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A-09-590202-B
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DISTRICT COURT

CLARK COUNTY, NEVADA

EUGENE J. GORLICK and JEANNE M. GORLICK as general partners of THE GORLICK FAMILY LIMITED PARTNERSHIP; DANIEL M. GORLICK, individually; JANET S. GREGORY, individually; JOHN B. SLIGHT, individually; KENNETH GRAGSON and YVONNE GRAGSON, Trustees of THE KENNETH GRAGSON & YVONNE GRAGSON FAMILY TRUST; NORTH MAIN, LLC, a Nevada limited liability company; BONNIE H. GRAGSON and KENNETH RAY GRAGSON, Trustees of THE GRAGSON 1988 TRUST; RODNEY F. REBER as general partner of THE RODNEY F. REBER FAMILY LIMITED PARTNERSHIP; LINDA REBER, individually; LOIS LEVY, Trustee of THE LOIS LEVY FAMILY TRUST DTD 2/11/93; CHARLES E. THOMPSON, Trustee of THE CHARLES E. THOMPSON 1989 TRUST; CONNIE LAVERNE THOMPSON, individually and as Trustee of THE CONNIE LAVERNE THOMPSON FAMILY TRUST, DTD 12/12/05; DAWN J. GERKE, Trustee of THE BLAKELY CHARITABLE REMAINDER TRUST, DTD 5/2/97; JAMES B. GERKE and DAWN J. GERKE, Trustees of THE BYRON TRUST, DTD 5/2/85; DAVID J. WILLDEN, Trustee of THE DAVID J. WILLDEN CHARITABLE REMAINDER UNI TRUST, dated 12/28/87; CHERYL ROGERS-BARNETT and LARRY BARNETT, Trustees of THE ROGERS-BARNETT FAMILY TRUST, DTD 11/28/03,

Plaintiffs,

CASE NO. A-09-590202-B

DEPT. NO. XI

COMPLAINT

(BUSINESS COURT REQUESTED)

Exempt from Arbitration:
(1) Declaratory & Injunctive Relief Requested; and
(2) Amount in dispute exceeds $50,000

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ASPEN FINANCIAL SERVICES, INC., a Nevada corporation; ASPEN FINANCIAL SERVICES, LLC, a Nevada limited liability company; JEFFREY B. GUINN, individually; MILANO RESIDENCES, LLC, a Nevada limited liability company; JOSHUA TREE, LLC, a Nevada limited liability company; SUSAN MARDIAN, individually; HK INVESTMENTS, LLC, a Nevada limited liability company; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; THE BRITTON GROUP, a Nevada professional corporation, d/b/a ROI Appraisal/Britton Group; and DOES I through X, inclusive, and ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

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COMPLAINT

COME NOW, Plaintiffs, by and through their attorneys of record, the law firm of WOODS ERICKSON WHITAKER & MAURICE LLP, and as and for their claims and causes of action against ASPEN FINANCIAL SERVICES, INC., a Nevada corporation; ASPEN FINANCIAL SERVICES, LLC, a Nevada limited liability company (collectively "Aspen"); JEFFREY B. GUINN, individually; MILANO RESIDENCES, LLC, a Nevada limited liability company; JOSHUA TREE, LLC, a Nevada limited liability company; SUSAN MARDIAN, individually; HK INVESTMENTS, LLC, a Nevada limited liability company; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; THE BRITTON GROUP, a Nevada professional corporation, d/b/a ROI Appraisal/Britton Group, state and allege as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, THE GORLICK FAMILY LIMITED PARTNERSHIP, is a Nevada limited partnership whose general partners, EUGENE J. GORLICK and JEANNE M. GORLICK, are residents of Clark County, Nevada.

2. Plaintiff, DANIEL M. GORLICK, is and was, at all times relevant hereto, a resident of Travis County, Texas.

3. Plaintiff, JANET S. GREGORY, is and was, at all times relevant hereto, a resident of Clark County, Nevada.

4. Plaintiff, JOHN B. SLIGHT, is and was, at all times relevant hereto, a resident of Clark County, Nevada.

5. Plaintiff, KENNETH GRAGSON & YVONNE GRAGSON FAMILY TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. KENNETH GRAGSON and YVONNE GRAGSON are the trustees of the trust and are residents of Clark County, Nevada.

6. Plaintiff, NORTH MAIN, LLC, is and was a Nevada limited liability company that was, at all times relevant hereto, conducting business in Clark County, Nevada.

7. Plaintiff, THE GRAGSON 1988 TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. BONNIE H. GRAGSON and KENNETH RAY GRAGSON are the trustees of the trust and are residents of Clark County, Nevada.

8. Plaintiff, THE RODNEY F. REBER FAMILY LIMITED PARTNERSHIP, is a Nevada limited partnership that was, at all times relevant hereto, conducting business in Clark County, Nevada. RODNEY F. REBER, is the general partner of THE RODNEY F. REBER FAMILY LIMITED PARTNERSHIP and is a resident of Clark County, Nevada.

9. Plaintiff, LINDA REBER, is and was, at all times relevant hereto, a resident of Clark County, Nevada.

10. Plaintiff, THE LOIS LEVY FAMILY TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. LOIS LEVY is the trustee of the trust and is a resident of Clark County, Nevada.

11. Plaintiff, CHARLES E. THOMPSON 1989 TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. CHARLES E. THOMPSON is the trustee of the trust and is a resident of Clark County, Nevada.

12. Plaintiff, CONNIE LAVERNE THOMPSON, is and was, at all times relevant hereto, a resident of Clark County, Nevada.

13. Plaintiff, THE CONNIE LAVERNE THOMPSON FAMILY TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. CONNIE LAVERNE THOMPSON is the trustee of the trust and, as set forth previously, is a resident of Clark County, Nevada.

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14. Plaintiff, THE BLAKELY CHARITABLE REMAINDER TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. DAWN J. GERKE is the trustee of the trust and is a resident of Clark County, Nevada.

15. Plaintiff, THE BYRON TRUST, is a trust whose beneficiaries are residents of Clark County, Nevada. JAMES B. GERKE and DAWN J. GERKE are the trustees of the trust and are residents of Clark County, Nevada.

16. Plaintiff, THE DAVID J. WILLDEN CHARITABLE REMAINDER UNI TRUST, is a trust whose beneficiary is a resident of Clark County, Nevada. DAVID J. WILLDEN is the trustee of the trust and is a resident of Clark County, Nevada.

17. Plaintiff, THE ROGERS-BARNETT FAMILY TRUST, is a trust whose beneficiaries are residents of Washington County, Utah. CHERYL ROGERS-BARNETT and LARRY BARNETT are the trustees of the trust and are residents of Washington County, Utah.

18. Defendant, ASPEN FINANCIAL SERVICES, INC., is and was, at all times relevant hereto, a corporation organized and existing under the laws of the State of Nevada.

19. Defendant, ASPEN FINANCIAL SERVICES, LLC, is and was, at all times relevant hereto, a limited liability company organized and existing under the laws of the State of Nevada.

20. Defendant, JEFFREY B. GUINN ("Guinn"), is and was, at all times relevant hereto, an individual residing in Clark County, Nevada. Upon information and belief, Guinn is and was the majority owner/investor in Aspen and served, at all times relevant hereto, as Aspen's president/manager/chief executive officer.

21. Defendant, MILANO RESIDENCES, LLC ("Milano LLC"), is and was, at all times relevant hereto, a limited liability company organized and existing under the laws of the State of Nevada. Milano LLC is currently the owner of certain real property in Clark County, Nevada (on the north side of Cactus Avenue, east of Bermuda Road) identified by the Recorder's Office for Clark County as APN 177-27-410-006 and 177-27-410-011 ("Milano Property").

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22. Defendant, JOSHUA TREE, LLC ("Joshua Tree"), is and was, at all times relevant hereto, a limited liability company organized and existing under the laws of the State of Nevada.

23. Defendant, HK INVESTMENTS, LLC ("HK Investments"), is and was, at all times relevant hereto, a limited liability company organized and existing under the laws of the State of Nevada. HK Investments owned the Milano Property prior to Milano LLC.

24. Defendant, SUSAN MARDIAN ("Mardian"), is and was, at times relevant hereto, an individual residing in Clark County, Nevada. Upon information and belief, Mardian is and was the majority owner/investor in Milano LLC, HK Investments and Joshua Tree and simultaneously served as the manager for all three entities.

25. Defendant, NEVADA CONSTRUCTION SERVICES ("N.C.S."), is and was, at all times relevant hereto, a limited liability company organized and existing under the laws of the State of Nevada.

26. Defendant, THE BRITTON GROUP d/b/a ROI Appraisal/Britton Group ("ROI"), is and was, at all times relevant hereto, a corporation organized and existing under the laws of the State of Nevada.

27. The true names of Defendants DOES I through X and ROE BUSINESS ENTITIES I through X, inclusive, are unknown to Plaintiffs at this time, and therefore Plaintiffs bring suit against them by the foregoing fictitious names. Plaintiffs allege that said Defendants are liable to Plaintiffs under the claims for relief set forth below. Plaintiffs ask that when the true names are discovered for these DOE and ROE Defendants, that this Complaint may be amended by inserting their true names in lieu of the fictitious names, together with apt and proper words to charge them.

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

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GENERAL ALLEGATIONS

Aspen the Loan Broker.

29. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

30. Aspen is a mortgage broker as defined by Chapter 645B of the Nevada Revised Statutes and Chapter 645B of the Nevada Administrative Code.

31. As a mortgage broker, Aspen fields requests from individuals or business entities in need of capital (usually for the purpose of acquiring real property, refinancing a loan secured by real property, or constructing improvements on real property) ("Borrowers"), and then solicits investors (such as Plaintiffs) to make the loans requested by the Borrowers ("Lenders").

32. When soliciting Lenders, Aspen represents itself as having special knowledge and expertise in the area of loan making, brokering and servicing.

33. Aspen also, as part of its solicitation, provides the Lenders with a recent appraisal of the property that is to act as security for the loan.

34. If the purpose of the loan is to finance the development of the property (i.e., a construction loan), Aspen provides the Lenders with an appraisal showing the market value of the property "as if complete" and represents that an independent construction control agent will be used to control distribution of the loan proceeds following the close of escrow.

35. The appraisals provided by Aspen to the Lenders are generally generated by ROI.

36. The "independent construction control agent" identified by Aspen is generally N.C.S.

37. In reliance upon Aspen's special knowledge and expertise in the area of loan making (as represented by Aspen), the ROI appraisal (provided to the Lender by Aspen) and the assurance that an independent construction control agent (N.C.S.) will be utilized to disburse the loan proceeds following the close of escrow, Lenders invest funds with Aspen for the purpose of making the Loans requested by the Borrowers.

38. When investing money with Aspen, Lenders place their trust and confidence in Aspen.

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39. Because the principal amount of the loans brokered by Aspen typically exceeds One Million Dollars ($1,000,000), the investment from one Lender is usually not sufficient to fund an entire loan. As a result, Aspen generally combines investments from multiple Lenders to come up with the amount of the loan requested by the Borrower.

40. Because there are generally numerous Lenders on each loan, the Borrowers grant the Lenders pro rata fractional interests in the promissory note evidencing the loan and the deed of trust recorded on the property securing the loan.

41. A deed of trust is recorded on the property (or in some case multiple properties) to be acquired and/or developed as a result of the loan. In this regard, the property acts as security for repayment of the loan.

42. The loan is also secured by one or more personal guaranties executed by the Borrower. Where the Borrower is a business entity, principals of the Borrower also execute personal guaranties.

43. When a loan matures and the principal amount is repaid by the Borrowers, Aspen provides the Lenders with the opportunity to reinvest in other loans brokered by Aspen. This "opportunity" is conveyed verbally by Aspen to the Lenders.

44. If a Lender agrees to reinvest money being paid on one Aspen loan ("Old Loan") into a new Aspen loan ("New Loan"), the Lender's money is transferred (or "rolled over") from the Old Loan to the New Loan (i.e., no money actually passes through the Lender's hands).

45. Following the close of escrow on the New Loan, Aspen mails the Lender a letter enclosing certain documents and requesting that the Lender execute the documents where indicated and return the fully executed documents to Aspen's attention. Enclosed with the documents are two packets: (1) an Opening Package (which carries a gold cover sheet); and (2) a Closing Package (which carries a green cover sheet). The Opening Package contains four documents: (a) a Loan Summary & Conditions of Loan Approval; (b) a Loan Officer Analysis; (c) a Preliminary Title Report; and (d) an Appraisal. The Closing Package also contains four documents: (a) a Promissory Note; (b) a Deed of Trust; (c) a Title Policy; and (d) a Resolution to Borrow.

46. By the time the Lenders receive the materials provided in the Opening and Closing Packages, escrow on the loans has already closed (i.e., the Lenders' money has already been transferred to the Borrower).

47. Aspen brokers first position loans ("First Position Loans") and second position loans ("Second Position Loans").

48. First Position Loans are secured by deeds of trust in first position ("First Deeds of Trust") on the properties securing the loans.

49. Second Position Loans are secured by deeds of trust in second position ("Second Deeds of Trust") on the properties securing the loans.

50. First Trust Deeds are at all times superior to and have priority over Second Trust Deeds; to wit: the foreclosure on a First Trust Deed eliminates (or "wipes out") a Second Trust Deed.

51. Because Lenders in Second Position Loans bear a higher risk than Lenders in First Position Loans, Lenders in Second Position Loans enjoy a higher rate of return as compared to Lenders in First Position Loans.

52. Aspen sometimes acts as a Lender on loans that it brokers.

53. Aspen sometimes brokers loans where the Borrower is an entity owned, controlled and/or managed by Guinn.

54. Aspen receives a fee ("Origination Fee") in connection with the loans its brokers.

55. The amount of the Origination Fee is generally calculated as a percentage of the loan amount.

56. On some occasions, Aspen negotiates the amount of the Origination Fee with the Borrower as a sum certain (i.e., it is not calculated as a percentage of the loan amount).

57. Aspen routinely receives Origination Fees in excess of Four Hundred Thousand Dollars ($400,000).

58. Aspen does not disclose to Lenders the amount of the Origination Fees Aspen receives in connection with the Loans it brokers.

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Aspen the Loan Servicing Agent.

59. Aspen also acts as the servicing agent on the loans that it brokers.

60. Aspen's duties and obligations as servicing agent are set forth in servicing agreements ("Servicing Agreements") Aspen enters into with each Lender.

61. Pursuant to the Servicing Agreements, Aspen is appointed as the Lenders' agent "to service each Note, to protect their interest in and enforce their rights under each Note, Deed of Trust and other Loan Documents . . . ."

62. The Servicing Agreements purport to grant to Aspen an "irrevocable, durable power of attorney, coupled with an interest" authorizing Aspen to "perform all acts" that Aspen is authorized to perform pursuant to the Servicing Agreement.

63. The Servicing Agreements provide that "[u]pon discovery by Aspen of an event of default under any Loan Documents, Aspen shall promptly notify the Lenders of the occurrence and nature of such event of default" and either: (i) promptly perform all acts and execute all documents necessary to exercise the power of sale contained in the Deed of Trust; or (ii) negotiate and enter into a forbearance agreement with the Borrower for no more than ninety (90) days in accordance with reasonable and customary commercial practices.

64. The Servicing Agreements provide that "[i]f ASPEN should agree to forebear for ninety (90) days as provided in Clause (ii) above and such Borrower has not paid all amounts owing under the Loan Documents on or before the end of such ninety (90) day period, then ASPEN shall promptly proceed to exercise the power of sale contained in the relevant Deed of Trust as provided in clause (i) above."

65. The Servicing Agreements provide that Aspen "shall not, without the prior written consent of Lenders holding more than 50% of the Fractional Interests of a particular Loan: (i) forebear from exercising the power of sale contained in the Deed of Trust for such Loan for more than ninety (90) days from the date ASPEN discovers the occurrence of an event of default under the relevant Loan Documents . . . ."

66. The Servicing Agreements provide that the Lenders may terminate the Servicing Agreements with respect to any one loan by providing Aspen with thirty (30) days prior written

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notice signed by Lenders holding more than 50% of the Fractional Interests in such Loan, and upon payment to Aspen of a "Termination Fee" equal to 1% of the then-outstanding principal balance of the Note.

67. The Servicing Agreements provide that if legal action is commenced to enforce any provision of the Servicing Agreement that the prevailing party shall be entitled to an award of reasonable attorney's fees and other costs and expenses in such sum as shall be fixed by the court.

68. Aspen insists on servicing the loans its brokers. Accordingly, Lenders must consider whether Aspen is a trustworthy servicing agent for the loan at the same time they consider whether to invest in the loan.

The Milano Property.

69. Plaintiffs are Lenders on Aspen Loan No. 50-00047-7, which is secured by a First Deed of Trust in the amount of Nineteen Million, Two Hundred Forty Thousand Dollars ($19,240,000), recorded on the Milano Property ("the $19.24M Loan").

70. Many of the Plaintiffs were also Lenders on Aspen Loan No. 50-00041-9, which was a prior First Deed of Trust (in the amount of Seventeen Million, Seven Hundred Thousand Dollars ($17,700,000)) recorded on the Milano Property ("the $17.7M Loan").

71. A review of the loan history on the Milano Property reveals that from July of 2004 through December of 2006 (a period of only thirty (30) months) Aspen churned (through the brokering of six loans wherein Milano LLC was the borrower) Fifty-Five Million, One Hundred Forty Thousand Dollars ($55,140,000) in loans using the Milano Property (which, again, consists of approximately 3.12 acres on the north side of Cactus Avenue, east of Bermuda Road) as security. This amount does not include loans made by Aspen to HK Investments prior to July of 2004 that used the Milano Property as security).

72. During this time frame (from February of 2005 to March of 2006 (a period of thirteen months)), Joshua Tree recorded three deeds of trust (the "Joshua Tree Deeds of Trust") on the Milano Property totaling Eleven Million, Five Hundred Thousand Dollars ($11,500,000).

73. The loan history going back to July of 2004 on the Milano Property is as follows:

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	Date	Lender	Position	Amount
A.	7/8/04	Aspen Financial Services	First	$2,208,000
B.	7/8/04	Aspen Financial Services	Second	$992,000
C.	2/28/05	Joshua Tree, LLC	Third	$4,000,000
D.	5/5/05	Aspen Financial Services - *Takes out Loans A, B & C*	First	$17,700,000
E.	5/24/05	Joshua Tree, LLC	Second	$4,500,000
F.	8/03/05	Aspen Financial Services - *Takes out Loan E*	Second	$5,000,000
G.	3/15/06	Joshua Tree	Third	$3,000,000
H.	3/28/06	Aspen Financial Services - *Takes out Loan F & G*	Second	$10,000,000
I.	12/29/06	Aspen Financial Services - *Takes out Loan D* - *Loan H subordinates*	First	$19,240,000

74. Upon information and belief, no money was actually loaned by Joshua Tree to Milano LLC, nor was anything of value provided by Joshua Tree to Milano, LLC or the Milano Property. In this regard, the Joshua Tree Deeds of Trust purport to secure a debt not owed.

75. Nevertheless, on no fewer than three occasions Aspen solicited Lenders to loan money to pay-off the Joshua Tree Deeds of Trust.

76. In this regard, in excess of Three Million Dollars ($3,000,000) loaned by Aspen's investors was used to pay-off the Joshua Tree Deeds of Trust.

77. For brokering the Fifty-Five Million, One Hundred Forty Thousand Dollars ($55,140,000) in loans, Aspen received in excess of One Million, One Hundred Thousand Dollars ($1,100,000) in origination fees (THIS IS IN ADDITION TO THE LOAN SERVICING FEES ASPEN RECEIVED ON A MONTHLY BASIS FOR SERVICING THE LOANS).

78. In addition to the loan servicing fees Aspen received in connection with the Loans, Aspen also received and retained (in violation of the loan agreements and the Loan

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Servicing Agreements) in excess of One Hundred Thirty Thousand Dollars ($130,000) in loan extension fees. This money rightfully belonged to the Lenders.

The $17.7M Loan.

79. Aspen solicited Plaintiffs to invest in the $17.7M Loan in April and early May of 2005.

80. As part of the solicitation, Aspen made a series of representations regarding material facts, including, but not limited to:

a. That the loan proceeds would be used to construct a 100 unit condominium project on the Milano Property (the "Project");

b. That the appraised market value of the Project was Twenty-Five Million, Three Hundred Fifty Thousand Dollars ($25,350,000);

c. That the loan proceeds would provide enough money to construct the Project and provide an interest reserve fund to cover all interest payments due over the twelve (12) month term of the loan; and

d. That the Project would be completed prior to the maturity date on the loan.

81. Aspen made the representations to Plaintiffs in an effort to induce Plaintiffs to invest in the $17.7M Loan.

82. Aspen knew the representations were false at the time they made them to Plaintiffs.

83. Plaintiffs relied on Aspen's representations when deciding to invest in the $17.7M Loan.

84. When soliciting Plaintiffs in connection with the $17.7M Loan, Aspen failed to disclose (or omitted) a number of material facts, including, but not limited to:

a. That the loan proceeds would also be used to pay-off three trust deeds encumbering the Milano Property (an Aspen first (in the amount of Two Million, Two Hundred Eight Thousand Dollars ($2,208,000)), an Aspen second (in the amount of Nine Hundred Ninety-Two Thousand Dollars

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($992,000)), and a Joshua Tree third (in the amount of Four Million Dollars ($4,000,000));

b. That no money was actually loaned by Joshua Tree to Milano LLC, nor was anything of value provided by Joshua Tree to Milano, LLC or the Milano Property. In this regard, the Joshua Tree deed of trust (in the amount of Four Million Dollars ($4,000,000) purported to secure a debt that was not owed;

c. That Mardian owned and controlled Joshua Tree;

d. That Four Hundred Forty-Three Thousand, Seven Hundred Fifty Dollars ($443,750) of the loan proceeds would be retained by Aspen as an Origination Fee for the loan;

e. That the loan proceeds would not, after paying-off the three deeds of trust encumbering the Milano Property, Aspen's Origination Fee and the costs associated with escrow, provide enough money to construct the Project and provide an interest reserve fund to cover all interest payments due over the twelve (12) month term of the loan;

f. That Milano LLC was not ready to commence construction on the Project ; and

g. That there was no way the Project could be completed in nine months (or, for that matter, at any time prior to the maturity date on the loan).

85. Had Aspen disclosed this information to Plaintiffs, Plaintiffs would not have invested in the $17.7M Loan.

86. The Opening and Closing Packages for the $17.7M Loan were not sent by Aspen to the Plaintiffs until May 6, 2005 – the day after the $17.7M Loan closed.

87. Contained in the Opening Package was an appraisal from ROI dated April 20, 2005. It appraised the market value of the Project "as if complete" at Twenty-Five Million, Three Hundred Fifty Thousand Dollars ($25,350,000). This seemed to substantiate Aspen's representation regarding the market value of the Project.

88. Plaintiffs accepted Aspen's representation regarding the market value of the Project based on the ROI appraisal.

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89. Furthermore, Plaintiffs did not question a number of the other representations made by Aspen regarding the Project because the ROI appraisal seemed to substantiate Aspen's representation regarding the market value of the Project.

90. Payment on the principal owed under the $17.7M Loan was due on May 5, 2006.

91. Upon information and belief, as of May 5, 2006, Milano LLC had not even obtained the building permits necessary to begin construction on the Project.

92. Despite this fact, Aspen allowed Milano LLC to exercise the option provided to it under the loan agreement to extend the term of the loan by six (6) months.

93. In connection with this extension, Milano LLC paid an extension fee in the amount of Eighty-Eight Thousand, Five Hundred Dollars ($88,500).

94. Aspen never paid Plaintiffs their pro rata share of the extension fee in violation of the loan agreement and the Loan Servicing Agreements.

95. Following the recording of the First Position Deed of Trust securing the $17.7M Loan, Joshua Tree and Aspen recorded four deeds of trust on the Property which alternated in second position and, at one point, sat in third position. The total combined value of the four deeds of trust recorded by Aspen and Joshua Tree was Twenty-Two Million, Five Hundred Thousand Dollars ($22,500,000).

The $19.24M Loan.

96. Aspen solicited Plaintiffs to invest in the $19.24M Loan in December of 2006.

97. As part of the solicitation, Aspen made a series of representations regarding material facts, including, but not limited to:

a. That construction on the Project was well underway;

b. That the loan proceeds would refinance the construction loan that was issued in May of 2005, to allow Milano LLC to complete the Project;

c. That the appraised market value of the Project was Thirty-Six Million, Three Hundred Sixty Thousand Dollars ($36,360,000); and

d. That the Project would be completed well prior to the maturity date on the $19.24M Loan.

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98. Aspen made the representations to Plaintiffs in an effort to induce Plaintiffs to invest in the $19.24M Loan.

99. Aspen knew the representations were false at the time they made them to Plaintiffs.

100. Plaintiffs relied on Aspen's representations when deciding to invest in the $19.24M Loan.

101. When soliciting Plaintiffs in connection with the $19.24M Loan, Aspen failed to disclose (or omitted) a number of material facts, including, but not limited to:

a. That nineteen (19) days after a deed of trust was recorded by Aspen securing the $17.7M Loan, Joshua Tree had recorded (on May 24, 2005) a deed of trust on the Milano Property purporting to secure a loan in the amount of Four Million, Five Hundred Thousand Dollars ($4,500,000);

b. That no money was actually loaned by Joshua Tree to Milano LLC, nor was anything of value provided by Joshua Tree to Milano, LLC or the Milano Property. In this regard, the Joshua Tree deed of trust (in the amount of Four Million, Five Hundred Thousand Dollars ($4,500,000) purported to secure a debt that was not owed;

c. That Mardian owned and controlled Joshua Tree;

d. That less than three (3) months later (on August 3, 2005), Aspen paid off the Four Million, Five Hundred Thousand Dollar ($4,500,000) deed of trust, and recorded its own deed of trust in the amount of Five Million Dollars ($5,000,000) on the Milano Property;

e. That seven (7) months later (on March 15, 2006), Joshua Tree recorded another deed of trust purporting to secure a loan secured by the Milano Property – this time in the amount of Three Million Dollars ($3,000,000);

f. That, again, no money was actually loaned by Joshua Tree to Milano LLC, nor was anything of value provided by Joshua Tree to Milano, LLC or the Milano

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Property. In this regard, the Joshua Tree deed of trust (in the amount of Three Million Dollars ($3,000,000) purported to secure a debt that was not owed;

g. That thirteen (13) days later (on March 28, 2006), Aspen paid off the Joshua Tree Three Million Dollar ($3,000,000) deed of trust (which was in third position) and the Aspen Five Million Dollar ($5,000,000) deed of trust (which was in second position) and recorded a deed of trust in the amount of Ten Million Dollars ($10,000,000) on the Milano Property;

h. That Aspen was using the refinance to, in large part, divest itself from the $17.7M Loan (going from a 27.1317% interest in the $17.7M Loan to a 7.4346% interest in the $19.24M Loan);

i. That Aspen would receive an Origination Fee in connection with the $19.24M Loan of Three Hundred Eight-Six Thousand, Fifty Dollars ($386,050); and

j. That as a result of a delayed start on the Project and certain problems with construction, it was unlikely that the Project could be completed prior to the maturity date on the loan.

102. Had Aspen disclosed this information to Plaintiffs, Plaintiffs would not have invested in the $19.24M Loan.

103. The Opening and Closing Packages for the $19.24M Loan were not sent by Aspen to the Plaintiffs until December 29, 2006 – the day the $19.24M Loan closed.

104. Contained in the Opening Package was an appraisal from ROI dated November 8, 2006. It appraised the market value of the Project "as if complete" at Thirty-Six Million, Three Hundred Sixty Thousand Dollars ($36,360,000). The ROI appraisal concluded by stating: "The exposure time for the subject property "as is", is estimated at 12 months or less. This was derived from discussions with local participants in the marketplace, and actual sales data from comparable properties. As discussed herein, market conditions are not anticipated to change dramatically and the marketing period is also estimated at 12 months or less." The ROI appraisal seemed to substantiate Aspen's representation regarding the market value of the Project.

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105. Plaintiffs accepted Aspen's representation regarding the market value of the Project based on the ROI appraisal.

106. Furthermore, Plaintiffs did not question a number of the other representations made by Aspen regarding the Project because the ROI appraisal seemed to substantiate Aspen's representation regarding the market value of the Project.

107. Unfortunately, the ROI appraisal found no basis in fact. As of October of 2006 (one month prior to the ROI appraisal), the condominium market in Clark County had begun to decline. Greater Las Vegas Association of Realtors ("GLVAR") statistics show that since March of 2006, the median value of condominiums sold in Clark County had declined by approximately 2.5%. Worse, the number of condominium sales had declined by 44.7%, while the number of units available for sale had increased by 41.4%.

108. Had the ROI appraisal accurately stated the condition of the market and the value of the Milano Property, Plaintiffs would have questioned many of the other representations made by Aspen.

109. Pursuant to the loan agreement and other loan documents executed by Milano LLC in connection with the $19.24M Loan ("Milano Loan Agreement"), Milano LLC agreed to maintain a funds account for the loan proceeds ("Funds Account"), governed by a Deposit Account Control Agreement and Disbursement Agreement. Milano LLC also agreed to deposit additional funds into the Funds Account as necessary to enable Milano LLC to perform and satisfy all of its covenants under the loan documents and to maintain a specific loan-to-value ratio.

110. Milano LLC further agreed pursuant to the terms of the Milano Loan Agreement that should the Lenders determine that the amounts held in the Funds Account were insufficient for such purposes, Milano LLC would deposit the deficiency amount into the Funds Account within seven (7) business days of receipt of written demand by the Lenders requesting as such.

111. Pursuant to the Loan Servicing Agreements, Aspen agreed to protect and enforce Plaintiffs' rights and interests as Lenders under the Milano Loan Agreement and further agreed

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to "promptly notify [Plaintiffs] of the occurrence and nature" of any event of default under the loan documents. Aspen received consideration for the performance of such services.

112. Plaintiffs are informed and believe that the Project was to be fully constructed, marketed and sold by June of 2007 (well prior to the maturity date on the $19.24M Loan).

Problems on the Project.

113. On or before April 20, 2007, Aspen was notified by Milano LLC that the original contractor on the Project had been replaced; the Project had been delayed; and that construction would not resume until May 1, 2007. Aspen failed to inform Plaintiffs of this development or of the resulting delay of the completion of the Project.

114. On July 25, 2007, Aspen received a draw request from N.C.S. that notified Aspen that despite the fact that 50% of the construction budget had been disbursed, the Project was only 25% complete.

115. Upon information and belief, the distribution of 50% of the construction budget on a project that was only 25% complete was a breach of the Deposit Account Control Agreement and Disbursement Agreement.

116. Despite being advised of the breach of the Deposit Account Control Agreement and Disbursement Agreement, Aspen took no action to stop N.C.S. from making further distributions from the Funds Account. Additionally, Aspen took no steps to audit the Funds Account to determine how 50% of the construction budget had been disbursed for construction that was only 25% complete.

117. Upon information and belief, it is alleged that in direct violation of the Deposit Account Control Agreement and Disbursement Agreement, N.C.S. made distributions from the Funds Account for purposes other than construction of the Project.

118. Aspen failed to notify Plaintiffs regarding the contents of the July 25, 2007 draw request from N.C.S.

119. Aspen also failed to demand (as required under the Loan Servicing Agreements) that Milano LLC deposit additional funds into the Funds Account to bring the construction reserve account to the level required under the Milano Loan Agreement.

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120. Under the Milano Loan Agreement, Milano LLC was also required to keep the Milano Property free and clear of any liens or claims. Failure by Milano LLC to effectuate the discharge or release of any liens or claims recorded on the Milano Property within twenty (20) days from the date they were recorded constituted an event of default under the Milano Loan Agreement.

121. Pursuant to the Loan Servicing Agreements, Aspen agreed to protect and enforce Plaintiffs' rights and interests as Lenders under the Milano Loan Agreement and further to agreed to notify Plaintiffs of any default by Milano LLC under the Milano Loan Agreement. Aspen received consideration for the performance of such services.

122. On or about May 10, 2007, Dayside Construction, Inc. ("Dayside") recorded a mechanic's lien on the Milano Property in the amount of Three Hundred Eighty-One Thousand, Six Hundred Sixty-One Dollars and Forty Cents ($381,661.40).

123. On or about May 17, 2007, Peri Formwork Systems, Inc. ("Peri Formwork") recorded a mechanic's lien on the Milano Property in the amount of One Hundred Ninety-Six Thousand, Eight Hundred Forty-Nine Dollars and Fourteen Cents ($196,849.14).

124. As of May 30, 2007, Dayside's lien still encumbered the Milano Property, thereby rendering Milano LLC in default under the Milano Loan Agreement.

125. As of June 7, 2007, Peri Formwork's lien still encumbered the Milano Property, thereby rendering Milano LLC in default under the Milano Loan Agreement.

126. On or about November 14, 2007, Peri Formwork recorded a lis pendens on the Milano Property.

127. As of November 24, 2007, the Peri Formwork's lis pendens had not been discharged, released, or expunged from the title to the Milano Property, thereby rendering Milano LLC in default under the Milano Loan Agreement.

128. Aspen failed to take any action to protect and enforce Plaintiffs' rights and interests as Lenders under the Loan Agreement or to notify Plaintiffs regarding the recording of the two mechanic's liens and the lis pendens and Milano LLC's default under the Milano Loan Agreement as a result of the same.

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The Loan-to-Value Ratio.

129. The Milano Loan Agreement provides that as a condition precedent to entering into the Agreement, Milano LLC agreed to maintain a specific loan-to-value ratio on the Milano Property. To this effect, Milano LLC agreed it would deposit additional funds into the Funds Account sufficient to maintain that loan-to-value ratio.

130. The Milano Loan Agreement provides that every six months the Lenders on the $19.24M Loan may retain an appraiser at Milano LLC's expense to appraise the property, whereupon, if a deficiency exists, the Lenders may demand on five days' notice that Milano LLC deposit into the Funds Account that amount necessary to bring the loan-to-value ratio to the required percentage.

131. Pursuant to the Loan Servicing Agreements, Aspen agreed to protect and enforce Plaintiffs' rights and interests under the loan agreements and received consideration for such services.

132. Pursuant to the terms of the Milano Loan Agreement, on or about June 29, 2007, the Lenders on the Milano Loan possessed the right to request an appraisal of the Milano Property at Milano LLC's expense and to demand that Milano LLC deposit additional funds in the Funds Account in the event the loan-to-value ratio had decreased below the level required in the Milano Loan Agreement. Aspen neither notified Plaintiffs of this right nor exercised the right on behalf of the Lenders on the Milano Loan.

133. Plaintiffs are informed and believe that as of June of 2007, the condominium market in Clark County was in decline, as evidenced by GLVAR statistics showing that, based upon the year-over-year comparisons, the median value for condominiums sold in Clark County had declined by 5.2% and the number of sales had declined by 41.9%. Worse yet, the number of available units for sale had increased by 35.3%.

134. Upon information and belief, had Aspen either notified Plaintiffs of this right or exercised the right on behalf of the Lenders on the Milano Loan, Milano LLC's breach of the covenants in the Milano Loan Agreement would have been discovered.

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135. Upon discovery of the breach, the Lenders on the Milano Loan could have demanded that Milano LLC deposit (on five days' notice) into the Funds Account that amount necessary to bring the loan-to-value ratio to the required percentage.

136. Aspen failed to notify the Lenders on the Milano Loan of this right and failed to exercise the right on behalf of the Lenders (as required by the Loan Servicing Agreements). Accordingly, the loan-to-value ratio required under the Milano Loan Agreement was not maintained.

137. Pursuant to the terms of the Milano Loan Agreement, on or about December 29, 2007, the Lenders on the Milano Loan possessed the right to request an appraisal of the Milano Property at Milano LLC's expense and to demand that Milano LLC deposit additional funds in the Funds Account in the event the loan to value ratio had decreased below the level required in the Milano Loan Agreement. Aspen neither notified Plaintiffs of this right nor exercised the right on behalf of the Lenders on the Milano Loan.

138. Plaintiffs are informed and believe that as of December of 2007, the condominium market in Clark County was still in decline, as evidenced by GLVAR statistics showing that, based upon the year-over-year comparisons, the median value for condominiums sold in Clark County had declined by 5.1% and the number of sales had declined by 55.1%. Worse yet, the number of available units for sale had increased by 14%.

139. Upon information and belief, had Aspen either notified Plaintiffs of this right or exercised the right on behalf of the Lenders on the Milano Loan, Milano LLC's breach of the covenants in the Milano Loan Agreement would have been discovered.

140. Upon discovery of the breach, the Lenders on the Milano Loan could have demanded that Milano LLC deposit (on five days' notice) into the Funds Account that amount necessary to bring the loan-to-value ratio to the required percentage.

141. Aspen failed to notify the Lenders on the Milano Loan of this right and failed to exercise the right on behalf of the Lenders (as required by the Loan Servicing Agreements). Accordingly, the loan-to-value ratio required under the Milano Loan Agreement was not maintained.

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142. Pursuant to the terms of the Milano Loan Agreement, on or about June 29, 2008, the Lenders on the Milano Loan possessed the right to request an appraisal of the Milano Property at Milano LLC's expense and to demand that Milano LLC deposit additional funds in the Funds Account in the event the loan-to-value ratio had decreased below the level required in the Milano Loan Agreement. Aspen neither notified Plaintiffs of this right nor exercised the right on behalf of the Lenders on the Milano Loan.

143. Plaintiffs are informed and believe that as of June of 2008, the condominium market in Clark County was still in decline, as evidenced by GLVAR statistics showing that, based upon the year-over-year comparisons, the median value for condominiums sold in Clark County had declined by 29.2% and the number of sales had declined by 14.5%.

144. Upon information and belief, had Aspen either notified Plaintiffs of this right or exercised the right on behalf of the Lenders on the Milano Loan, Milano LLC's breach of the covenants in the Milano Loan Agreement would have been discovered.

145. Upon discovery of the breach, the Lenders on the Milano Loan could have demanded that Milano LLC deposit (on five days' notice) into the Funds Account that amount necessary to bring the loan-to-value ratio to the required percentage.

146. Aspen failed to notify the Lenders on the Milano Loan of this right and failed to exercise the right on behalf of the Lenders (as required by the Loan Servicing Agreements). Accordingly, the loan-to-value ratio required under the Milano Loan Agreement was not maintained.

Extension of the Maturity Date on the $19.24M Loan.

147. In November of 2007, Milano LLC advised Aspen that it was exercising its right (as provided under the Milano Loan Agreement) to extend the term of the Milano Loan for six (6) months.

148. Under the Milano Loan Agreement, Milano LLC's right to extend the term of the loan was conditioned upon a number of "conditions precedent."

149. The "conditions precedent" identified in the Milano Loan Agreement included, but were not limited to:

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a. Payment by Milano LLC to the Lenders of an extension fee in the amount of 0.5% (i.e., one-half of one percent) of the total of the outstanding disbursed principal of the loan and the undisbursed principal balance of the loan (both as determined on the original maturity date);

b. Representation by Milano LLC that no Default or Event of Default, breach or failure of condition had occurred or existed under the Milano Loan Agreement, or would exist after notice or passage of time or both, at the time of the original maturity date; and

c. That there has occurred no material adverse change, as determined by the Lenders, in the financial condition of Milano LLC or any guarantor or other person or entity in any manner obligated to the Lenders under the loan documents from that which existed as of the date on which the deed of trust securing the $19.24M Loan was recorded on the Milano Property.

150. On or before December 6, 2007, Milano LLC represented that no Default or Event of Default, breach or failure of condition had occurred or existed under the Milano Loan Agreement, or would exist after notice or passage of time or both, at the time of the original maturity date.

151. Milano LLC's representation was patently false. The loan-to-value ratio on the Project had not been maintained; the mechanic's liens recorded by Dayside and Peri Formwork continued to encumber the Milano Property; and the lis pendens recorded by Peri Formwork continued to cloud title to the Milano Property.

152. On December 6, 2007, Milano LLC paid an extension fee to Aspen, as agent for the Lenders, in the amount of Ninety-Six Thousand, Two Hundred Dollars ($96,200).

153. Aspen ignored Milano LLC's multiple breaches of the Milano Loan Agreement; accepted the loan extension fee payment; and allowed Milano LLC to exercise the option to extend.

154. Aspen never paid Plaintiffs their pro rata share of the extension fee in violation of the loan agreement and the Loan Servicing Agreements.

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155. With the extension, the maturity date on the $19.24M Loan was extended to July 1, 2008.

Forbearance on the $19.24M Loan.

156. Milano LLC failed to pay-off the $19.24M Loan on or before July 1, 2008.

157. Instead, on August 14, 2008, Milano LLC sent a letter to Aspen, stating that as a result of the deteriorating financial and real estate market, Milano LLC was unable to continue making the payments required under the Milano Loan Agreement. By the letter, Milano LLC requested that the Lenders enter into a forbearance agreement which would allow Milano LLC to forgo making interest payments on the $19.24M Loan while allowing Milano LLC to "consummate the sale and financing projects" that would allow Milano LLC to pay the accrued interest payments at the end of the forbearance period.

158. On August 26, 2008, Aspen sent a letter to the Lenders on the $19.24M Loan, asking them to vote on whether to enter into the forbearance agreement proposed by Milano LLC or "proceed with a foreclosure action."

159. Upon information and belief, there was no requirement that the Lenders instigate a "foreclosure action" (i.e., a judicial foreclosure) if they refused to enter into the forbearance agreement proposed by Milano LLC. The Milano Loan Agreement provided for a non-judicial foreclosure in the case of default by Milano LLC.

160. Aspen's August 26, 2008 letter did not advise the Lenders of Mardian's liability under the personal guaranty executed in connection with the Milano Loan Agreement or the fact that by agreeing to delay foreclosure on the $19.24M Loan, other Mardian creditors would be able to obtain judgment and commence collection activities against Mardian (giving them an advantage over the Lenders on the Milano Loan whose collection activities would be delayed).

161. Lacking this information, more than 51% of the Lenders on the $19.24M Loan voted in favor of entering into the forbearance agreement.

162. Upon information and belief, it is alleged that the omissions in Aspen's August 26, 2008 letter were intentional as Aspen did not want to foreclose on the $19.24M Loan.

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163. Upon information and belief, it is alleged that Aspen did not want to foreclose on the $19.24M Loan because a number of the Lenders on the Aspen loan in second position (who would see their security eliminated by a foreclosure on the $19.24M Loan) were friends and family of Guinn.

164. The forbearance period expired on February 1, 2009.

Expiration of the Forbearance Agreement.

165. Milano LLC neither found a buyer for the Milano Property nor resumed making the interest payments required by the Milano Loan Agreement.

166. On February 19, 2009, Aspen sent a letter to the Lenders on the $19.24M Loan, indicating that Milano LLC had presented a proposal requesting that the Lenders either (i) take a deed in lieu of foreclosure or (ii) complete a foreclosure and accept their offer of land in Arizona to diminish the personal guaranty.

167. Under either scenario, Milano LLC offered six hundred forty (640) acres of land at the Mardian Ranch in White Hills, Arizona (which the letter described as "Extra Land"), to be divided among the Lenders on the $19.24M Loan (66%) and the Lenders on the Aspen loan in second position (34%) in return for a reduction in the personal guaranties on both loans.

168. The personal guaranties would be lowered to an aggregate of Four Million Dollars ($4,000,000) – Three Million Dollars ($3,000,000) to the Lenders on the $19.24M Loan and One Million Dollars ($1,000,000) to the Lenders on the Aspen loan in second position.

169. Additionally, in exchange for the Extra Land, the Lenders on both loans had to agree that they would not attempt collection under the personal guaranties for thirty-six (36) months.

170. The letter advised that Valuation Consultants had placed the current value of the Milano Property at Three Million, Eight Hundred Ten Thousand Dollars ($3,810,000) and that ROI had appraised the value of the Extra Land at Nine Million Six Hundred Thousand Dollars ($9,600,000).

171. Upon information and belief, the actual value of the Extra Land in February of 2009 was Two Million, Five Hundred Sixty Thousand Dollars ($2,560,000).

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172. Aspen's February 19, 2009 letter asked the Lenders on the $19.24M Loan to vote on one of three options: (a) take a deed in lieu of foreclosure and reduce the personal guaranty by accepting the Extra Land; (b) complete the foreclosure and reduce the personal guaranty by accepting the Extra Land; or (c) foreclose and reject the Extra Land offer, and have the right to pursue the guarantor for the full deficiency (stated in the letter to be approximately Seventeen Million, Five Hundred Thousand Dollars ($17,500,000)).

173. Aspen's February 19, 2009 letter did not advise the Lenders that delaying action against the guarantor (Mardian) on the $19.24M Loan could allow other Mardian creditors (of which there were known to be many) to obtain judgment against Mardian and commence collection activities in connection with the same (thereby decreasing the pool of assets from which the Lenders on the $19.24M Loan could draw to collect on any judgment which they might ultimately obtain).

174. Aspen's February 19, 2009 letter also failed to advise the Lenders of the limitations imposed on setting aside asset transfers under the Uniform Fraudulent Transfer Act and how agreeing to refrain from attempting to collect under the personal guaranty for thirty-six (36) months might affect the Lenders' ability to satisfy any judgment they might ultimately obtain against Mardian under the personal guaranty.

175. On April 1, 2009, Aspen sent a letter to the Lenders on the $19.24M Loan, indicating that none of the options presented in Aspen's February 1, 2009 letter had received 51% of the vote. The letter eliminated the option receiving the lowest vote total (deed in lieu of foreclosure) and asked that the Lenders vote on the two options receiving the most votes: (a) foreclose on the $19.24M Loan and accept the Extra Property in exchange for a reduction in Mardian's liability under the personal guaranty and agree not to pursue collection under the personal guaranty for thirty-six (36) months (note: Under this option, ownership in the Milano Property and the Extra Land would be divided among the fist position Lenders and the second position Lenders in relation to the amount of the original debt (66% to the Lenders on the $19.24M Loan and 34% to the Lenders on the Aspen loan in second position)); or (b) Foreclose and pursue Mardian as the personal guarantor of the $19.24M Loan.

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176. Aspen's April 1, 2009 letter did not advise the Lenders that delaying action against the guarantor (Mardian) on the $19.24M Loan could allow other Mardian creditors to obtain judgment against Mardian and commence collection activities in connection with the same (giving them an advantage over the Lenders' attempts to collect under the personal guaranty).

177. Aspen's April 1, 2009 letter also failed to advise the Lenders of the limitations imposed on setting aside asset transfers under the Uniform Fraudulent Transfer Act and how agreeing to refrain from attempting to collect under the personal guaranty for thirty-six (36) months might affect the Lenders' ability to satisfy any judgment they might ultimately obtain against Mardian under the personal guaranty.

178. By April 20, 2009, 53.1% of the Lenders on the $19.24M Loan had voted in favor of the second option – Foreclosure on the $19.24M Loan and action against Mardian under the personal guaranty.

179. On April 20, 2009, Aspen sent a letter to the Lenders on the $19.24M Loan advising them of the results of the vote. The letter advised the Lenders that the costs to complete the foreclosure would be in excess of One Hundred Thousand Dollars ($100,000) and requested that each lender pay their pro rata share of the costs. Aspen's April 20, 2009 letter stated: "In order for Aspen to proceed as directed by the majority of the Lenders on this loan, we must collect all of these funds."

180. Upon information and belief, it is alleged that Aspen has no intention of going forward with the foreclosure on the Milano Property. Rather, Aspen intends to continue to stall – delaying foreclosure indefinitely – by claiming that it cannot proceed until it has first collected all of the foreclosure costs from the Lenders.

181. Defendants' conduct constitutes fraud and Plaintiffs have sustained damages in an amount in excess of Ten Thousand Dollars ($10,000) to be proven at the time of trial. Furthermore, absent judicial intervention, Aspen will continue to breach its contractual and fiduciary duties to Plaintiffs – placing the interests of the Lenders on the second trust deed ahead of those on the first trust deed.

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FIRST CAUSE OF ACTION

(Fraud – All Defendants)

182. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

183. At the time Aspen solicited the loans, Aspen made numerous material misrepresentations and failed to disclose numerous material facts as described herein.

184. Aspen knew or had reason to believe that such representations were false when made or upon learning that such representations were false, failed to advise Plaintiffs.

185. Aspen also knew or had reason to believe that the material facts Aspen failed to disclose and intentionally concealed would be relevant to investors such as Plaintiffs.

186. Aspen's actions, misrepresentations, deception, omissions, and concealment were done intentionally and with malice for the specific purpose of causing injury to Plaintiffs and to induce Plaintiffs to rely upon them and to act or refrain from acting in reliance upon them.

187. Plaintiffs justifiably and reasonably relied upon Aspen's misrepresentations.

188. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

189. Further, to prevent similar malicious, willful and wanton conduct in the future by this and other Defendants, Plaintiffs should be awarded punitive or exemplary damages in excess of Ten Thousand Dollars ($10,000), to be proven at trial.

190. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

SECOND CAUSE OF ACTION

(Conversion – All Defendants)

191. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

192. Plaintiffs provided money to Defendants for a specific purpose.

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193. That specific purpose was set forth in the loan agreements for the $17.7M Loan and the $19.24M Loan.

194. Despite the known limitations on the use of Plaintiffs' funds, Defendants exercised dominion and control over such funds and used the money for their own benefit.

195. By doing so, Defendants deprived Plaintiffs of the benefit to be derived from said funds.

196. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

197. Further, to prevent similar malicious, willful and wanton conduct in the future by this and other Defendants, Plaintiffs should be awarded punitive or exemplary damages in excess of Ten Thousand Dollars ($10,000), to be proven at trial.

198. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

THIRD CAUSE OF ACTION

(Conspiracy – All Defendants)

199. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

200. Each of the Defendants, either expressly or implicitly, agreed with and/or conspired with each of the other Defendants, to defraud Plaintiffs as described herein.

201. Plaintiffs are informed and believe and thereon allege that the conduct of Defendants, as set forth herein, was intentional, malicious, express or implied, fraudulent, oppressive and in violation of Plaintiffs' rights.

202. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

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203. Further, to prevent similar malicious, willful and wanton conduct in the future by this and other Defendants, Plaintiffs should be awarded punitive or exemplary damages in excess of Ten Thousand Dollars ($10,000), to be proven at trial.

204. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty – Aspen, Guinn & N.C.S.)

205. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

206. Defendants (identified above) owed fiduciary duties to Plaintiffs including, but not limited to, full disclosure, due diligence, fairness, loyalty, utmost good faith, no self-dealing, and to protect Plaintiffs' interests.

207. Defendants breached these duties as described herein.

208. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

209. Further, to prevent similar malicious, willful and wanton conduct in the future by this and other Defendants, Plaintiffs should be awarded punitive or exemplary damages in excess of Ten Thousand Dollars ($10,000), to be proven at trial.

210. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

FIFTH CAUSE OF ACTION

(Breach of Contract – Aspen, Guinn, Milano LLC, Mardian, HK Investments & N.C.S.)

211. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

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212. Plaintiffs executed the Servicing Agreements with Aspen that imposed various duties upon Aspen and Guinn.

213. Aspen, as Plaintiffs' agent, executed loan agreements for the $17.7M Loan and the $19.24M Loan that imposed various duties on Milano LLC, Mardian and HK Investments.

214. Aspen, as Plaintiffs' agent, executed a Deposit Account Control Agreement and Disbursement Agreement that imposed various duties on N.C.S.

215. Defendants (identified above) breached their obligations under the above-referenced contracts as described herein.

216. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

217. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

SIXTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith & Fair Dealing – Aspen, Guinn, Milano LLC, Mardian, HK Investments & N.C.S.)

218. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

219. In every contract, including each agreement entered into between Plaintiffs and Defendants, there exists an implied covenant of good faith and fair dealing.

220. Additionally, there existed a special relationship of trust and reliance between the parties, as described herein, arising from the duties owed by Defendants' to Plaintiffs.

221. Defendants (identified above) contractually and/or tortiously breached the implied covenant of good faith and fair dealing.

222. Plaintiffs are informed and believe and thereon allege that the tortious conduct of Defendants, as set forth herein, was intentional, malicious, express or implied, fraudulent, oppressive and in violation of Plaintiffs' rights under the Servicing Agreements. As a result of

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the acts and omissions of Defendants, Plaintiffs are entitled to an award of punitive damages in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

223. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

224. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

SEVENTH CAUSE OF ACTION

(Negligence – Aspen, Guinn & N.C.S.)

225. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

226. Defendants (identified above) owed Plaintiffs a duty to exercise a reasonable degree of care.

227. Defendants breached this duty of care to Plaintiffs as described herein.

228. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

229. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

EIGHTH CAUSE OF ACTION

(Alter Ego – Guinn)

230. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

231. Aspen is influenced and governed by Guinn who is the alter ego of Aspen.

232. There is such a unity of interest and ownership between Aspen and Guinn that Aspen is inseparable from Guinn.

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233. Adhering to the fiction that Aspen is a separate entity from Guinn would, under the circumstances described herein, sanction a fraud or promote injustice.

234. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

235. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

NINTH CAUSE OF ACTION

(Negligence – ROI)

236. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

237. Defendant ROI provided appraisals to Aspen with knowledge that Aspen would use the appraisals to solicit investors such as Plaintiffs.

238. Defendant ROI owed potential investors (such as Plaintiffs) a duty to exercise reasonable care in preparing the appraisals.

239. Defendant ROI breached this duty of care to Plaintiffs as described herein.

240. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

241. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

TENTH CAUSE OF ACTION

(Negligent Misrepresentation – ROI)

242. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

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243. Defendant ROI provided appraisals to Aspen with knowledge that Aspen would use the appraisals to solicit investors such as Plaintiffs.

244. Defendant ROI owed potential investors (such as Plaintiffs) a duty to not to make material misrepresentations in the appraisals.

245. Plaintiffs justifiably relied upon the representations contained within the appraisals.

246. The representations contained in the appraisals were false.

247. Defendant ROI breached its duty of care to Plaintiffs as described herein.

248. As a direct and proximate result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial.

249. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

ELEVENTH CAUSE OF ACTION

(Accounting – Aspen & N.C.S.)

250. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

251. Plaintiffs placed their trust and confidence in Defendants (identified above) when Plaintiffs invested in the loans.

252. Plaintiffs are entitled to a full and complete accounting from Defendants with regard to any transactions or activities which have affected or may have affected Plaintiffs interests.

253. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

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TWELFTH CAUSE OF ACTION

(Appointment of a Receiver – Aspen)

254. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

255. Plaintiffs are entitled, pursuant to NRS 32.010, to a receiver to take charge of each of the loans in which Plaintiffs invested and being serviced by the Defendants (identified above), the proceeds of the loans Defendants have in their possession or control, and any other funds in the possession or control of Defendants traceable to the investments made by Plaintiffs.

256. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

THIRTEENTH CAUSE OF ACTION

(Imposition of a Constructive Trust – Aspen & N.C.S.)

257. Plaintiffs repeat and reallege the allegations previously set forth in this Complaint, and incorporate the same by reference as though set forth herein in full.

258. Defendants (identified above) have wrongfully exercised ownership and dominion over Plaintiffs' assets and have retained control of such assets and the proceeds of such assets for their own benefit and to the detriment of Plaintiffs.

259. Defendants have an equitable duty to convey to Plaintiffs the money and proceeds owing to Plaintiffs.

260. Equity demands that a constructive trust be established in Plaintiffs' favor over all the money and proceeds due and owing to Plaintiffs that are in the possession or control of Defendants or in the possession or control of any other entity or individual that obtained possession by reason of Defendants' self-dealing, mismanagement, fraud, and other bad acts set forth herein.

261. As Defendants' conduct forced Plaintiffs to retain the services of an attorney, Plaintiffs are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

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WHEREFORE, Plaintiffs pray for judgment as follows:

1. For an award of general damages in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial;

2. For punitive or exemplary damages in an amount in excess of Ten Thousand Dollars ($10,000), to be proven at the time of trial;

3. For the issuance of an Order requiring Defendants to provide a full and complete accounting of their use of Plaintiffs' money;

4. For the issuance of an Order appointing a Receiver to assume responsibility to act as the servicing agent for the Current Aspen First;

5. For the issuance of an Order imposing a Constructive Trust over the assets of Plaintiffs held by the Defendants;

6. For the issuance of an Order rescinding the Loan Servicing Agreements entered into by Plaintiffs;

7. For an award of attorneys' fees and costs incurred in the prosecution of this case; and

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

DATED this 12th day of May, 2009.

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