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12 STATE OF CALIFORNIA

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 PEOPLE OF THE STATE OF CALIFORNIA,) Case No. 37-2007-00071686-CU-MC-CTL
11)
12 Plaintiff,)
13 v.) **COMPLAINT FOR CIVIL**
14) **PENALTIES, INJUNCTION,**
15) **RESTITUTION AND OTHER RELIEF**
16)
17 LINVILLE CRAIG MARTIN; and DOES 1)
18 through 25, inclusive,) I/C Judge:
19) Dept.:
20) Action Filed:
21) Trial Date: Not Set
22)

23 The People of the State of California, by and through Michael J. Aguirre, City Attorney
24 for the City of San Diego, State of California, acting on information and belief, allege:

25 **JURISDICTION AND VENUE**

26 1. Pursuant to California Business and Professions Code sections 17200, 17203,
27 17204, 17206, 17500, 17535 and 17536, Plaintiff People of the State of California (hereinafter
28 referred to as "Plaintiff") seeks to enjoin Defendants Linville Craig Martin and Does 1 through
29 25 (hereinafter referred to as "Defendants") from engaging in unlawful, unfair or fraudulent
30 business acts or practices and unfair, deceptive, untrue or misleading advertising as alleged in
31 this Complaint. Plaintiff further seeks to obtain civil penalties, restitution and other remedies
32 for Defendants' violations of law as alleged in this Complaint.

33 2. Venue of this action is proper in the County of San Diego, State of California,
34 pursuant to California Code of Civil Procedure section 393 because the Defendants at all times

1 mentioned in this Complaint transacted business within and from the City of San Diego, State of
2 California, and the violations of law described in this Complaint have been committed within
3 and from City of San Diego, State of California.

4 **DEFENDANTS**

5 3. Defendant Linville Craig Martin is an individual doing business as a licensed real
6 estate broker in the City and County of San Diego.

7 4. The true names and capacities, whether individual, corporate, associate, or
8 otherwise of Defendants DOES 1 through 25, inclusive, are currently unknown to Plaintiff,
9 who, therefore, sues such Defendants by their fictitious names and will seek leave to amend this
10 Complaint to show their true names and capacities once ascertained.

11 5. Plaintiff is informed and believes and thereon alleges that each of the Defendants
12 was/is the agent or employee of each of the remaining Defendants and in doing the acts or
13 omissions herein alleged, each was acting within the course and scope of said agency and/or
14 employment.

15 **GENERAL ALLEGATIONS**

16 6. The San Diego Community College District (hereinafter referred to as "SDCCD")
17 is the second largest community college district in the State of California. Today, SDCCD
18 consists of three campuses: San Diego City College, San Diego Mesa College, and San Diego
19 Miramar College, as well as six continuing education sites throughout the City of San Diego.

20 7. Founded in 1914 as San Diego Junior College, the precursor to today's SDCCD
21 shared facilities with San Diego High School on Park Boulevard near historic Balboa Park.

22 8. A community college district was subsequently formed in 1970 as a separate
23 district but having the same elected board as the San Diego Unified School District.

24 9. In 1972, San Diego voters elected to create SDCCD as a community college
25 district separate and apart from the San Diego Unified School District.

26 10. SDCCD's mission is to provide accessible high quality learning experiences to
27 meet the educational needs of the San Diego community.

28

1 11. San Diego voters in the November 5, 2002, election approved Proposition S, a
2 \$685 million capital improvement measure to repair, renovate and retrofit existing SDCCD
3 facilities as well as to acquire and construct new facilities.

4 12. The election was held under California Proposition 39, which lowered the voting
5 requirement for approval of a bond measure to fifty-five percent (55%) of the electorate.

6 13. In compliance with Proposition 39 and related provisions of California Education
7 Code, Proposition S was subject to, among others, the following requirements and
8 determinations:

9 A. The bond proceeds shall only be used for the purposes set forth in the ballot
10 measure and not for any other purpose;

11 B. The SDCCD board will cause to be conducted an annual performance audit to
12 ensure that the bond monies are expended for the specified projects;

13 C. The board will cause the appointment of a Citizens Oversight Committee in
14 compliance with Education Code section 15278, the members of which shall include
15 construction, finance and other qualified professionals; and

16 D. The property tax levy authorized to secure the bonds shall not exceed \$25 per
17 \$100,000 of assessed valuation from 2003 to 2028.

18 14. The passage of Proposition S stimulated San Diego City College's (hereinafter
19 referred to as "City College") long-range planning process. The Master Planning Council
20 reviewed and revised City College's long-range strategic program planning priority in the fall of
21 2002.

22 15. Furthermore, the passage of Proposition S necessitated the reactivation of City
23 College's Master Planning Committee. The reactivated committee became known as the
24 Proposition S Steering Committee which reports to the Master Planning Council and its
25 recommendations become part of City College's Institutional Strategic Master Plan.

26 16. On March 12, 2004, the Proposition S Steering Committee selected Overland,
27 Pacific & Cutler, Inc., a nationally recognized property acquisition and real estate services
28 organization, to assist in the acquisition of additional land for City College.

1 17. On April 14, 2005, City College's Facilities Master Plan was adopted as a means
2 of providing a clear blueprint for the long term development and growth of the downtown
3 campus.

4 18. The Facilities Master Plan acknowledged that most of City College's current
5 campus land area is utilized for necessary academic or support purposes. Further, it recognized
6 that the demolition or removal of any existing facility to create space for new construction would
7 have a severe impact on the educational or support activities. Therefore, implementation of a
8 land acquisition strategy was a necessary first step in implementing the Facilities Master Plan.

9 19. Phase 1 of the Facilities Master Plan called for the acquisition of three (3) parcels
10 of land adjacent to the existing campus. The first parcel was identified as the upper half block
11 between 13th and 14th Avenue south of C Street. The second and third parcels were identified as
12 the full blocks located between 15th and 17th Avenue south of C Street.

13 20. Proposition S was identified as the funding source for the acquisition of these
14 three parcels.

15 21. On November 7, 2006, voters approved another SDCCD bond measure,
16 Proposition N, authorizing an additional \$870 million in bond indebtedness.

17 22. The combination of Propositions S and N extended the property tax assessment
18 through the year 2083.

19 23. This action is being brought as a result of unlawful, unfair and/or fraudulent
20 business practices including, but not limited to, misrepresentations made by Defendants and
21 others in connection with land speculation by individuals triggered by the expansion of City
22 College's downtown campus.

23 **Affected Properties**

24 24. As stated above, Phase 1 of City College's Facilities Master Plan called for
25 expansion into the two downtown city blocks between 15th and 17th Streets and bound by C
26 Street and Broadway.

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25. These properties are owned, or were owned, by the following individuals:

- A. Milton and Jean Creek, and Esao and Glenda Sumida
1027 15th Street (APN 534-225-05-00)
- B. Raul Valderrama, Rachel Lucerno and Rebecca Jones
1037 15th Street (APN 534-225-04-00)
- C. SG Town Square Family Ltd. Partnership
1065 15th Street (APN 534-225-17-00)
- D. Michael Mihos
1068-1070 16th Street (APN 534-225-18-00)
- E. Landau Family Ltd. Partnership
1529 C Street 16th (APN 534-225-12-00)
- F. Houston Family Trust
1046 16th Street (APN 534-225-12-00)
- G. Youngers-Okey LLC.
1040 16th Street (APN 534-225-16-00)
- H. Mossmer Family Trust
16th Street (APN 534-225-09-00)
- I. James K. Hildreth
1010 16th Street (APN 534-225-09-00)
- J. Mossmer Family Trust
1528 Broadway (APN 534-225-06-00)
(APN 534-225-07-00)
- K. Singing Serpent Inc.
(APN 534-224-07-00)
- L. LaFramboise Family Trust
(APN 534-224-05-00)
(APN 534-224-06-00)
- M. SGKS Properties
1601 C Street (APN 534-224-01-00)
1041 16th Street (APN 534-224-02-00)
1600 Broadway (APN 534-224-03-00)

1 26. The plat map for the properties identified above in subparagraphs A - K is
2 attached hereto as Exhibit 1, and the plat map for the properties identified in subparagraphs K -
3 L is attached hereto as Exhibit 2.

4 **False Statements and Misrepresentations**

5 27. Starting in November 2004, Defendants began an aggressive campaign to
6 purchase each of the properties listed in paragraph 25.

7 28. Numerous property owners received a solicitation letter dated November 24,
8 2004, signed by Defendant Martin wherein he falsely represented that he was acting on behalf of
9 TMG Partners, LLC, and SDCCD, and that TMG Partners had been designated SDCCD's
10 development partner.

11 29. Further, the letter dated November 24, 2004, signed by Defendant Martin falsely
12 represented that the property owners would receive numerous economic benefits by entering into
13 a transaction with TMG Partners and SDCCD.

14 30. For example, the November 24, 2004, letter represented that SDCCD could offer
15 an IRS Section 1033 exchange allowing the property owners to transfer their existing property
16 tax basis to another property if they wished to consider this alternative.

17 31. Unbeknownst to the property owners, TMG Partners, a San Francisco based real
18 estate development and management firm, had not been designated as SDCCD's "development
19 partner" tasked with acquiring parcels for SDCCD, as stated in the November 24, 2004 letter.

20 32. As stated above, Overland, Pacific & Cutler, Inc., was designated as SDCCD's
21 acquisition coordinator in March 2004.

22 33. Furthermore, TMG Partners, as a non-governmental entity, had no ability to offer
23 property owners the incentive of an IRS Section 1033 exchange.

24 34. Any reliance that a property owner made on the misrepresentations contained in
25 the November 24, 2004, letter led to unfortunate consequences for that property owner.

26 35. For example, Milton and Jean Creek, the owners of 1027 15th Street, received
27 Defendant Martin's November 24, 2004, letter.

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1 36. Thereafter, the Creeks, the property's co-owners (Esao and Glenda Sumida), and
2 their listing agent received a Letter of Intent for a Real Estate Purchase and Sale Agreement
3 dated December 6, 2004, drafted by Defendant Martin on behalf of TMG Partners.

4 37. The December 6, 2004, Letter of Intent, as drafted by Defendant Martin, again
5 falsely informed the Creeks that TMG Partners "is the development partner for The San Diego
6 Community College District."

7 38. The second paragraph of the December 6, 2004, Letter of Intent also provides the
8 reader with the false impression that SDCCD, and not TMG Partners, was going to acquire the
9 property. The second paragraph reads as follows:

10 In our prior conversation, we informed you that TMG Partners is
11 the development partner for The San Diego Community College
12 District ("District"). You should also know that the District owns
13 the entire block located between Park Boulevard and 13th Street
14 and E and F Street as well as the majority of the block immediately
15 to the east of that block. TMG is in the process of providing the
16 District with a development plan that includes required facilities
17 for their expansion on their property as well as other parcels in the
18 immediate area. The College District cannot continue to meet its
19 obligations to the community with the limited facilities that they
20 presently have and given that the community recently passed bond
21 issues that enabled the District to supplement existing facilities
22 through expansion, they entered into an agreement with TMG to
23 do so. Given these mandates, TMG wishes to purchase your
24 clients' property to used as part of their development for the
25 College District.

26 39. Although a later paragraph in the December 6, 2004, letter states that TMG
27 Partners, LLC, or its assignees, is the buyer, this paragraph added to the confusion when it
28 casually mentioned that SDCCD was anticipated to ultimately be the owner of the property but
that some undefined "legal restrictions" preclude the transfer until the proposed development is
complete.

 40. This paragraph also falsely represented that "TMG agrees to remain in the
transaction and any assignment will only be to an entity in which TMG has an equity and
management position."

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1 41. In reliance on Defendant Martin's representations, the Creeks and Sumidas
2 entered into a Real Estate Purchase and Sale Agreement for the purchase their property for
3 \$750,000.

4 42. The escrow instructions stated that the "close of escrow for the purchase of the
5 property shall occur no later than thirty (30) days after the San Diego Community College
6 District approves the Master Plan for expansion of the San Diego City College campus which is
7 presently scheduled to be submitted in February, 2005."

8 43. Based on Defendants' repeated representations, the Creeks and Sumidas believed
9 that once SDCCD Trustees approved City College's Facilities Master Plan, they would obtain a
10 "friendly condemnation" from SDCCD permitting them to take advantage of an IRS Section
11 1033 exchange.

12 44. As stated above, City College's Facilities Master Plan was adopted on April 14,
13 2005.

14 45. On April 26, 2005, TMG assigned its rights under the Real Estate Purchase and
15 Sale Agreement to Paul Nieto and Mike Madigan.

16 46. In August 2005, the Creeks and Sumidas agreed to extend escrow until October
17 14, 2005 "in order to procure a Friendly Condemnation Letter."

18 47. In December 2005, the Creeks and Sumidas were eventually informed by their
19 attorney that SDCCD would not provide a "friendly condemnation" letter in order to facilitate an
20 IRS Section 1033 exchange because SDCCD was not involved in the transaction between the
21 Creeks/Sumidas and Nieto/Madigan.

22 48. Subsequently, the Creeks' attorney inquired whether SDCCD would be interested
23 in acquiring the property directly from the Creeks and Sumidas.

24 49. Although a December 15, 2005, letter was received by the Creeks from SDCCD
25 Vice Chancellor Damon Schamu stating SDCCD's interest in the property, repeated telephone
26 calls to acquisition agent at Overland, Pacific & Cutler went unanswered.

27 50. Escrow eventually closed on the Creek/Sumida property January 5, 2006, at
28 Nieto/Madigan's \$750,000 purchase price.

1 51. In January 2006, SDCCD offered to buy the Creek/Sumida property from Nieto
2 and Madigan for \$1,125,000. This offer was declined.

3 52. For reasons that are presently unknown, Nieto and Madigan transferred the
4 property at no cost to Nieto's father-in-law, James Shillady, as trustee under the newly created
5 "1027 15th Street Trust" on July 20, 2006.

6 53. On September 14, 2006, SDCCD purchased the property from Shillady for
7 \$1,284,375 resulting in a gross profit of \$534,375 over the purchase price paid to the Creeks and
8 Sumidas by Nieto and Madigan.

9 54. As a result of the reliance on Defendants' misrepresentations, the Creeks suffered
10 a financial loss. They were not able to take financial advantage of an IRS Section 1033
11 exchange. Nor were they able to realize any of the additional monies that SDCCD demonstrated
12 it was willing to pay for their property.

13 55. The November 24, 2004, solicitation letter signed by Defendant Martin was also
14 received by representatives of the Mossmer Trust, owners of 1528 Broadway. In the letter,
15 similar to the one received by the Creeks, Defendant Martin falsely misrepresents that he is
16 acting on behalf of SDCCD. The letter also touts the advantages of an IRS Section 1033
17 exchange.

18 56. Other property owners experienced Defendants aggressive tactics as well.

19 57. For example, an associate of Defendant Martin unexpectedly approached the 95
20 year old occupant of 1037 15th Street gaining entrance into the residence.

21 58. A solicitation letter signed by Defendant Martin was later sent to one of the co-
22 owners of 1037 15th Street, Rachel Lucero, on June 29, 2005. In the letter, Defendant Martin
23 again falsely represents that TMG is "the developer partner" for SDCCA and that the property
24 will be used as part of TMG's "development for the College District."

25 59. On August 2, 2005, another letter signed by Defendant Martin was sent to Vicki
26 Youngers, owner of property at 1040 16th Street. The letter, entitled "Final Offer to Purchase"
27 misrepresented that TMG Partners were the "developers" for SDCCD, and further falsely stated
28 "our client and the College District are about to enter into their final agreement."

1 69. Beginning on an exact date unknown to Plaintiff, but within four years prior to the
2 filing of this complaint, and continuing to the present, Defendants engaged in unfair competition
3 in violation of Business and Professions Code section 17200, including but not limited to one or
4 more unlawful, unfair or fraudulent business acts or practices and/or unfair, deceptive, untrue or
5 misleading statements. Such acts, practices and/or advertising include but are not limited to the
6 following:

7 A. Defendants made untrue or misleading statements in violation of Business and
8 Professions Code section 17500 as more specifically set forth in the First Cause of Action;

9 B. Defendants made a substantial misrepresentation in violation of Business and
10 Professions Code section 10176(a);

11 C. Defendants made false promises of a character likely to influence, persuade or
12 induce in violation of Business and Professions Code section 10176(b);

13 D. Defendants engaged in conduct which constituted fraud or dishonest dealings in
14 violation of Business and Professions Code section 10177(j);

15 E. Defendants knowingly authorized, directed, or aided in the publication,
16 advertisement, distribution or circularization of any false statement or representation concerning
17 land offered for sale or lease in violation of Business and Professions Code section 10140;

18 F. Defendants with knowledge that an advertisement, pamphlet, prospectus or letter
19 concerning land for sale or lease, contained a written statement that was false or fraudulent,
20 issued, circulated, published or distributed the same, or caused the same to be issued, circulated,
21 published or distributed in violation of Business and Professions Code section 10140; and

22 G. Defendants knowingly advertised, printed, displayed, published, distributed,
23 telecasted or broadcasted, or caused or permitted to be advertised, printed, displayed, published,
24 distributed, televised or broadcasted, in any manner any statement or representation with regard
25 to the rates, terms, or conditions for making, purchasing or negotiating real property sales
26 contracts which were false, misleading, or deceptive in violation of Business and Professions
27 Code section 10235.

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1 Second Cause of Action that is committed against a senior citizen. Plaintiff requests that a civil
2 penalty of no less than one hundred thousand dollars (\$100,000) be imposed against each
3 Defendant;

4 7. For an order directing Defendants to make full restitution of all money or other
5 property that may have been acquired by their violations of Business and Professions Code
6 sections 17200 and 17500;

7 8. For costs of suit incurred herein; and

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

9
10 Dated: 7/24/7

MICHAEL J. AGUIRRE, City Attorney

11
12 By 
for David Karlin

13 David Karlin
14 Head Deputy City Attorney

15 Attorneys for Plaintiff
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