

1 JUDITH STARR
 General Counsel
 2 CHARLES L. FINKE
 Deputy General Counsel
 3 JOEL W. RUDERMAN
 KENNETH J. COOPER
 4 Assistant General Counsel
 MARK R. SNYDER (CA 109430)
 5 MARY A. PETROVIC
 JORDAN E. JACOBSON (CA 302543)
 6 Attorneys
 PENSION BENEFIT GUARANTY CORPORATION
 7 1200 K Street, N.W.
 Washington, D.C. 20005-4026
 8 Tel.: (202) 326-4020, ext. 6511
 Fax: (202) 326-4112
 9 Email: jacobson.jordan@pbgc.gov and
 efile@pbgc.gov;

10
11 Attorneys for Pension Benefit Guaranty Corporation

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**
 14 **SOUTHERN DIVISION**

15	_____	:	Civil Action No.: 8:19-cv-00299
16	PENSION BENEFIT GUARANTY	:	
17	CORPORATION, as statutory trustee of	:	
18	The Retirement Plan of Freedom	:	
19	Communications, Inc.,	:	COMPLAINT FOR:
20		:	(1) BREACH OF FIDUCIARY
21		:	DUTIES IN VIOLATION OF
22		:	ERISA, (2) ENGAGING IN
23		:	PROHIBITED TRANSACTIONS
24		:	IN VIOLATION OF ERISA, AND
25		:	(3) KNOWING PARTICIPATION
26		:	IN BREACH OF FIDUCIARY
27		:	DUTIES IN VIOLATION OF ERISA
28		:	

19 Plaintiff,

20 ERIC SPITZ
 21 225 19th Street
 Newport Beach, CA 92663

22 AARON KUSHNER
 23 396 Washington Street, #307
 Wellesley, MA 02481

24 RICHARD J. COVELLI
 25 16701 Jetton Road
 Cornelius, NC 28031

26 TRACI M. CHRISTIAN
 27 5008 W. 129th Street
 Leawood, KS 66209

1 JTR, LLC :
 814 Tyvola Road, Suite 107 :
 2 Charlotte, NC 28217 :
 3 C&C MARKETING LLC :
 814 Tyvola Road, Suite 107 :
 4 Charlotte, NC 28217 :
 5 C2 ADVISORS, LLC :
 814 Tyvola Road, Suite 107 :
 6 Charlotte, NC 28217 :
 7 ETAROS ACTUARIAL SERVICES, LLC :
 5008 W. 129th Street :
 8 Leawood, KS 66209 :
 9 Defendants. :
 _____ :

10
 11 The Pension Benefit Guaranty Corporation (“PBGC”) brings this complaint (the “Complaint”)
 12 as statutory trustee of the Retirement Plan of Freedom Communications, Inc. (the “Pension Plan”)
 13 against Aaron Kushner (“Kushner”), Eric Spitz (“Spitz”), Richard J. Covelli (“Covelli”), Traci M.
 14 Christian (“Christian”), JTR, LLC (“JTR”), C & C Marketing LLC (“C & C”), C2 Advisors, LLC
 15 (“C2”), and Etaros Actuarial Services LLC (“Etaros”) (collectively, the “Defendants”), and alleges as
 16 follows on information and belief:

17 **JURISDICTION & VENUE**

- 18 1. PBGC brings this action under 29 U.S.C. §§ 1132, 1303(e), and 1342(d).
 19 2. The United States District Court for the Central District of California (the “Court”) has
 20 jurisdiction over this action, without regard to the amount in controversy, pursuant to 29 U.S.C.
 21 §§ 1132(e)(1), (f) and 1303(e)(3).
 22 3. Venue properly lies in this Court under 29 U.S.C. §§ 1132(e)(2), 1303(e)(2) because
 23 many of the acts giving rise to the alleged ERISA violations took place in this district.

24 **INTRODUCTION**

25
 26 4. The Pension Plan is a single-employer defined benefit pension plan covered by the
 27 pension plan termination insurance program established under Title IV of the Employee Retirement
 28 Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1301 – 1461 (2012 & Supp. IV
 2016). Freedom Communications, Inc. (“Freedom”) was the sponsor of the Pension Plan, which

1 provided retirement benefits to certain employees of Freedom and its affiliates. The Pension Plan
2 terminated under ERISA during the bankruptcy reorganization proceedings of Freedom and its
3 affiliates.¹ PBGC then became the statutory trustee of the Pension Plan. PBGC brings this action on
4 behalf of the Pension Plan to recover losses suffered by the Pension Plan attributable to (a) breaches
5 of fiduciary duties under ERISA, including the duties of loyalty, prudence, and adherence to plan
6 documents (collectively, the “Fiduciary Standards”), 29 U.S.C. §§ 1104(a)(1)(A) - (D); (b)
7 transactions prohibited by ERISA (“Prohibited Transactions”), 29 U.S.C. § 1106(a); and (c) knowing
8 participation in breaches of fiduciary duties (“Knowing Participation”), 29 U.S.C. § 1132(a)(3).

9 5. In 2012, Kushner and Spitz acquired Freedom. The company was in the media and
10 information business. The Pension Plan was substantially underfunded at the time of the acquisition,
11 and assumption of the Pension Plan was part of the consideration.

12 6. Kushner and Spitz wanted to improve the funding status of the Pension Plan to reduce
13 the funding contributions required by ERISA. With that aim, rather than maintaining prudent
14 investments with sound economic substance, Kushner and Spitz caused the Pension Plan to make
15 four ill-advised, highly speculative investments which caused the Pension Plan to lose tens of
16 millions of dollars

17 7. One of the failed investments started when Covelli and his associate, Larry P. Chinn
18 (“Chinn”), approached Kushner and Spitz with a proposal which they claimed would instantly
19 improve the Pension Plan’s funding status. Under this program, which Kushner and Spitz
20 implemented, the Pension Plan purchased life insurance policies with Freedom employees as the
21 insureds. Christian, the actuary retained and compensated by Covelli, then inflated the value of the
22 policies by valuing them at the net present value of future death benefits, rather than using the
23 correct valuation method, the cash surrender value of the policies. Kushner and Spitz abandoned the
24 program when they realized that the Pension Plan was legally required to use the cash surrender
25 value, resulting in a loss to the Pension Plan of over \$7 million dollars.

26
27 ¹ In November 2015, Freedom and certain of its affiliates commenced cases under chapter 11 of title
28 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). These cases are
being jointly administered as *In re Freedom Communications, Inc., et al.*, Case No. 15-15311-MW
(the “Bankruptcy Case”), and are pending in the United States Bankruptcy Court for the Central
District of California, Santa Ana Division (the “Bankruptcy Court”).

1 13. Defendant Aaron Kushner is an individual residing in Massachusetts.

2 14. Defendant Eric Spitz is an individual residing in California.

3 15. Defendant Richard J. Covelli is an individual residing in North Carolina.

4 16. Defendant Traci M. Christian is an individual residing in Kansas.

5 17. Defendants JTR, LLC, C & C Marketing, LLC, and C2 Advisors, LLC (each, a
6 “Covelli Entity” and collectively, the “Covelli Entities”) are each Delaware limited liability
7 companies with principal places of business located at 814 Tyvola Road, Suite 107, Charlotte, North
8 Carolina 28217. Covelli is, and at all times relevant to this action was, the Managing Member of
9 each Covelli Entity.

10 18. Defendant Etaros Actuarial Services, LLC, is a Kansas limited liability company with
11 a principal place of business located at 5008 W. 129th Street, Leawood, Kansas 66209. Christian is,
12 and at all times relevant to this action was, the Managing Member of Etaros.

13 **GENERAL ALLEGATIONS**

14 **ERISA Definitions & Standards**

15 19. Under ERISA, a fiduciary of an employee benefit plan (“Fiduciary”) includes any
16 person who exercises discretionary authority or discretionary control respecting the management of
17 the plan or exercises any authority or control respecting the management or disposition of its assets.
18 29 U.S.C. § 1002(21)(A). A Fiduciary also includes anyone who renders investment advice for a fee
19 or other compensation, direct or indirect, with respect to any moneys or other property of such plan
20 or has any authority to do so. *Id.* In addition to this functional definition of a fiduciary, ERISA
21 requires pension plans to have one or more named fiduciaries. 29 U.S.C. § 1102(a). A named
22 fiduciary is a fiduciary named in the plan instrument. *Id.*

23 20. Under ERISA, a Fiduciary shall discharge his duties with respect to the plan:
24 solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of
25 . . . providing benefits to participants and their beneficiaries [the “Duty of Loyalty”] . . . with
26 the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent
27 man acting in a like capacity and familiar with such matters would use in the conduct of an
28 enterprise of a like character and with like aims [“Due Diligence” and the “Duty of

1 Prudence”] . . . in accordance with the documents and instruments governing the plan . . .
2 [the “Duty to Act in Accordance with Plan Documents”].

3 29 U.S.C. §§ 1104(a)(1)(A)-(D). Under ERISA, a “Party in Interest” in relation to an employee
4 benefit plan includes “a person providing services to such plan,” 29 U.S.C. § 1002(14)(B).

5 21. Under ERISA, a transaction is a “Prohibited Transaction” if, among other things, it
6 constitutes a direct or indirect “furnishing of goods, services, or facilities between the plan and a
7 [P]arty in [I]nterest,” 29 U.S.C. § 1106(a)(1)(C).

8 **The Pension Plan**

9 22. The Pension Plan was established by Freedom effective January 1, 1989.

10 23. Before commencing its bankruptcy proceeding in November 2015, Freedom and its
11 affiliates owned The Orange County Register, The Riverside Press-Enterprise, and other Southern
12 California newspapers and magazines.

13 24. Freedom maintained the Pension Plan to provide retirement benefits for employees of
14 Freedom and its affiliates.

15 25. The Pension Plan was an employee benefit pension plan within the meaning of 29
16 U.S.C. § 1002(2). A copy of the Pension Plan’s written instrument is attached hereto as Exhibit 1
17 (the “Plan Document”).

18 26. Under ERISA, the Pension Plan’s administrator was required to prepare an annual
19 report containing, along with other information, the current value of the Pension Plan’s assets (the
20 “Annual Report”). 29 U.S.C. § 1023.

21 27. Under ERISA, Freedom was required to make minimum funding contributions to
22 the Pension Plan (the “Minimum Funding Obligations”), 29 U.S.C. §§ 1082, 1083, in amounts based
23 in part on the combined fair market value of assets contained in the previous year’s Annual Report.
24 *See* 29 CFR 4010.4(b).

25 **Freedom, Pre-bankruptcy**

26 28. On April 30, 2010, Freedom and its affiliates emerged from a Chapter 11 bankruptcy
27 filed in the United States Bankruptcy Court for the District of Delaware, jointly administered as *In re*
28 *Freedom Communications Holdings, Inc.*, Case No. 09-13046 (Bankr. D. Del.).

1 29. In 2012, Kushner and Spitz acquired Freedom and its affiliates for approximately \$50
2 million and the assumption of liabilities, including liability for the underfunding of the Pension Plan.

3 30. Beginning in 2012, Kushner held various executive positions with Freedom and its
4 affiliates, including as Freedom’s chief executive officer and the chairman of its board of directors,
5 and the chairman of the board of directors of Freedom’s sole shareholder and ultimate corporate
6 parent, 2100 Freedom, Inc. (“2100”). At all relevant times to the allegations in this Complaint,
7 Kushner and Spitz co-owned 2100. A Kushner-affiliated entity owned approximately 90% of 2100’s
8 stock. *See* Summary of Assets and Liabilities of 2100 Freedom, Inc. at 76, *In re 2100 Freedom,*
9 *Inc.*, No. 15-15315 (Bankr. C. D. Cal. Dec. 21, 2015), ECF No. 16.

10 31. Beginning in 2012, Kushner was a member of the Pension Plan’s administrative
11 committee (the “Administrative Committee”), which had exclusive authority to control and manage
12 the Pension Plan’s operations and administration, and he was a member of the Pension Plan’s
13 investment committee (the “Investment Committee”), which had exclusive authority to control and
14 manage the investment of the Pension Plan’s assets. Under the Plan Document, members of the
15 Administrative Committee and the Investment Committee were the named Fiduciaries of the Pension
16 Plan. Ex. 1. Plan Document § 11.01(d); 29 U.S.C. § 1102(a)(1).

17 32. Beginning in 2012, Spitz held various executive roles with Freedom and its affiliates,
18 including as Freedom’s president.

19 33. Beginning in 2012, Spitz was a member of the Administrative Committee and the
20 Investment Committee.

21 34. Beginning in 2012, Kushner and Spitz were trustees of the Pension Plan.

22 35. Kushner and Spitz, as members of the Administrative and Investment Committees,
23 and as trustees of the Pension Plan, each had access to the professional opinions of various pension
24 advisory, accounting, and actuarial firms retained by Freedom, including the firms of LTSP, Inc.,
25 Towers Watson & Co., and Aon Hewitt.

26 36. Effective July 29, 2013, Freedom and Aon Hewitt entered into an agreement (the
27 “Aon Hewitt Master Consulting Agreement”) under which Aon Hewitt agreed to provide investment
28 consulting and management advice to the Pension Plan. As part of the Aon Hewitt Master

1 Consulting Agreement, Freedom designated Aon Hewitt as a Fiduciary of the Pension Plan in
2 connection with certain investment consulting actions.

3 37. In 2012, Kushner and Spitz together began implementing a business plan to expand
4 and increase circulation of The Orange County Register and Freedom's other publications
5 throughout Southern California (the "Kushner/Spitz Business Plan").

6 38. The combined fair market value of the Pension Plan's assets directly affected the
7 financial condition of Freedom and 2100. If the combined fair market value of the Pension Plan's
8 assets increased, Freedom's Minimum Funding Obligations to the Pension Plan decreased.

9 39. In January 2013, Kushner and Spitz each received from Freedom's pension advisory
10 and actuarial firm, Towers Watson & Co., detailed information regarding the responsibilities of
11 Fiduciaries of the Pension Plan.

12 40. In March 2013, Aon Hewitt replaced Towers Watson & Co. as Freedom's pension
13 advisory and actuarial firm.

14 41. Effective September 11, 2013, the Investment Committee adopted an Investment
15 Policy Statement for the Pension Plan (the "Investment Policy") setting forth guidelines for investing
16 the assets of the Pension Plan (the "Investment Guidelines"). A copy of the Investment Policy is
17 attached hereto as Exhibit 2. The Investment Guidelines are found at pp. 12-13. The Investment
18 Guidelines set forth "an investment strategy the [Investment] Committee . . . determined is
19 appropriate for managing the [Pension Plan's] assets," and thus constituted an instrument governing
20 the Pension Plan.

21 42. On November 21, 2013, due to Freedom's failure to generate the revenues necessary
22 to implement and fund the Kushner/Spitz Business Plan, Kushner and Spitz each authorized and
23 caused 2100, Freedom, and other subsidiaries of 2100 (collectively, the "Freedom Obligor"), to
24 enter into a \$26 million credit facility with Silver Point Finance, LLC ("Silver Point" and the "Silver
25 Point Credit Agreement").

26 43. Under the Silver Point Credit Agreement, the financial obligations of the Freedom
27 Obligor, including all borrowed sums outstanding plus all fees, costs, and charges (collectively, the
28 "Silver Point Obligation"), were secured by first-priority liens granted in favor of Silver Point on

1 substantially all of the real, personal, and intellectual property of the Freedom Obligors, and on the
2 rights of the Freedom Obligors to such property (the “Silver Point Liens”).

3 44. In or around December 2013, Kushner and Spitz together engaged Covelli and the
4 Covelli Entities to provide advice and other pension-related services concerning the investment of
5 the Pension Plan’s assets.

6 45. On April 15, 2014, Freedom failed to satisfy its Minimum Funding Obligation owed
7 to the Pension Plan.

8 46. On July 11, 2014, Silver Point delivered to the Freedom Obligors notices of default
9 for the Silver Point Credit Agreement, which accelerated payment of the Silver Point Obligation.

10 47. On July 15 and September 15, 2014, Freedom again failed to satisfy its Minimum
11 Funding Obligations owed to the Pension Plan.

12 48. On September 16, 2014, Silver Point commenced nonjudicial foreclosures of the
13 Silver Point Liens, and scheduled foreclosure sales on November 3, 2015, for the real properties (the
14 “Foreclosure Sales”).

15 49. On October 15, 2014, and on January 15, 2015, Freedom again failed to satisfy its
16 Minimum Funding Obligations owed to the Pension Plan.

17 50. Effective March 10, 2015, Kushner resigned from 2100, Freedom, and 2100’s other
18 subsidiaries. Spitz resigned as Freedom’s president and became chairman of Freedom’s board of
19 directors.

20 51. On April 15, July 15, September 15, and October 15, 2015, Freedom again failed to
21 satisfy the Minimum Funding Obligations owed to the Pension Plan.

22 **Freedom, Post-commencement of the Bankruptcy Case**

23 52. On November 1, 2015, and November 2, 2015 (together, the “Bankruptcy Date”),
24 2100, Freedom, and other subsidiaries of 2100 including all of the Freedom Obligors (collectively,
25 the “Freedom Debtors”), filed bankruptcy thereby commencing the Bankruptcy Case and staying the
26 Foreclosure Sales.

27 53. On November 10, 2015, the United States Trustee for the Central District of
28 California formed the Official Committee of Unsecured Creditors of Freedom Communications, Inc.

1 *et al.* (the “Creditors’ Committee”). The Creditors’ Committee consists of PBGC and certain other
2 creditors of the Freedom Debtors.²

3 54. As of the Bankruptcy Date, the Freedom Debtors owed Silver Point approximately
4 \$19.5 million, secured by the Silver Point Liens. In addition, the Freedom Debtors owed the Pension
5 Plan approximately \$15.5 million (the “Pension Contribution Obligation”) excluding interest,
6 secured by statutory liens perfected by PBGC on behalf of the Pension Plan. PBGC perfected the
7 statutory liens, before the Bankruptcy Date, against the property and rights to property of Freedom
8 and the members of its “controlled group” (as defined by 29 U.S.C. § 1301(a)(14)), pursuant to
9 section 430(k) of the Internal Revenue Code (collectively, the “430(k) Liens”). *See* 26 U.S.C.
10 § 430(k).

11 55. On March 30, 2016, the Freedom Debtors sold all assets free and clear of both the
12 Silver Point Liens and the 430(k) Liens, to a Bankruptcy Court-approved bidder that did not assume
13 any liabilities associated with the Pension Plan, and the Freedom Debtors ceased all business
14 operations.³ The Freedom Debtors applied the proceeds to satisfy the Silver Point Obligation and
15 the Pension Contribution Obligation. PBGC’s unsecured claims remain unsatisfied. Limited
16 proceeds remain for the Freedom Debtors to distribute to unsecured creditors.

17 **Termination of the Pension Plan and PBGC’s Investigation**

18 56. On May 5, 2016, PBGC issued to the Administrative Committee a notice of
19 determination under 29 U.S.C. § 1342(a) that the Pension Plan would be unable to pay benefits when
20 due, and that the Plan should be terminated under 29 U.S.C. § 1342(c).

21 57. On May 18, 2016, Spitz, acting on behalf of the Administrative Committee, which
22 was the administrator of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(1), entered into
23 an agreement with PBGC, pursuant to 29 U.S.C. § 1342(c), that terminated the Pension Plan,

24 ² Notice of Appointment of Creditors’ Committee Filed by United States Trustee, *In re Freedom*
25 *Communications, Inc., et al.* No. 15-15315 (Bankr. C.D. Cal. Nov 10, 2015), ECF No. 77. On
26 January 26, 2017, the Creditors’ Committee sued the Defendants and certain other parties, on behalf
27 of the Freedom Debtors, for various causes of action available under the Bankruptcy Code and the
laws of the State of California. The suit remains ongoing. *See Complaint*, Adversary Proceeding
No. 17-01012-MW, *Official Committee of Unsecured Creditors of Freedom Communications, Inc.*
and 2100 Freedom Inc. v. Kushner, Spitz, et al., (Bankr. C.D. Cal. Jan 26, 2017), ECF No. 1.

28 ³ *See Order: (A) Authorizing the Sale of the Debtors’ Assets Free and Clear of Liens, Claims,*
Encumbrances, and Other Interests, etc., In re Freedom Communications, Inc., et al. No. 15-15315
(Bankr. C.D. Cal. Mar. 30, 2016), ECF No. 562.

1 effective March 31, 2016 (the “Termination Date”), and appointed PBGC the Pension Plan’s
2 statutory trustee (the “Trusteeship Agreement”). On May 23, 2016 (the “Trusteeship Date”), PBGC
3 signed the Trusteeship Agreement, and it became effective. A copy of the Trusteeship Agreement is
4 attached hereto as Exhibit 3.

5 58. PBGC estimates that as of the Termination Date the Pension Plan had “unfunded
6 benefit liabilities”⁴ of approximately \$219.1 million.

7 59. As the Pension Plan’s trustee, PBGC is authorized to recover any liabilities owed to
8 the Pension Plan, *see* 29 U.S.C. §§ 1342(d), 1362(c), including any liabilities owed pursuant to 29
9 U.S.C. §§ 1105, 1109.

10 60. Following the Trusteeship Date, PBGC gathered investment and other business
11 records relating to the Pension Plan and investigated whether any of the Fiduciary Standards had
12 been violated and whether any Prohibited Transactions had occurred. PBGC identified four
13 investments that involved either Prohibited Transactions or violations of the Fiduciary Standards, or
14 both. PBGC estimates that these schemes caused approximately \$83.1 million in damages, plus
15 interest. The four investments are discussed below.

16 **The 2100 Stock Transaction**

17 61. On or about October 11, 2013, Kushner and Spitz each authorized and caused the
18 Pension Plan to invest approximately \$7.25 million to acquire 665,748 shares of Series E preferred
19 stock and 665,748 shares of Class F non-voting stock of 2100 (the “2100 Stock Transaction” and the
20 Series E and Class F shares collectively, the “Shares”).

21 62. Kushner and Spitz each sought for the 2100 Stock Transaction to benefit the Freedom
22 Obligors and themselves as owners of 2100 through the realization of an approximately \$7.25
23 million increase in the assets available to the Freedom Obligors to implement the Kushner/Spitz
24 Business Plan and/or to satisfy the Silver Point Obligation. Accordingly, rather than acting in the
25 best interest of the Participants and Beneficiaries, Kushner and Spitz authorized and caused the 2100

26 ⁴ 29 U.S.C. § 1301(a)(18). On April 1, 2016, PBGC filed against the Freedom Debtors a proof of
27 claim for the Pension Plan’s unfunded benefit liabilities with a lower estimated amount, as its
28 investigation was not yet underway, and its estimate of the market value of the Pension Plan’s assets
was therefore not accurate. *See Proof of Claim of Pension Benefit Guaranty Corporation Against
Freedom Communications, Inc., et al. of \$154,566,070.00*, No. 15-15315 (Bankr. C.D. Cal. Apr. 1,
2016), Claim No. 503-1. PBGC anticipates amending its proofs of claim.

1 Stock Transaction to increase the assets available to the Freedom Obligors to implement the
2 Kushner/Spitz Business Plan and to satisfy the Silver Point Obligation.

3 63. Before authorizing and causing the 2100 Stock Transaction, Kushner and Spitz each
4 knew that (a) the Freedom Obligors were or would soon become heavily indebted to Silver Point
5 under the Silver Point Credit Agreement; (b) substantially all of the property of the Freedom
6 Obligors would be encumbered by the Silver Point Liens; (c) 2100's liabilities exceeded the value of
7 its assets; and (d) the Pension Plan's cost to acquire the stock was greater than the fair market value
8 of the Shares (the "Insider Information"). Following the 2100 Stock Transaction, Kushner and Spitz
9 each knowingly authorized and caused the Pension Plan to overstate the fair market value of the
10 Shares in the Pension Plan's subsequent Annual Reports.

11 **The Participant Life Insurance Transaction**

12 64. Beginning in December 2013, Covelli, Kushner, and Spitz began to devise and
13 implement a program to take out life insurance on Participants of the Pension Plan (the "Participant
14 Life Insurance Transaction"). Covelli proposed and facilitated the scheme, and Kushner and Spitz
15 authorized and caused the Pension Plan to (a) expend approximately \$9.4 million to procure and
16 maintain life insurance policies issued on the lives of Participants (the "Participant Life Insurance");
17 and (b) pay unreasonable, above-market fees, commissions, and other compensation to Covelli, and
18 each Covelli Entity, and later to Christian and Etaros, for their advice to Kushner and Spitz (the
19 "Participant Life Insurance Transaction Fees").

20 65. On or about December 20, 2013, Aon Hewitt, as a Fiduciary of the Pension Plan,
21 warned Kushner and Spitz that (a) the assets of the Pension Plan must be valued in accordance with
22 generally accepted accounting principles recognized by the Financial Accounting Standards Board
23 (the "Accounting Standards"), which provide, in pertinent part, that "[i]f a contract has a
24 determinable cash surrender value or conversion value, that is presumed to be its fair value," *see*
25 Accounting Standards Codification 715-30-35-60, Financial Accounting Standards Board; (b) due to
26 the Accounting Standards, the Participant Life Insurance was not a suitable asset for the Pension
27 Plan to acquire, as it could only be valued according to the combined determinable cash surrender or
28 conversion values of the underlying policies; and (c) authorizing and causing the Participant Life

1 Insurance Transaction would be imprudent and would likely increase Freedom's Minimum Funding
2 Obligations to the Pension Plan (the "Aon Advice").

3 66. Before the Participant Life Insurance Transaction, Covelli and the Covelli Entities
4 each advised Kushner and Spitz to authorize and cause the Participant Life Insurance Transaction
5 under the false presumptions that (a) the Participant Life Insurance would be valued in excess of the
6 combined determinable cash surrender or conversion values of the underlying policies; (b) the
7 Participant Life Insurance Transaction would substantially increase the combined fair market value
8 of the Pension Plan's assets; and (c) the Participant Life Insurance Transaction would decrease
9 Freedom's Minimum Funding Obligations to the Pension Plan (together, the "Participant Life
10 Insurance Transaction Presumptions").

11 67. In forming the Participant Life Insurance Transaction Presumptions, Covelli,
12 Christian, Etaros, and the Covelli Entities each knew or should have known, yet failed to consider,
13 the Accounting Standards and the Aon Advice.

14 68. Kushner and Spitz each accepted the Participant Life Insurance Presumptions without
15 seeking adequate assurances of their validity or adequate assurances of the professional credentials,
16 experience, and expertise of Covelli and the Covelli Entities.

17 69. Through the Participant Life Insurance Transaction, Kushner and Spitz each sought to
18 benefit the Freedom Obligors and themselves as owners of 2100 through a decrease of Freedom's
19 Minimum Funding Obligation to the Pension Plan. Accordingly, rather than acting in the best
20 interest of the Participants and Beneficiaries, Kushner and Spitz authorized and caused the
21 Participant Life Insurance Transaction to increase the assets available to the Freedom Obligors to
22 implement the Kushner/Spitz Business Plan and to satisfy the Silver Point Obligation.

23 70. Covelli, Christian, Etaros and the Covelli Entities each sought for the Participant Life
24 Insurance Transaction to benefit themselves as recipients of the Participant Life Insurance
25 Transaction Fees.

26 71. On or about December 30, 2013, Kushner and Spitz each authorized and caused the
27 Participant Life Insurance Transaction.

28 72. The Participant Life Insurance Transaction was not consistent with the Investment
Guidelines.

1 73. In May 2014, the Pension Plan’s long-retained auditor and accountant, LTSP, Inc.,
2 advised Kushner and Spitz that it would no longer audit the Pension Plan, because of the Participant
3 Life Insurance Transaction and the 2100 Stock Transaction.

4 74. On or about June 14, 2014, Christian and Etaros began working with Covelli and the
5 Covelli Entities in connection with the Participant Life Insurance Transaction. Covelli or the Covelli
6 Entities compensated Christian and Etaros for their services.

7 75. On or about August 13, 2014, Christian and Etaros erroneously advised Kushner and
8 Spitz that the fair market value of the Participant Life Insurance was determinable according to the
9 present value of the expected death benefits of the underlying policies (the “Etaros Valuation
10 Method”).

11 76. Kushner and Spitz each authorized and caused the Pension Plan to overstate the fair
12 market value of the Participant Life Insurance, according to the Etaros Valuation Method, in the
13 Pension Plan’s subsequent Annual Reports.

14 77. On or about October 8, 2014, in an amendment to the Aon Hewitt Master Consulting
15 Agreement, Aon Hewitt disavowed its role as a Fiduciary of the Pension Plan, stating that, “effective
16 December 1, 2013, [Freedom] relieved [Aon Hewitt] as the Named Fiduciary . . . with respect to
17 [Freedom’s] decision to acquire [plan] owned life insurance interests.”

18 78. Following the Participant Life Insurance Transaction, Spitz and Kushner were unable
19 to obtain a legal opinion validating the Etaros Valuation Method, or a clean audit from the Pension
20 Plan’s newly retained accountant and auditor, Sensiba San Filippo LLP. As a result, Spitz and
21 Kushner were forced to admit that the Participant Life Insurance could only be valued according to
22 the determinable cash surrender or conversion values of the underlying policies.

23 79. In January 2016, Spitz authorized and caused the Pension Plan to liquidate the
24 Participant Life Insurance for the cash surrender values of the underlying policies, approximately
25 \$320,000.

26
27
28

The LT Funding Transaction

1
2 80. In 2014, Covelli devised a second program involving life insurance (the “LT Funding
3 Transaction”). He persuaded Kushner and Spitz to authorize and cause the Pension Plan to (a) invest
4 approximately \$32 million in a limited liability company wholly owned by the Pension Plan, LT
5 Funding, LLC (“LT Funding”), (b) have LT Funding enter into contractual obligations to loan tens
6 of millions of dollars to over 80 irrevocable life insurance trusts (the “LT Funding Obligations” and
7 the “ILITs,” respectively) for the purpose of funding premiums on life insurance policies owned by
8 the ILITs (the “ILIT-owned Policies); and (c) pay unreasonable, above-market fees and other
9 compensation to Covelli, Christian, Etaros, and each Covelli Entity (the “LT Funding Transaction
10 Fees”).

11 81. Before the LT Funding Transaction, the Defendants each knew or should have known
12 that (a) the net worth of LT Funding would likely be negative at any point in time (i.e., the present
13 value of the LT Funding Obligations would exceed the combined present value of LT Funding’s
14 assets and future revenues, taking into account the life expectancies of the insureds), and (b) a
15 decrease in the combined fair market value of the Pension Plan’s assets was a significant risk of the
16 LT Funding Transaction (the “Actuarial Information”).

17 82. Before the LT Funding Transaction, Covelli, Christian, Etaros, and the Covelli
18 Entities each advised Kushner and Spitz to authorize and cause the LT Funding Transaction based
19 upon their false presumptions that (a) the fair market value of LT Funding would be substantially
20 more than the cost of LT Funding to the Pension Plan; (b) the LT Funding Transaction would
21 significantly increase the combined fair market value of the Pension Plan’s assets; and (c) the LT
22 Funding Transaction would decrease Freedom’s Minimum Funding Obligations to the Pension Plan
23 (together, the “LT Funding Transaction Presumptions”).

24 83. In forming the LT Funding Transaction Presumptions, Covelli, Christian, Etaros, and
25 the Covelli Entities each failed to consider the Actuarial Information; medical underwriting for any
26 of the ILIT-owned Policies; a proper applicable interest rate; or, for each ILIT-owned Policy, a
27 proper comparison of the present value of expected death benefits to the present value of premiums
28 owed over the corresponding insured’s expected lifetime.

1 84. Before the LT Funding Transaction, one of the Covelli Entities, JTR, had entered into
2 loan agreements with several of the ILITs (the “JTR Obligations”). By the time of the LT Funding
3 Transaction, JTR could no longer afford to satisfy the JTR Obligations.

4 85. Before authorizing and causing the LT Funding Transaction, Spitz and Kushner each
5 failed to seek adequate assurances of the validity of the LT Funding Transaction Presumptions, or of
6 the professional credentials, experience, or expertise of Covelli, Christian, Etaros, or the Covelli
7 Entities.

8 86. Kushner and Spitz each sought for the LT Funding Transaction to benefit the
9 Freedom Obligors and themselves as owners of 2100 through a decrease of Freedom’s Minimum
10 Funding Obligation to the Pension Plan. Accordingly, rather than acting in the best interest of the
11 Participants and Beneficiaries, Kushner and Spitz’s authorized and caused the LT Funding
12 Transaction to increase the assets available to the Freedom Obligors to implement the Kushner/Spitz
13 Business Plan and to satisfy the Silver Point Obligation.

14 87. Covelli, Christian, Etaros and the Covelli Entities each sought for the LT Funding
15 Transaction to benefit themselves as recipients of the LT Funding Transaction Fees.

16 88. On or about December 31, 2014, Kushner and Spitz each (a) authorized and caused
17 the LT Funding Transaction; and (b) agreed with JTR, on behalf of LT Funding, LLC, to replace
18 JTR with LT Funding, LLC, as the obligor with respect to the JTR Obligations, and, in exchange for
19 \$3.6 million (the “JTR Subordination Fee”), to subordinate the JTR Obligations to the LT Funding
20 Obligations.

21 89. Covelli and JTR sought for the LT Funding Transaction to benefit themselves as the
22 transaction would relieve JTR from the JTR Obligations and provide the JTR Subordination Fee.

23 90. The LT Funding Transaction was not consistent with the Investment Guidelines.

24 91. Following the LT Funding Transaction, Kushner and Spitz each knowingly caused
25 the Pension Plan to overstate the fair market value of LT Funding in the Pension Plan’s subsequent
26 Annual Reports.⁵

27 ⁵ On November 12, 2018, LT Funding filed for bankruptcy under Chapter 7 of the United States
28 Bankruptcy Code. *In re LT Funding, LLC*, 18-bk-23282, U.S. Bankruptcy Court, Central District of California.

The Topaz Transaction

1
2 92. On or about October 13, 2014, Kushner and Spitz each authorized and caused the
3 Pension Plan to invest approximately \$6 million to acquire an interest (the “Topaz Interest”) in the
4 Topaz MP Fixed Income Fund (the “Topaz Fund”), an unproven, high-risk foreign investment fund
5 (the “Topaz Transaction”).

6 93. According to the Topaz Fund’s advertising material, the Topaz Fund boasted “a new
7 yearly distribution of 14% over 5 years offers the prospect of a 70% total net return at the end of five
8 years.” The materials promised “100% loss protection” by an underwriter, “thus guaranteeing the
9 investor his total return.”

10 94. Before authorizing and causing the Topaz Transaction, Kushner and Spitz each knew
11 or should have known that (a) the Topaz Fund was newly established by EQUI, a Luxembourg-
12 based investment fund manager with no reliable record of investment returns; (b) the fair market
13 value of the Topaz Interest was likely less than the Pension Plan’s acquisition cost; (c) the Topaz
14 Interest, if acquired, presented an unreasonable risk to the Pension Plan; (d) the fees and
15 commissions associated with the transaction were excessive and not typical or appropriate for such
16 an asset class; and (e) the Topaz Transaction could likely result in a significant decrease in the
17 combined fair market value of the Pension Plan’s assets (the “Topaz Information”).

18 95. On or about October 3, 2014, Aon Hewitt informed Kushner and Spitz that, “[t]he
19 Topaz fund would not be our preferred choice of asset manager to access this asset class . . .” Aon
20 Hewitt stated that it had “concerns about the lack of track record of the investment thesis and . . . the
21 relatively large upfront fee and placement commission.” Specifically, Aon Hewitt informed
22 Kushner and Spitz that such fees were “not typical” and would “cause an immediate small loss to the
23 [Pension Plan].”

24 96. On or about October 8, 2014, in an amendment to the Aon Hewitt Master Consulting
25 Agreement, Aon Hewitt disavowed its role as a Fiduciary of the Pension Plan, stating that, “effective
26 October 1, 2014, [Freedom] relieved [Aon Hewitt] as the Named Fiduciary . . . with respect to
27 [Freedom’s] decision to acquire interests in the Topaz Fixed Income Fund.”

28 97. Following the Topaz Transaction, the government of Luxembourg withdrew EQUI
from its list of licensed investment fund managers (due to apparent non-compliance issues) and

1 stated that EQUI and the underwriters of Topaz would soon become the subject of subsequent
2 liquidation proceedings.

3 98. On October 31, 2016, the Topaz Fund stopped trading. On February 2, 2017, the
4 Italian Ministry of Economic Development announced that the underwriter of EQUI would be
5 administratively liquidated. Those liquidation proceedings remain ongoing and, thus, on information
6 and belief, the Topaz Interest has no discernable fair market value and is worthless.

7 99. Kushner and Spitz each sought for the Topaz Transaction to benefit the Freedom
8 Obligors and themselves as owners of 2100 through a decrease of Freedom's Minimum Funding
9 Obligation to the Pension Plan. Accordingly, rather than acting in the best interest of the
10 Participants and Beneficiaries, Kushner and Spitz authorized and caused the Topaz Transaction to
11 increase the assets available to the Freedom Obligors to implement the Kushner/Spitz Business Plan
12 and to satisfy the Silver Point Obligation.

13 100. Following the Topaz Transaction, Kushner and Spitz each authorized and caused the
14 Pension Plan to overstate the fair market value of the Topaz Interest in the Pension Plan's
15 subsequent Annual Reports.

16 **Count I**
17 **Against Kushner and Spitz for Breach of Duty of Loyalty**
18 **(2100 Stock Transaction)**

19 101. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
20 this Complaint as if fully set forth herein.

21 102. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
22 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

23 103. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan when they
24 authorized and caused the Pension Plan to invest in the 2100 Stock Transaction.

25 104. Because Kushner and Spitz each sought for the 2100 Stock Transaction to benefit the
26 Freedom Obligors and themselves as owners of 2100, their authorization and causation of the 2100
27 Stock Transaction was not solely in the interest of the Participants and Beneficiaries.
28

1 105. Because Kushner and Spitz's authorization and causation of the 2100 Stock
2 Transaction was not solely in the interest of the Participants and Beneficiaries, Kushner and Spitz
3 each violated their Duty of Loyalty to the Pension Plan under 29 U.S.C. § 1104(a)(1)(A).

4 106. Because Kushner and Spitz authorized and caused the 2100 Stock Transaction to
5 increase the assets available to the Freedom Obligors to implement the Kushner/Spitz Business Plan
6 and to satisfy the Silver Point Obligation, Kushner and Spitz's authorization and causation of the
7 2100 Stock Transaction was not for the exclusive purpose of providing benefits to the Participants
8 and Beneficiaries.

9 107. Because Kushner and Spitz's authorization and causation of the 2100 Stock
10 Transaction was not for the exclusive purpose of providing benefits to Participants and Beneficiaries,
11 Kushner and Spitz each violated their Duty of Loyalty to the Pension Plan under 29 U.S.C.
12 § 1104(a)(1)(A).

13 108. As a direct and proximate result of Kushner and Spitz's violations of their Duty of
14 Loyalty in connection with the 2100 Stock Transaction, the Pension Plan suffered losses of at least
15 \$7.25 million, plus interest and lost opportunity costs. In addition to the cost of the Shares, the
16 losses include, but are not limited to, the increase in the Minimum Funding Obligations that would
17 have been due if the Annual Reports did not overstate the fair market value of the Shares.

18 109. For their violations of the Duty of Loyalty in connection with the 2100 Stock
19 Transaction, PBGC requests that Kushner and Spitz each be held personally liable under 29 U.S.C.
20 § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension Plan any
21 lost profit associated therewith.

22
23 **Count II**
24 **Against Kushner and Spitz for Breach of Duty of Prudence**
(2100 Stock Transaction)

25 110. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
26 this Complaint as if fully set forth herein.

27 111. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
28 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

1 112. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan when they
2 authorized and caused the Pension Plan to invest in the 2100 Stock Transaction.

3 113. Because Kushner and Spitz each knew yet failed to adequately consider the Insider
4 Information, Kushner and Spitz each failed to act with Due Diligence before authorizing and causing
5 the 2100 Stock Transaction.

6 114. Because Kushner and Spitz each failed to act with Due Diligence, Kushner and Spitz
7 each violated their Duty of Prudence with respect to the Pension Plan under 29 U.S.C.
8 § 1104(a)(1)(B).

9 115. As a direct and proximate result of Kushner and Spitz's violations of their Duty of
10 Prudence in connection with the 2100 Stock Transaction, the Pension Plan suffered losses of at least
11 \$7.25 million, plus interest and lost opportunity costs. In addition to the cost of the Shares, the
12 losses include, but are not limited to, the increase in the Minimum Funding Obligations that would
13 have been due if the Annual Reports did not overstate the fair market value of the Shares.

14 116. For their violations of the Duty of Prudence in connection with the 2100 Stock
15 Transaction, PBGC requests that Kushner and Spitz each be held personally liable under 29 U.S.C.
16 § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension Plan any
17 lost profits associated therewith.

18 **Count III**
19 **Against Kushner and Spitz for Breach of Duty of Loyalty**
20 **(Participant Life Insurance Transaction)**

21 117. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
22 this Complaint as if fully set forth herein.

23 118. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
24 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

25 119. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
26 they authorized and caused the Pension Plan to invest in the Participant Life Insurance Transaction.

27 120. Because Kushner and Spitz each sought for the Participant Life Insurance Transaction
28 to benefit the Freedom Obligors and themselves as owners of 2100, their authorization and causation
of the Participant Life Insurance Transaction was not solely in the interest of the Participants and
Beneficiaries.

1 121. Because the Participant Life Insurance Transaction was for the purposes of (a)
2 increasing the assets available to the Freedom Obligors to implement the Kushner/Spitz Business
3 Plan and to satisfy the Silver Point Obligation, and (b) funding the Participant Life Insurance
4 Transaction Fees, it was not for the exclusive purpose of providing benefits to Participants and
5 Beneficiaries.

6 122. Because Kushner and Spitz's authorization and causation of the Participant Life
7 Insurance Transaction was not solely in the interest of the Participants and Beneficiaries, Kushner
8 and Spitz each violated their Duty of Loyalty to the Pension Plan under 29 U.S.C. § 1104(a)(1)(A).

9 123. As a direct and proximate result of Kushner's and Spitz's violations of their Duty of
10 Loyalty in connection with the Participant Life Insurance Transaction, the Pension Plan suffered
11 losses of approximately \$9.4 million, plus interest and lost opportunity costs. In addition to the cost
12 of the Participant Life Insurance, the losses include, but are not limited to, the increase in the
13 Minimum Funding Obligations that would have been due if the Annual Reports did not overstate in
14 the Annual Reports the fair market value of the Participant Life Insurance.

15 124. For their violations of the Duty of Loyalty in connection with the Participant Life
16 Insurance Transaction, PBGC requests that Kushner and Spitz each be held personally liable under
17 29 U.S.C. § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the
18 Pension Plan any lost profit associated therewith.

19 **Count IV**
20 **Against Kushner and Spitz for Breach of Duty of Prudence**
21 **(Participant Life Insurance Transaction)**

22 125. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
23 this Complaint as if fully set forth herein.

24 126. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
25 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

26 127. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
27 they authorized and caused the Pension Plan to invest in the Participant Life Insurance Transaction.

28 128. Because Kushner and Spitz each accepted the Participant Life Insurance
Presumptions without seeking sufficient assurances of their validity or adequately verifying the

1 professional credentials, experience, or expertise of Covelli, Christian, Etaros, or the Covelli
2 Entities, and by failing to adequately consider the Accounting Standards and the Aon Advice,
3 Kushner and Spitz each failed to act with Due Diligence before authorizing and causing the
4 Participant Life Insurance Transaction.

5 129. Because Kushner and Spitz each failed to act with Due Diligence, Kushner and Spitz
6 each violated their Duty of Prudence with respect to the Pension Plan under 29 U.S.C.
7 § 1104(a)(1)(B).

8 130. As a direct and proximate result of Kushner's and Spitz's violations of their Duty of
9 Prudence in connection with the Participant Life Insurance Transaction, the Pension Plan suffered
10 losses of approximately \$9.4 million, plus interest and lost opportunity costs. In addition to the cost
11 of the Participant Life Insurance, the damages include, but are not limited to, the increase in the
12 Minimum Funding Obligations that would have been due if the Annual Reports did not overstate the
13 fair market value of the Participant Life Insurance.

14 131. For their violations of the Duty of Prudence in connection with the Participant Life
15 Insurance Transaction, PBGC requests that Kushner and Spitz each be held personally liable under
16 29 U.S.C. § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the
17 Pension Plan any lost profits associated therewith.

18 **Count V**

19 **Against Kushner and Spitz for Breach of Duty to Act in Accordance with Plan Documents** 20 **(Participant Life Insurance Transaction)**

21 132. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
22 this Complaint as if fully set forth herein.

23 133. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
24 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

25 134. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
26 they authorized and caused the Pension Plan to invest in the Participant Life Insurance Transaction.

27 135. By authorizing and causing the Participant Life Insurance Transaction in
28 contravention of the Investment Guidelines, Kushner and Spitz each violated their Duty to Act in
Accordance with Plan Documents under 29 U.S.C. § 1104(a)(1)(D).

1 136. As a direct and proximate result of Kushner's and Spitz's violations of their Duty to
2 Act in Accordance with Plan Documents in connection with the Participant Life Insurance
3 Transaction, the Pension Plan suffered losses of approximately \$9.4 million, plus interest and lost
4 opportunity costs. In addition to the cost of the Participant Life Insurance, the losses include, but are
5 not limited to, the increase in the Minimum Funding Obligations that would have been due if the
6 Annual Reports did not overstate the fair market value of the Participant Life Insurance.

7 137. For their violations of the Duty to Act in Accordance with Plan Documents in
8 connection with the Participant Life Insurance Transaction, PBGC requests that Spitz and Kushner
9 each be held personally liable under 29 U.S.C. § 1109(a) to make good all losses suffered by the
10 Pension Plan and to restore to the Pension Plan any lost profits associated therewith.

11 **Count VI**
12 **Against Kushner and Spitz for Breach of Duty of Loyalty**
13 **(LT Funding Transaction)**

14 138. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
15 this Complaint as if fully set forth herein.

16 139. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
17 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

18 140. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
19 they authorized and caused the Pension Plan to invest in the LT Funding Transaction.

20 141. Because Kushner and Spitz each sought for the LT Funding Transaction to benefit the
21 Freedom Obligors and themselves as owners of 2100, their authorization and causation of the LT
22 Funding Transaction was not solely in the interest of the Participants and Beneficiaries.

23 142. Because the LT Funding Transaction was for the purpose of (a) reducing the
24 Minimum Funding Obligations, and thereby increasing the assets available to the Freedom Obligors
25 to implement the Kushner/Spitz Business Plan and to satisfy the Silver Point Obligation, and (b)
26 funding the LT Funding Transaction Fees, it was not for the exclusive purpose of providing benefits
27 to Participants and Beneficiaries.

28 143. Because the LT Funding Transaction was not for the exclusive purpose of providing
benefits to Participants and Beneficiaries, Kushner and Spitz each violated their Duty of Loyalty to

1 the Pension Plan under 29 U.S.C. § 1104(a)(1)(A) when they authorized and caused the LT Funding
2 Transaction.

3 144. As a direct and proximate result of Kushner's and Spitz's violations of their Duty of
4 Loyalty in connection with the LT Funding Transaction, the Pension Plan suffered losses of at least
5 \$32 million, plus interest and lost opportunity costs. In addition to the cost of the LT Funding
6 Transaction, the losses include, but are not limited to, the increase in the Minimum Funding
7 Obligations that would have been due if the Annual Reports did not overstate the fair market value
8 of LT Funding.

9 145. For their violations of the Duty of Loyalty in connection with the LT Funding
10 Transaction, PBGC requests that Kushner and Spitz each be held personally liable under 29 U.S.C.
11 § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension Plan any
12 lost profit associated therewith.

13
14 **Count VII**
15 **Against Kushner and Spitz for Breach of Duty of Prudence**
16 **(LT Funding Transaction)**

17 146. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
18 this Complaint as if fully set forth herein.

19 147. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
20 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

21 148. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
22 they authorized and caused the Pension Plan to invest in the LT Funding Transaction.

23 149. Because Kushner and Spitz each (a) accepted the LT Funding Transaction
24 Presumptions without seeking sufficient assurances of their validity, (b) failed to adequately verify
25 the professional credentials, experience, or expertise of Covelli, Christian, Etaros, or the Covelli
26 Entities, and (c) failed to consider the Actuarial Information; medical underwriting for any of the
27 ILIT-owned Policies; a proper applicable interest rate; or, for each ILIT-owned Policy, a proper
28 comparison of the present value of expected death benefits to the present value of premiums owed
Diligence before authorizing and causing the LT Funding Transaction.

1 150. Because Kushner and Spitz each failed to act with Due Diligence, Kushner and Spitz
2 each violated their Duty of Prudence with respect to the Pension Plan under 29 U.S.C.
3 § 1104(a)(1)(B).

4 151. As a direct and proximate result of the Defendants' violations of their Duty of
5 Prudence in connection with the LT Funding Transaction, the Pension Plan suffered losses of at least
6 \$32 million, plus interest and lost opportunity costs. In addition to the cost of the LT Funding
7 Transaction, the losses include, but are not limited to, the increase in the Minimum Funding
8 Obligations that would have been due if the Annual Reports did not overstate the fair market value
9 of LT Funding.

10 152. For their violations of the Duty of Prudence in connection with the LT Funding
11 Transaction, PBGC requests that Kushner and Spitz each be held personally liable under 29 U.S.C.
12 § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension Plan any
13 lost profits associated therewith.

14 **Count VIII**
15 **Against Kushner and Spitz for Breach of Duty to Act in Accordance with Plan Documents**
16 **(LT Funding Transaction)**

17 153. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
18 this Complaint as if fully set forth herein.

19 154. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
20 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

21 155. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
22 they authorized and caused the Pension Plan to invest in the LT Funding Transaction.

23 156. By authorizing and causing the LT Funding Transaction in contravention of the
24 Investment Guidelines, Kushner and Spitz each violated their Duty to Act in Accordance with Plan
25 Documents under 29 U.S.C. § 1104(a)(1)(D).

26 157. As a direct and proximate result of Kushner's and Spitz's violations of their Duty to
27 Act in Accordance with Plan Documents in connection with the LT Funding Transaction, the
28 Pension Plan suffered losses of at least \$32 million, plus interest and lost opportunity costs. In
addition to the cost of the LT Funding Transaction, the losses include, but are not limited to, the

1 increase in the Minimum Funding Obligations that would have been due if the Annual Reports did
2 not overstate the fair market value of LT Funding.

3 158. For their violations of the Duty to Act in Accordance with Plan Documents in
4 connection with the LT Funding Transaction, PBGC requests that Kushner and Spitz each be held
5 personally liable under 29 U.S.C. § 1109(a) to make good all losses suffered by the Pension Plan and
6 to restore to the Pension Plan any lost profits associated therewith.

7 **Count IX**
8 **Against Covelli for Knowing Participation in a Breach**
9 **of Fiduciary Duties in Violation of ERISA**
10 **(Participant Life Insurance Transaction)**

11 159. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
12 this Complaint as if fully set forth herein.

13 160. In 2013, Covelli contacted Kushner and Spitz and proposed the Participant Life
14 Insurance Transaction to purportedly reduce or eliminate the Pension Plan's underfunding. Covelli
15 retained and compensated Christian, an unqualified actuary, to artificially inflate the value of the
16 Participant Life Insurance policies to substantially more than their cost. The commission that
17 Covelli and his business associate charged the Pension Plan for the Participant Life Insurance
18 Transaction was based on the difference in value between what the Pension Plan paid and the
19 actuary's valuation. Therefore, Covelli had a conflict of interest. Covelli proceeded with the
20 scheme even after the Pension Plan's advisor, Aon Hewitt, opined that the proposed valuation
21 method violated the applicable accounting standards and recommended not making the investment.

22 161. Covelli participated in a campaign to convince Plan Participants to enroll in the
23 Participant Life Insurance Program. He drafted letters to Participants, scheduled meetings with
24 Participants, and provided Kushner and Spitz with information to give to Participants.

25 162. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
26 they authorized and caused the Pension Plan to make an initial investment of \$9.4 million in the
27 Participant Life Insurance Transaction.

28 163. Consistent with Aon Hewitt's advice, the Pension Plan's auditors, Sensiba San
Filippo LLP concluded that the Participant Life Insurance policies must be valued at their cash
surrender value in order for the Pension Plan to receive a clean audit opinion. Kushner and Spitz

1 abandoned the Participant Life Insurance program, and stopped making premium payments. By
2 authorizing and causing the Participant Life Insurance Transaction, Kushner and Spitz each violated
3 their fiduciary duties of Loyalty and Prudence under 29 U.S.C. § 1104(a)(1)(A) and (B). *See* Counts
4 III and IV above.

5 164. As a direct and proximate result of the Kushner's and Spitz's violations of their duties
6 of Loyalty and Prudence in connection with the Participant Life Insurance Transaction, the Pension
7 Plan suffered losses of approximately \$9.4 million, plus interest and lost opportunity costs.

8 165. At all times relevant herein, Covelli knew that Kushner and Spitz were acting on
9 behalf of the Pension Plan and using Pension Plan money to invest in the Participant Life Insurance
10 Transaction.

11 166. At all times relevant herein, Covelli knew that Kushner and Spitz were putting their
12 own interests and the interests of Freedom above the interests of the Participants and Beneficiaries in
13 violation of their fiduciary duty of Loyalty. In fact, Covelli designed the Participant Life Insurance
14 Transaction to inflate the value of the Pension Plan's assets in order to reduce the Minimum Funding
15 Obligations, thereby benefitting Kushner, Spitz, and Freedom at the expense of the Participants and
16 Beneficiaries.

17 167. At all times relevant herein, Covelli knew that Kushner and Spitz were not acting
18 with the care, skill, prudence, and diligence under the circumstances that a prudent man would use in
19 connection with the Participant Life Insurance Transaction, in violation of their duty of Prudence.
20 Covelli knew that Kushner and Spitz were relying on Covelli and the actuary retained and
21 compensated by Covelli, rather than relying on independent advice regarding the Participant Life
22 Insurance Transaction.

23 168. Covelli knowingly participated in the violations by Kushner and Spitz of the duties of
24 Loyalty and Prudence by his comprehensive and instrumental role in designing and facilitating the
25 Participant Life Insurance Transaction, thereby enabling Kushner and Spitz to breach their fiduciary
26 duties.

27 169. Title 29 U.S.C. § 1132(a)(3) imposes liability on non-fiduciaries who knowingly
28 participate in fiduciary breaches in violation of ERISA.

1 170. For his knowing participation in the breach of the fiduciary duties of Loyalty and
2 Prudence in connection with the Participant Life Insurance Transaction, PBGC requests that Covelli
3 be held liable under 29 U.S.C. § 1132(a)(3) for disgorgement of all commissions, fees and other
4 financial benefits that he and the Covelli Entities earned, received, or obtained as a result of the
5 Participant Life Insurance Transaction, disgorgement of any profits earned on such commissions,
6 fees and other financial benefits, and all other appropriate equitable relief.

7 **Count X**
8 **Against Covelli for Knowing Participation in Breach of**
9 **Fiduciary Duties in Violation of ERISA**
10 **(LT Funding Transaction)**

11 174. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
12 this Complaint as if fully set forth herein.

13 175. In 2014, Covelli developed a second scheme involving life insurance, the LT Funding
14 Transaction, and he proposed it to Kushner and Spitz as a means of reducing or eliminating the
15 Pension Plan's underfunding.

16 176. Covelli retained and compensated an unqualified actuary to artificially inflate the
17 value of the life settlement contracts used for the LT Funding Transaction to an amount substantially
18 greater than their cost. The commission that Covelli charged the Pension Plan for the LT Funding
19 Transaction was based on the difference in value between the cost to the Pension Plan and the
20 actuary's valuation. Therefore, Covelli had a conflict of interest.

21 177. Following Covelli's advice and relying on the inflated valuation, Kushner and Spitz
22 authorized and caused an entity wholly owned by the Pension Plan, LT Funding, to enter into eighty-
23 three loan agreements with irrevocable life insurance trusts (defined above as an "ILIT") to finance
24 premium payments on life insurance policies owned by the ILITs. The loan agreements and related
25 documents provided that LT Funding would receive a percentage of the future death benefits in
26 exchange for making the loans.

27 178. JTR, one of the Covelli Entities, had previously entered into agreements with many of
28 the ILITs to finance the life insurance premiums. Covelli and JTR could not afford to continue
making the loans, and Covelli needed the Pension Plan to take over the loan obligations so that the
policies would not lapse. Covelli enabled the LT Funding Transaction by, among other things,

1 causing JTR to enter into agreements to subordinate JTR's loan security interests to LT Funding's
2 loan security interests.

3 179. Covelli and JTR charged excessive commissions and fees for the LT Funding
4 Transaction, and they charged excessive fees for subordinating JTR's loan security interests to LT
5 Funding's loan security interests.

6 180. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
7 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

8 181. Kushner and Spitz were each acting as a Fiduciary of the Pension Plan at the time
9 they authorized and caused the Pension Plan, through LT Funding, to invest in the LT Funding
10 Transaction.

11 182. By authorizing and causing the LT Funding Transaction, Kushner and Spitz each
12 violated their Duties of Loyalty and Prudence under 29 U.S.C. § 1104(a)(1)(A) and (B). *See* Counts
13 VI and VII above.

14 183. As a direct and proximate result of the Kushner's and Spitz's violations of their
15 Duties of Loyalty and Prudence in connection with the LT Funding Transaction, the Pension Plan
16 suffered losses of at least \$32 million, plus interest and lost opportunity costs.

17 184. At all times relevant herein, Covelli knew that Kushner and Spitz were acting on
18 behalf of the Pension Plan and using the Pension Plan money to invest in the LT Funding
19 Transaction.

20 185. At all times relevant herein, Covelli knew that Kushner and Spitz were putting their
21 own interests and the interests of Freedom above the interests of the Participants and Beneficiaries in
22 connection with the LT Funding Transaction, in violation of their Duty of Loyalty. Covelli designed
23 and promoted the LT Funding Transaction as a method of artificially reducing the Pension Plan's
24 underfunding the thereby reducing required contributions, to the benefit of Spitz, Kushner, and
25 Freedom, and at the expense of the Participants and Beneficiaries.

26 186. At all times relevant herein, Covelli knew that Kushner and Spitz were not acting
27 with the care, skill, prudence, and diligence under the circumstances that a prudent man would use in
28 connection with the LT Funding Transaction, in violation of their Duty of Prudence. Among other
things, Covelli knew that Kushner and Spitz did not have the medical records needed to accurately

1 value the life insurance policies. Covelli also knew that Kushner and Spitz failed to verify the
2 accuracy of the valuation method used by the actuary that Covelli retained.

3 187. Covelli knowingly participated in the violations by Kushner and Spitz of the Duties
4 of Loyalty and Prudence by his comprehensive and instrumental role in designing, promoting,
5 valuing, and otherwise facilitating the LT Funding Transaction, thereby enabling Kushner and Spitz
6 to breach their fiduciary duties.

7 188. Title 29 U.S.C. § 1132(a)(3) imposes liability on non-fiduciaries who knowingly
8 participate in fiduciary breaches in violation of ERISA.

9 189. For his knowing participation in the breach of the fiduciary duties of Loyalty and
10 Prudence in connection with the LT Funding Transaction, PBGC requests that Covelli be held liable
11 under 29 U.S.C. § 1132(a)(3) for disgorgement of all commissions, the JTR Subordination Fee, other
12 fees, and all other financial benefits that he or the Covelli entities earned, received, or obtained as a
13 result of the LT Funding Transaction, disgorgement of any profits earned on such commissions, fees
14 and other financial benefits, and all other appropriate equitable relief.

15
16 **Count XI**
Against Kushner and Spitz for Breach of Duty of Loyalty
(Topaz Transaction)
17

18 190. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
19 this Complaint as if fully set forth herein.

20 191. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
21 Pension Plan, and each Fiduciary was a co-Fiduciary of the other
22 pursuant to 29 U.S.C. § 1105.

23 192. Kushner and Spitz were each acting as a Fiduciary when they authorized and caused
24 the Pension Plan to invest in the Topaz Transaction.

25 193. Because Kushner and Spitz each sought for the Topaz Transaction to benefit the
26 Freedom Obligors and themselves as owners of 2100, their authorization and causation of the Topaz
27 Transaction was not solely in the interest of the Participants and Beneficiaries.
28

1 194. Because Kushner and Spitz's authorization and causation of the Topaz Transaction
2 was not solely in the interest of the Participants and Beneficiaries, Kushner and Spitz each violated
3 their Duty of Loyalty to the Pension Plan under 29 U.S.C. § 1104(a)(1)(A).

4 195. Because Kushner and Spitz authorized and caused the Topaz Transaction to increase
5 the assets available to the Freedom Obligors to implement the Kushner/Spitz Business Plan and to
6 satisfy the Silver Point Obligation, Kushner and Spitz's authorization and causation of the Topaz
7 Transaction was not for the exclusive purpose of providing benefits to the Participants and
8 Beneficiaries.

9 196. Because Kushner and Spitz authorized and caused the Topaz Transaction for reasons
10 other than for the exclusive purpose of providing benefits to Participants and Beneficiaries, Kushner
11 and Spitz each violated their Duty of Loyalty to the Pension Plan under 29 U.S.C. § 1104(a)(1)(A).

12 197. As a direct and proximate result of Kushner and Spitz's violations of their Duty of
13 Loyalty in connection with the Topaz Transaction, the Pension Plan suffered losses of at least \$6
14 million, plus interest and lost opportunity costs. In addition to the cost of the Topaz Transaction, the
15 losses include, but are not limited to, the increase in the Minimum Funding Obligations that would
16 have been due if the Annual Reports did not overstate the fair market value of the Topaz Interest.

17 198. For their violations of the Duty of Loyalty in connection with the Topaz Transaction,
18 PBGC requests that Kushner and Spitz each be held personally liable under 29 U.S.C. § 1109(a) to
19 make good all losses suffered by the Pension Plan and to restore to the Pension Plan any lost profit
20 associated therewith.

21 **Count XII**
22 **Against Kushner and Spitz for Breach of Duty of Prudence**
23 **(Topaz Transaction)**

24 199. PBGC repeats and realleges each and every allegation in the foregoing
25 paragraphs of this Complaint as if fully set forth herein.

26 200. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
27 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

28 201. Kushner and Spitz were each acting as a Fiduciary when they authorized and caused
the Pension Plan to invest in the Topaz Transaction.

1 valuation services regarding the Participant Life Insurance Transaction. Thus, they were all Parties
2 in Interest with respect to the Pension Plan pursuant to 29 U.S. C. § 1102(14).

3 210. Because Kushner and Spitz each authorized and caused the Pension Plan to pay the
4 Participant Life Insurance Transaction Fees to Covelli, Christian, Etaros, and/or the Covelli Entities,
5 Kushner and Spitz each violated 29 U.S.C. § 1106(a)(1)(C).

6 211. The only relevant exception to the prohibition provided in 29 U.S.C. § 1106(a)(1)(C)
7 is under 29 U.S.C. § 1108(b)(2), which provides, in pertinent part, that the prohibitions of § 1106 do
8 not apply to the “[c]ontracting or making reasonable arrangements with a party in interest for . . .
9 services necessary for the establishment or operation of the plan, if no more than reasonable
10 compensation is paid therefor.”

11 212. The Participant Life Insurance Transaction Fees paid to Covelli, Christian, Etaros,
12 and/or the Covelli Entities were excessive and unreasonable in relation to the value of the services
13 provided to the Plan, and thus the exception under 29 U.S.C. § 1108(b)(2) does not apply.

14 213. For causing the Pension Plan to engage in Prohibited Transactions in violation of 29
15 U.S.C. § 1106, PBGC requests that Kushner and Spitz each be held personally liable under 29
16 U.S.C. § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension
17 Plan any lost profits associated therewith.

18 **Count XIV**
19 **Against Kushner and Spitz for Liability of Fiduciaries for Prohibited Transactions**
20 **(LT Funding Transaction)**

21 214. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
22 this Complaint as if fully set forth herein.

23 215. 29 U.S.C. § 1106(a)(1)(C) provides that “[a] fiduciary with respect to a plan shall not
24 cause the plan to engage in a transaction, if he knows or should know that such transaction
25 constitutes a direct or indirect . . . furnishing of goods, services, or facilities between the plan and a
26 party in interest”

27 216. At all times relevant to this Count, Kushner and Spitz each were Fiduciaries of the
28 Pension Plan, and each Fiduciary was a co-Fiduciary of the other pursuant to 29 U.S.C. § 1105.

1 217. At all times relevant to this Count, Covelli, Christian, Etaros, and the Covelli Entities
2 each provided services to the Pension Plan including, but not limited to, investment advice and
3 valuation services in connection with the LT Funding Transaction. Thus, they were all Parties in
4 Interest with respect to the Pension Plan pursuant to 29 U.S. C. § 1102(14).

5 218. Because Kushner and Spitz each caused the Pension Plan to pay the LT Funding
6 Transaction Fees to Covelli, Christian, Etaros, and/or the Covelli Entities, Kushner and Spitz each
7 violated 29 U.S.C. § 1106(a)(1)(C).

8 219. The only arguably relevant exception to the prohibition provided in 29 U.S.C.
9 § 1106(a)(1)(C) is under 29 U.S.C. § 1108(b)(2), which provides, in pertinent part, that the
10 prohibitions of § 1106 do not apply to the “[c]ontracting or making reasonable arrangements with a
11 party in interest for . . . services necessary for the establishment or operation of the plan, if no more
12 than reasonable compensation is paid therefor.”

13 220. The LT Funding Transaction Fees paid to Covelli, Christian, Etaros, and/or the
14 Covelli Entities were excessive and unreasonable in relation to the value of the services provided to
15 the Plan, and thus the exception under 29 U.S.C. § 1108(b)(2) does not apply.

16 221. For causing the Pension Plan to engage in Prohibited Transactions in violation of 29
17 U.S.C. § 1106, PBGC requests that Kushner and Spitz each be held personally liable under 29
18 U.S.C. § 1109(a) to make good all losses suffered by the Pension Plan and to restore to the Pension
19 Plan any lost profits associated therewith

20 **Count XV**

21 **Against Kushner and Spitz for Liability of Co-fiduciaries**

22 222. PBGC repeats and realleges each and every allegation in the foregoing paragraphs of
23 this Complaint as if fully set forth herein.

24 223. In addition to the liabilities described in the other Counts hereinabove, Kushner and
25 Spitz are personally liable under 29 U.S.C. § 1105 to the extent they either (a) knowingly
26 participated in or concealed the breaches of Fiduciary Standards by other Fiduciaries of the Pension
27 Plan; (b) knowingly enabled the breaches of Fiduciary Standards by other such Fiduciaries by failing
28 to monitor other such Fiduciaries; or (c) having knowledge of the breaches of Fiduciary Standards
by such other Fiduciaries, failed to make reasonable efforts to remedy them.

1 237. Because Covelli, acting through his Covelli Entity JTR, solicited and accepted the
2 JTR Subordination Fee, Covelli and JTR engaged in one or more Prohibited Transactions in
3 violation of 29 U.S.C. § 1106(a).

4 238. The JTR Subordination Fee was excessive and unreasonable in relation to the value
5 of the services provided to the Pension Plan.

6 239. As a direct and proximate result of their engaging in Prohibited Transactions in
7 violation of ERISA, Covelli, Christian, Etaros, the Covelli Entities, and JTR, each caused the
8 Pension Plan to suffer losses of at least \$32 million in connection with the LT Funding Transaction.

9 240. For their engagement in Prohibited Transactions, PBGC requests that Covelli,
10 Christian, Etaros, and the Covelli Entities, each be required to disgorge all commissions, fees, and
11 other financial benefits that they earned, received, or obtained as a result of engaging in the
12 Prohibited Transactions.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff, PBGC, as statutory trustee of the Pension Plan, respectfully
15 requests that the Court take the following actions:

16 A. Enter judgment in favor of Plaintiff PBGC and against Defendants Kushner and Spitz
17 on each of Counts I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, XIII, XIV, and XV, for their violations
18 of 29 U.S.C. §§ 1104 and 1106, and pursuant to their liability under 29 U.S.C. §§ 1105 and 1109,
19 for:

- 20 (a) losses suffered by the Pension Plan, including, but not limited to, the increase in the
21 Minimum Funding Obligations that would have been due if the Annual Reports did not
22 overstate the fair market value of the combined assets of the Pension Plan,
23 (b) pre- and post-judgment interest,
24 (c) lost opportunity costs,
25 (d) lost profits,
26 (e) disgorgement and surcharge,
27 (f) an accounting,
28 (g) imposition of a constructive trust,
(h) restitution, and

1 (i) any other and further relief as the Court deems just and proper, compelling the
2 Defendants Kushner and Spitz, and each of them, to disgorge and restore to the Pension
3 Plan, with interest, the value of all profits and other financial benefits Defendants
4 Kushner and Spitz have earned, received, or obtained through improper use of the
5 Pension Plan's assets, pursuant to their liability under 29 U.S.C. §§ 1105 and 1109.

6 B. Enter Judgement in favor of Plaintiff PBGC and against Defendant Richard J. Covelli
7 on each of Counts IX and X for disgorgement of all fees, including but not limited to the JTR
8 Subordination Fee, commissions, and other financial benefits that he earned, received, or obtained as
9 a result of engaging in the Knowing Participation in a Breach of Fiduciary Duties in violation of 29
10 U.S.C. § 502(a)(3), disgorgement of any profits earned on such fees, commissions, and other
11 financial benefits, and any other appropriate equitable relief.

12 C. Enter Judgement in favor of PBGC and against Defendants Richard J. Covelli, Traci
13 M. Christian, JTR, LLC, C & C Marketing , LLC, C2 Advisors, LLC, Etaros Actuarial Services,
14 LLC on each of Counts XVI and XVII for disgorgement of all fees, commissions, and other
15 financial benefits that they earned, received, or obtained as a result of engaging in the Prohibited
16 Transactions in violation of 29 U.S.C. § 1106, disgorgement of any profits earned on such fees and
17 other financial benefits, and any other appropriate equitable relief.

18 D. Award PBGC all its costs of litigation in this case pursuant to 29 U.S.C.
19 §§ 1132(g) and 1303(e)(5); and
20 Award PBGC such other and further relief as the Court deems just and proper.

21 Dated: February 14, 2019

Respectfully Submitted,

22
23 s/ Jordan E. Jacobson
JUDITH STARR
General Counsel
24 CHARLES L. FINKE
Deputy General Counsel
25 JOEL W. RUDERMAN
KENNETH J. COOPER
Assistant General Counsel
26 MARK R. SNYDER (CA 109430)
MARY A. PETROVIC
27 JORDAN E. JACOBSON (CA 302543)
28 Attorneys

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PENSION BENEFIT GUARANTY
CORPORATION
Office of the General Counsel
1200 K Street, N.W.
Washington, D.C. 20005-4026
Tel.: (202) 326-4020, ext. 6511
Fax: (202) 326-4112
Emails: jacobson.jordan@pbgc.gov *and*
efile@pbgc.gov

Attorneys for Pension Benefit Guaranty
Corporation