UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

In re: DAYMARK REALTY ADVISORS, INC.,	Case No. 18-23750-SMG
In re: DAYMARK PROPERTIES REALTY, INC.,	Case No. 18-23751-SMG
In re: DAYMARK RESIDENTIAL MANGEMENT, INC.,	Case No. 18-23752-SMG Substantively Consolidated
Debtors.	Chapter 7

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DECLARATION OF TODD MIKLES IN SUPPORT OF RESPONSE AND OPPOSITION TO MOTION FOR WITHDRAWAL OF PROOFS OF CLAIM NOS. 756, 757, 758, 759, 760, 761, 762, 979, 980, 981, 993, 994, 995, 996, 997, 998, 999, 1000, 1001

Pursuant to 28 U.S.C. § 1746, I, Todd Mikles, declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 years and a resident of California. I am competent to testify to the matters contained within this Declaration because the following facts are within my personal knowledge.

The 2011 stock acquisition of Daymark Realty Advisors, Inc.

2. I am the manager of IUC-SOV, LLC, a Delaware limited liability company. On August 11, 2011, IUC-SOV, LLC purchased the stock of Daymark Realty Advisors, Inc. ("DRA") from Grubb & Ellis Company ("GEC"). DRA owned 100% of NNN Realty Advisors, Inc. ("NNNRA"), which was the sole member of NNN Realty Investors, LLC (f/n/a Grubb & Ellis Realty Investors, LLC f/n/a Triple Net Properties, LLC) ("NNNRI"), and at that time owner of Daymark Properties Realty, Inc. ("DPR") and Daymark Residential Management, Inc. ("DRM"). This transaction was publicly disclosed by Grubb on the website of the Securities and Exchange Commission (the "SEC"). Attached hereto as **Exhibit A** is a true and correct copy of GEC's Form

8-K dated August 10, 2011 with Exhibit 10.1 attached as the Purchase and Sale Agreement between GEC and IUC-SOV, LLC.

3. At that time, DRA and its subsidiaries had approximately 850 employees and various offices across the country. Debtors DPR and DRM were property managers for a national portfolio of limited liability companies owning fractional interests in commercial and residential properties as tenants-in-common ("TICs") in groups of no more than 35 TICs each property (the "TIC properties") through various property management agreements ("PMA") and related documents. DPR's and DRM's revenue consisted of fees earned under the PMAs. NNNRI organized each investment and structured each to take advantage of deferred taxable gains in the like-kind exchange of real estate pursuant to IRS Code 1031 and IRS Revenue Procedure Ruling 2002-22, which included giving each TIC certain controls. The TICs invested in the TIC properties prior to the Great Recession.

4. NNNRI started syndicating investments in or around 1997, with DPR as the property manager; and in 2007, NNNRI and DPR came under the control of GEC, a commercial real estate firm formerly traded on the New York Stock Exchange, through a reverse merger between GEC and NNNRA. Subsequently, GEC formed DRM, another property manager, and DRA, a holding company for DPR and DRM. Under GEC, in addition to the TIC properties, NNNRI syndicated investments in certain funds which made unsecured loans to entities for the acquisition of real estate (the "Funds"). As part of the DRA stock sale, GEC built in the concept of providing advisory services to the Debtors, which GEC saw as revenue; however, shortly after the stock purchase, the management of Debtors decided to terminate that agreement, and as a result there was an incomplete transfer of information and data from GEC. In February 2012, GEC filed for bankruptcy protection. With IUC-SOV, LLC's stock acquisition of DRA, a new board of

directors was installed, along with new management. I was appointed president of DRA, DPR, and DRM. I am still president of Debtors.

A review of the claims filed in the Bankruptcies

5. I have reviewed the claims register for Debtors, and each of the proof of claims filed therein. Just over 1,000 claims were filed in the Bankruptcy Cases totaling approximately $3,727,781,621.35, with some claims were filed without any amount listed.

6. The Alleged Creditors[1] filed claims that together total approximately $1,446,255,118.49[2] related to outside lawsuits and adversary proceedings, and approximately $1,100,994,000.00[3] in duplicate claims for a total of $2,547,249,118.49, or **68.33% of the total dollar amount of claims filed**.

7. Sovereign Capital Management Group, Inc., Sovereign Strategic Mortgage Fund, LLC, Infinity Urban Century, LLC, and I filed claims related to loans to Debtors and indemnification claims that together total approximately $656,439,946.00,[4] or **17.60% of the total dollar amount of claims filed**.

8. Approximately $306,253,908.36 in claims were filed by co-defendants in the Litigation and/or former officers and directors for indemnification, comprising **8.21% of the total dollar amount of claims filed**.

9. The remaining claims of approximately **5.86% of the total dollar amount of claims filed**, which make up the majority of claims in terms of number, are brought by investors

[1] The Alleged Creditors are defined "Creditors" in the *Motion for Withdrawal of Proof of Claims Nos. 756, 757, 758, 759, 760, 761, 762, 979, 980, 981, 993, 994, 995, 996, 997, 998, 999, 1000, 1001; Declaration of Counsel in Support thereof* [D.E.737].
[2] Claim numbers 647, 699, 700, 701, 756, 757, 758, 759, 760, 761, 762, 943, 966, 1000, and 1001.
[3] Claim numbers 993, 994, 995, 996, 997, 998, and 999.
[4] Claim numbers 698, 764, 765, 766, 767, 768, 769, 770, 771.

seeking a return of their entire investment from Debtors, the property managers. Specifically, 127 of these claims are duplicates, and can be summarily rejected; 225 of these claims either lack identification of a TIC property or Fund, or a claim amount; 234 of these claims are brought by investors in a Fund seeking the return of their entire investment, which had no connection to Debtors as property managers; 223 of these claims are brought by investors in a Fund without any information to support a claim; 73 of these claims are brought by TICs seeking the return of their entire investment; 104 of these claims are brought by TICs without any information to support a claim. All of these remaining claims lack merit as Debtors were not the guarantor of these claimants' pre-Great Recession investments and they do not otherwise support a claim against Debtors.

10. The IRS filed a claim for $61,636.13,[5] the Florida State Department of Revenue filed a claim for $9,933.20,[6] the Texas Comptroller of Public Accountants filed a claim for $4,338.00,[7] and Corporation Services Company filed a claim for $3,236.05,[8] which all together total $79,143.38 or **0.002% of the total dollar amount of claims filed**. There are no priority claims other than the claims filed related to Debtors' unpaid State and Federal taxes.

<u>The Alleged Creditors' Lawsuits against the Debtors</u>

11. I have reviewed Debtors' books, records, and files. It was the regular practice of Debtors to maintain copies of the property management agreements for each investment by those employees of Debtors involved with the investment at or near the time of the transaction, as a regularly conducted business practice of Debtors, and a practice of maintain these records that

[5] Claim number 662.
[6] Claim Number 988.
[7] Claim Number 612.
[8] Claim Number 712.

continued while I was President of these parties. Attached hereto as Exhibit B is a true and correct copy of the property management agreement ("PMA") for the property commonly referred to as Congress Center Property. Attached hereto as **Exhibit C** is a true and correct copy of the PMA for the property commonly referred to as the Western Place Property. Attached hereto as **Exhibit D** is a true and correct copy of the PMA for the property commonly referred to as the 1818 Market Street Property. Attached hereto as **Exhibit E** is a true and correct copy of the PMA for the property commonly referred to as the 1600 Barberry Lane Property. Attached hereto as **Exhibit F** is a true and correct copy of the PMA for the property commonly referred to as the Plantations at Haywood Property.

12. Catanzarite, through the Alleged Creditors, initiated separate lawsuits against the Debtors prior to the Bankruptcies. The Claims are based on those outside lawsuits (the "Litigation") which, as detailed below, are largely still in the early phase, and the efforts already expended in the Bankruptcies before the Court, a single forum for the Alleged Creditors' Claims, all brought by Catanzarite, will necessarily be duplicated.

13. Catanzarite initiated a lawsuit against DPR entitled *Richard Carlson et al. v. Gary H. Hunt et al.*, case number 30-2018-00982195 in the Orange County Superior Court of California; the case is not yet at issue as there are pending pleading challenges to the operative fourth amended complaint. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors, based, in part on the 2012 sale of the Congress Center Property. This case includes creditor Northwood as well. In 2021, after the Court lifted the stay against non-Debtors in the instant matter, Catanzarite vexatiously multiplied the claims and initiated a new lawsuit on behalf of Richard Carlson, based on the pending claims, entitled *Richard Carlson et al. v. Mikles 2021 Irrevocable Trust et al.*, case number 30-2021-01180402, in the Orange County Superior Court of

California. Catanzarite who was sanctions in this Court for the improper imitation of a lawsuit and recording of a lis pendens, (ECF No. 112) also improperly recorded three notices of pendency of action on real property in bad faith without any legal basis, which were ultimately expunged. Attached hereto as **Exhibit G** is a true and correct copy of the Notice of Ruling re Motion to Expunge

14. Catanzarite initiated a lawsuit against DPR entitled *NNN Congress Center, LLC et al. v. Etienne Locoh et al.*, case number 30-2018-01015717 in the Orange County Superior Court of California. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors based on the sale of the Congress Center Property. The case is not yet at issue as there are pending pleading challenges to the operative third amended complaint. Catanzarite named creditor Northwood in this lawsuit.

15. Catanzarite initiated a lawsuit entitled *Edward Henkin et al. v. Todd A. Mikles et al.*, case number 30-2021-01185203 in the Orange County Superior Court of California. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors based on the sale of the Congress Center Property. The case is not yet at issue as there are pending pleading challenges to the operative first amended complaint. Catanzarite named creditor Northwood in this lawsuit.

16. NNN Capital Fund I, LLC, through Tyrone Wynfield, initiated a lawsuit entitled *NNN Capital Fund I, LLC, et al. v. Todd Mikles, et al.*, Case Number 30-2017-00910991, filed in the Superior Court of California, Orange County. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors. Debtors successfully compelled these claims to arbitration and Catanzarite sued Cottonwood in Utah state court based on these claims. Catanzarite has not initiated an arbitration to date.

17. Catanzarite initiated a lawsuit entitled *Dennis Dierenfield et al. v. Todd Mikles, et al.*, Case Number 37-2016-00018180, against DPR in the Superior Court of California, San Diego County, which was compelled to arbitration and then the arbitration against DPR entitled *Dennis Dierenfield et al. v. Todd Mikles et al.*, AAA Case Number AAA 01-17-0005-0462, before the American Arbitration Association which is currently pending in the early stages. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors.

18. 1600 Barberry Lane 8, LLC and 1600 Barberry Lane 9, LLC pursued claims against the DRM and DPR in the lawsuit entitled *1600 Barberry Lane 8, LLC, et al. v. Todd Mikles, et al*., San Diego County California Superior Court Case No.: 37-2016-00019030-CU-BT-CTL, and pursued the same claims against creditor Cottonwood in Utah state court. Debtors initiated arbitration which is currently still pending before the American Arbitration Association, AAA Case No.: 01-17-0005-0462 currently pending in the early stages of that proceeding. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors.

19. Catanzarite initiated a lawsuit entitled *Plantations at Haywood 1, LLC et al. v. Plantations at Haywood M, LLC* case number 30-2017-00901157 in the Orange County Superior Court against DRA and DPR and these claims were compelled to arbitration, then Catanzarite initiated an arbitration which is currently pending before the American Arbitration Association, AAA Case No. 01-18-002-4380. Catanzarite pursued creditor Cottonwood in Utah state court for these same claims and, after losing those claims on the merits, has also named Cottonwood in the pending arbitration. These claims are currently pending in arbitration, with an arbitrator recently appointed and the first preliminary conference call occurring on June 29, 2021. The claims asserted here are the same as those asserted in the Bankruptcies against Debtors.

20. The Objecting Parties,[9] and the Trustee, and others, have incurred hundreds of thousands of dollars in attorneys' fees and costs, over the last 3 years in an attempt to resolve the Debtors' Estates.

The unavailability of witnesses and evidence

21. I conducted a background check on each of the below referenced individuals based on a search of public records. Each individual is the investor related to the referenced Objecting Creditor.

NNN Capital Fund I, LLC, and 1818 Market Street, Carlson, and Brown matters

22. In December 2019, Tyrone Wynfield passed away. Catanzarite has informed various courts of this fact, attempted to substitute his widow Mary Jo Saul in Wynfield's place, and I have confirmed this fact through public records. Wynfield, through Hagen Securities, was a third party registered financial representative who recommended investments in the TIC properties and Funds to his clients. NNNRI offered investments and third-party financial representatives had to review, recommend, and sign off on the investments for their clients through a number of documents that included disclosures in the private placement memorandums, subscription documents, and investor questionnaires. Wynfield recommended, and represented, his clients in a large number of investments sponsored by NNNRI, including the Congress Center Property, 1818 Market Street Property, 1600 Barberry Lane, G REIT, Inc. (then, a Fund, now a liquidating trust called G REIT Liquidating Trust), and Capital Fund (then called Grubb & Ellis Capital Fund I, LLC, now called NNN Capital Fund I, LLC). Wynfield made a 7% commission up front on each of these investments. Each of these investments is related to the Claims. In addition, Wynfield is

[9] The Objecting Parties are defined in the following documents: D.E. 686, 689, 692, 695, 697, 698, 702, 705, 706, 710, 717, and 719.

a named claimant/plaintiff in the 1818 Market Street and Capital Fund matters. Wynfield is a key witness who is no longer available.

1600 Barberry Lane

23. On November 15, 2014, Sonia Taylor passed away. Sonia Taylor was the individual who invested in 1600 Barberry Lane 8, LLC ("TIC 8"), which owned a fractional interest in the residential property called 1600 Barberry Lane and is a claimant. Bernard Taylor is 92 years old, and Catanzarite has represented that Bernard Taylor is "infirm including suffering from dementia." Bernard Taylor was the husband of Sonia Taylor and was the individual who invested in 1600 Barberry Lane 9, LLC ("TIC 9"), which owned a fractional interest in 1600 Barberry Lane, and is a claimant. In July 2015, the Taylors authorized the sale of the interests held by TIC 8 and TIC 9 to Cottonwood, which included an assignment of any claims related to those entities. (ECF No. 690 [Mikles Decl., ¶8; Exs. 7, 8]) The Taylors are each key witnesses and unavailable.

Richard Carlson (G REIT)

24. Richard Carlson is 83 years old and lives in Norco, California; on February 12, 2020, Carlson testified under oath that he had no knowledge of facts to support his two claims of $400,100,000 against Debtors. Attached hereto as **Exhibit H** is a true and correct copy of the deposition transcript of Richard Carlson taken by the Trustee in the instant matter that I obtained from the Trustee ("Carlson"). Wynfield was Carlson's registered financial representative, who Carlson testified he looked to entirely regarding his investment in G REIT. (*Id.*, Carlson, 71:5-23) Carlson testified that ***he never heard of*** Todd Mikles, Etienne Locoh, SCMG, SSMF, or IUC (*Id.* Carlson, 26:21-27:2; 28:12-17; 31:17-22). When counsel for the U.S. Trustee asked Plaintiff "What is your knowledge about [DPR] and what it did, if any[thing], relative to any investments that you had with G REIT, Inc. or the G REIT Liquidating Trust," Carlson responded "Really

none. I don't recognize any use of it. I just recognize the name, but that's all." (*Id.*, Carlson, 27:18-24; 158:12-15) Same answer regarding Daymark, Carlson has no details. (*Id.*, Carlson, 27:25-28:8; 158:9-11) Carlson testified that he never heard of NNNRI; he knew the former name Triple Net Properties, LLC, but admitted "I don't really know anything" about that entity. (*Id.*, Carlson, 28:9-11; 39:6-13) Carlson testified he never heard of GCL, GCL Manager, or any Northwood entity. (*Id.*, Carlson, 28:18-25) When asked about the relationship between "Mr. Mikles, IUC-SOV, LLC, Daymark Realty Advisors, and NNN Realty Investors, LLC," Carlson testified he had no knowledge of any relationship, (*Id.*, Carlson, 68:2-7; 158:25-159:9) and that he had no factual grounds for any alleged conspiracy between Locoh, Mikles, and Northwood. (*Id.*, Carlson 183:10-25) Carlson has no knowledge of any of the facts alleged against Mikles (*Id.*, Carlson, 158: 20-24), NNNRI (*Id.*, Carlson, 159:25-160:9), SCMG (*Id.*, Carlson, 156:11-17; 160:10-12), or IUC (*Id.*, Carlson, 156:18-22). Carlson had ***no knowledge*** regarding the instant allegations of the "Locoh and Mikles acquisition of Daymark," its alleged impact on Congress, and alleged concealments (*Id.*, Carlson, 70:8-25) or related to Congress Center (*Id.*, Carlson, 59:24-60:6; 64:2-14; 188:10-189:1). Carlson testified that Catanzarite recruited him through an improper in-person solicitation. (*Id.*, Carlson, 75:12-76:24; 82:22-83:2; 85:3-9 [around December 2017, "Mr. Catanzarite asked if Ty [Wynfield] would introduce . . . him to [Plaintiff], and then shortly after that [Mr. Catanzarite] came out to my home and we had some more discussions about it." Catanzarite is pursuing this litigation at no charge to Carlson. (*Id.*, Carlson, 88:4-10; 89:10-15)

Milton Brown (NNN Congress Center, LLC)

25. Milton Brown is 91 years old and lives in Washington; on February 12, 2020, Brown was presented for deposition after the disastrous deposition of Carlson and Catanzarite refused to allow Brown to testify, promised to produce him the following morning on the record,

and failed to do so. Attached hereto as **Exhibit I** is a true and correct copy of the deposition transcript of Milton Brown taken by the Trustee in the instant proceeding that I obtained from the Trustee. Brown was not presented for deposition again. Wynfield was the registered financial representative of Brown.

Katherine Looper, et al.

26. On November 30, 2010, Morris Richard Henkins passed away. Henkins' wife predeceased him on October 6, 2007. Henkins was the individual investor in NNN Congress Center Member 1, LLC. On September 11, 2011, Leroy Looper passed away, and his wife Katherine Looper is 72 years old and a resident of the California. The Loopers were the individual investors in NNN Congress Center Member 4, LLC. On September 12, 2013, John Fils passed away, and on January 23, 2014 his wife Karen Fils passed away; John Fils was the investor in NNN Congress Center 10 Member, LLC. On October 2, 2005, William Hoff passed away, during the investment process, and on June 5, 2011, his wife, Barbara Hoff passed away. The Barbara C. Hoff Survivor's Trust was the original investor in NNN Western Place 6, LLC; William Hoff Jr., their son, is 73 years old.

27. Stanley Cohen is 86 and was the original investor in NNN Congress Center Member 15, LLC, but Lawrence Leventon brings certain claims as the liquidating trustee of Mr. Cohen's estate. George Vrakas is 72 years old and a resident of Illinois; Vrakas is the control person of Jonmar Partnership, the investor in NNN Congress Center Member 3, LLC. Thomas F. Scheidt is 82 years old and a resident of Illinois; Scheidt is the investor in NNN Congress Center Member 3, LLC. Ellen B. Friedman is 68 years old and a resident of Illinois, Freidman is the investor in NNN Congress Center Member 14, LLC. Paul L. Cohen is 79 years old and a resident of Pennsylvania; Cohen is the investor in NNN Congress Center Member 16, LLC. Patricia McRoberts is 78 years

old and a resident of California; McRoberts is the investor in NNN Congress Center Member 6, LLC. Mark Vanmourick is 65 years old a resident of Hawaii and California; Vanmourick invested in NNN Congress Center Member 7, LLC through Chicago Houston Partners, LLC. John Griffith is 75 years old and control person of Griffith-Griffin Properties the original investor in NNN Western Place 1, LLC. John Davis is 85 years old and the control person of Davis Family Enterprise, LLC the original investor in NNN Western Place 2, LLC. Patricia Wunderlich, the trustee of the Aurthur H. Wunderlich Trust, is 80 years old and a resident of Illinois, the Aurthur H. Wunderlich Trust was the original investor in NNN Western Place 3, LLC. John Page is 63 years old and a resident of California, he was the original investor in NNN Western Place 7, LLC.

1818 Market Street

28. William Gilmer is 77 years old and lives in Oregon; Gilmer provided Debtors with a durable power of attorney in case he was not fit to make decisions and it is believed that he currently resides in a care facility. In connection with the prior 1818 Market Street Property lawsuit brought by Catanzarite, on January 13, 2015, Gilmer sent a letter to his attorneys, including Catanzarite stating "[m]y request is effective immediately and includes the directive that, attorneys are to take all steps necessary, including without limitation the filing of dismissals with prejudice [the San Diego Superior Court lawsuit] . . . [i]n order to ensure I am no longer a participant in these matters." (ECF No. 687 [Mikles Decl., ¶16; Ex. 9]) On March 18, 2015, Catanzarite filed a declaration with the Superior Court of California, San Diego County, certifying under penalty of perjury that "I am . . . counsel for Applicants NNN 1818 Market Street 13, LLC . . ." in support of an *ex parte* request for a dismissal. (ECF No. 688 [RJN, Ex. E, Declaration of Kenneth J. Catanzarite in support of Ex Parte Application, pp.5-6, ¶¶2-4]) In that same request, Catanzarite attached another of his declarations that he filed with the Superior Court of California, San Diego

County, certifying under penalty of perjury that "[p]reviously named representative NNN 1818 Market Street 13, LLC sought removal from the representatives and class complaint of its own accord, and as a result was dropped from Plaintiff's First Amended Complaint." (ECF No. 688 [RJN, Ex. E, Ex. A, Declaration of Kenneth J. Catanzarite in support of Dismissal Pursuant to California Rule of Court Rule 3.770, ¶7]) On March 18, 2015, Catanzarite filed a request for dismissal with the Superior Court of California, San Diego County, requesting that the Court dismiss the lawsuit *with prejudice*. (ECF No. 688 [RJN, Ex. E, Ex. A, Declaration of Kenneth J. Catanzarite in support of Dismissal Pursuant to California Rule of Court Rule 3.770, Ex. 1])

29. Dennis Dierenfield is 80 years old and lives in California.

Plantations at Haywood

30. William White is 68 years old and lives in Colorado; William Edwards is 73 years old and lives in Florida; Kenneth Robbins is 76 years old and lives in California; and Christine Russman is 69 years old and lives in California.

Debtors' former employees, officers, directors, and agents

31. In August 2011, DRA's subsidiaries had approximately 850 employees across the country, a board of directors for each subsidiary, and directors and officers for each. Now, Debtors do not have access to the employees, directors, and officers at the time of the Alleged Creditors' investments, and for a large part of the Debtors' alleged management of the subject investments. Specifically, former employees, officers, and directors that worked for Debtors and who were involved in the transactions that are the subject of the Alleged Creditors' claims are Robert Assoian, Paul Henderson, Mike Waddell, Robert Giusti, Taylor Davis, David Mellor, and others, and are no longer working for Debtors, and are not readily available. For example, Robert Giusti was involved in the restructuring of the Plantations at Haywood TICs, and the sale of the Congress

Center Property (Carlson, Brown, and Henkins matters), and it is believed that he currently lives and works outside of the United States somewhere in Europe, and that he is unavailable.

I declare under penalty of perjury this 13th day of September, 2021 that the foregoing is true and correct.

Todd Miklas