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DISTRICT COURT

CLARK COUNTY, NEVADA

LOIS LEVY as trustee for the LOIS LEVY
FAMILY TRUST; JAMES R. ZELLERS as
trustee for the JAMES R. ZELLERS
REVOCABLE TRUST; LINDA REBER, an
individual; RODNEY F. REBER as general
partner of the RODNEY F. REBER FAMILY
LIMITED PARTNERSHIP; CHARLES E.
THOMPSON as trustee for the CHARLES E.
THOMPSON 1989 TRUST; DANIEL PICK, an
individual; JODI PICK, an individual; PEGGY
BETH HART, an individual; CLINTON
CLAUSEN, an individual; DAVID J. WILLDEN
as trustee for the DAVID J. WILLDEN
CHARITABLE REMAINDER UNI TRUST,
DATED 12/28/87; KENNETH R. GRAGSON
and YVONNE R. GRAGSON as trustees for the
KENNETH and YVONNE GRAGSON
FAMILY TRUST; JEAN WILLDEN, an
individual; CONNIE LAVERNE THOMPSON
as trustee for the CONNIE LAVERNE
THOMPSON FAMILY TRUST; and KIRA
JOHN-MACDONALD, an individual,

CASE NO.:
DEPT. NO.:

A575322

XVI

COMPLAINT

**(Exempt from Arbitration: Extraordinary
Relief Sought in the Form of Equitable
Relief)**

Plaintiffs,

vs.

ASPEN FINANCIAL SERVICES, INC., a
Nevada corporation; ASPEN FINANCIAL
SERVICES, LLC, a Nevada limited liability
company; DOES I through V and ROE
ENTITIES I through V,

Defendants.

COME NOW Plaintiffs, LOIS LEVY as trustee for the LOIS LEVY FAMILY TRUST;
JAMES R. ZELLERS as trustee for the JAMES R. ZELLERS REVOCABLE TRUST; LINDA

CLERK OF THE COURT
NOV 07 2008
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1 REBER, an individual; RODNEY F. REBER as trustee for the RODNEY F. REBER FAMILY
2 LIMITED PARTNERSHIP; CHARLES E. THOMPSON as trustee for the CHARLES E.
3 THOMPSON 1989 TRUST; DANIEL PICK, an individual; JODI PICK, an individual; PEGGY
4 BETH HART, an individual; CLINTON CLAUSEN, an individual; DAVID J. WILLDEN as
5 trustee for the DAVID J. WILLDEN CHARITABLE REMAINDER UNI TRUST, DATED
6 12/28/87; KENNETH R. GRAGSON and YVONNE R. GRAGSON as trustees for the
7 KENNETH and YVONNE GRAGSON FAMILY TRUST; JEAN WILLDEN, an individual;
8 CONNIE LAVERNE THOMPSON as trustee for the CONNIE LAVERNE THOMPSON
9 FAMILY TRUST; and KIRA JOHN-MACDONALD, an individual (collectively "Plaintiffs"),
10 by and through their counsel, the law firm of Gordon Silver, and hereby complain and allege
11 against Defendants, ASPEN FINANCIAL SERVICES, INC. and ASPEN FINANCIAL
12 SERVICES LLC (together with Aspen Financial Services, Inc., "Aspen" or "Defendants"), as
13 follows:

14 **I.**

15 **THE PARTIES, JURSDICTION AND VENUE**

16 **Defendants**

17 1. Defendant Aspen Financial Services, Inc., is a Nevada domestic corporation that
18 at all times relevant herein was duly authorized to conduct business in Clark County, Nevada.

19 2. Defendant Aspen Financial Services, LLC is a Nevada limited liability company
20 that at all times relevant herein was duly authorized to conduct business in Clark County,
21 Nevada.

22 3. Upon information and belief, Jeffrey B. Guinn ("Guinn"), was the majority
23 owner/investor in Aspen, and served as Aspen's president/manager/chief executive officer at all
24 times relevant herein.

25 4. Aspen is a maker, broker, and servicer of loans in Clark County, Nevada.

26 5. Aspen's business practices as a maker, broker, and servicer of loans give rise to
27 special fiduciary, contractual, and statutory duties, as set forth herein.

28 6. Aspen is and was at all times relevant herein Plaintiffs' agent.

1 general partner of this limited partnership and is a resident of Clark County, Nevada.

2 17. Plaintiff Charles E. Thompson 1989 Trust is a trust whose beneficiaries are
3 residents of Clark County, Nevada. Charles E. Thompson is the trustee of this trust and is a
4 resident of Clark County, Nevada.

5 18. Plaintiff Daniel Pick is an individual who is a resident of Fairfax County,
6 Virginia.

7 19. Plaintiff Jodi Pick is an individual who is a resident of Fairfax County, Virginia.

8 20. Plaintiff Peggy Beth Hart is an individual who is a resident of Maricopa County,
9 Arizona.

10 21. Plaintiff Clinton Clausen is an individual who is a resident of Clark County,
11 Nevada.

12 22. Plaintiff David J. Willden Charitable Remainder Uni Trust, Dated 12/28/87 is a
13 trust whose beneficiaries are residents of Clark County, Nevada. David J. Willden is the trustee
14 of this trust and is a resident of Clark County, Nevada.

15 23. Plaintiff Kenneth and Yvonne Gragson Family Trust is a trust whose beneficiaries
16 are residents of Clark County, Nevada. Kenneth R. Gragson and Yvonne R. Gragson are the
17 trustees of this trust and are residents of Clark County, Nevada.

18 24. Plaintiff Jean Willden is an individual who is a resident of Clark County, Nevada.

19 25. Plaintiff Laverne Thompson Family Trust is a trust whose beneficiaries are
20 residents of Clark County, Nevada. Laverne Thompson is the trustee of this trust and is a
21 resident of Clark County, Nevada.

22 26. Plaintiff Kira John-MacDonald is an individual who is a resident of Clark County,
23 Nevada.

24 27. The majority of the actions and/or the duties and obligations relevant to Plaintiffs'
25 claims in this Complaint occurred and/or arose in Clark County, Nevada. Thus, jurisdiction is
26 proper in the Courts of this State and venue is proper in this Judicial District.

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1 II.

2 **GENERAL ALLEGATIONS**

3 **Overview of Aspen's Business Practices and Function**

4 28. Aspen has a two-fold business practice: (1) maker and broker of loans, and (2)
5 servicer of loans.

6 **Aspen's Function as Maker and Broker of Loans**

7 29. As a maker and broker of mortgage loans in Nevada, Aspen is required to meet
8 the requirements of Chapter 645B of the Nevada Revised Statutes ("NRS") and Chapter 645B of
9 the Nevada Administrative Code ("NAC").

10 30. The process through which Aspen makes and brokers loans is as follows:

- 11 (a) Business entities, formed for the purpose of conducting real estate
12 ownership and development projects in Clark County, Nevada, approach
13 Aspen for loans to finance their projects (the "Borrowers").
- 14 (b) In response to requests from the Borrowers for loans, Aspen's
15 representatives contact and solicit local investors (such as Plaintiffs) to
16 invest funds with Aspen for the purpose of making loans to the Borrowers
17 ("Lenders").
- 18 (c) Pursuant to Aspen's solicitations, the Lenders invest funds with Aspen,
19 which Aspen utilizes to make the loans to the Borrowers.
- 20 (d) In investing money with Aspen, the Lenders place their trust and
21 confidence in Aspen because Aspen represents itself as having special
22 expertise and knowledge in the area of loan making, brokering, and
23 servicing.
- 24 (e) The principal amount of the loans Aspen makes, brokers and services
25 typically exceeds a million dollars, and frequently exceeds ten million
26 dollars.
- 27 (f) Due to the large principal amounts of the loans, the investment from one
28 Lender is not sufficient to fund an entire loan; thus, Aspen combines the

1 investments from multiple Lenders into one loan package that is then
2 loaned to the Borrowers.

3 (g) As there are numerous Lenders on one loan, the Borrowers grant the
4 Lenders pro rata fractional interests in the promissory note evidencing the
5 loans as well as fractional interests in the recorded deeds of trust to the
6 properties that secure the loans.

7 (h) The properties that secure the loans are always the properties that are to be
8 owned and/or developed with the funds from the loans.

9 (i) The loans are also secured by the individual guarantees from the principals
10 of the Borrower entities (the "Guarantors").

11 (j) When a loan matures and the principal amount is repaid by the Borrowers,
12 Aspen provides the Lenders, often verbally, with the option to reinvest in
13 other loan investment packages made and brokered by Aspen or "cash
14 out" their investments.

15 31. Aspen makes and brokers first position loans ("First Position Loans") and second
16 position loans ("Second Position Loans").

17 32. The First Position Loans are secured by first deeds of trust ("First Trust Deeds")
18 on the properties securing the loans.

19 33. The Second Position Loans are secured by second deeds of trust ("Second Trust
20 Deeds") on the properties securing the loans—the same properties that secure the First Trust
21 Deeds; hence, most properties are encumbered by both First Trust Deeds and Second Trust
22 Deeds.

23 34. The First Trust Deeds are at all times superior and have priority as to the Second
24 Trust Deeds by law because they are either recorded first in time, or are made superior to the
25 Second Trust Deeds through subordination agreements executed by the holders of the Second
26 Trust Deeds.

27 35. The Lenders that invest in the Second Position Loans receive a higher rate of
28 investment return as a result of their inferior position (i.e. higher risk) as compared to the First

1 Position Loans.

2 36. The Lenders receive three benefits in return for their investments with Aspen: (1)
3 they receive a return from the Borrowers in the form of monthly interest payments on the loan;
4 (2) they are granted pro rata fractional interests in either First Trust Deeds or Second Trust
5 Deeds, depending on whether the loan is a First Position Loan or a Second Position Loan, which
6 fractional interests include the right to foreclose on the property securing the loans in the event of
7 default (with the First Trust Deeds being superior at all times); and (3) the immediate right to
8 pursue the Guarantors in the event of default, as the Guarantors waive the one-action rule set
9 forth in NRS 40.430.

10 37. Aspen's motivation in making and brokering loans is that it receives lucrative
11 returns from the broker's and lending fees it charges; Aspen has informed Plaintiffs through its
12 principal, Guinn, that it profits around \$3 million annually from these fees.

13 **Aspen's Function as Loan Servicer**

14 38. Aspen services the loans it makes and brokers.

15 39. Aspen's motivation in servicing the loans is that it receives a servicing fee
16 chargeable to the Lenders, which is usually an annual percentage of 3.00% of the principal
17 amount of the loan; thus, Aspen earns a substantial servicing fee on the multi-million dollar loans
18 it services.

19 40. Aspen's duties and obligations as loan servicer are set forth in servicing
20 agreements ("Servicing Agreements") that it executes with each Lender.

21 41. Aspen insists on servicing the loans it makes and brokers as part of the Lenders'
22 opportunity to invest with Aspen.

23 42. Thus, upon investing with Aspen, the Lenders must consider whether Aspen is a
24 trustworthy loan servicer at the same time the Lenders are considering whether to invest with
25 Aspen, as the two functions are made indivisible by Aspen.

26 ...

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28 ...

Plaintiffs as Investors in First Position Loans Made, Brokered and Serviced by Aspen

43. Between 1998 to 2008, Plaintiffs were solicited by Aspen to invest funds in First Position Loans that Aspen was to make to Borrowers.

44. Pursuant to Aspen's solicitations, Plaintiffs invested in approximately twenty-six First Position Loans made, brokered, and serviced by Aspen; the sum total of Plaintiffs' investments in First Position Loans exceeds \$4 million.

45. Plaintiffs' First Position Loans were secured by First Trust Deeds and the immediate right to pursue the Guarantors in the event of default.

46. As holders of First Trust Deeds, Plaintiffs' rights to foreclose in the event of default were at all times superior to the rights of any Second Trust Deed holders under law.

47. Aspen, by its actions and omissions, has materially breached its fiduciary and contractual duties owed to Plaintiffs.

48. The following are examples of some of Aspen's wrongful actions and omissions:

- (a) Unbeknownst to Plaintiffs and without Plaintiffs' permission, Aspen offered the Borrowers on Plaintiffs' First Position Loans the opportunity to borrow additional funds through Second Position Loans, which were secured by Second Trust Deeds (encumbering the same properties that secured Plaintiffs' First Position Loans).
- (b) Unbeknownst to Plaintiffs, Aspen serviced Second Position Loans that Aspen made and brokered to the Borrowers on Plaintiffs' First Position Loans; thus, Aspen serviced both the First Position Loans and Second Position Loans.
- (c) Aspen gave preference to lenders on Second Position Loans over lenders on First Position Loans, because Aspen's business associates, family members, and employees were lenders on Second Position Loans.
- (d) Aspen, and/or Aspen's principal, Guinn, acted as a lender, Borrower and/or Guarantor on some of the same First Position Loans and/or Second Position Loans that it made, brokered, and serviced.

1 49. Aspen's actions of making, brokering, and servicing both First Position Loans and
2 Second Position Loans to the same Borrower, as well as acting as a lender, borrower and/or
3 guarantor on the First Position Loans and/or Second Position Loans it made, brokered, and
4 serviced, created an inherent, irreconcilable conflict of interest between Plaintiffs as lenders of
5 the First Position Loans as secured by the First Trust Deeds, the lenders of the Second Position
6 Loans secured by the Second Trust Deeds, and Aspen itself.

7 50. The predictable consequences of the aforesaid conflicts of interest have come to
8 fruition as Aspen has wrongfully placed its interests, and the interests of its principals (including
9 Guinn), the lenders of the Second Position Loans, the Borrowers, and the Guarantors ahead of
10 the interests of Plaintiffs as lenders of the First Position Loans.

11 51. Specifically, although many of Plaintiffs' First Position Loans have fallen into
12 default, Aspen has forestalled foreclosure on the First Trust Deeds and has refused to pursue the
13 Guarantors despite being directed to do so by the lenders on the First Position Loans, thereby
14 protecting the interests of itself, Guinn, the Second Trust Deeds holders, the Borrowers, and the
15 Guarantors, all to Plaintiffs' detriment and injury.

16 52. Moreover, Aspen has sought, in some instances, to further its wrongful actions,
17 omissions, and schemes by deceitfully seeking to form irrevocable trusts ("Irrevocable Trusts")
18 designed to limit Aspen's contractual and fiduciary obligations owed to Plaintiffs.

19 **Aspen's Servicing Agreement with Plaintiffs**

20 53. Upon investing with Aspen, Plaintiffs executed Servicing Agreements with
21 Aspen, which Servicing Agreements set forth and established the contractual duties and
22 obligations Aspen owed Plaintiffs as the loan servicing agent on the First Position Loans in
23 which Plaintiffs invested.

24 54. Plaintiffs entered into the Servicing Agreements as a condition of Plaintiffs
25 investing in loans made and brokered by Aspen; that is, Aspen would not allow Plaintiffs to
26 invest in loans made and brokered by Aspen unless Plaintiffs agreed that Aspen would service
27 the loans.

28 55. The Servicing Agreements entered into by Plaintiffs all were in the same or

1 similar form and appointed Aspen as lender's agent.

2 56. The contractual duties set forth in the Servicing Agreements specifically included
3 Aspen's duty to: (1) "PROTECT" Plaintiffs' interest in the First Position Loans, including the
4 loan documents and First Trust Deeds; (2) "ENFORCE" Plaintiffs' rights under the loan
5 documents, including the First Trust Deeds and the guarantees; and (3) "AVOID" all
6 improprieties by placing Plaintiffs' interests in all instances superior to those of any other party,
7 including Aspen.

8 57. Through its actions, Aspen has breached each of those contractual duties.

9 58. The following is an overview of Aspen's specific duties and obligations to
10 Plaintiffs under the Servicing Agreements:

11 (a) All First Position Loans made and brokered by Aspen were to be
12 evidenced by promissory notes from the Borrowers in favor of Plaintiffs.

13 (b) Under the promissory notes, Borrowers are required to pay, and
14 Guarantors are required to guarantee, payment of the following costs:

- 15 i. interest on the principal amount, to be paid monthly;
- 16 ii. additional charges for late and unpaid monthly payments;
- 17 iii. in the event of default, interest on default at a rate of 5% interest
18 above the agreed upon interest rate;
- 19 iv. in the event of default, administrative charges;
- 20 v. applicable taxes;
- 21 vi. applicable attorney's fees and costs.

22 (c) Plaintiffs were to receive a fractionalized interest in those promissory notes.

23 (d) Every Plaintiff's fractionalized interest in a promissory note was to be
24 determined by the ratio of that Plaintiff's investment in the particular First Position Loan to the
25 total dollar amount of the First Position Loan in question.

26 (e) Every Plaintiffs' First Position Loan was to be secured by a fractionalized
27 interest in a First Trust Deed on the real property to be purchased and/or developed with the loan
28 proceeds.

1 (f) Aspen was to serve as Plaintiffs' agent with respect to the First Position
2 Loans.

3 (g) Aspen was to exercise *diligent and good faith efforts* in the execution of its
4 duties as the agent for Plaintiffs in accordance with reasonable and customary commercial
5 practice.

6 (h) As Plaintiffs' agent, Aspen was to act in *good faith* in:

- 7 i. servicing the First Position Loans;
- 8 ii. protecting Plaintiffs' interests in the promissory notes evidencing
9 the First Position Loans, in the First Trust Deeds, and in any other
10 loan documentation; and, if necessary,
- 11 iii. managing, refinancing, or selling the property securing the First
12 Position Loans.

13 (i) Aspen was to service the First Position Loans and deposit receipt of
14 payments in a trust account in Aspen's name as agent for Plaintiffs.

15 (j) Aspen was to maintain full and accurate records of its receipts from the
16 Borrowers and disbursements of all payments relating to the First Position Loans from the
17 Borrowers.

18 (k) In the event of default by a Borrower on a First Position Loan, Aspen was
19 to *promptly notify* Plaintiffs of the occurrence and nature of the event of default.

20 (l) Upon Aspen's notification to Plaintiffs regarding the Borrower's default,
21 Aspen was to follow *the Lenders' (including Plaintiffs') written instructions* to take one of the
22 following courses of action:

- 23 i. exercise the power of sale in the First Trust Deeds *through*
24 *foreclosure proceedings* and enforce all rights and remedies with
25 respect to other collateral; or
- 26 ii. negotiate and enter into a forbearance agreement for ninety (90)
27 days (or such other period, *only as directed by the Lenders,*
28 *including Plaintiffs*).

1 (m) Additionally, in the event of default, Aspen was required to follow the
2 Lenders' written instructions to pursue any or all available remedies against any guarantors of the
3 First Position Loan.

4 (n) Aspen could not, *without the prior written consent of Lenders*
5 *constituting more than 50% of Lenders:*

6 i. *forbear from exercising the power of sale* in the First Trust Deeds
7 for more than ninety (90) days from the date Aspen discovered that
8 the Borrowers were in default of the First Position Loan;

9 ii. forgive the debt evidenced by the promissory notes; or

10 iii. modify the terms of the promissory notes.

11 (o) Aspen was granted authority to retain additional funds for protective
12 actions for the benefit of Plaintiffs, which costs could include paying property taxes, insurance,
13 foreclosure costs, marketing costs and costs of engaging attorneys for the benefit and protection
14 of Plaintiffs.

15 (p) Aspen was required to provide Plaintiffs with 120 days written notice to
16 Plaintiffs should Aspen desire to withdraw from the Servicing Agreement.

17 **Aspen's Fiduciary Duties Owed to Plaintiffs**

18 59. Aspen owed Plaintiffs additional duties by nature of its loan servicing on
19 Plaintiffs' behalf that are above, beyond, and separate from its contractual duties to Plaintiffs
20 under the Servicing Agreements.

21 60. Specifically, by nature of placing money with Aspen as an investment and by
22 retaining Aspen as the loan maker, broker and the servicing agent on the loans, Plaintiffs placed
23 special confidence in Aspen such that, under Nevada law, Aspen owed Plaintiffs specific
24 fiduciary duties that were comprised of, but not limited to:

25 (a) a duty of good faith;

26 (b) a duty of honesty;

27 (c) a duty of full disclosure;

28 (d) a duty of undivided, extreme loyalty;

1 (e) a duty to place Plaintiffs' interests above those of Aspen, even if in so
2 doing Aspen was damaged in some way;

3 (f) a duty not to profit from its position as loan servicing agent on the First
4 Position Loans apart from funds authorized by Plaintiffs for servicing the First Position Loans;

5 (g) a duty not to have a conflict of interest; and

6 (h) a duty of confidence.

7 61. Aspen's fiduciary duties owed to Plaintiffs are in addition to Aspen's contractual
8 duties owed to Plaintiffs.

9 **Events of Default by the Borrowers**

10 62. The real estate market in Clark County, Nevada, has recently encountered a
11 turbulent downturn, which has caused several Borrowers to default on the First Position Loans in
12 which Plaintiffs have invested funds.

13 63. The Borrowers' defaults on the First Position Loans have triggered the provisions
14 in the Servicing Agreements that specifically set forth Aspen's obligations in the event of default.

15 64. In dereliction of its duties and obligations owed to Plaintiffs under the Servicing
16 Agreements and under Nevada law, however, Aspen has failed and refuses, and openly continues
17 to fail and refuse, to strictly adhere to the required proper procedure and fiduciary duties to be
18 taken by Aspen in the event of a Borrower's default.

19 65. Aspen has breached its contractual and fiduciary duties to Plaintiffs through the
20 wrongful actions it has taken to deprive Plaintiffs of their ability to control the First Position
21 Loans, and the property securing the First Position Loans, by use of deceit, deception,
22 concealment, misrepresentation, dishonesty, lack of loyalty, and conflicts of interest to benefit
23 Aspen, its owners, the Borrowers, the Second Position Loan lenders, and the Guarantors.

24 66. By way of example, and as more particularly set forth below, Aspen has put
25 Plaintiffs in a position where Plaintiffs no longer control their rights under the First Position
26 Loans and the First Trust Deeds securing those loans, by failing to foreclose pursuant to the First
27 Trust Deeds, failing to pursue the Guarantors, failing to charge the late fees and default rates of
28 interest chargeable to Borrowers in the event of default (thereby depriving Plaintiffs of monies

1 due and owing them), and setting up a scheme wherein the lenders on the Second Trust Deeds
2 wrongfully share in the proceeds from the sale of the properties that secure Plaintiffs' First Trust
3 Deeds.

4 67. In addition, Aspen has attempted to utilize Irrevocable Trusts to strip Plaintiffs of
5 their rights under the Servicing Agreements.

6 68. Specifically, as set forth above, the Servicing Agreements contain provisions that
7 direct Aspen as to the course of action it shall take with respect to foreclosing on the collateral
8 property in the event of a Borrowers' default.

9 69. In most of Plaintiffs' Servicing Agreements,¹ Aspen has four options at its
10 disposal in the event of default and foreclosure under the First Trust Deeds:

- 11 (a) obtain title to the foreclosed property in trust for the Lenders ("Servicing
12 Agreement Trusts");
- 13 (b) act as nominee or agent for the Lenders;
- 14 (c) allow the Lenders to take title to the foreclosed property as tenants in
15 common; or
- 16 (d) form a corporation or limited liability company, to which each fractional
17 holder of the First Trust Deed securing the foreclosed property will obtain
18 a fractional interest in the corporation or limited liability company.

19 70. In the event Aspen takes title to the foreclosed property in trust as trustee for the
20 Lenders, as provided for in the Servicing Agreements, Aspen still must fulfill its duties and
21 obligations set forth in the Servicing Agreements.

22 71. Recently, as a result of multiple defaults by multiple Borrowers on Plaintiffs'
23 First Position Loans, Aspen, by use of deception, concealment and various heavy-handed tactics,
24 has attempted to force Plaintiffs to form Irrevocable Trusts not permitted under the Servicing
25 Agreements.

26
27 ¹ Plaintiff David J. Willden Charitable Remainder Uni Trust, Dated 12/28/87's Servicing Agreement directs Aspen
28 to "exercise diligent and good faith efforts" to sell the foreclosed property for the highest price, upon written consent
from the Lenders.

1 72. The terms of the Irrevocable Trusts are significantly different from the terms of
2 the Servicing Agreement Trusts provided for under the Servicing Agreements; under the
3 Irrevocable Trusts, the trustees (the initial trustee is Guinn) strip the Lenders of much of their
4 control over the collateral property and attempt to relieve Aspen of its contractual and fiduciary
5 duties owed to the Lenders.

6 73. The Irrevocable Trusts furthermore are designed to benefit Aspen and Guinn to
7 the detriment of the Trust beneficiaries. For example, one of the provisions of the Irrevocable
8 Trust, entitled "Permitted Self-Dealing," permits the trustee(s) of the Irrevocable Trust, including
9 Guinn, to self-deal with any other trustee, beneficiary, and/or grantor of the same trust; thus, this
10 provision essentially relieves the trustee(s) of their fiduciary duties to the trust beneficiaries.

11 74. The coerced creation of these Irrevocable Trusts is another illustration of Aspen's
12 wrongful actions that have damaged, and continue to damage, Plaintiffs.

13 75. Aspens' specific failures to meet its duties and obligations to Plaintiffs under the
14 Servicing Agreements and Nevada law are set forth below in the context of some of the
15 individual First Position Loans in which Plaintiffs have invested; this pattern of wrongful
16 behavior is consistent throughout almost all of Plaintiffs' twenty-six First Position Loans.

17 76. The following actions taken (or not taken) by Aspen have been exposed through
18 letters that Aspen has sent to Plaintiffs.

19 **Celebrate Investments, LLC**

20 77. On or around December 14, 2006, Plaintiffs Lois Levy Family Trust, Charles E.
21 Thompson 1989 Trust, David J. Willden Charitable Remainder UNI Trust, and Peggy Beth Hart
22 (the "Celebrate Plaintiffs") invested in a First Position Loan (the "Celebrate Loan") to Celebrate
23 Investment, LLC ("Celebrate, LLC").

24 78. The principal amount of the Celebrate Loan was \$18,196,000.00, which amount
25 Celebrate, LLC promised to repay as evidenced by a promissory note.

26 79. The Celebrate Loan was secured by a First Trust Deed on the property (the
27 "Celebrate Property") owned by Celebrate, LLC and located in Clark County, Nevada.

28 80. Pursuant to the Servicing Agreement, the Celebrate Plaintiffs were made lenders

1 of fractional interests in the Celebrate Loan, which were in turn secured by fractional interests in
2 the Celebrate First Trust Deed.

3 81. The Celebrate Loan was individually guaranteed by the principal members of
4 Celebrate, LLC (the "Celebrate Guarantors").

5 82. Celebrate, LLC, thereafter obtained additional financing from Aspen that was
6 subordinated to the Celebrate Loan ("Celebrate Second Position Loan").

7 83. The principal amount of the Celebrate Second Position Loan was \$7,900,000.00.

8 84. The Celebrate Second Position Loan was secured by a Second Trust Deed on the
9 Celebrate Property, and by guarantees from the same Guarantors that guaranteed the Celebrate
10 Loan.

11 85. Aspen is and was the loan maker, broker and servicer for the Celebrate Second
12 Position Loan.

13 86. Upon information and belief, Aspen did not disclose to the Celebrate Plaintiffs of
14 the planned existence of the Celebrate Second Position Loan nor Aspen's role as loan maker,
15 broker and servicer of the Celebrate Second Position Loan.

16 87. On January 1, 2008, the Celebrate Loan went into default when Celebrate, LLC
17 did not make its required loan maturity payment due on that date.

18 88. Upon Celebrate, LLC's default, Aspen was required, under the terms of the
19 Servicing Agreement, to immediately inform the lenders of the Celebrate Loan that Celebrate,
20 LLC had defaulted on the Celebrate Loan, and to seek written instructions from the Celebrate
21 Loan lenders whether to commence foreclosure proceedings or enter into a forbearance
22 agreement.

23 89. As set forth below, Aspen breached the explicit terms of the Servicing
24 Agreement by not fulfilling the aforesaid duties and obligations.

25 90. On January 8, 2008, Aspen informed the lenders of the Celebrate Loan that
26 Celebrate, LLC had defaulted on the Celebrate Loan, and that the Celebrate, LLC was in
27 negotiations to sell the property to a "well qualified purchaser."

28 91. However, the January 8, 2008 communication from Aspen sought no direction

1 from the Celebrate Plaintiffs regarding whether to foreclose on the Celebrate Property or
2 negotiate a forbearance agreement with Celebrate, LLC, and made no mention of pursuing the
3 Celebrate Guarantors—all of which was required under the Servicing Agreements.

4 92. On March 7, 2008, Aspen again communicated with the Celebrate Loan lenders,
5 and again failed to seek direction regarding foreclosure on the Celebrate Property forbearance
6 and/or pursuit of the Celebrate Guarantors.

7 93. On March 12, 2008, Aspen informed the Celebrate Loan lenders, probably for the
8 first time, that Aspen was also servicing the Celebrate Second Position Loan.

9 94. In that same letter, Aspen unilaterally informed the Celebrate Loan lenders that it
10 was planning a foreclosure on the Celebrate Property on behalf of the Celebrate Second Position
11 Loan lenders *before* foreclosing pursuant to First Trust Deed on the Celebrate Property.

12 95. Aspen's stated purpose in enforcing the subordinated lenders' rights before the
13 rights of the Celebrate Plaintiffs was that it was necessary to preserve the position of the lenders
14 of the Celebrate Second Position Loan.

15 96. Aspen's stated purpose is nonsensical, however, because the Celebrate Plaintiffs
16 had and have no obligation to the lenders of the Celebrate Second Position Loan; the central
17 reason the Celebrate Plaintiffs invested in the Celebrate Loan (and consequently received a lower
18 rate of return on their investment than the investors in the Second Position Celebrate Loan) was
19 because the Celebrate Loan was a First Position Loan secured by a First Trust Deed (and
20 consequently was superior to the Celebrate Second Position Loan), which created greater
21 security for the Celebrate Plaintiffs' investment.

22 97. Thus, in contravention of the terms of the Servicing Agreement and its fiduciary
23 duties, Aspen, obviously burdened by its own self-interests, sought no written direction from the
24 Celebrate Plaintiffs regarding whether to foreclose on the Celebrate Property or negotiate a
25 forbearance; instead Aspen *forced* the Celebrate Plaintiffs to take a certain course of action (i.e.
26 allow the Second Position Loan lenders the right to foreclose before the Celebrate Plaintiffs
27 could foreclose)—which course of action went completely against the preeminent interests of the
28 Celebrate Loan lenders.

1 98. On July 23, 2008, nearly seven months after Celebrate, LLC defaulted on the
2 Celebrate Loan, Aspen, for the first time, sought the Celebrate Loan lenders' approval to initiate
3 foreclosure proceedings against the Celebrate Property and to pursue the Celebrate Guarantors.

4 99. Aspen's long overdue request for permission to initiate foreclosure proceedings
5 for the default of the Celebrate Loan came *after* Aspen had already scheduled the foreclosure
6 sale on behalf of the Celebrate Second Position Loan lenders for August 7, 2008.

7 100. On August 6, 2008, Aspen received approval from 61.5% of the lenders of the
8 Celebrate Loan to foreclose on the Celebrate Property.

9 101. Despite the Celebrate Loan lenders' direction to Aspen to initiate foreclosure
10 proceedings against the Celebrate Property on August 6, 2008, Aspen proceeded with the
11 Celebrate Second Position Loan foreclosure of the Celebrate Property on August 7, 2008.

12 102. On August 13, 2008, Aspen informed the Celebrate Loan lenders that the
13 Celebrate Second Position Loan lenders had successfully foreclosed on the Celebrate Property.

14 103. On August 15, 2008, Aspen requested that the lenders of the Celebrate Loan
15 forestall foreclosure proceedings against the Celebrate Property in order to give the lenders of the
16 Celebrate Second Position Loan (and now the new owners of the Celebrate Property) the
17 opportunity to market and sell the Celebrate Property.

18 104. Aspen touted the benefit of forestalling foreclosure on the Celebrate Property as a
19 cost-saving mechanism; specifically, Aspen stated that allowing the lenders of the Celebrate
20 Second Position Loan the opportunity to sell the Celebrate Property would save attorneys' fees
21 and foreclosure fees.

22 105. Aspen requested that the lenders of the Celebrate Loan forestall foreclosure even
23 after having been explicitly directed by the Celebrate Loan lenders to foreclose on the Celebrate
24 Property.

25 106. In touting the benefits of forestalling foreclosure, Aspen concealed its real
26 purposes in seeking to forestall foreclosure on the Celebrate Property (and the other properties
27 discussed in this Complaint) from the Celebrate Loan lenders: (1) that Aspen continued to accrue
28 loan servicing fees from Plaintiffs even when the loans fell into default—thus, the longer Aspen

1 could drag out the foreclosure process, the more loan servicing fees it could accumulate; and (2)
2 that Aspen would potentially receive a broker's commission if it could find new Borrowers to
3 purchase the securing property, where in foreclosure it would earn no commission because the
4 lenders would credit bid the property.

5 107. On September 11, 2008, now nine months since Celebrate, LLC's default, Aspen
6 informed the lenders of the Celebrate Loan that an alleged majority of the Celebrate First
7 Position Loan lenders agreed to grant the Celebrate Second Position Loan lenders a six-month
8 period to attempt to find a buyer for the Celebrate Property.

9 108. On October 13, 2008, Aspen informed the Celebrate Loan lenders that the
10 Celebrate Second Position Loan lenders had received an offer to purchase the Celebrate
11 Property.

12 109. That letter made no mention, however, of the terms of the sale, and whether
13 Aspen intended to enforce the rights of the Celebrate Loan lenders in full before enforcing any of
14 the rights of the Celebrate Second Position Loan lenders.

15 110. As of the date of this Complaint, the Celebrate Second Position Loan lenders
16 have not sold the Celebrate Property, and Aspen still has not proceeded with the foreclosure of
17 the Celebrate Loan or pursued the Guarantors, despite having been directed in writing to do so
18 by the Celebrate Loan lenders on August 6, 2008. All of this unconscionable delay occurred
19 while the value of the Celebrate Loan collateral deteriorated, given the market conditions in
20 Clark County, Nevada.

21 111. By failing to foreclose on the Celebrate Property at any time after January 1,
22 2008, by further forestalling foreclosure on the Celebrate Property to allow the Celebrate Second
23 Position Loan lenders to foreclose before the Celebrate Loan lenders, and by now seeking to sell
24 the Celebrate Property on behalf of the lenders of the Celebrate Second Position Loan, Aspen
25 breached its fiduciary and contractual duties and obligations owed to the Celebrate Plaintiffs.

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Coronado Eastern, LLC #80

112. On or around March 20, 2007, Plaintiffs Peggy Beth Hart, Kenneth and Yvonne Gragson Family Trust, Charles E. Thompson 1989 Trust, and Connie Laverne Thompson Family Trust, (the "Coronado 80 Plaintiffs") invested in a First Position Loan (the "Coronado 80 Loan") to Coronado Eastern, LLC ("Coronado Eastern").

113. Borrower Coronado Eastern's majority owner was, and is, Aspen's majority owner and president, Guinn.

114. Aspen was the loan maker, broker and the loan servicer on the Coronado 80 Loan.

115. The principal amount of the Coronado 80 Loan was \$19,550,000.00, which Borrower Coronado Eastern promised to repay as evidenced by a promissory note.

116. Pursuant to the Servicing Agreement, the Coronado 80 Plaintiffs were made lenders of a fractional interest in the Coronado 80 Loan.

117. The Coronado 80 Loan was secured by a First Trust Deed on the property (the "Coronado 80 Property") owned by Coronado Eastern and located in Clark County, Nevada.

118. The Coronado 80 Plaintiffs held fractional interest in the First Trust Deed on the Coronado 80 Property in order to secure their loans.

119. The Coronado 80 Loan was individually guaranteed by the principal members of Borrower Coronado Eastern (the "Coronado 80 Guarantors"), one of whom was Guinn, Aspen's president.

120. Borrower Coronado Eastern obtained additional financing on the real property from Aspen, which financing was subordinated to the Coronado 80 First Trust Deed Loan ("Coronado 80 Second Position Loan").

121. The Coronado 80 Second Position Loan is and was made, brokered and serviced by Aspen.

122. The Coronado 80 Second Position Loan was secured by a Second Trust Deed on the Coronado Eastern Property.

123. Upon information and belief, Aspen was an underlying Lender on the Coronado

1 80 Second Position Loan, holding a 67.2609% interest in the loan, a fact that was not disclosed
2 to the Coronado 80 Loan lenders (including Coronado 80 Plaintiffs).

3 124. Thus, the Coronado 80 Loan was made, brokered and serviced by Aspen to the
4 Coronado 80 Plaintiffs. In actuality, the Coronado 80 Loan was made to Aspen's president,
5 Guinn, and to the borrowing entity, Coronado Eastern, of which Guinn is and was a principal
6 member, and was guaranteed by Aspen's president, Guinn, all while Aspen was a lender and loan
7 servicer on the Second Position Coronado 80 Loan.

8 125. Upon information and belief, Aspen did not disclose to the Coronado 80
9 Plaintiffs of the planned existence of the Coronado 80 Second Position Loan or Aspen's role as
10 lender, maker, broker and servicer of the Coronado 80 Second Position Loan.

11 126. The Coronado 80 Loan had a maturity date of April 1, 2008, with an option for a
12 six month extension, which Aspen (i.e. an undisclosed Guinn) granted to Coronado Eastern (i.e.
13 an undisclosed Guinn) without prior written approval of the lenders of the Coronado 80 First
14 Loan; thus, Guinn, via Aspen, essentially and unilaterally granted himself a six-month extension
15 without the Coronado 80 Loan lenders' consent.

16 127. On July 25, 2008, Aspen sent a letter to the lenders of the Coronado 80 Loan
17 stating that Borrower Coronado Eastern (i.e. an undisclosed Guinn), had "approached" Aspen
18 seeking to extend the maturity date on the Coronado 80 Loan from October 1, 2008 (which was
19 the extended maturity an undisclosed Guinn granted himself without approval from the lenders
20 of the loan) to January 1, 2009.

21 128. Aspen also stated in the letter that Borrower Coronado Eastern (i.e. an
22 undisclosed Guinn), was requesting that the Coronado 80 Loan lenders accept only partial
23 payments at a reduced rate of interest until the extension date.

24 129. Aspen also threatened the lenders of the Coronado 80 Loan that if they did not
25 grant Borrower Coronado Eastern (i.e. an undisclosed Guinn) an extension, "future problems"
26 could occur "due to the holding costs on the project."

27 130. The July 25, 2008 letter was signed by Sean Corrigan as President of Aspen
28 Financial Services, LLC, although up to that moment, every other letter sent from Aspen to

1 Plaintiffs regarding any loan brokered and serviced by Aspen was signed by Guinn as Aspen's
2 president/manager/chief executive officer.

3 131. Thus, Aspen made a conscious effort to conceal from the lenders of the Coronado
4 80 Loan that Guinn was both a principal of the borrowing entity, Coronado Eastern, and a
5 personal guarantor on the Coronado 80 Loan, even though such a disclosure should have been
6 made by Aspen on every communication between Aspen/Guinn and the lenders of the Coronado
7 80 Loan.

8 132. Moreover, Aspen did not disclose to the lenders of the Coronado 80 Loan that
9 Aspen was a Lender and servicer on the Second Position Coronado 80 Loan.

10 133. As set forth in the preceding paragraphs, Aspen and Guinn's actions with respect
11 to the Coronado 80 Loan were egregious and breached every conceivable contractual and
12 fiduciary duty Aspen owed to the Coronado 80 Plaintiffs.

13 Omega Development LLC

14 134. On or around August 7, 2007, Plaintiffs Connie Laverne Thompson Family
15 Trust, Daniel Pick, Jodi Pick, Kira John-MacDonald and Rodney F. Reber Family Limited
16 Partnership (the "Omega Plaintiffs") invested funds in a First Position Loan (the "Omega Loan")
17 to Omega Development, LLC ("Omega Development").

18 135. Aspen was the loan maker, broker and servicer on the Omega Loan.

19 136. The principal amount of the Omega Loan was \$14,475,000.00, which Omega
20 Development promised to repay as evidenced by a promissory note.

21 137. The Omega Loan was collateralized by a First Trust Deed on the property
22 (Omega Property) owned by Omega Development and located in Clark County, Nevada.

23 138. Pursuant to the Servicing Agreements, the Omega Plaintiffs were made lenders
24 of fractional interests in the Omega Loan, which interests were secured by fractionalized
25 interests in the First Trust Deed on the Omega Property.

26 139. The Omega Loan was individually guaranteed by the principal members of
27 Omega Development (the "Omega Guarantors").

28 140. Omega Development had additional financing that was subordinated to the

1 Omega Loan (the "Omega Second Position Loan").

2 141. Aspen was also the maker, broker and servicer of the Omega Second Position
3 Loan.

4 142. The Omega Second Position Loan was secured by a Second Trust Deed on the
5 Omega Property, the same property that secured the Omega Loan.

6 143. Upon information and belief, Aspen did not disclose to the Omega Plaintiffs of
7 the existence of the Omega Second Position Loan or Aspen's role as loan maker, broker and
8 servicer of the Omega Second Position Loan.

9 144. Omega Development ceased making payments on the Omega Loan as of April
10 2008; the lenders of the Omega Loan were notified of Omega Development's default by Aspen's
11 letter on or around April 9, 2008.

12 145. In that same letter, Aspen sought approval from the Omega Loan lenders to
13 proceed against Omega Development, the Omega Property, and the Omega Guarantors.

14 146. On May 30, 2008, Aspen requested and was granted funds from the Omega Loan
15 lenders to foreclose on the Omega Property.

16 147. On June 10, 2008, Aspen informed the Omega Loan lenders that Aspen had
17 received approval from over 51% of the lenders of the Omega Loan to foreclose on the Omega
18 Property and pursue the Omega Guarantors.

19 148. On July 11, 2008, Aspen informed the Omega Loan lenders that the foreclosure
20 sale for the property was scheduled for August 22, 2008, and requested that the Omega Loan
21 lenders consider forming an Irrevocable Trust to "better manage and facilitate the multiple tasks
22 associated with this matter," even though the Servicing Agreements already set forth the specific
23 actions Aspen must take to service the loans and enforce the Omega Plaintiffs' rights under the
24 Omega Loan in the event of default.

25 149. Outrageously, on August 7, 2008, Aspen informed the Omega Loan lenders that
26 the lenders of the previously undisclosed Omega Second Position Loan had completed their
27 foreclosure of the Omega Property on July 30, 2008; this was a surprise development for the
28 Omega Loan lenders because the only foreclosure sale previously mentioned by Aspen to the

1 Omega Loan lenders was the sale scheduled for August 22, 2008—which was to be conducted
2 on their behalf on the First Trust Deed.

3 150. Adding insult to injury, and true to its desire to place its interests and the interests
4 of the Second Position Loan lenders, the Omega Borrowers, and the Omega Guarantors ahead of
5 the Omega Loan lenders, Aspen also requested, on behalf of the lenders of the Omega Second
6 Position Loan, that the Omega Loan lenders, without any consideration from the Omega Second
7 Position Loan lenders, delay foreclosing on the Omega Property because doing so would "wipe
8 out" the interests of the Omega Second Position Loan lenders.

9 151. Aspen also threatened the Omega Loan lenders that their failure to approve
10 forestalling foreclosure on the Omega Property for six months would result in more foreclosure
11 costs and attorneys' fees, even though Aspen had already collected the foreclosure costs from the
12 Omega Loan lenders pursuant to its May 30, 2008 letter.

13 152. Aspen's disingenuous request that the Omega Loan lenders forestall foreclosure
14 out of an ostensible act of kindness to the lenders of the Omega Second Position Loan came
15 more than three months after the Omega Loan lenders directed Aspen to foreclose on the Omega
16 Property.

17 153. Similarly, Aspen failed to pursue the Omega Guarantors regarding the defaulted
18 Omega Loan despite being directed to do so months earlier.

19 154. On October 3, 2008, Aspen sent a letter to the Omega Loan lenders stating that it
20 would be continuing to collect its servicing fees to cover "accounting, communications, letters,
21 meetings, discussions, analysis, and a full array of clerical work," and that it would be taking
22 past-due servicing fees out of extra foreclosure costs it had already collected from the Omega
23 Loan lenders; however, the Servicing Agreement contains no provision permitting Aspen to
24 continue to assess and collect servicing fees in the event of default.

25 155. On October 13, 2008, Aspen brazenly sent another letter to the Omega First Trust
26 Deed Loan lenders stating that it had sent a previous letter requesting a vote on the listing price
27 for the sale of the Omega Property, although no such letter was ever sent to the Omega Plaintiffs.

28 156. Thus, Aspen failed to foreclose on the Omega Property despite being directed to

1 do so by the Omega Loan lenders, failed to assess default interest from Borrowers, failed to
2 inform the Omega Loan lenders that the lenders of the Omega Second Position Loan had a
3 scheduled foreclosure sale on July 30, 2008, failed to pursue the Omega Guarantors, attempted to
4 circumvent the duties and responsibilities set forth in the Servicing Agreements by creating an
5 Irrevocable Trust, recovered servicing fees from the Omega Loan lenders in contravention of the
6 terms of the Servicing Agreements, and, adding insult to injury, requested that the Omega Loan
7 lenders forestall (without consent) *their* foreclosure sale of the Omega Property as a favor to the
8 Omega Second Position Loan lenders, all during a time when the value of the collateral securing
9 the Omega Loan continued to diminish.

10 157. As with the other loans set forth herein, Aspen's actions vis-à-vis the Omega
11 Loan were offensive to any sense of honesty, loyalty, fairness and good faith, and Aspen
12 therefore intentionally breached its fiduciary and contractual duties to the Omega Plaintiffs.

13 HDB, LLC

14 158. On or around January 10, 2007, Plaintiffs James R. Zellers Revocable Trust,
15 Linda Reber, Charles E. Thompson 1989 Trust, Kira John MacDonald, and Connie Laverne
16 Thompson Family Trust (the "HDB Plaintiffs") invested in a First Position Loan (the "HDB
17 Loan") to HDB, LLC ("HDB").

18 159. Aspen was the loan maker, broker and servicer on the HDB Loan.

19 160. The principal amount of the HDB Loan was \$14,500,000.00, which HDB
20 promised to repay as evidenced by a promissory note.

21 161. The HDB Loan was secured by a First Trust Deed on the property (the "HDB
22 Property") owned by HDB Development.

23 162. Pursuant to the Servicing Agreements, the HDB Plaintiffs were made lenders of
24 fractional interests in the HDB Loan and were secured by fractional interests in a First Trust
25 Deed.

26 163. The HDB Loan was individually guaranteed by the principal members of HDB
27 Development (the "HDB Guarantors").

28 164. HDB had additional financing that was subordinated to the HDB Loan (the

1 "HDB Second Position Loan"); Aspen made, brokered and serviced the HDB Second Position
2 Loan.

3 165. The HDB Second Position Loan was made secondary to the HDB Loan pursuant
4 to a subordination agreement executed by Aspen/Guinn on behalf of the HDB Second Position
5 Loan lenders.

6 166. Upon information and belief, Aspen did not disclose to the HDB Plaintiffs that
7 Aspen was the loan maker, broker and servicer of the HDB Second Position Loan.

8 167. The HDB Loan matured on February 1, 2008, and HDB filed for Chapter 11
9 bankruptcy protection on or around that date.

10 168. On February 13, 2008, Aspen informed the HDB Loan lenders (including the
11 HDB Plaintiffs) of the bankruptcy filing; yet, Aspen made no mention of pursuing the HDB
12 Guarantors and has not subsequently done so; nor has it assessed or filed claims in the
13 bankruptcy against Borrower for all default money owed to the HDB Plaintiffs by HDB
14 Development.

15 169. On March 7, 2008, Aspen sent a joint letter to the lenders of the HDB Loan and
16 the HDB Second Position Loan—which was the first time the HDB Loan lenders were made
17 aware that Aspen was servicing both loans—in which Aspen requested that both parties share in
18 the attorneys' fees associated with HDB's bankruptcy, even though the parties had no relationship
19 other than (probably unknowingly) sharing a Borrower and a loan servicer.

20 170. On July 11, 2008, Aspen informed the HDB Loan lenders that HDB
21 Development was delinquent on the May 2008 through July 2008 interest payments that had
22 been ordered by the Bankruptcy Court.

23 171. In that letter, Aspen also stated that although the HDB Loan lenders had
24 approved pursuing the HDB Guarantors, Aspen's "attorneys [were] reviewing and strategizing as
25 to be best approach to filing a lawsuit with multiple beneficiaries and multiple loans with the
26 same Guarantors"; on the advice of counsel, Aspen recommended forming an Irrevocable Trust
27 to "facilitate multiple tasks associated with this matter"—even though the Servicing Agreements
28 clearly set forth Aspen's course of action in the event of default and/or bankruptcy by a

1 Borrower, and do not authorize the formation of an Irrevocable Trust.

2 172. On August 13, 2008, Aspen sent a letter to the HDB Loan lenders that was
3 virtually identical to the July 11, 2008 letter; hence, Aspen did nothing over that time period to
4 pursue the HDB Guarantors, despite having been directed to do so by the HDB Loan lenders
5 before July 11, 2008.

6 173. The August 13, 2008 letter also again touted the need to create the Irrevocable
7 Trust, although Aspen did not disclose that the formation of the Irrevocable Trust would strip the
8 HDB Loan lenders of their rights under the Servicing Agreements; that is, Aspen's purpose in
9 seeking the Irrevocable Trust was to strip the Lenders of their rights under the Servicing
10 Agreements by granting Aspen (and trustees selected by Aspen) the right unilaterally to make
11 any and all decisions regarding the loans and to self-deal (as opposed to Aspen's wrongfully
12 doing so as it was at that time).

13 174. On September 11, 2008, Aspen informed the HDB Loan lenders that it still had
14 not pursued the HDB Guarantors.

15 175. Aspen also informed the HDB Loan lenders that an Irrevocable Trust had been
16 approved by the "Lenders on this loan"—though the HDB Plaintiffs never received a
17 communication from Aspen requesting their vote on the formation of the Irrevocable Trust.

18 176. When challenged on this attempt to mislead the Plaintiffs and other investors,
19 Aspen informed the HDB Loan lenders on October 10, 2008 that the previous vote on the
20 Irrevocable Trust was erroneous and that the Irrevocable Trust had not yet been formed.

21 177. Thus, Aspen breached its duties to the HDB Plaintiffs in being dilatory in
22 pursuing the HDB Guarantors and in seeking to create an Irrevocable Trust designed to strip the
23 HDB Loan lenders, including the HDB Plaintiffs, of their Servicing Agreement rights.

24 **Pay Dirt Development & Investment, LLC**

25 178. Sometime in 2007, Plaintiffs Connie Laverne Thompson Family Trust, Lois Levy
26 Family Trust and James R. Zellers Revocable Trust (the "Pay Dirt Plaintiffs") invested in a First
27 Position Loan (the "Pay Dirt Loan") to Pay Dirt Development & Investment, LLC, loan number
28 10-00346-2 ("Pay Dirt").

1 179. The principal amount of the Pay Dirt Loan was \$1,187,00.00, which Pay Dirt
2 promised to repay as evidenced by a promissory note.

3 180. The Pay Dirt Loan was secured by a First Trust Deed on the property (the "Pay
4 Dirt Property") owned by Pay Dirt.

5 181. Pursuant to the Servicing Agreements, the Pay Dirt Plaintiffs were made lenders
6 of fractional interests in the Pay Dirt Loan; they were secured by fractionalized interests in a
7 First Trust Deed.

8 182. Upon information and belief, the Pay Dirt Loan was individually guaranteed by
9 the principal members of Pay Dirt Development (the "Pay Dirt Guarantors").

10 183. Pay Dirt had additional financing that was subordinate to the Pay Dirt Loan (the
11 "Pay Dirt Second Position Loan").

12 184. Aspen was and is the maker, broker and servicer, as well as a lender on the Pay
13 Dirt Second Position Loan.

14 185. Upon information and belief, Aspen did not initially disclose to the Pay Dirt
15 Plaintiffs that Aspen was the loan maker, broker, servicer, and a lender on the Pay Dirt Second
16 Position Loan.

17 186. Pay Dirt failed to make the required payment when the Pay Dirt Loan matured on
18 April 1, 2008.

19 187. On April 24, 2008, Aspen informed the Pay Dirt Loan lenders that notices of
20 default had been sent to Pay Dirt and the Pay Dirt Guarantors.

21 188. Aspen also informed the Pay Dirt Loan lenders that "Aspen has discussed
22 proceeding with foreclosures on both mortgages with counsel" and that "counsel has
23 recommended proceeding on the second mortgages first, as this foreclosure will not effect the
24 lien of the first mortgage."

25 189. Therefore, hiding behind advice from its attorneys, which attorneys fees were
26 paid for by fees collected from Plaintiffs by Aspen, Aspen expressed its intent to "seek approval
27 to file a breach on the second mortgage loan" before foreclosing on the Pay Dirt Loan.

28 190. In essence, Aspen was informing the Pay Dirt Loan lenders that it was seeking to

1 forestall foreclosure on behalf of the Pay Dirt Loan lenders in order to protect the interests of the
2 Pay Dirt Second Position Loan lenders—which just so happened to be Aspen.

3 191. On May 7, 2008, Aspen informed the Pay Dirt Loan lenders that it had received
4 51% approval to proceed with foreclosure on the Pay Dirt Property and pursue the Pay Dirt
5 Guarantors.

6 192. On May 27, 2008, Aspen informed the Pay Dirt Loan lenders that Pay Dirt was
7 attempting to negotiate the sale of the Pay Dirt property to a third party.

8 193. Aspen also informed the Pay Dirt Loan lenders that it had already filed a notice
9 of breach on its own behalf as lender under the Pay Dirt Second Position Loan.

10 194. Despite having previously been granted approval to proceed with foreclosure
11 against the Pay Dirt Property and pursue the Pay Dirt Guarantors on May 7, 2008, Aspen again
12 sought that same approval in its May 27, 2008 letter.

13 195. On June 10, 2008, Aspen informed the Pay Dirt Loan lenders that it (again) had
14 received approval to proceed with foreclosure on the Pay Dirt Property, but requested approval
15 from the lenders to allow Pay Dirt to make partial interest payments—no approval form was
16 attached to the letter, however.

17 196. One day later, on June 11, 2008, Aspen stated it was awaiting a 51% approval
18 from the Pay Dirt Loan lenders to allow Pay Dirt to make partial interest payment and thereby
19 cancel the Notice of Breach, even though no approval forms were sent to the Pay Dirt Loan
20 lenders to accept partial payments.

21 197. On August 13, 2008, Aspen informed the Pay Dirt Loan lenders that it had
22 received approval of over 51% of the Pay Dirt Loan lenders to accept reduced payments, which
23 Aspen magically accomplished without sending approval forms to the Pay Dirt Plaintiffs.

24 198. On August 14, 2008, Aspen sent a letter to all Pay Dirt Lenders (i.e. the Pay Dirt
25 Loan lenders, the Pay Dirt Second Position Loan lenders (Aspen), and other lenders that had
26 made loans secured by the Pay Dirt Property), informing the lenders that Pay Dirt had received
27 an offer to purchase the Pay Dirt Property at 73% of the original principal balance.

28 199. The offer was rejected three weeks later.

1 200. On October 13, 2008, Aspen sent a letter to the Pay Dirt Loan lenders proposing
2 that they accept an offer from Pay Dirt at 94 cents on the dollar as payment in full on the Pay
3 Dirt Loan.

4 201. Aspen did not mention in that letter, however, as it should have as the Pay Dirt
5 Plaintiffs' fiduciary agent, that the 94 cents on the dollar buy out would be effectively reduced to
6 a much lower number after commissions and fees, as set forth in the promissory note; and that
7 the 94 cents on the dollar figure did not represent the loss of accrued interest and penalties from
8 February 2008 to the present.

9 202. Upon information and belief, Aspen's proposed payout of 94 cents on the dollar
10 for the Pay Dirt Loan lenders was driven, at least in part, to pay money to the Pay Dirt Second
11 Position Loan lenders.

12 203. Critically, the letter states that "Aspen will proceed as directed by a majority vote
13 of the Lenders (51% or greater *based on participation*)"; however, the Servicing Agreement
14 states that a failure to participate in a vote will be considered a "no" vote—not a disregarded
15 vote, as would be the case under Aspen's "based on participation" voting standard.

16 204. Thus, as with all other loans, Aspen was twisting requirements of the Servicing
17 Agreement and misleading the Pay Dirt Plaintiffs in order to meet its own designs and
18 objectives.

19 205. The named Plaintiffs that are not identified as "Celebrate Plaintiffs," "Coronado
20 80 Plaintiffs," "Omega Plaintiffs," "HDB Plaintiffs," or "Pay Dirt Plaintiffs" invested with Aspen
21 in First Position Loans with other Borrowers. However, these other investments had the same
22 characteristics as the Celebrate, Coronado 80, Omega, HDB and Pay Dirt loans. Aspen was the
23 loan maker, broker and servicer for First Position Loans and Second Position Loans with the
24 same Borrower, secured by the same collateral; Aspen placed the interests of others before the
25 interests of the remaining Plaintiffs as First Position Loan lenders; Aspen therefore breached its
26 contractual and fiduciary duties owed to those Plaintiffs.

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III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Breach of the Servicing Agreements)

206. Plaintiffs incorporate the allegations in paragraphs 1 through 205 above as if specifically set forth herein.

207. Plaintiffs entered into valid and existing contracts under Nevada law when they executed the Servicing Agreements with Defendants.

208. Plaintiffs performed each and every obligation set forth in the Servicing Agreements.

209. Defendants breached their duties and obligations to Plaintiffs under the Servicing Agreements, which breaches are set forth herein, and include in part, but are not limited to, Defendants' failing to act in good faith as Plaintiffs' agent in servicing Plaintiffs' approximate twenty-six First Position Loans; failing to protect and enforce Plaintiffs' interests in Plaintiffs' First Position Loans (including the First Trust Deeds); failing to follow the procedures set forth in the Servicing Agreements in the event of default by a Borrower; and foreclosing on the property that secured Plaintiffs' First Trust Deeds on behalf of the Second Position Loan lenders without prior written consent from Plaintiffs.

210. As a result of Defendants' breaches of the Servicing Agreements, Plaintiffs have suffered damages in excess of \$10,000.00.

211. It has been necessary for Plaintiffs to employ the legal services of counsel in order to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees and costs incurred herein.

SECOND CLAIM FOR RELIEF
(Contractual and Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

212. Plaintiffs incorporate the allegations in paragraphs 1 through 211 above as if specifically set forth herein.

213. Plaintiffs entered into a valid contract under Nevada law when they executed the

1 Servicing Agreements with Defendants.

2 214. Defendants owed Plaintiffs a duty of good faith and fair dealing under Nevada
3 law arising from the Servicing Agreements.

4 215. As a result of the Servicing Agreements, a special element of reliance and trust
5 existed, such that Defendants owed Plaintiffs fiduciary duties.

6 216. Defendants breached the duties owed Plaintiffs by performing in a manner that
7 was unfaithful to the purpose of the contract, as set forth herein, by in part, but not limited to,
8 servicing the First Position Loans and Second Position Loans at the same time; abusing its
9 special relationship with Plaintiffs as Plaintiffs' loan servicing agent by wrongfully and
10 repeatedly requesting that Plaintiffs place their interests lower and behind than those of the
11 Second Position Loan lenders; foreclosing on the properties securing the First Position Loans on
12 behalf of the Second Position Loan lenders without giving notice to Plaintiffs until shortly before
13 or after the Second Position Loan lenders' foreclosure sales were scheduled; and seeking to strip
14 Plaintiffs of their rights under the Servicing Agreement by misstating the necessity of- and
15 Defendants' intent in- forming Irrevocable Trusts.

16 217. Defendants' breach of its duty of good faith by engaging in misconduct, as set
17 forth herein, was tortious and in bad faith.

18 218. As a result of Defendants' contractual and tortious bad faith breach, Plaintiffs
19 have suffered damages in excess of \$10,000.00.

20 219. Defendants' contractual and tortious bad faith breach constituted a reckless
21 disregard of Plaintiffs' rights, and justifies awarding Plaintiffs exemplary and punitive damages
22 in excess of \$10,000.00.

23 220. It has been necessary for Plaintiffs to employ the legal services of counsel in order
24 to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees
25 and costs incurred herein.

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THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

221. Plaintiffs incorporate the allegations in paragraphs 1 through 220 above as if specifically set forth herein.

222. By investing funds with Aspen and by nature of retaining Defendants as the servicing agent on the loans, Plaintiffs placed special confidence in and reliance on Defendants such that, under Nevada law, Defendants owed Plaintiffs fiduciary duties.

223. Defendants' fiduciary duties to Plaintiffs are comprised of, but not limited to, a duty of good faith; a duty of honesty; a duty of full disclosure; a duty of undivided, extreme loyalty; a duty to place Plaintiffs' interests above those of Defendants, even if in so doing Defendants were damaged in some way; a duty not to profit from its position as loan servicing agent on the First Position Loans apart from funds authorized by Plaintiffs for servicing the First Position Loans; a duty to not have a conflict of interest; and a duty of confidence and trust.

224. As a creation of Nevada law, Defendants' fiduciary duties to Plaintiffs arise separate and apart from any duties and obligations set forth in the Servicing Agreements.

225. Defendants repeatedly and intentionally breached, and are still breaching, their fiduciary duties to Plaintiffs by, in part, but not limited to, acting in bad faith in brokering and servicing the First Position Loans; failing to honestly and fully disclose the extent and nature of Aspen's relationship with the Borrowers and Second Position Loan lenders; failing to honestly and fully disclose to Plaintiffs that the Second Position Loan lenders were foreclosing, with Aspen's approval and assistance, on the properties securing the First Position Loans; dividing its loyalty to Plaintiffs by servicing the First Position Loans and the Second Position Loans at the same time; failing to place Plaintiffs' interests above its own; improperly profiting by way of its position as loan servicing agent; and violating Plaintiffs' confidences and legal and equitable rights and priorities by seeking to institute Irrevocable Trusts designed to strip Plaintiffs of their rights under the Servicing Agreements.

226. As a result of Defendants' egregious breaches of its fiduciary duties to Plaintiffs, Plaintiffs have suffered damages in excess of \$10,000.00.

227. Defendants' breach of its fiduciary duties also constituted a reckless disregard of Plaintiffs' rights, and justifies awarding Plaintiffs exemplary and punitive damages in excess of \$10,000.00.

228. It has been necessary for Plaintiffs to employ the legal services of counsel in order to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
(Accounting)

229. Plaintiffs incorporate the allegations in paragraphs 1 through 228 above as if specifically set forth herein.

230. Pursuant to the Servicing Agreements and applicable provisions of NRS and NAC, Defendants are required to maintain full and accurate records of its making the loans, underwriting the loans, and servicing the loans to include but not be limited to records of all receipts and disbursements relating to Plaintiffs' Loans.

231. Furthermore, by way of Defendants' special relationship with Plaintiffs as the servicing agent on Plaintiffs' First Position Loans, Defendants are required to account for their actions regarding their servicing of Plaintiffs' First Position Loans in all respects.

232. Therefore, pursuant to Defendants' contractual, fiduciary, and statutory duties and obligations, Plaintiffs seek a Court-ordered accounting requiring Defendants to account for each and every aspect of Defendants' making and servicing of Plaintiffs' First Position Loans, which includes an accounting of Defendants' servicing of the pertinent Second Position Loans (i.e. the Second Position Loans made to Borrowers to which Plaintiffs have also lent funds).

233. Such accounting is necessary in the interest of equity and justice to determine the extend of Defendants' wrongdoings in servicing Plaintiffs' First Position Loans, which have caused Plaintiffs to incur damages in excess of \$10,000.00.

234. It has been necessary for Plaintiffs to employ the legal services of counsel in order to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees and costs incurred herein.

1 **FIFTH CLAIM FOR RELIEF**
2 **(Appointment of a Receiver)**

3 235. Plaintiffs incorporate the allegations in paragraphs 1 through 235 above as if
4 specifically set forth herein.

5 236. Due to Defendants' egregious and conflict-burdened conduct in servicing
6 Plaintiffs' First Position Loans, Plaintiffs seek the Court-ordered appointment of a receiver,
7 pursuant to the provisions of Chapter 32 of the Nevada Revised Statutes ("NRS"), which
8 appointment is necessary to protect and preserve Plaintiffs' rights in the First Position Loans and
9 the properties securing those loans through First Trust Deeds.

10 237. It has been necessary for Plaintiffs to employ the legal services of counsel in order
11 to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees
12 and costs incurred herein.

13 **SIXTH CLAIM FOR RELIEF**
14 **(Fraudulent Concealment)**

15 238. Plaintiffs incorporate the allegations in paragraphs 1 through 237 above as if
16 specifically set forth herein.

17 239. The majority of the facts necessary for Plaintiffs to plead Aspen's fraudulent
18 concealment with particularity are peculiarly within Aspen's control, knowledge, and possession;
19 nonetheless, Plaintiffs will plead the facts that give rise to an inference of fraud.

20 240. Aspen misrepresented, concealed and suppressed material facts in its dealings
21 with Plaintiffs, which material facts Aspen had a duty to disclose to Plaintiffs; specifically,
22 Aspen concealed and suppressed the fact that Aspen was the loan servicer on First and Second
23 Position loans made to the same Borrowers; that Aspen was a Borrower and/or Guarantor on
24 Second Position Loans made to the same Borrowers to which Plaintiffs, through Aspen, had
25 made First Position Loans; Aspen misrepresented that the formation of the Irrevocable Trusts
26 was necessary to secure Plaintiffs' rights under the First Position Loans, when in reality the
27 mechanism of an Irrevocable Trust was designed to strip Plaintiffs of their rights under the
28 Servicing Agreements; that Aspen sought the Plaintiffs' actions regarding the defaulted First
Position Loans while concealing that Aspen had already taken action to foreclose on the Second

1 Position Loans and Second Trust Deeds; and Aspen concealed that it was delaying foreclosure
2 on the First Position Loans in order to protect Aspen's principals, employees, family members,
3 and business associates.

4 241. Aspen was under a duty to disclose to the Plaintiffs the facts it concealed and
5 suppressed.

6 242. Aspen misrepresented suppressed and concealed the facts alleged in order to
7 defraud Plaintiffs.

8 243. Plaintiffs were unaware of the concealed, suppressed or true facts that were
9 misrepresented, and would have acted differently if they would have known of the concealed,
10 suppressed material facts.

11 244. As a result of Aspen's concealment and suppression of material facts, Plaintiffs
12 have sustained damages in excess of \$10,000.00.

13 245. Aspen's fraudulent misrepresentation, suppression and concealment were done
14 maliciously and constituted a reckless disregard of Plaintiffs' rights, thereby justifying awarding
15 Plaintiffs exemplary and punitive damages in excess of \$10,000.00.

16 246. It has been necessary for Plaintiffs to employ the legal services of counsel in order
17 to prosecute this claim, and Plaintiffs are entitled to recover all of their reasonable attorney's fees
18 and costs incurred herein.

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1 WHEREFORE, Plaintiffs pray for relief as follows

- 2 1. For general damages in excess of \$10,000.00 from Defendants;
- 3 2. For punitive damages in excess of \$10,000.00 from Defendants;
- 4 3. For the appointment of a receiver pursuant to Chapter 32 of the Nevada Revised
- 5 Statutes;
- 6 4. For an accounting of Defendants' servicing of Plaintiffs' First Position Loans;
- 7 5. For costs of suit and reasonable attorney's fees; and
- 8 6. For such other and further relief as the Court deems just and proper.

9 Dated this 7th day of November, 2008.

10 GORDON SILVER

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