brokerage (License # 1110031) and is an affiliate of Defendant C Land Referral Agency LLC.

5. Defendant C Land Referral Agency LLC is a New Jersey limited liability company with a business address of 222 Bridge Plaza South, Suite 580, Fort Lee, New Jersey, is a licensed New Jersey real estate referral company (License # 1326762) and is an affiliate of Defendant C Land Realty Co.²

6. Defendant Jasmine Choi is an individual who upon information and belief resides in Leonia, New Jersey and is a licensed New Jersey real estate salesperson (License #1326303) and is an agent of Defendants C Land Realty CO and C Land Referral Agency LLC.

FACTS COMMON TO ALL COUNTS

Choi Defendants solicit Plaintiff's participation in the Joint Venture

7. Defendants Thomas Choi and Jasmine Choi (collectively referred to herein as the "Choi Defendants") are married as husband and wife.

8. In or about October of 2021, Defendants Thomas Choi and Jasmine Choi acted in concert to solicit Plaintiff's investment in a real estate joint venture. (the "Joint Venture")

9. Defendants Thomas Choi and Jasmine Choi represented to the Plaintiff the essential terms of the Joint Venture were that Plaintiff would finance the purchase of a residential property

² Defendants C Land Realty Co and C Land Referral Agency LLC are collectively referred to herein as "C Land Realty"

which Defendant Thomas Choi's company Acculux Construction, LLC would renovate and upon sale of the property the Plaintiff and the Choi Defendants would split the difference between the sale price and purchase price 50/50.

Plaintiff's Purchase of the Property

10. Shortly thereafter Defendants Thomas Choi and Jasmine Choi informed Plaintiff they had identified 14 MacArthur Avenue, Closter, New Jersey (the "Property") as a prospective property for the Joint Venture and that the Property could be purchased for \$1,150,000.00.

11. In reliance upon Defendants Thomas Choi and Jasmine Choi's stated intentions to honor the aforesaid terms for the Joint Venture, Plaintiff agreed to proceed with the purchase of the Property.

12. Plaintiff did not have any contact with the seller of the Property and instead Defendants Thomas Choi and Jasmine Choi communicated and corresponded with the seller on Plaintiff's behalf.

13. After the Defendants Thomas Choi and Jasmine Choi had negotiated all essential terms including the purchase price on her behalf, Plaintiff engaged independent counsel to represent her in the closing of the purchase of the Property.

14. On October 26, 2021 Plaintiff entered into a contract for the purchase of the Property (the "Purchase Contract") which was provided to Plaintiff by her independent counsel.

15. The Purchase Contract provided for a purchase price of \$980,000.00.

The Illicit Finder's Fee paid by Plaintiff to Acculux Construction

16. Plaintiff asked the Choi Defendants why the Purchase Contract provided for a purchase price of \$980,000.00 as opposed to the \$1,115,000.00 purchase price Plaintiff had been led to believe the Choi Defendants had negotiated with the seller of the Property.

17. The Choi Defendants responded by telling the Plaintiff that the \$170,000.00 difference had to be paid to Acculux as a finder's fee (the "Finder's Fee") for identifying the Property.

18. The Choi Defendants instructed the Plaintiff to refrain from informing the seller of the Property that Plaintiff was going to be paying the \$170,000.00 Finder's Fee to Acculux.

19. On December 2, 2021 Plaintiff closed on the purchase of the Property.

20. On or about December 7, 2021, Plaintiff paid the \$170,000.00 Finder's Fee to Acculux at the direction of the Choi Defendants.

The Renovation Proposal and Joint Venture Agreement

21. In or about January of 2022 the Choi Defendants advised Plaintiff the renovation of the Property would take three (3) months to complete and the construction work would cost \$300,000.00 which would represent the full extent of the Choi Defendants' capital contribution to the Joint Venture.

22. On or about January 17, 2022 Defendants Thomas Choi and Jasmine Choi presented Plaintiff with a proposal for the renovation of the Property (the "Renovation Proposal") bearing Acculux' letterhead.

23. In relevant part, the Renovation Proposal provided Acculux would “furnish all materials (except as noted) and perform all labor necessary to complete the . . . Residential Renovation.”

24. The Renovation Proposal further specified that the “*Duration of construction will be three months (working time) the start date.*”

25. The Renovation Proposal set forth a detailed itemization of all construction work which Acculux was to perform at the Property in addition to the following terms:

- a) A total estimated cost of \$275,000.00 with a “contingency” of “approx. ten percent of total budget.”;
- b) an “Initial Lien in the amount of \$100,000.00” was to be “placed at the beginning of construction”;
- c) a “Second Lien in the amount of \$100,000.00” was to be “placed after the completion of rough-ins.”;
- d) A “Third Lien in the amount of \$75,000.00” was to be “placed after completion of paint work.”; and
- e) costs of construction were to be “received at sale/closing (all liens will be released)”;

26. The Renovation Proposal further provided:

“Any alterations or deviations from the above specifications involving extra cost of material or labor will be executed upon written order for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing. Only items specified in itemized list set forth in this contract are included in base cost.”;

and

“All workmanship will be guaranteed for one year commencing from the completion date. Furthermore, this warranty will cover all work completed by sub contractors and sub-subcontractors. All materials will carry manufacturer warranties.”

27. The Renovation Proposal was executed on January 18, 2022.

28. On or about January 18, 2022 the Choi Defendants presented Plaintiff with a Real Estate Joint Venture Agreement. (the “Joint Venture Agreement”)

29. The Joint Venture Agreement discussed a joint venture between Plaintiff and Acculux the purpose of which was “Invest in a specific real estate project located at 14 Mac Arthur Avenue, Closter, New Jersey 07624. More specifically, to purchase, renovate, and sell the land and single family residence located at 14 Mac Arthur Avenue.”

30. The Joint Venture Agreement contained a provision captioned “**Capital**” stating “The contributions from each of the Joint Venturers, for the purpose of this Joint Venture, is the sum set after the name of each Joint Venturer as follows:

Acculux Construction LLC	Design/Construction	\$300,000.00	(fifty thousand U.S. Dollars) (Est)
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Ethel Choi Lee	Land/Existing Home	\$1,150,000.00	(one million one hundred fifty thousand U.S. dollars)”
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31. The Joint Venture Agreement designated the “respective interest in the Joint Venture owned by each Joint Venturer” as “Acculux Construction LLC 30” and “Ethel Choi Lee 70.”

32. The Joint Venture Agreement provided “net profits as they accrue...shall be distributed between the Joint Venturers as follows: Acculux Construction LLC 50 and Ethel Choi Lee 50.”

33. The Joint Venture Agreement stated the “duties of Acculux Construction LLC are:
to locate and obtain right to purchase the property for development.
to design and complete construction to prepare for sale of the property
to coordinate with sales team until sale of property is completed.”
34. The Joint Venture Agreement stated the “duties of Ethel Choi Lee are:
“to contribute capital in the amount of \$1,150,000.00 (one million one
hundred fifty thousand U.S. Dollars) as a silent partner. These funds will be
used to purchase the land and existing home.”
35. The Joint Venture Agreement was executed on or about January 18, 2022.

The C Land Realty Listing Agreement

36. On or about February 1, 2022 Defendant Jasmine Choi provided Plaintiff with an Exclusive Listing Agreement between Broker and Seller from C Land Realty. (the “Listing Agreement”)
37. The Listing Agreement identified Plaintiff as the Property “Owner” and C Land Realty as the “Transaction Broker” and Defendant Jasmine Choi was identified as a “licensee” and “authorized representative” of C Land Realty.
38. The Listing Agreement further provided Jasmine Choi and C Land Realty would endeavor to procure a purchaser for the Property at the “listed price” of \$1,850,000.00 and that Jasmine Choi and C Land Realty would be entitled to compensation in the form of a four (4%) commission on the sale of the Property.
39. Plaintiff signed the Listing Agreement on February 9, 2022.

The Contract for Sale of the Property by Plaintiff

40. Shortly thereafter the Choi Defendants informed the Plaintiff they had identified prospective purchasers for the Property at an agreed upon purchase price of \$1,850,000.00.

41. The Choi Defendants engaged attorney Sung Min Kim, Esq. of Kim, Choi & Kim, P.C. to represent Plaintiff in the sale of the Property.

42. On or about February 25, 2022 Defendant Thomas Choi visited Plaintiff's home and asked Plaintiff to sign several documents to proceed with the sale of the Property and the Joint Venture.

43. Among the documents which Defendant Thomas Choi asked Plaintiff to sign was a mortgage in the amount of \$300,000.00 in favor of Thomas Choi's construction business Acculux Construction, LLC. (the "Mortgage")

44. Also among the documents which Defendant Thomas Choi asked Plaintiff to sign was a standard form Real Estate Sales Contract (hereinafter the "Contract for Sale") for the sale of the Property to Purchasers Ho Jun Youn and Bokyung Kim (the "Purchasers").

45. Plaintiff signed the Mortgage and Contract for Sale.

46. The Contract for Sale provided for a purchase price of \$1,850,000.00 with a \$370,000.00 deposit, with the balance due at the time of closing.

47. The Contract for Sale identified Defendants Jasmine Choi and C Land Realty as Seller's broker for the sale of the Property.

48. In or around late February or early March of 2022, Defendant Tom Choi and the Purchasers began negotiating a Specification Sheet (the "Specifications Sheet") for the renovation of the Property.

49. The Specification Sheet bears Acculux' letterhead and was finalized on or about

March 3, 2022.

50. The Specification Sheet sets forth various items of renovation and construction work to be performed at the Property.

51. On or about March 10, 2022 the Choi Defendants directed Plaintiff to sign a Rider to the Contract for Sale (the “Rider”) which unbeknownst to the Plaintiff had been negotiated by attorney Sung Min Kim, Esq. without any input from the Plaintiff.

52. Section 7. of the Rider referenced the renovation of the Property stating in relevant part:

“Since the premises is still under construction/renovation at the time of the Contract the inspection provisions under the contract shall be amended to allow buyer to conduct an inspections [sic] of the premises within 5 days of notification from the Seller that the premises is completed as per the attached specification sheet dated March 1, 2022 and to furnish reports and list of inspection concerns to Seller within 7 days thereafter.”

53. Section 7. of the Rider includes a handwritten notation adding “And as modified by Specification Sheet dated March 3, 2022.”

54. Section 24. of the Rider provided the closing would take place on or about June 30, 2022 or whenever i) the construction/renovation of the Property was completed, and ii) Seller obtains a Certificate of Occupancy for the Property.

55. Plaintiff signed the Rider

Attorney Sung Min Kim, Esq. and Thomas Choi record the mortgage on the Property without Plaintiff’s knowledge or consent

56. On March 11, 2022, attorney Sung Min Kim, Esq. recorded the Mortgage against the Property with the Bergen County Clerk without Plaintiff’s knowledge or consent.

**Defendants Thomas Choi and Acculux take nineteen
(19) months to complete the renovation of the Property**

57. Defendants Thomas Choi and Acculux failed to complete the renovation of the Property within three (3) months.

58. Instead, it took over nineteen (19) months for Defendants Thomas Choi and Acculux to complete the construction and renovation work itemized on the Renovation Proposal and Specifications Sheet.

59. A Certificate of Occupancy for the Property was not issued by the Borough of Closter until August 16, 2023.

**Defendants Thomas Choi and Jasmine Choi attempt
to change the deal and perpetrate a “bait and switch” on the Plaintiff**

60. As time went by Plaintiff was saddled with carrying costs for the Property including municipal property taxes which were paid exclusively by Plaintiff.

61. In or about March of 2023 the Choi Defendants informed Plaintiff that due to the cost of the construction/renovation of the Property, Plaintiff would not be receiving any profit from the sale of the Property.

62. Plaintiff was confused as the Choi Defendants had previously explained to her that consistent with the terms of the Joint Venture Agreement the renovation and construction work would cost \$300,000.00 and the Joint Venture partners were going to split the profit from the sale of the Property.

63. Plaintiff had on numerous occasions discussed her understanding of “profit” with the Choi Defendants as being the difference between the \$1,850,000.00 sale price and the \$1,150,000.00 that Plaintiff paid for the Property (consisting of the \$980,000.00 purchase price and the \$170,000.00 Finder’s Fee paid to Acculux).

64. Plaintiff grew alarmed at the position taken by the Choi Defendants and the amount of time it was taking Thomas Choi and Acculux to complete the renovation work.

65. In or about April of 2023 the Choi Defendants ceased communication with the Plaintiff and refused to provide plaintiff with any updates on the progress of the renovation of the Property.

**Plaintiff engages counsel to represent her interests
in the Joint Venture and sale of the Property**

66. In June of 2023 Plaintiff engaged the undersigned law firm to represent her in the sale of the Property and with respect to the Joint Venture.

67. The undersigned law firm assumed control of the Purchaser’s deposit and the closing file from attorney Sung Kim Min, Esq.

68. The undersigned law firm communicated with Defendant Thomas Choi and counsel for the Purchasers regarding the progress of the renovation of the Property in an effort to expedite the closing of sale of the Property.

69. The undersigned law firm arranged for the Purchasers to inspect the Property with the assistance of a professional home inspection service on August 21, 2023.

70. Following the inspection on August 21, 2023 Purchasers’ attorney circulated an inspection report and a punch list (the “Punch List”) of construction items yet to be completed by

Defendants' Thomas Choi and Acculux.

71. Following the August 21, 2023 inspection of the Property and the circulation of the Punch List counsel for the Purchasers informed the undersigned counsel for Plaintiff that the Purchasers were amenable to closing subject to i) Plaintiff providing Purchasers with a warranty of the renovation and construction work signed by Defendants Thomas Choi and Acculux, and ii) Plaintiff committing to the completion of all remaining Punch List items either before or after closing.

72. In late August/early September 2023 the undersigned counsel for Plaintiff requested Defendants Thomas Choi and Acculux i) confirm they would complete the Punch List items, ii) deliver a one (1) year warranty of Acculux' construction work to the Buyers, and iii) execute a discharge of the Mortgage to facilitate the closing of the sale of the Property.

Defendants Thomas Choi and Acculux attempt to hold Plaintiff's \$1,115,000.00 investment hostage by obstructing the closing of sale of the Property

73. On or about September 19, 2023 Defendant Thomas Choi informed the undersigned law firm he had expended \$559,284.43 on the construction and renovation of the Property thereby exceeding the \$300,000.00 construction cost estimate he had initially provided to Plaintiff which was restated in the Renovation Proposal and Joint Venture Agreement by \$259,284.43.

74. Defendant Thomas Choi demanded Plaintiff absorb the 86.43% cost overrun by relinquishing her half of the proceeds of the sale of the Property.

75. Defendant Thomas Choi refused to sign a one (1) year warranty of the construction and renovation work and further refused to execute a discharge of the Mortgage and insisted he

would only provide a Mortgage discharge if Plaintiff acquiesced and agreed to relinquish her share of the net proceeds of sale of the Property.

Closing of sale of the Property

76. On September 26, 2023 Plaintiff and Purchasers entered into a post-closing agreement to facilitate the closing of the sale of the Property:

- a) Plaintiff agreed to address all remaining Punch List items with \$50,000.00 of the closing proceeds held back in in escrow and not released until the Punch List items were resolved to Purchaser's reasonable satisfaction. (the "Repair Escrow");
- b) Plaintiff agreed to use her best efforts to secure a one (1) year guarantee of Acculux' workmanship, along with a lien waiver from Acculux and an index of manufacturer's warranties for any appliances and equipment or materials installed at the Property by Acculux.

77. On September 27, 2023 counsel for the Choi Defendants and Acculux attempted to derail the closing by serving counsel for Plaintiff, Counsel for Purchasers and the Purchasers' title company/settlement agent North Bergen Title Agency with a notice claiming Plaintiff was in default of repayment obligations arising under the Mortgage and a related promissory note.

78. Notwithstanding the Choi Defendants' outlandish position Plaintiff had defaulted upon the Mortgage and related promissory note, the Choi Defendants and

Acculux persisted in their refusal to provide a payoff statement for the Mortgage.

79. The Mortgage is deficient on its face and does not specify an interest rate which made it difficult for Plaintiff and the settlement agent to estimate a payoff figure.

80. Nonetheless the Purchasers' title company and settlement agent agreed to proceed with the closing subject to holding back a \$450,000.00 escrow to secure the discharge of the Mortgage. (the "Mortgage Escrow")

81. On September 27, 2023 Plaintiff closed on the sale of the Property.

Disposition of Proceeds of Sale of the Property and completion of Punch List repairs

82. At closing Plaintiff incurred \$93,960.00 of closing costs inclusive of a \$74,000.00 broker's commission paid to Defendants Jasmine Choi and C Land Realty, realty transfer fees and recording fees.

83. After deducting the \$93,960.00 of closing costs from the purchase price of \$1,850,000.00, and adjusting for pre-paid property taxes and the \$450,000.00 Mortgage Escrow, Plaintiff received \$1,150,000.00 at time of closing.

84. On or about October 24, 2023 Plaintiff agreed to the release of \$315,000.00 from the Mortgage Escrow to the Choi Defendants with a full reservation of Plaintiff's rights and without prejudice to Plaintiff's claims or defenses arising in connection with the Joint Venture Agreement, at equity or law.

85. On or about October 24, 2023 the Choi Defendants delivered an executed Discharge of the Mortgage to North Bergen Title Agency upon receipt of which the settlement agent released the Mortgage Escrow disbursing \$315,000.00 to counsel for the Choi Defendants and the balance of \$135,000.00 to the undersigned counsel for Plaintiff.

86. As of this writing the Choi Defendants and Acculux have addressed some but not all of the Punch List repair items and the Purchasers have yet to authorize the release of the Repair Escrow.

87. The Choi Defendants and Acculux persist in their refusal to provide a one (1) year

warranty of Acculux' workmanship, a lien waiver and index of manufacturer's warranties for appliances installed at the Property.

88. The Choi Defendants and Acculux persist in their demand Plaintiff absorb the alleged construction cost overruns and relinquish her share of the profit from the sale of the Property.

89. Plaintiff and the undersigned law firm have agreed to hold the remaining \$291,338.05 of sale proceeds in trust until the parties agree as to how the funds should be distributed or we are otherwise directed by a court order.

COUNT I
(Declaratory Judgment)

90. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

91. In light of the foregoing, a justiciable controversy has arisen between Plaintiff and the Choi Defendants and Acculux as to the manner in which the remaining proceeds of the sale of the Property should be distributed in accordance with the terms of the Joint Venture.

92. The terms of the Joint Venture require the profits from sale of the Property to be distributed 50/50 between the Plaintiff and Choi Defendants.

93. The profits from the sale of the Property consist of the net closing proceeds of \$1,756,338.05 less Plaintiff's capital contribution of \$1,150,000.00 and the Choi Defendants capital contribution of \$300,000.00 of construction costs, leaving a balance of \$306,338.05.

94. The Choi Defendants already received \$15,000.00 of their share of the profits by way of the \$315,000.00 mortgage payoff.

95. In light of the foregoing, Plaintiff is entitled to a declaratory judgment pursuant to the Declaratory Judgments Act, N.J.S.A. 2A: 16-50 *et seq.* as follows:

a) determining the profit from the sale of the Property to consist of the \$306,338.05 remaining from the net proceeds of sale after accounting for the Plaintiff's capital contribution of \$1,150,000.00 and the Choi Defendants capital contribution of \$300,000.00 of construction costs;

b) determining Plaintiff is entitled to receive fifty (50%) percent of the profits from the sale of the Property in the amount of \$153,169.03;

c) determining the Choi Defendants and Acculux are entitled to receive fifty (50%) percent of the profits from the sale of the Property and having already received \$15,000.00 by way of the Mortgage payoff, the Choi Defendants and Acculux are due an additional \$138,169.03.

WHEREFORE, Plaintiff demands the entry of an order directing the undersigned law firm of Kates, Nussman, Ellis, Farhi & Earle, LLP release and disburse of \$153,169.03 of the funds presently being held in trust to Plaintiff and the balance of \$138,169.03 to counsel for the Choi Defendants and Acculux.

COUNT II
**(Breach of Fiduciary Duty against Thomas Choi,
Jasmine Choi and Acculux Construction, LLC)**

96. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

97. Parties in a joint venture owe each other a fiduciary duty of fairness, good faith and fidelity, and are liable for the harm stemming from a breach of that duty.

98. The relation of joint adventurers is one of trust and confidence calling for the utmost good faith, permitting of no secret advantages or benefits.

99. Any fiduciary obligations to the dependent party include a duty of loyalty and a duty to exercise reasonable skill and care.

100. By virtue of the Joint Venture and the Joint Venture Agreement, Plaintiff, on the one hand and Defendant Thomas Choi, Defendant Jasmine Choi and Defendant Acculux Construction, LLC on the other were party to a joint venture.

101. Defendants Thomas Choi, Defendant Jasmine Choi and Defendant Acculux Construction, LLC owed a fiduciary duty of fairness, good faith and fidelity, care and loyalty to Plaintiff.

102. Defendants Thomas Choi, Defendant Jasmine Choi and Defendant Acculux Construction, LLC breached their fiduciary duties to Plaintiff by, *inter alia*:

a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;

b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property;

c) Fraudulently inducing Plaintiff into participating in the Joint Venture based on misrepresentations of the time required to complete the renovation of the Property, the cost of construction and their intention to honor the terms of the Joint Venture and Joint Venture Agreement;

d) Attempting to obstruct the closing of the sale of the Property in furtherance of holding Plaintiff's \$1,150,000.00 investment in the Joint Venture hostage in an attempt to secure Plaintiff's acquiescence to absorb the construction cost overruns contrary to the agreed upon terms for the Joint Venture and the terms of the Joint Venture Agreement;

e) Acting as aforesaid with full knowledge Plaintiff was a layperson with respect to construction and real estate matters while Thomas Choi and Jasmine Choi, on the other hand, are licensed real estate and construction professionals; and

f) Directing Plaintiff to pay an illicit Finder's Fee of \$170,000.00 to Acculux Construction LLC which is not a licensed real estate brokerage.

103. As a result of Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC's breach of the fiduciary duties owed to Plaintiff in connection with the Joint Venture, Plaintiff has suffered damages in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment against Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC, jointly and severally for:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;

- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT III
**(Conversion against Thomas Choi, Jasmine Choi
and Acculux Construction, LLC)**

104. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

105. On or about December 7, 2021 Plaintiff paid Acculux the \$170,000.00 Finder's Fee.

106. Plaintiff paid the Finder's Fee to Acculux under the direction of Defendants Thomas Choi, Jasmine Choi and Acculux in connection with Defendants Thomas Choi, Jasmine Choi and Acculux' identification of the Property for purposes of the Joint Venture.

107. Defendant Acculux Construction, LLC is not a licensed New Jersey real estate broker.

108. N.J.S.A. 45:15-1 *et seq.* bars the acceptance of a commission by any person or entity not licensed by the New Jersey Real Estate Commission to broker real estate transactions.

109. In light of the foregoing the Finder's Fee represents an unlawful realty commission payment to Defendant Acculux Construction, LLC.

110. But for the payment of the Finder's Fee, consistent with the terms of the Joint Venture and Joint Venture Agreement the profit on the sale of the Property would have been the difference between the \$980,000.00 purchase price and sale price of \$1,850,000.00.

111. Defendants Thomas Choi, Jasmine Choi and Acculux pocketed the \$170,000.00 Finder's Fee while simultaneously decreasing Plaintiff's share of the profits realized from the sale of the Property by \$85,000.00.

112. In acting as aforesaid, Defendants Thomas Choi, Jasmine Choi and Acculux intentionally and improperly exercised their dominion and control over \$170,000.00 belonging to the Plaintiff.

113. As a result of the conversion of Plaintiff's \$170,000.00 in the form of the illicit Finder's Fee, Plaintiff has been damaged in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment against Plaintiff demands judgment against Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC, jointly and severally, directing the immediate disgorgement and return of the Finder's Fee to Plaintiff in addition to:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT IV
**(Fraudulent Inducement against Thomas Choi, Jasmine Choi
and Acculux Construction, LLC)**

114. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

115. Defendants Thomas Choi, Defendant Jasmine Choi and Defendant Acculux Construction, LLC made numerous knowing and intentional misrepresentations to Plaintiff in furtherance of inducing Plaintiff to proceed with the Joint Venture, *inter alia*:

a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;

b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property.

116. Plaintiff relied upon the misrepresentations of Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC in deciding to proceed with the Joint Venture to her detriment.

117. Chief among their misrepresentations were the essential terms of the Joint Venture including the manner in which the Joint Venture partners would distribute the profits of the sale of the Property and whether Plaintiff was obligated to absorb the construction cost overruns.

118. In addition to monetary damages, the appropriate remedy for Defendants' fraudulent inducement of the Plaintiff is the reformation of the Joint Venture Agreement to conform with Plaintiff's reasonable expectations as to how the Joint Venture partners

would distribute the profits of the sale of the Property and whether Plaintiff was obligated to absorb the construction cost overruns.

119. As a result of Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC's fraudulent misrepresentation, Plaintiff has suffered damages in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment against Defendants Thomas Choi, Jasmine Choi and Acculux Construction, LLC, jointly and severally, reforming the Joint Venture Agreement to expressly state the following terms:

- a) Plaintiff is not obligated to absorb the construction and renovation cost overruns above and beyond the \$300,000.00 capital contribution of Acculux Construction, LLC; and
- b) the profits to be distributed 50/50 between the Joint Venture partners consist of the difference between the net proceeds of sale of the Property less Plaintiff's capital contribution of \$1,150,000.00 and Acculux' capital contribution of \$300,000.00.

In addition to:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT V
**(Breach of Fiduciary Duty against Jasmine Choi,
 C Land Realty Co and C Land Referral Agency LLC)**

120. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

121. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi are a licensed New Jersey real estate brokerage and salesperson.

122. Defendant Jasmine Choi is an agent of Defendants C Land Realty Co and C Land Referral Agency LLC.

123. New Jersey law is well settled that a real estate broker is in a fiduciary relationship toward the principal whom they represents and owes a duty of good faith and ‘absolute fidelity.

124. In light of the aforesaid facts and circumstances, *inter alia*, the Listing Agreement between Plaintiff and Jasmine Choi and C Land Realty, Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC were in a fiduciary relationship with the Plaintiff.

125. Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC breached their fiduciary duties to Plaintiff by, *inter alia*:

- a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;
- b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property;
- c) Fraudulently inducing Plaintiff into participating in the Joint Venture based on misrepresentations of the time required to complete the renovation of the Property, the cost of construction and their intention to honor the

terms of the Joint Venture and Joint Venture Agreement;

d) Attempting to obstruct the closing of the sale of the Property in furtherance of holding Plaintiff's \$1,150,000.00 investment in the Joint Venture hostage in an attempt to secure Plaintiff's acquiescence to absorb the construction cost overruns contrary to the agreed upon terms for the Joint Venture and the terms of the Joint Venture Agreement;

e) Acting as aforesaid with full knowledge Plaintiff was a layperson with respect to construction and real estate matters while Thomas Choi and Jasmine Choi, on the other hand, are licensed real estate and construction professionals; and

f) Directing Plaintiff to pay an illicit Finder's Fee of \$170,000.00 to Acculux Construction LLC which is not a licensed real estate brokerage.

126. As a result of Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC's breach of the fiduciary duties owed to Plaintiff in connection with the Listing Agreement, Plaintiff has suffered damages in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment against Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC's, jointly and severally, directing Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC disgorge and return the \$74,000.00 commission paid to Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC upon closing of the sale of the Property in addition to the following:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;

vii) any other relief the Court deems equitable and proper.

COUNT VI
**(Professional Negligence against Jasmine Choi,
C Land Realty Co and C Land Referral Agency LLC)**

127. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

128. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi are a licensed New Jersey real estate brokerage and salesperson.

129. Defendant Jasmine Choi is an agent of Defendants C Land Realty Co and C Land Referral Agency LLC.

130. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi as Plaintiff's realtor in the sale of the Property, owed a duty of care to Plaintiff.

131. Plaintiff relied upon the advice guidance, direction, representations, and experience of Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi in various aspects of renovation and sale of the Property

132. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi violated the duties and regulations applicable to realtors, including as set forth in N.J.S.A. 45:15-1, et seq. and N.J.A.C. 11:5-1, et seq.

133. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi violated the duties and regulations applicable to realtors by, *inter alia*, failing to properly disclose their business relationship with Defendants Acculux Construction, LLC and Thomas Choi and

failing to properly disclose any associated conflicts of interest arising in connection therewith.

134. As a direct and proximate result of the negligence and/or professional negligence of Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi, Plaintiff has been damaged as a result of the aforementioned breaches of duty, including, but not limited to, having to prosecute this litigation and exposing Plaintiff to potential claims by Defendants Acculux Construction, LLC and Thomas Choi.

WHEREFORE, Plaintiff demands judgment against Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC's, jointly and severally, for:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT VII

**(Violation of New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 *et seq.*
against Jasmine Choi, C Land Realty Co and C Land Referral Agency LLC)**

136. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

137. Defendants C Land Realty Co, C Land Referral Agency LLC and Jasmine Choi are a licensed New Jersey real estate brokerage and salesperson.

138. Defendant Jasmine Choi is an agent of Defendants C Land Realty Co and C Land Referral Agency LLC.

139. New Jersey law is well settled that the conduct of a real estate broker is subject to the New Jersey Consumer Fraud Act.

140. The Consumer Fraud Act prohibits a real estate broker such as Jasmine Choi and C Land Realty from utilizing any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of real estate.

141. Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC violated the New Jersey Consumer Fraud Act by, *inter alia*:

a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;

b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property;

c) Fraudulently inducing Plaintiff into participating in the Joint Venture based on misrepresentations of the time required to complete the renovation of the Property, the cost of construction and their intention to honor the terms of the Joint Venture and Joint Venture Agreement;

d) Conspiring with attorney Sung Kim Min, Esq. to surreptitiously record the Mortgage on the Property without Plaintiff's knowledge or consent;

e) Attempting to obstruct the closing of the sale of the Property in furtherance of holding Plaintiff's \$1,150,000.00 investment in the Joint Venture hostage in an attempt to secure Plaintiff's acquiescence to absorb the construction cost overruns contrary to the agreed upon terms for the Joint Venture and the terms of the Joint Venture Agreement;

f) Acting as aforesaid with full knowledge Plaintiff was a layperson with respect to construction and real estate matters while Thomas Choi and Jasmine Choi, on the other hand, are licensed real estate and construction professionals; and

g) Directing Plaintiff to pay an illicit Finder's Fee of \$170,000.00 to Acculux Construction LLC which is not a licensed real estate brokerage.

142. Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC further violated the New Jersey Consumer Fraud Act by misrepresenting the capabilities and competency of Defendants Thomas Choi and Acculux Construction, LLC to complete the construction and renovation of the Property within three (3) months and at a total cost of \$300,000.00.

143. As a result of Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC's violation of the New Jersey Consumer Fraud Act, Plaintiff has suffered damages in in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment against Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC's, jointly and severally, directing Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC disgorge and return the \$74,000.00 commission paid to Defendants Jasmine Choi, C Land Realty Co, C Land Referral Agency LLC upon closing of the sale of the Property in addition to the following:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT VIII

(Violation of New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 *et seq.*, New Jersey Home Improvement Practices Regulations N.J.A.C. 13:45A-16.1 *et seq.*, and the Home Improvement Contractor Registration Regulations at N.J.A.C. 13:45A-17.1 *et seq.* against Defendant Acculux Construction LLC)

144. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

145. Defendant Acculux Construction LLC is a licensed New Jersey home improvement contractor.

146. New Jersey law is well settled that the conduct of a home improvement contractor is subject to the New Jersey Consumer Fraud Act.

147. The New Jersey Consumer Fraud Act prohibits home improvement contractor such as Acculux from utilizing any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of real estate.

148. Defendant Acculux Construction, LLC violated the New Jersey Consumer Fraud Act by, *inter alia*:

a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;

b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property;

c) Fraudulently inducing Plaintiff into participating in the Joint Venture based on misrepresentations of the time required to complete the

renovation of the Property, the cost of construction and their intention to honor the terms of the Joint Venture and Joint Venture Agreement;

d) Attempting to obstruct the closing of the sale of the Property in furtherance of holding Plaintiff's \$1,150,000.00 investment in the Joint Venture hostage in an attempt to secure Plaintiff's acquiescence to absorb the construction cost overruns contrary to the agreed upon terms for the Joint Venture and the terms of the Joint Venture Agreement;

e) Acting as aforesaid with full knowledge Plaintiff was a layperson with respect to construction and real estate matters while Thomas Choi and Jasmine Choi, on the other hand, are licensed real estate and construction professionals; and

f) Directing Plaintiff to pay an illicit Finder's Fee of \$170,000.00 to Acculux Construction LLC which is not a licensed real estate brokerage.

149. Pursuant to N.J.S.A. 58:8-151 and N.J.A.C. 13:45A-16.2 all increases in the cost of the construction and renovation work performed by Acculux at the Property were required to be memorialized in writing via a change order reviewed, approved and signed by the Plaintiff.

150. Defendant Acculux Construction, LLC quoted Plaintiff a total cost of \$300,000.00 to complete all construction and renovation work set forth on the Renovation Proposal with a 10% i.e. \$30,000.00 pricing contingency.

151. Defendant Acculux Construction, LLC attempted to increase the cost of its renovation and construction services to \$559,284.43 thereby exceeding the \$300,000.00 \$259,284.43 or 86.43%.

152. Defendant Acculux Construction, LLC failed to provide Plaintiff with written

change orders or seek Plaintiff's approval in writing or otherwise to increase the cost of Acculux' construction and renovation services in violation of N.J.S.A. 58:8-151 and N.J.A.C. 13:45A-16.2.

153. Defendant Acculux Construction, LLC has demanded payment of an additional \$259,284.43 from Plaintiff above and beyond the agreed upon \$300,000.00 price for Acculux' construction services in violation of N.J.S.A. 58:8-151 and N.J.A.C. 13:45A-16.2.

154. As a result of Defendants Acculux Construction LLC's violation of the New Jersey Consumer Fraud Act, Plaintiff has suffered damages in in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant Acculux Construction LLC for:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT IX
(Specific Performance against Defendant Acculux Construction LLC)

155. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

156. The terms of the Renovation Proposal and Joint Venture Agreement collectively require Defendant Acculux Construction, LLC to delivery to the Purchasers of the Property i) a signed one (1) year warranty of Acculux' workmanship, ii) a signed construction lien waiver, and iii) an index of manufacturer's warranties for all appliances, materials and equipment installed at the Property by Acculux.

157. Defendant Acculux Construction, LLC has breached the terms of the Renovation Proposal and Joint Venture Agreement by refusing without justification to deliver to the Purchasers of the Property i) a signed one (1) year warranty of Acculux' workmanship, ii) a signed construction lien waiver, and iii) an index of manufacturer's warranties for all appliances, materials and equipment installed at the Property by Acculux.

158. As a result of Defendant Acculux Construction breach of the Renovation Proposal and Joint Venture Agreement, Plaintiff has suffered damages in in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant Acculux LLC:

- a) For an Order directing Defendant Acculux LLC to perform under the terms of the Renovation Proposal and Joint Venture Agreement delivering to the Purchasers of the Property i) a signed one (1) year warranty of Acculux' workmanship, ii) a signed construction lien waiver, and iii) an index of

manufacturer's warranties for all appliances, materials and equipment installed at the Property by Acculux.

- b) For all costs, disbursements, reasonable attorney's fees, pre-judgment interest, post-judgment interest, consequential and punitive damages; and
- c) Ordering such other relief as the Court deems just and proper.

COUNT X

(Piercing the Corporate Veil of Acculux Construction, LLC against Thomas Choi)

159. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

160. Upon information and belief, Defendant Thomas Choi is the sole member and exercises pervasive control over Defendant Acculux Construction, LLC.

161. Upon information and belief, Defendants Acculux Construction LLC and Thomas Choi fail to observe corporate formalities

162. Upon information and belief, Defendant Thomas Choi intentionally undercapitalized Defendant Acculux Construction LLC such that Acculux Construction LLC lacks sufficient assets and/or income to satisfy its debts and obligations.

163. Upon information and belief Defendant Thomas Choi intentionally undercapitalized Defendant Acculux Construction LLC thereby ensuring Plaintiff would have no recourse to pursue collection of a judgment or otherwise satisfy debts owed by Acculux Construction LLC.

164. Upon information and belief Defendant Thomas Choi has withdrawn money from Defendant Acculux Construction, LLC outside the ordinary course of business for inadequate consideration in avoidance of debts and creditors such as the Plaintiff as prohibited by N.J.S.A. § 25:2-1 *et seq.* (Uniform Fraudulent Transfer Act).

165. Upon information and belief, at all times relevant to the pleadings, Defendant Thomas Choi knowingly and intentionally utilized Acculux Construction, LLC as an assetless “shell” corporation for purposes of contracting with the Plaintiff and entering into the Renovation Proposal and Joint Venture Agreement in furtherance of ensuring that Plaintiff would have no recourse to pursue collection of a judgment or otherwise satisfy debts owed by Acculux Construction LLC in the event of a breach of those agreements.

166. Defendant Thomas Choi utilized Acculux Construction, LLC to perpetrate a fraud upon the Plaintiff as aforesaid.

167. In light of the foregoing, the Court must “pierce the corporate veil” with respect to Defendant Acculux Construction LLC to prevent a fraud and injustice from being perpetrated upon the Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Thomas Choi for:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;
- iii) attorneys’ fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

COUNT XI

(Breach of covenant of good faith and fair dealing against Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty Co and C Land Referral Agency LLC)

168. Plaintiff repeats all of the allegations contained in the previous paragraphs as if fully set forth herein.

169. Plaintiff entered into certain agreements and had dealings with Defendants Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty and C Land Referral Agency, LLC, *inter alia*, the Joint Venture, the Joint Venture Agreement, the Renovation Proposal, and the Listing Agreement.

170. Covenants of good faith and fair dealing arise when parties enter into agreements and business ventures such as those at issue in the instant matter and such covenants in fact arose in the instant matter.

171. At all times relevant hereto with Defendants Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty and C Land Referral Agency, LLC's transgressions and defalcations identified above constitute a breach of the covenant of good faith and fair dealing.

172. More specifically, Defendants Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty and C Land Referral Agency, LLC have breached the covenant of good faith and fair dealing by, *inter alia*,

a) Misrepresenting the terms of the Joint Venture to Plaintiff and concealing their intention not to honor the terms of the Joint Venture as explained to Plaintiff;

b) Misrepresenting to Plaintiff the estimated cost and time to complete the construction and renovation work to be performed by Acculux on the Property;

c) Fraudulently inducing Plaintiff into participating in the Joint

Venture based on misrepresentations of the time required to complete the renovation of the Property, the cost of construction and their intention to honor the terms of the Joint Venture and Joint Venture Agreement;

d)

e) Attempting to obstruct the closing of the sale of the Property in furtherance of holding Plaintiff's \$1,150,000.00 investment in the Joint Venture hostage in an attempt to secure Plaintiff's acquiescence to absorb the construction cost overruns contrary to the agreed upon terms for the Joint Venture and the terms of the Joint Venture Agreement;

f) Acting as aforesaid with full knowledge Plaintiff was a layperson with respect to construction and real estate matters while Thomas Choi and Jasmine Choi, on the other hand, are licensed real estate and construction professionals; and

g) Directing Plaintiff to pay an illicit Finder's Fee of \$170,000.00 to Acculux Construction LLC which is not a licensed real estate brokerage.

173. As a result of Defendants Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty and C Land Referral Agency, LLC's breach of the covenant of good faith and fair dealing, Plaintiff has suffered damages in an amount to be proven at time of trial.

WHEREFORE, Plaintiff demands judgment in its favor jointly and severally against Defendants Thomas Choi, Jasmine Choi, Acculux Construction, LLC, C Land Realty and C Land Referral Agency, LLC's for:

- i) direct, actual, compensatory and consequential damages, in addition to treble, punitive and any other special damages permitted by law;
- ii) pre-judgment and post-judgment interest;

- iii) attorneys' fees and costs of suit;
- vii) any other relief the Court deems equitable and proper.

**KATES NUSSMAN ELLIS
FARHI & EARLE, LLP
Attorneys for Plaintiff**

Dated: December 13, 2023

**By: /s/ Noah Zakim
Noah Zakim**

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable by jury under the applicable law.

**KATES NUSSMAN ELLIS
FARHI & EARLE, LLP
Attorneys for Plaintiff**

Dated: December 13, 2023

**By: /s/ Noah Zakim
Noah Zakim**

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify pursuant to *Rule* 4:5-1 that the matter in controversy is not the subject of a pending or contemplated proceeding in any other court or pending or contemplated arbitration proceeding with the exception of i) the demand for AAA arbitration by Acculux Construction, LLC dated December 8, 2023, and ii) contemplated proceedings against Sung Min Kim, Esq. of Kim, Choi & Kim, P.C. I further certify that, to the best of my knowledge, all necessary parties have been joined in this action.

**KATES NUSSMAN ELLIS
FARHI & EARLE, LLP
Attorneys for Plaintiff**

Dated: December 13, 2023

**By: /s/ Noah Zakim
Noah Zakim**

TRIAL COUNSEL DESIGNATION

Pursuant to *Rule* 4:25-4, Noah Zakim, Esq. is hereby designated trial counsel.

**KATES NUSSMAN ELLIS
FARHI & EARLE, LLP
Attorneys for Plaintiff**

Dated: December 13 , 2023

**By: /s/ Noah Zakim
Noah Zakim**