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Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV358712
Reviewed By: J. Duong

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

GLOBAL INDUSTRIAL INVESTMENT
LIMITED,

Plaintiff,

vs.

ANDREW CHUNG, an individual, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 19CV358712

**COMPLAINT FOR (1) BREACH OF
FIDUCIARY DUTY, (2) AIDING AND
ABETTING BREACH OF FIDUCIARY
DUTY AND (3) TORT OF ANOTHER**

JURY TRIAL DEMANDED

1 Plaintiff Global Industrial Investment Limited (“GIIL”) hereby complains against
2 defendants Andrew Chung (“Chung”) and Does 1 through 10 (collectively, “Defendants”), upon
3 personal knowledge as to itself and its own acts and upon information and belief as to all other
4 matters, as follows:

5 **I. INTRODUCTION**

6 1. This is an action based upon Andrew Chung’s having breached fiduciary duties to
7 GIIL and/or aided and abetted several non-party general partnership fiduciaries of GIIL in
8 breaching fiduciary duties owed by those fiduciaries to GIIL. GIIL brings this action to put an end
9 to Chung’s and the fiduciaries’ scheme to rob GIIL of its \$80 million investment and to hold
10 Chung accountable for his wrongdoing.

11 **II. PARTIES**

12 2. Plaintiff GIIL is a limited liability company organized and existing under the laws
13 of Hong Kong, with a principal place of business at Heng Shan Centre, 5/F, 145 Queen’s Road
14 East, Wanchai, Hong Kong.

15 3. GIIL is a wholly-owned subsidiary of non-party China Fortune Land Development
16 Co., Ltd. (“CFLD”), a corporation organized and existing under the laws of the People’s Republic
17 of China. CFLD is a large, publicly-traded real estate development company listed on the
18 Shanghai Stock Exchange. It is a leading developer and operator of industrial parks and mixed-
19 use planned communities in Mainland China.

20 4. Defendant Andrew Chung is a resident and citizen of the State of California,
21 County of Santa Clara. Chung is a former partner and/or former principal of two venture capital
22 firms, Lightspeed Venture Partners and Khosla Ventures. Chung’s departure from Khosla
23 Ventures was publicly announced in January 2016.

24 5. Non-party 1955 Capital China Fund GP LLC (“China Fund GP”) is a limited
25 liability company organized and existing under the laws of Delaware, and a general partner of a
26 Delaware partnership, 1955 Capital China Fund LP (“China Fund”).

1 6. Non-party 1955 Capital Fund I GP LLC (“Fund I GP”) is a limited liability
2 company organized and existing under the laws of Delaware, and a general partner of a Delaware
3 partnership, 1955 Capital Fund I LP (“Fund I”).

4 7. Defendants Does 1 through 10 are as-yet unknown companies, entities, and/or
5 individuals who are affiliated or associated with Chung and who are legally responsible for
6 GIIL’s losses. The true names or capacities, whether individual, corporate or otherwise, of Does 1
7 through 10 are unknown to GIIL at the present time, and these defendants are therefore sued by
8 such fictitious names. GIIL will amend this Complaint to show their true names and capacities
9 when ascertained.

10 **III. JURISDICTION AND VENUE**

11 8. Jurisdiction is proper in the Superior Court for the County of Santa Clara pursuant
12 to Section 410.10 of the California Code of Civil Procedure because such Court has general
13 subject matter jurisdiction and no statutory exceptions to such jurisdiction exist. The amount in
14 controversy exceeds the jurisdictional minimum of the Court.

15 9. Venue is proper in the County of Santa Clara pursuant to Section 395 of the
16 California Code of Civil Procedure because Defendants are residents of Santa Clara County and
17 transactions, activities, and misconduct giving rise to this action occurred in Santa Clara County.

18 **IV. FACTUAL ALLEGATIONS**

19 **A. The Partnerships**

20 10. In or around late October 2015, two Delaware partnerships, China Fund and Fund
21 I (collectively, the “Funds”), were formed by certain limited partnership agreements (the
22 “Partnership Agreements”), with China Fund GP and Fund I GP (collectively, the “GPs”) as
23 general partners.

24 11. At all times relevant to this Action, China Fund GP was the general partner of
25 China Fund and Fund I GP was the general partner of Fund I.

26 12. At all times relevant to this Action, Chung was the sole managing member of
27 China Fund GP and Fund I GP.

28

1 **B. The November 2015 Agreements**

2 13. In or around November 2015, GIIL executed certain agreements by which GIIL
3 was to agree to subscribe to be a limited partner in the China Fund and the Fund I (the
4 “November 2015 Agreements”). Chung is not a party or signatory to the November 2015
5 Agreements, which are governed by Delaware law.

6 14. The legal validity of the November 2015 Agreements is currently in dispute
7 between the signatories, and GIIL continues to contend in other legal proceedings that the
8 November 2015 Agreements were not valid. In the event that the November 2015 Agreements are
9 valid, however, by GIIL entering into the November 2015 Agreements, China Fund GP and Fund
10 I GP undertook fiduciary duties, including duties of loyalty and care, to GIIL.

11 15. China Fund GP and Fund I GP also owed GIIL fiduciary duties as escrow agents
12 for GIIL’s investments and as GIIL’s attorneys-in-fact based on purportedly having been granted
13 GIIL’s power of attorney.

14 **C. Chung Breached Fiduciary Duties and/or Aided and Abetted Breaches of**
15 **Fiduciary Duties Against GIIL**

16 16. In or around December 2015, Fund I GP and China Fund GP each breached
17 fiduciary duties owed to GIIL. The GPs breached their fiduciary duties owed to GIIL by revising
18 material terms of the limited partnership agreements (“LPAs”) and an appendix to subscription
19 agreements included within the November 2015 Agreements *after* GIIL executed the November
20 2015 Agreements. After these undisclosed revisions, the LPAs were executed by Chung on behalf
21 of China Fund GP and Fund I GP, which purportedly had been granted GIIL’s power of attorney
22 via the November 2015 Agreements.

23 17. Chung, as the sole managing member of both GPs, has at all times completely
24 dominated and controlled the GPs, including control of their property, such that he has acted as
25 the “de facto” general partner of the Funds and thus assumed fiduciary duties to GIIL.

26 18. Chung actively caused and substantially assisted the GPs to breach their fiduciary
27 duties to GIIL, as alleged above, and in so doing Chung breached his fiduciary duties to GIIL.

1 23. As alleged above, Chung acted as the de facto general partner of the Funds and
2 owed fiduciary duties to GIIL.

3 24. Chung breached his fiduciary duties of loyalty and care to GIIL as alleged above.

4 25. Chung's breaches of fiduciary duty to GIIL proximately caused GIIL damages,
5 including the attorneys' fees and costs incurred by GIIL in bringing and/or defending actions
6 against the GPs, in an amount to be proven at trial. Chung's breaches of fiduciary duty to GIIL
7 will also cause GIIL to suffer irreparable harm in the future.

8 **SECOND CAUSE OF ACTION**
9 **(Aiding and Abetting Breach of Fiduciary Duty Against All Defendants)**

10 26. GIIL repeats and realleges the allegations of paragraphs 1-16 and 19-21 above as if
11 fully set forth herein.

12 27. This second cause of action is pled in the alternative to the first cause of action.

13 28. China Fund GP and Fund I GP each owed a fiduciary duty to GIIL to act at all
14 times with the utmost care, honesty, undivided loyalty, and fidelity in all its business dealings
15 with GIIL.

16 29. China Fund GP and Fund I GP each breached their fiduciary duties to GIIL as
17 alleged above.

18 30. Defendants provided substantial assistance and aided and abetted the breach of
19 duties as alleged above.

20 31. Defendants aided and abetted the breaches of duty for the purpose of advancing
21 their own interests or financial advantage. Defendants knew or were reckless in not knowing that
22 they were wrongfully and materially aiding and abetting breaches of fiduciary duties.

23 32. As a proximate result of Defendants' aiding and abetting in the breaches of duties,
24 GIIL has been harmed as alleged herein, including in the amount of attorneys' fees and costs
25 incurred by GIIL in bringing and/or defending actions against the GPs, in an amount to be proven
26 at trial, and in the future will suffer irreparable harm.

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THIRD CAUSE OF ACTION
(Tort of Another Against All Defendants)

33. GUIL, through the tort of Chung and the other Defendants, has been required to act in the protection of its interests by bringing and/or defending actions against third parties. Chung and the other Defendants wrongfully made it necessary for GUIL to bring action and/or defend against such third parties.

34. GUIL is accordingly entitled to recover compensation from Chung and the other Defendants for the attorney's fees and other damages and costs thereby suffered or incurred by GUIL.

PRAYER FOR RELIEF

WHEREFORE, GUIL prays that the Court enter judgment against Defendants as follows:

- A. For compensatory damages according to proof, including actual and consequential damages incurred by GUIL, on the first, second and third causes of action;
- B. For exemplary and punitive damages according to proof at trial;
- C. On the third cause of action for the attorneys' fees and costs incurred by GUIL in bringing and/or defending actions against third parties;
- D. For pre and post-judgment interest;
- E. For costs of suit herein according to law;
- F. For injunctive relief, including a permanent injunction, enjoining Chung from further breaches of fiduciary duty and/or aiding and abetting further breaches of fiduciary duty, including but not limited to injunctive relief prohibiting Chung from having any involvement in the affairs of China Fund GP and Fund I GP in relation to transactions or business conducted by same in relation to GUIL; and
- G. For such other and further relief that this Court deems just and proper.

1 DATED: November 18, 2019

BAKER BOTTS L.L.P.

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By: /s/ Stuart C. Plunkett

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GLOBAL INDUSTRIAL INVESTMENT

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