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21 *Attorneys for Plaintiffs*

22 **IN THE SUPERIOR COURT OF ARIZONA**
23 **IN AND FOR THE COUNTY OF MARICOPA**

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1. MARY MARSH, individually;
 2. ACHEN CONTRACTORS, LLC, an Arizona Limited Liability Company;
 3. ACHEN-GARDNER ENGINEERING, LLC, an Arizona Limited Liability Company;
 4. ARENA I LIMITED PARTNERSHIP, an Arizona limited partnership;
 5. JOHN ARENA, as Trustee of the Farm Managers, Inc., PSP&T;

Case No.

COMPLAINT

(Illegally Conducting an Enterprise, A.R.S. §13-2312; Common Law Fraud; Aiding and Abetting Breach of Fiduciary Duty; Negligent Misrepresentation; Primary Violation of Arizona Securities Act; Aiding and Abetting Violations of Arizona Securities Act; Violations of Consumer Fraud Act, A.R.S. §44-1521 et seq.; Constructive Trust)

COPY
SEP 16 2010



MICHAEL K. JAMES, CLERK
M. McTAGGART
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- 1 6. SLYVIA ARENA, individually;
- 2 7. MERLE R. ARLEN, as Trustee of the Merle
3 and Norma Arlen Family Trust Dated January
4 6, 1997;
- 5 8. MERLE R. ARLEN, individually;
- 6 9. THOMAS BERLINGER and CATHERINE
7 BERLINGER, husband and wife;
- 8 10. BRUCE DENNIS BUCKLEY and ALIVIA
9 VIRGINIA BUCKLEY, as Trustees of The
10 Bruce Dennis Buckley and Alivia Virginia
11 Buckley Revocable Living Trust Dated June
12 4, 1985 and Amended December 7, 1994;
- 13 11. BRUCE D. BUCKLEY, individually;
- 14 12. THOMAS A. BUSH and JOANNE M. BUSH,
15 husband and wife;
- 16 13. C&D TRADING, a Nevada corporation;
- 17 14. KAREN-RUDEL CLEEVES-ESTABROOK
18 as Trustee of the Karen-Rudel Cleeves-
19 Estabrook Revocable Trust dated May 23,
20 2002;
- 21 15. MELVIN L. DUNSWORTH JR., as Trustee
22 of The Revocable Living Trust of Melvin
23 Dunsworth, Jr. Dated December 23, 2003;
- 24 16. ENERGETICS, INC., an Arizona
25 Corporation;
- 26 17. ENERGETICS, INC. RESTATED PROFIT
27 SHARING PLAN;
- 28 18. VALENTINE EYTAN;
19. DOUGLAS and SHARLENE GARDNER,
individually and as husband and wife;
20. DOUGLAS GARDNER, individually;

- 1 21. SHARLENE GARDNER, individually;
- 2 22. WENDELL GARDNER, individually;
- 3 23. WENDELL J. GARDNER and PAULINE M.
4 GARDNER as Trustees of the WPG
5 Revocable Trust;
- 6 24. GARDNER CAPITAL PARTNERS, LP, an
7 Arizona limited partnership;
- 8 25. ADAM GILBURNE and RONDA
9 GILBURNE, husband and wife;
- 10 26. ADAM GILBURNE and RONDA
11 GILBURNE, as Trustees for The Adam and
12 Rhonda Gilburne Family Trust UTA 6/30/06;
- 13 27. RONDA GILBURNE, individually;
- 14 28. GOLDEN LENDING GROUP, LLC, an
15 Arizona limited liability company, f/k/a
16 PENNY HARDAWAY INVESTMENTS,
17 LLC;
- 18 29. BONNIE GREENBANK;
- 19 30. BONNIE GREENBANK, as Trustee for
20 Bonnie L. Greenbank Family Trust;
- 21 31. GERALD GROSS, as Trustee of The Gerald
22 Gross Family Trust;
- 23 32. GERALD GROSS, as Trustee of the T & J
24 Gross Trust;
- 25 33. THELMA GROSS, individually;
- 26 34. DELERY GUILLORY and KATHY
27 GUILLORY, husband and wife;
- 28 35. DELERY GUILLORY, individually;
36. KATHY GUILLORY, individually;

- 1 37. INVESTOR CLOUT, an Arizona Partnership;
- 2 38. JSM FAMILY VENTURES, LLLP, an
3 Arizona Limited Liability Limited
Partnership;
- 4 39. EVALINA LAYNE;
- 5 40. LEAH L. LEWIS, as Trustee of the Leah L.
6 Lewis Trust Dated February 23, 2000;
- 7 41. LEAH L. LEWIS;
- 8 42. WILLIAM C. LEWIS, as Trustee of the
9 William C. Lewis Trust Dated August 1,
10 1989, as amended;
- 11 43. BARBARA LUKAVSKY;
- 12 44. STEPHEN MAYNE and LINDA MAYNE,
husband and wife;
- 13 45. STEPHEN MAYNE, individually;
- 14 46. LINDA MAYNE, individually;
- 15 47. DONNA J. MCGREGOR;
- 16 48. CHUCK NIDAY, as Trustee of the Ross
17 Verne Family Trust, a Revocable Living
18 Trust, dated January 18, 2007, and any
19 supplements thereto;
- 20 49. JEROME NOSANCHUK;
- 21 50. JOSHUA NOSANCHUK and PATRICIA L.
22 MURPHY, husband and wife;
- 23 51. SARA NOSANCHUK;
- 24 52. RICHARD J. PRINZ and CATHERINE T.
PRINZ, husband and wife;
- 25 53. YVONNE QUINTAL;
- 26 54. LINDA REEVES, as Trustee for The Linda
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- 1 Reeves Trust;
- 2 55. RMA RENTAL AND LEASING LLP, and
3 Arizona limited liability partnership;
- 4 56. ROBERT RODEN;
- 5 57. MARCELO ROMANO, individually;
- 6 58. THE MARCELO ROMANO AND
7 JEANETTE ROMANO FAMILY LIMITED
8 LIABILITY PARTNERSHIP, NUMBER
9 ONE, an Arizona limited liability partnership;
- 10 59. DAVID ROSENTHAL, individually;
- 11 60. MORTON M. SCULT, as Trustee of the
12 Morton M. Scult, PC Money Purchase
13 Pension Plan;
- 14 61. SUMAR INVESTMENT CO., an Arizona
15 general partnership;
- 16 62. ROBERT L. TAYLOR and BONNIE
17 TAYLOR, as Trustees of The Taylor Loving
18 Trust;
- 19 63. ROBERT L. TAYLOR as Trustee of the DDS,
20 PC Profit Sharing Plan & Trust;
- 21 64. RICHARD K. UNDERWOOD, as Trustee of
22 the Richard K. Underwood Revocable Trust
23 Dated October 31, 1995, as Amended;
- 24 65. VERMA KATARIA MORTGAGE
25 INVESTMENT, LLC, an Arizona limited
26 liability company;
- 27 66. JOHN VINSON and TAEKO VINSON, as
28 Trustees for the John Charles Vinson Family
Trust, dated December 3, 1984, as amended;
67. DAVID WACKNOV, individually;
68. CHRISTINE WACKNOV, individually;

1 69. DON WATKINS;

2 70. LEANORE WIRTZ, as Trustee for The
3 Leanore Wirtz Living Trust Dated February 3,
1993;

4 71. WMS FIXED INCOME FUND I, LLC, an
5 Arizona limited liability company;

6 72. WPG FAMILY LIMITED PARTNERSHIP, a
7 Colorado Limited Partnership;

8 73. DIANA WYKES;

9 74. DAVE ZANECKI; and

10 75. JOSEPH B. ZNANIECKI and CLARA B.
11 ZNANIECKI, husband and wife,

12 Plaintiffs,

13 vs.

14 1. GREENBERG TRAURIG, LLP, a New York
15 limited liability partnership;

16 2. ROBERT S. KANT and ELLEN P. KANT,
17 husband and wife;

18 3. MAYER HOFFMANN McCANN, P.C., a
19 Missouri professional corporation;

20 4. CBIZ, INC., a Delaware corporation;

21 5. CBIZ MHM, LLC, a Delaware limited
22 liability company, f/k/a CBIZ
ACCOUNTING, TAX & ADVISORY
SERVICES, LLC;

23 6. CBIZ ACCOUNTING, TAX & ADVISORY
24 SERVICES OF PHOENIX, LLC, a Delaware
25 limited liability company f/k/a CBIZ
MILLER WAGNER, LLC;

26 7. HIRSCH & SHAW CPA'S, LLC, an Arizona
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1 limited liability company;

2 8. ASHLEY COLES, as Trustee of the Ashley
3 Coles Family Trust;

4 9. FRANCINE COLES, individually and as
5 conservator of Z.A. Coles and S.B. Coles,
6 minors; and

7 10. HALEY BROOKE COLES.

8 Defendants.

9 For their Complaint against Defendants, Plaintiffs allege the following:

10 **I. INTRODUCTION**

11 **“Fraud is the ready minister of injustice.”**

12 **Edmund Burke**

13
14 1. This case arises from the ashes of Mortgages Ltd, once the largest and oldest
15 private lender in Arizona. This case is about the illegal confederation of lawyers,
16 accountants, and financiers who, acting in concert with Scott Coles, destroyed Mortgages
17 Ltd and, in the process, cheated Plaintiffs out of more than \$135,000,000.

18
19 2. Charles Jacob Coles (“Chuck Coles”) and Ronald M. Anatole started
20 Mortgages Ltd in 1963. Eventually, Chuck Coles took control. Through conservative and
21 straightforward business practices, Chuck Coles developed Mortgages Ltd into a model of
22 honesty, stability, and reliability in the Arizona real estate investment market. Mortgages
23 Ltd was a name and a business to be trusted.

24
25 3. Chuck Coles died on October 10, 1998. Ownership and the reins of
26 leadership of Mortgages Ltd passed to Mr. Coles’ son, Scott Martin Coles (“Scott Coles”).
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1 Ten years later, early the morning of June 2, 2008, Scott Coles dressed himself in a tuxedo,
2 laid down on his bed, and took his own life with an overdose of oxycodone.

3
4 4. The world may never know why Scott Coles tragically chose to end his own
5 life. However, it is unmistakably clear that, before he died, Scott Coles had deeply betrayed
6 his father's legacy. Coles' greed and ambition overrode his sense of loyalty to that legacy
7 and to Plaintiffs, who, individually and collectively, had entrusted Coles with more than
8 \$135,000,000. After the deaths of his father and his mother, Scott Coles broke loose from
9 the moorings that had guided Mortgages Ltd for more than three decades. He transformed
10 into a man possessed with creating astronomical growth in his company and accumulating
11 magnificent personal wealth.
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14 5. In the years before he died, Coles became known as "Arizona's most
15 flamboyant millionaire." By 2006, Coles' holdings were, to say the least, audacious.
16 Using money he had fleeced from Mortgages Ltd and laundered through his personal LLC
17 (SM Coles, LLC), Coles had acquired more than \$80 million dollars in property, purchasing
18 homes in Coronado, California, Aspen, Colorado, Las Vegas, Nevada and the pricey area of
19 Phoenix known as The Biltmore area. He purchased five condominiums in the Esplanade, a
20 high-rise condominium building in the Biltmore area of Phoenix. He formed and funded
21 Coles Bahamas Ltd and bought two condos at the opulent Reef Atlantis on Paradise Island,
22 Bahamas. He spent millions of dollars to acquire and improve a 20,000 square foot
23 compound, complete with mansion and the largest residential swimming pool in Arizona,
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1 located in the Rockridge area on the side of Camelback Mountain in Phoenix. He even built
2 an eighteen hole golf course on that property, completing it in late 2007, during a time when
3 many of the Plaintiffs had committed their entire retirement accounts and life savings to
4 Mortgages Ltd for safekeeping. He boasted a personal net worth of \$400,000,000. Coles
5 entertained the very elite of Hollywood and the sports world, throwing the exorbitantly
6 expensive “Best Damn Super Bowl Party” in 2008 at his Rockridge compound. As one
7 former president of Mortgages Ltd has so aptly put it, “He [Scott Coles] kind of turned into
8 a wanna-be rock star....”

11 6. Coles did not come by his wealth legally or honestly. He was able to live his
12 lavish “life in the fast lane” only because more than 2700 “investors,” including Plaintiffs,
13 had been persuaded to purchase hundreds of millions of dollars of investment securities
14 from and through Mortgages Ltd and its sister company, Mortgages Ltd Securities, LLC
15 (“ML Securities”). *That* was only possible because Coles had assembled a cadre of willing
16 confederates committed to creating wealth for Coles and themselves and to concealing the
17 fraudulent means employed to obtain it.

20 7. Under Arizona’s anti-racketeering statutes, Coles and his confederates were
21 an “enterprise,” an association-in-fact, although not a legal entity. The “enterprise”
22 consisted of the following persons and entities:
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- 24 • Mortgages Ltd
- 25 • Scott M. Coles
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- Mortgages Ltd Securities
- SM Coles, LLC
- SMC Revocable Trust
- Radical Bunny, LLC
- Hirsch & Shah CPAs, LLC
- Greenberg Traurig, LLP
- Robert S. Kant
- Mayer Hoffman McCann, P.C.
- CBIZ, Inc. (and the CBIZ entity Defendants herein)

8. Plaintiffs shall refer to this “enterprise” throughout the remainder of this Complaint as “the illegal enterprise.”

9. The illegal enterprise functioned as a continuing unit, with an existence separate and apart from the pattern of racketeering activity alleged herein and separate and distinct from those Defendants and persons against whom Plaintiffs allege a claim for participation in the illegal enterprise. The illegal enterprise existed to advance the interests of its individual members that made up its membership. The illegal enterprise functioned as a continuing unit with the common purpose of deliberately (1) concealing and facilitating the unlawful sale of unregistered securities by Radical Bunny, LLC, Mortgages Ltd, and ML Securities; (2) concealing the true financial condition of Mortgages Ltd; (3) creating

1 and perpetuating the false perception that Mortgages Ltd and ML Securities were properly
2 operating and complying with all material legal requirements; (4) enabling and concealing
3 Mortgages Ltd's and Scott Coles' breach of fiduciary duty to "investors," including
4 Plaintiffs; and (5) protecting the wealth of Scott M. Coles.

6 **II. PARTIES, JURISDICTION, AND VENUE**

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8 10. Plaintiffs are persons and entities who purchased and held securities offered
9 by and through Mortgages Ltd and ML Securities. Plaintiffs discuss the general investment
10 "programs" sponsored of Mortgages Ltd and ML Securities below. In purchasing, holding,
11 and, in certain circumstances, reinvesting to acquire investment securities through
12 Mortgages Ltd and ML Securities, Plaintiffs received, reviewed, and relied upon one or
13 more of 11 private offering memoranda authored by Defendant Greenberg between May 15,
14 2006 and February 2008 and containing the audited financial statements of Mortgages Ltd
15 and the clean audit opinion by Mayer Hoffman. As described further below, from and after
16 the acquisition by each Plaintiff of investment securities, Mortgages Ltd and Scott Coles
17 owed each Plaintiff a fiduciary duty, a duty known to the Lawyer Defendants, Auditor
18 Defendants and Hirsch & Shaw.

21
22 **A. Plaintiffs**

23 11. Achen-Contractors, LLC ("AC") is an Arizona limited liability company. At
24 the time of the Mortgages Ltd bankruptcy, AC owned \$700,000 in Mortgages Ltd's Pass-
25 Through investments and \$5,170,769 in MP15 investment interests that AC had acquired,
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1 held, or reinvested in reliance upon a misleading private offering memorandum that
2 Greenberg had authored and that contained the materially misstated financial statements of
3 Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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5 12. Achen-Gardner Engineering, LLC (“AGE”), is an Arizona limited liability
6 company. At the time of the Mortgages Ltd bankruptcy, AGE owned \$213,889 in
7 Mortgages Ltd’s Pass-Through investments and \$4,892,227 in MP15 investment interests
8 AGE had acquired, held, or reinvested in reliance upon a misleading private offering
9 memorandum that Greenberg had authored and that contained the materially misstated
10 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
11 Hoffman.
12 Hoffman.
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14 13. Arena I Limited Partnership (“AIL”) is a limited partnership organized under
15 the laws of the state of Arizona. At the time of the Mortgages Ltd bankruptcy, AIL owned
16 MP15 investment interests in the amount of \$901,000 that AIL had acquired, held, or
17 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
18 authored and that contained the materially misstated financial statements of Mortgages Ltd
19 and the false “clean” audit opinion of Mayer Hoffman.
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22 14. John Arena is the lawful Trustee of the Farm Managers, Inc., PSP&T (“Farm
23 Managers”) a trust organized under the laws of the state of Arizona. At the time of the
24 Mortgages Ltd bankruptcy, Farm Managers owned MP15 investment interests in the amount
25 of \$370,000 that Farm Managers had acquired, held, or reinvested in reliance upon a
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1 misleading private offering memorandum that Greenberg had authored and that contained
2 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
3 opinion of Mayer Hoffman.
4

5 15. Sylvia Arena is a resident of Maricopa County, Arizona. At the time of the
6 Mortgages Ltd bankruptcy, Sylvia Arena owned MP15 investment interests in the amount
7 of \$56,183.43 that Sylvia Arena had acquired, held, or reinvested in reliance upon a
8 misleading private offering memorandum that Greenberg had authored and that contained
9 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
10 opinion of Mayer Hoffman.
11

12 16. Merle Arlen is the lawful Trustees of the Merle and Norma Arlen Family
13 Trust Dated January 6, 1997 (“Arlen Trust”), a trust organized under the laws of the state of
14 Arizona. At the time of the Mortgages Ltd bankruptcy, the Arlen Trust owned \$160,000 in
15 Mortgages Ltd’s Pass-Through investments and \$347,282.73 in membership interest in
16 MP11 that the Arlen Trust had acquired, held, or reinvested in reliance upon a misleading
17 private offering memorandum that Greenberg had authored and that contained the
18 materially misstated financial statements of Mortgages Ltd and the false “clean” audit
19 opinion of Mayer Hoffman.
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22 17. At the time of the Mortgages Ltd bankruptcy, in his individual capacity, Merle
23 Arlen owned \$1,119,847.29 in membership interests in MP10 that Arlen had acquired, held,
24 or reinvested had acquired, held, or reinvested in reliance upon a misleading private offering
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1 memorandum that Greenberg had authored and that contained the materially misstated
2 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
3 Hoffman.
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5 18. Thomas Berlinger and Catherine Berlinger are husband and wife and residents
6 of Maricopa County, Arizona. At the time of the Mortgages Ltd bankruptcy, the Berlingers
7 owned Pass-Through investment interests in the amount of \$245,262.93 that the Berlingers
8 had acquired, held, or reinvested in reliance upon a misleading private offering
9 memorandum that Greenberg had authored and that contained the materially misstated
10 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
11 Hoffman.
12 Hoffman.
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14 19. Bruce Dennis Buckley and Alivia Buckley are residents of Arizona and the
15 lawful trustees of the Bruce Dennis and Alivia Virginia Buckley Revocable Living Trust
16 Dated June 4, 1985, and Amended December 7, 1994 (“Buckley Trust”), which was
17 established in Maricopa County, Arizona. At the time of the Mortgages Ltd bankruptcy, the
18 Buckley Trust owned \$900,953 in Mortgages Ltd’s Pass-Through investments that the
19 Buckley Trust had acquired, held, or reinvested in reliance upon a misleading private
20 offering memorandum that Greenberg had authored and that contained the materially
21 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
22 Mayer Hoffman.
23 Mayer Hoffman.
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1 20. At the time of the Mortgages Ltd bankruptcy, in his individual capacity, Bruce
2 Buckley owned \$252,000 in Mortgages Ltd's Pass-Through investments that Buckley had
3 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
4 that Greenberg had authored and that contained the materially misstated financial statements
5 of Mortgages Ltd and the false "clean" audit opinion of Mayer Hoffman.
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7 21. Thomas A. Bush and Joanne M. Bush are husband and wife and residents of
8 the state of Wyoming. At the time of the Mortgages Ltd bankruptcy, the Bushs owned
9 MP11 investment interests in the amount of \$262,617 that the Bushes had acquired, held, or
10 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
11 authored and that contained the materially misstated financial statements of Mortgages Ltd
12 and the false "clean" audit opinion of Mayer Hoffman.
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14 22. C&D Trading, Inc. ("CDT") is a Nevada corporation with its principal place
15 of business in Nevada. At the time of the Mortgages Ltd bankruptcy, CDT owned \$269,879
16 in Mortgages Ltd's Pass-Through investments, owned a membership interest in MP 15 in
17 the amount of \$501,867, and a \$50,000 membership interest in VTL that CDT had acquired,
18 held, or reinvested in reliance upon a misleading private offering memorandum that
19 Greenberg had authored and that contained the materially misstated financial statements of
20 Mortgages Ltd and the false "clean" audit opinion of Mayer Hoffman.
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22 23. Cleeves-Estabrook is a resident of Maricopa County, Arizona and the lawful
23 trustee of Karen-Rudel Cleeves-Estabrook Revocable Trust dated May 23, 2002 ("Cleeves
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1 Trust”), a trust organized in Maricopa County, Arizona. At the time of the Mortgages Ltd
2 bankruptcy, the Cleeves Trust owned MP11 investment interests in the amount of \$827,607
3 that the Cleeves Trust had acquired, held, or reinvested in reliance upon a misleading
4 private offering memorandum that Greenberg had authored and that contained the
5 materially misstated financial statements of Mortgages Ltd and the false “clean” audit
6 opinion of Mayer Hoffman.
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9 24. Melvin Dunsworth is a resident of Florida and the lawful trustee of the
10 Revocable Living Trust of Melvin L. Dunsworth, Jr., dated December 23, 2003
11 (“Dunsworth Trust”), which was established outside of Maricopa County, Arizona. At the
12 time of the Mortgages Ltd bankruptcy, the Dunsworth Trust owned \$6,000,000 in
13 investment interests in Mortgages Ltd’s RevOp program that the Dunsworth Trust had
14 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
15 that Greenberg had authored and that contained the materially misstated financial statements
16 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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19 25. The Estate of Louise Johansen is being administered in the State of Wyoming
20 by and through her personal representative. At the time of the Mortgages Ltd bankruptcy,
21 Johansen owned MP15 investment interests in the amount of \$681,293.22 that Johansen had
22 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
23 that Greenberg had authored and that contained the materially misstated financial statements
24 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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1 26. Energetics, Inc. is a corporation organized under the laws of the state of
2 Arizona. At the time of the Mortgages Ltd bankruptcy, Energetics, Inc. owned investment
3 interests in the amount of \$375,000 in Mortgages Ltd's Pass-Through investments that
4 Energetics, Inc. had acquired, held, or reinvested in reliance upon a misleading private
5 offering memorandum that Greenberg had authored and that contained the materially
6 misstated financial statements of Mortgages Ltd and the false "clean" audit opinion of
7 Mayer Hoffman.
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10 27. Energetics, Inc. Restated Profit Sharing Plan ("Energetics Profit Plan") is a
11 profit sharing plan situated in the state of Arizona. At the time of the Mortgages Ltd
12 bankruptcy, the Energetics Profit Plan owned investment interests in the amount of
13 \$77,167.75 in MP09 and \$427,653.17 in MP15 that the Energetics Profit Plan had acquired,
14 held, or reinvested in reliance upon a misleading private offering memorandum that
15 Greenberg had authored and that contained the materially misstated financial statements of
16 Mortgages Ltd and the false "clean" audit opinion of Mayer Hoffman.
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19 28. Valentine Eytan is a resident of Maricopa County, Arizona. At the time of the
20 Mortgages Ltd bankruptcy, Eytan owned MP11, MP14 and VTL investment interests in the
21 amount of \$521,573.78 that Eytan had acquired, held, or reinvested in reliance upon a
22 misleading private offering memorandum that Greenberg had authored and that contained
23 the materially misstated financial statements of Mortgages Ltd and the false "clean" audit
24 opinion of Mayer Hoffman.
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1 29. Douglas D. Gardner and Sharlene K. Gardner are husband and wife and
2 residents of Maricopa County, Arizona. They are the lawful Trustees of the Douglas D.
3 Gardner and Sharlene K. Gardner Family Trust (“Gardner Trust”), an Arizona trust. At the
4 time of the Mortgages Ltd bankruptcy, the Gardner Trust owned investment interests in the
5 amount of \$328,974 in MP15 that the Gardner Trust had acquired, held, or reinvested in
6 reliance upon a misleading private offering memorandum that Greenberg had authored and
7 that contained the materially misstated financial statements of Mortgages Ltd and the false
8 “clean” audit opinion of Mayer Hoffman.
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11 30. At the time of the Mortgages Ltd bankruptcy, in their individual capacities,
12 the Gardners owned investments interests in the amount of \$72,884 in MP10, \$8,624 in
13 MP15, and \$351,000 in VTL that the Gardners had acquired, held, or reinvested in reliance
14 upon a misleading private offering memorandum that Greenberg had authored and that
15 contained the materially misstated financial statements of Mortgages Ltd and the false
16 “clean” audit opinion of Mayer Hoffman.
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19 31. Wendell J. Gardner and Pauline M. Gardner are husband and wife. They are
20 the lawful Trustees of the WPG Revocable Trust (“WPG Trust”). At the time of the
21 Mortgages Ltd bankruptcy, the WPG Trust owned a \$400,000 membership interest in MP14
22 that the WPG Trust had acquired, held, or reinvested in reliance upon a misleading private
23 offering memorandum that Greenberg had authored and that contained the materially
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1 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
2 Mayer Hoffman.

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4 32. At the time of the Mortgages Ltd bankruptcy, in his individual capacity,
5 Wendell Gardner owned a \$350,000 investment interest in MP11 that Wendell Gardner had
6 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
7 that Greenberg had authored and that contained the materially misstated financial statements
8 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.

9
10 33. Gardner Capital Partners, LP (“GCP”), is an Arizona limited partnership. At
11 the time of the Mortgages Ltd bankruptcy, GCP owned investment interests in the amount
12 of \$233,041 in Mortgages Ltd’s Pass-Through investments and \$2,675,465 in MP15 that
13 GCP had acquired, held, or reinvested in reliance upon a misleading private offering
14 memorandum that Greenberg had authored and that contained the materially misstated
15 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
16 Hoffman.
17 Hoffman.

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19 34. Adam Gilburne and Ronda Gilburne are husband and wife and lawful
20 Trustees of the Adam and Rhonda Gilburne Family Trust UTA 6/30/06 (“Gilburne Trust”)
21 organized in the state of Arizona. At the time of the Mortgages Ltd bankruptcy, the
22 Gilburne Trust owned Pass-Through investment interests in the amount of \$154,869.53 that
23 the Gilburne Trust had acquired, held, or reinvested in reliance upon a misleading private
24 offering memorandum that Greenberg had authored and that contained the materially
25 offering memorandum that Greenberg had authored and that contained the materially
26 offering memorandum that Greenberg had authored and that contained the materially
27 offering memorandum that Greenberg had authored and that contained the materially
28 offering memorandum that Greenberg had authored and that contained the materially

1 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
2 Mayer Hoffman.

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4 35. At the time of the Mortgages Ltd bankruptcy, Adam and Rhonda Gilburne
5 owned Pass-Through investment interests in the amount of \$165,184.21 that the Gilburnes
6 had acquired, held, or reinvested in reliance upon a misleading private offering
7 memorandum that Greenberg had authored and that contained the materially misstated
8 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
9 Hoffman.
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12 36. At the time of the Mortgages Ltd bankruptcy, Rhonda Gilburne, in her
13 individual capacity, owned Pass-Through investment interests in the amount of \$350,000
14 that Rhonda Gilburne had acquired, held, or reinvested in reliance upon a misleading private
15 offering memorandum that Greenberg had authored and that contained the materially
16 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
17 Mayer Hoffman.
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19
20 37. Golden Lending Group, LLC (“GLG”), is an Arizona limited liability
21 company transacting business in Arizona. GLG was formerly known as Penny Hardaway
22 Investments, LLC (“PHI”). Hereinafter, Plaintiffs shall refer only to GLG. At the time of
23 the Mortgages Ltd bankruptcy, GLG owned investment interests in the amount of
24 \$4,828,191 in Mortgages Ltd’s Pass-Through investments that GLG had acquired, held, or
25 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
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1 authored and that contained the materially misstated financial statements of Mortgages Ltd
2 and the false “clean” audit opinion of Mayer Hoffman.
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4 38. Bonnie Greenbank is a resident of Yavapai County, Arizona and Trustee for
5 Bonnie L. Greenbank Family Trust (“Greenbank Trust”). At the time of the Mortgages Ltd
6 bankruptcy, the Greenbank Trust owned MP09 investment interests in the amount of
7 \$157,262.43 that the Greenbank Trust had acquired, held, or reinvested in reliance upon a
8 misleading private offering memorandum that Greenberg had authored and that contained
9 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
10 opinion of Mayer Hoffman.
11

12 39. At the time of the Mortgages Ltd bankruptcy, in her individual capacity,
13 Bonnie Greenbank owned investment interests in the amount of a \$442,484.37 in MP09 that
14 Greenbank had acquired, held, or reinvested in reliance upon a misleading private offering
15 memorandum that Greenberg had authored and that contained the materially misstated
16 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
17 Hoffman.
18

19 40. Gerald Gross is the lawful Trustee of The Gerald Gross Family Trust, a trust
20 established in Maricopa County, Arizona (“GF Trust”). At the time of the Mortgages Ltd
21 bankruptcy, the GF Trust owned investment interests in the amount of \$530,046.44 in
22 Mortgages Ltd’s Pass-Through investments that the GF Trust had acquired, held, or
23 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
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1 authored and that contained the materially misstated financial statements of Mortgages Ltd
2 and the false “clean” audit opinion of Mayer Hoffman.
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4 41. Gerald Gross is the lawful Trustee of the T&J Gross Trust, a trust established
5 in Maricopa County, Arizona (“TJG Trust”). At the time of the Mortgages Ltd bankruptcy,
6 The TJG trust owned investment interests in the amount of \$710,787.84 in Mortgages Ltd
7 Pass-Through investments that the TJG Trust had acquired, held, or reinvested in reliance
8 upon a misleading private offering memorandum that Greenberg had authored and that
9 contained the materially misstated financial statements of Mortgages Ltd and the false
10 “clean” audit opinion of Mayer Hoffman.
11

12 42. Gerald and Thelma Gross are managers of Sumar Investment Company
13 (“SIC”) a general partnership organized in the state of Arizona. At the time of the
14 Mortgages Ltd bankruptcy, SIC owned investment interests in the amount of \$200,000 in
15 Mortgages Ltd Pass-Through investments that SIC had acquired, held, or reinvested in
16 reliance upon a misleading private offering memorandum that Greenberg had authored and
17 that contained the materially misstated financial statements of Mortgages Ltd and the false
18 “clean” audit opinion of Mayer Hoffman.
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20 43. At the time of the Mortgages Ltd bankruptcy, Thelma Gross, in her individual
21 capacity, owned Pass-Through investment interests in the amount of \$95,692.49 in
22 Mortgages Ltd Pass-Through investments that that Thelma Gross had acquired, held, or
23 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
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1 authored and that contained the materially misstated financial statements of Mortgages Ltd
2 and the false “clean” audit opinion of Mayer Hoffman.

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4 44. Delery and Kathy Guillory are husband and wife and residents of Maricopa
5 County, Arizona. At the time of the Mortgages Ltd bankruptcy, the Guillorys made several
6 investments in Mortgages Ltd’s Pass-Through investments in the amount of \$10,000,000
7 that the Guillorys had acquired, held, or reinvested in reliance upon a misleading private
8 offering memorandum that Greenberg had authored and that contained the materially
9 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
10 Mayer Hoffman.
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13 45. Investor Clout is a partnership organized under the laws of the state of
14 Arizona. At the time of the Mortgages Ltd bankruptcy, Investor Clout owned Pass-Through
15 Participation investment interests in the amount of \$1,800,000 that Investor Clout had
16 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
17 that Greenberg had authored and that contained the materially misstated financial statements
18 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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21 46. JSM Family Ventures is a limited liability limited partnership organized under
22 the laws of the state of Arizona. At the time of the Mortgages Ltd bankruptcy, JSM Family
23 Ventures owned MP15 investment interests in the amount of \$902,592.62 that JSM Family
24 Ventures had acquired, held, or reinvested in reliance upon a misleading private offering
25 memorandum that Greenberg had authored and that contained the materially misstated
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1 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
2 Hoffman.

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4 47. Evalina Layne is Trustee for The Wesley R. and Evalina O. Layne Family
5 Trust dated June 26, 1987 (“Layne Trust”), a trust organized under the law of the state of
6 Arizona. At the time of the Mortgages Ltd bankruptcy, the Layne Trust owned MP10
7 investment interests in the amount of \$213,399 and \$180,433.86 in membership interest in
8 MP11 that the Layne Trust had acquired, held, or reinvested in reliance upon a misleading
9 private offering memorandum that Greenberg had authored and that contained the
10 materially misstated financial statements of Mortgages Ltd and the false “clean” audit
11 opinion of Mayer Hoffman.
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14 48. At the time of the Mortgages Ltd bankruptcy, in her individual capacity,
15 Evalina Layne owned investment interests in the amount of \$283,318.93 in MP10,
16 \$215,323.75 in MP11, and \$381,168.59 in Mortgages Ltd’s Pass-Through investments that
17 Evalina Layne had acquired, held, or reinvested in reliance upon a misleading private
18 offering memorandum that Greenberg had authored and that contained the materially
19 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
20 Mayer Hoffman.
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23 49. Leah Lewis is a resident of Maricopa County, Arizona and is the lawful
24 trustee of the Leah L. Lewis Trust, dated February 23, 2000 (“Lewis Trust”), which was
25 established in Maricopa County. At the time of the Mortgages Ltd bankruptcy, the Lewis
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1 Trust owned investment interests in the amount of \$6,692,963 in Mortgages Ltd's RevOp
2 program that the Lewis Trust had acquired, held, or reinvested in reliance upon a misleading
3 private offering memorandum that Greenberg had authored and that contained the
4 materially misstated financial statements of Mortgages Ltd and the false "clean" audit
5 opinion of Mayer Hoffman.
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8 50. William C. Lewis is a resident of Maricopa County, Arizona and is the lawful
9 trustee of The William C. Lewis Trust Dated August 1, 1989 ("Lewis"), a trust organized
10 under the laws of Arizona. At the time of the Mortgages Ltd bankruptcy, Lewis owned
11 investment interests in the amount of \$23,000,000 in Mortgages Ltd's RevOp Program that
12 Lewis had acquired, held, or reinvested in reliance upon a misleading private offering
13 memorandum that Greenberg had authored and that contained the materially misstated
14 financial statements of Mortgages Ltd and the false "clean" audit opinion of Mayer
15 Hoffman.
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18 51. Barbara A. Lukavsky is a resident of the state of Iowa. At the time of the
19 Mortgages Ltd bankruptcy, Lukavsky owned investment interests in the amount of
20 \$125,000 in MP 15 that Lukavsky had acquired, held, or reinvested in reliance upon a
21 misleading private offering memorandum that Greenberg had authored and that contained
22 the materially misstated financial statements of Mortgages Ltd and the false "clean" audit
23 opinion of Mayer Hoffman.
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1 52. Mary Marsh is a resident of Maricopa County, Arizona. At the time of the
2 Mortgages Ltd bankruptcy, Marsh owned investment interests in the amount of \$100,000 in
3 Mortgages Ltd Pass-Through investments and \$150,000 in MP16 that Marsh had acquired,
4 held, or reinvested in reliance upon a misleading private offering memorandum that
5 Greenberg had authored and that contained the materially misstated financial statements of
6 Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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9 53. Stephen Mayne and Linda Mayne are husband and wife and residents of the
10 state of California. At the time of the Mortgages Ltd bankruptcy, the Maynes owned Pass-
11 Through investment interests in the amount of \$298,190.06 that the Maynes had acquired,
12 held, or reinvested in reliance upon a misleading private offering memorandum that
13 Greenberg had authored and that contained the materially misstated financial statements of
14 Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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17 54. At the time of the Mortgages Ltd bankruptcy, Stephen and Linda Mayne, as
18 trustees for Mayne and Company Defined Benefit Pension Plan owned investment interests
19 in the amount of \$380,631.39 in Mortgages Ltd’s Pass-Through investmetns that the
20 Maynes had acquired, held, or reinvested in reliance upon a misleading private offering
21 memorandum that Greenberg had authored and that contained the materially misstated
22 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
23 Hoffman.
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1 55. Donna J. McGregor is a resident of the state of Tennessee. At the time of the
2 Mortgages Ltd bankruptcy, McGregor owned Pass-Through investment interests in the
3 amount of \$909,164.95 that McGregor had acquired, held, or reinvested in reliance upon a
4 misleading private offering memorandum that Greenberg had authored and that contained
5 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
6 opinion of Mayer Hoffman.
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9 56. Chuck Niday is a resident of the State of Arizona and is the Trustee of the
10 Ross Verne Family Trust, a Revocable Trust, dated January 18, 2007 (“Niday Trust”). At
11 the time of the Mortgages Ltd bankruptcy, the Niday Trust owned investment interests in
12 the amount of \$1,000,000 in MP15 that the Niday Trust had acquired, held, or reinvested in
13 reliance upon a misleading private offering memorandum that Greenberg had authored and
14 that contained the materially misstated financial statements of Mortgages Ltd and the false
15 “clean” audit opinion of Mayer Hoffman.
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18 57. Jerome Nosanchuk is a resident of the state of New York. At the time of the
19 Mortgages Ltd bankruptcy, Nosanchuk owned investment interests in the amount of
20 \$510,822.05 in MP09, \$553,676.54 in MP10, \$2,638.90 in MP11, and \$403,658.14 in
21 MP12 that Jerome Nosanchuk had acquired, held, or reinvested in reliance upon a
22 misleading private offering memorandum that Greenberg had authored and that contained
23 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
24 opinion of Mayer Hoffman.
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1 58. Joshua Nosanchuk and Patricia L. Murphy are husband and wife and are
2 residents of the state of New Jersey. At the time of the Mortgages Ltd bankruptcy,
3 Nosanchuk and Murphy owned investment interests in the amount of \$270,115 in MP09
4 that Nosanchuk and Murphy had acquired, held, or reinvested in reliance upon a misleading
5 private offering memorandum that Greenberg had authored and that contained the
6 materially misstated financial statements of Mortgages Ltd and the false “clean” audit
7 opinion of Mayer Hoffman.
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10 59. Sara Nosanchuk is a resident of the state of Oregon. At the time of the
11 Mortgages Ltd bankruptcy, Sara Nosanchuk owned investment interests in the amount of
12 \$75,000 in Mortgages Ltd’s Pass-Through investments and a \$280,624.14 membership
13 interest in MP12 that Sara Nosanchuk had acquired, held, or reinvested in reliance upon a
14 misleading private offering memorandum that Greenberg had authored and that contained
15 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
16 opinion of Mayer Hoffman.
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19 60. Richard J. Prinz and Catherine T. Prinz are husband and wife and residents of
20 the state of Nebraska. At the time of the Mortgages Ltd bankruptcy, the Prinz’ owned
21 MP11 investment interests in the amount of \$100,000 that the Prinz’ had acquired, held, or
22 reinvested in reliance upon a misleading private offering memorandum that Greenberg had
23 authored and that contained the materially misstated financial statements of Mortgages Ltd
24 and the false “clean” audit opinion of Mayer Hoffman.
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1 61. Yvonne Quintal is a resident of the state of California. At the time of the
2 Mortgages Ltd bankruptcy, Quintal owned Pass-Through investment interests in the amount
3 of \$49,813.05 that Quintal had acquired, held, or reinvested in reliance upon a misleading
4 private offering memorandum that Greenberg had authored and that contained the
5 materially misstated financial statements of Mortgages Ltd and the false “clean” audit
6 opinion of Mayer Hoffman.
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9 62. Linda Reeves is a resident of the State of California. At the time of the
10 Mortgages Ltd bankruptcy, Reeves owned investment interests in the amount of \$4,878,446
11 in Mortgages Ltd’s Pass-Through investments that Reeves had acquired, held, or reinvested
12 in reliance upon a misleading private offering memorandum that Greenberg had authored
13 and that contained the materially misstated financial statements of Mortgages Ltd and the
14 false “clean” audit opinion of Mayer Hoffman.
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17 63. RMA Rental and Leasing, LLP (“RMA”), is an Arizona limited liability
18 partnership. At the time of the Mortgages Ltd bankruptcy, RMA owned investment
19 interests in the amount of \$1,209,298 in MP15 that RMA had acquired, held, or reinvested
20 in reliance upon a misleading private offering memorandum that Greenberg had authored
21 and that contained the materially misstated financial statements of Mortgages Ltd and the
22 false “clean” audit opinion of Mayer Hoffman.
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25 64. Robert G. Roden is the lawful trustee for the Robert G. Roden Living Trust, a
26 trust organized under the laws of the State of Arizona. At the time of the Mortgages Ltd
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1 bankruptcy, Roden owned Pass-Through investment interests in the amount of \$4,213,829
2 that Roden had acquired, held, or reinvested in reliance upon a misleading private offering
3 memorandum that Greenberg had authored and that contained the materially misstated
4 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
5 Hoffman.
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8 65. Marcelo A. Romano is a resident of Maricopa County, Arizona. At the time
9 of the Mortgages Ltd bankruptcy, in his individual capacity, Romano owned investment
10 interests in the amount of \$141,000 membership interest in MP10 and a \$86,000
11 membership interest in MP15 that Romano had acquired, held, or reinvested in reliance
12 upon a misleading private offering memorandum that Greenberg had authored and that
13 contained the materially misstated financial statements of Mortgages Ltd and the false
14 “clean” audit opinion of Mayer Hoffman.
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17 66. The Marcelo Romano and Jeanette Romano Family Limited Liability
18 Partnership, Number One (“Romano LLP”), is an Arizona limited liability partnership. At
19 the time of the Mortgages Ltd bankruptcy, Romano LLP owned investment interests in the
20 amount of \$100,000 in Mortgages Ltd’s Pass-Through investments, \$342,419 membership
21 interest in MP9, and a \$703,364 membership interest in MP15 that Romano LLP had
22 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
23 that Greenberg had authored and that contained the materially misstated financial statements
24 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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1 67. David Rosenthal is a resident of Maricopa County, Arizona. At the time of
2 the Mortgages Ltd bankruptcy, Rosenthal owned Pass-Through investment interests in the
3 amount of \$8,705.27 that Rosenthal had acquired, held, or reinvested in reliance upon a
4 misleading private offering memorandum that Greenberg had authored and that contained
5 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
6 opinion of Mayer Hoffman.
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9 68. Morton M. Scult is Trustee of the Morton M. Scult, PC Money Purchase
10 Pension Plan (“Scult Pension Plan”), a pension plan organized in the state of Arizona. At
11 the time of the Mortgages Ltd bankruptcy, Scult Pension Plan owned Pass-Through
12 investment interests in the amount of \$1,024,900.27 that Scult Pension Plan had acquired,
13 held, or reinvested in reliance upon a misleading private offering memorandum that
14 Greenberg had authored and that contained the materially misstated financial statements of
15 Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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18 69. Robert L. Taylor and Bonnie Taylor are Trustees of The Taylor Loving Trust
19 (“Taylor Trust”), a trust organized under the laws of the state of Arizona. At the time of the
20 Mortgages Ltd bankruptcy, the Taylor Trust owned investment interests in the amount of
21 \$241,617 in MP09 that the Taylor Trust had acquired, held, or reinvested in reliance upon a
22 misleading private offering memorandum that Greenberg had authored and that contained
23 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
24 opinion of Mayer Hoffman.
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1 70. Robert L. Taylor is Trustee of the Robert L. Taylor DDS, PC Profit Sharing
2 Plan & Trust (“Taylor Profit Plan”), a profit sharing plan organized in the state of Arizona.
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4 At the time of the Mortgages Ltd bankruptcy, the Taylor Profit Plan owned investment
5 interests in the amount of \$75,548.16 in MP09 that the Taylor Profit Plan had acquired,
6 held, or reinvested in reliance upon a misleading private offering memorandum that
7 Greenberg had authored and that contained the materially misstated financial statements of
8 Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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10 71. Richard K. Underwood is a resident of Maricopa County, Arizona and the
11 lawful Trustee of the Richard K. Underwood Revocable Trust Dated October 31, 1995, as
12 Amended established in Maricopa County, Arizona. At the time of the Mortgages Ltd
13 bankruptcy, Underwood owned investment interests in the amount of \$2,000,000 in
14 Mortgages Ltd’s RevOp program that Underwood had acquired, held, or reinvested in
15 reliance upon a misleading private offering memorandum that Greenberg had authored and
16 that contained the materially misstated financial statements of Mortgages Ltd and the false
17 “clean” audit opinion of Mayer Hoffman.
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20 72. Verma Katarina Mortgage Investment, LLC (“Verma”) is an Arizona Limited
21 Liability Company doing business in Maricopa County. At the time of the Mortgages Ltd
22 bankruptcy, Verma owned investment interests in the amount of \$9,444,082 in Mortgages
23 Ltd’s RevOp program that Verma had acquired, held, or reinvested in reliance upon a
24 misleading private offering memorandum that Greenberg had authored and that contained
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1 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
2 opinion of Mayer Hoffman.

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4 73. John and Taeko Vinson are residents of Maricopa County, Arizona. At the
5 time of the Mortgages Ltd bankruptcy, the Vinsons owned investment interests in the
6 amount of \$578,826 in Mortgages Ltd’s Pass-Through investments that the Vinsons had
7 acquired, held, or reinvested in reliance upon a misleading private offering memorandum
8 that Greenberg had authored and that contained the materially misstated financial statements
9 of Mortgages Ltd and the false “clean” audit opinion of Mayer Hoffman.
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12 74. Christine M. Wacknov is a resident of the state of Arizona. At the time of the
13 Mortgages Ltd bankruptcy, Wacknov owned investment interests in the amount of \$304,635
14 in MP11 and MP15 that Wacknov had acquired, held, or reinvested in reliance upon a
15 misleading private offering memorandum that Greenberg had authored and that contained
16 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
17 opinion of Mayer Hoffman.
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20 75. David Wacknov is a resident of Maricopa County, Arizona. At the time of the
21 Mortgages Ltd bankruptcy, David Wacknov owned investment interests in the amount of
22 \$650,031 in MP10 and MP15 that David Wacknov had acquired, held, or reinvested in
23 reliance upon a misleading private offering memorandum that Greenberg had authored and
24 that contained the materially misstated financial statements of Mortgages Ltd and the false
25 “clean” audit opinion of Mayer Hoffman.
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1 76. Don Watkins is a resident of Maricopa County, Arizona. At the time of the
2 Mortgages Ltd bankruptcy, Watkins and Christine Wacknov owned investment interests in
3 the amount of \$80,000 in MP15 that Watkins had acquired, held, or reinvested in reliance
4 upon a misleading private offering memorandum that Greenberg had authored and that
5 contained the materially misstated financial statements of Mortgages Ltd and the false
6 “clean” audit opinion of Mayer Hoffman.
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9 77. WMS Fixed Income Fund I, LLC (“WMS”) is an Arizona limited liability
10 company transacting business in Maricopa County. At the time of the Mortgages Ltd
11 bankruptcy, WMS owned investment interests in the amount of \$6,848,388 in Mortgages
12 Ltd’s RevOp program that WMS had acquired, held, or reinvested in reliance upon a
13 misleading private offering memorandum that Greenberg had authored and that contained
14 the materially misstated financial statements of Mortgages Ltd and the false “clean” audit
15 opinion of Mayer Hoffman.
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18 78. WPG Family Limited Partnership (“WPG”) is a Colorado Limited
19 Partnership. At the time of the Mortgages Ltd bankruptcy, WPG owned investment
20 interests in the amount of \$100,000 in MP10 that WPG had acquired, held, or reinvested in
21 reliance upon a misleading private offering memorandum that Greenberg had authored and
22 that contained the materially misstated financial statements of Mortgages Ltd and the false
23 “clean” audit opinion of Mayer Hoffman.
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1 79. Leanore Wirtz is Trustee for The Leanore Wirtz Living Trust Dated February
2 3, 1993 (“Wirtz Trust”), a trust organized under the laws of the state of Arizona. At the
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4 time of the Mortgages Ltd bankruptcy, the Wirtz Trust owned investment interests in the
5 amount of \$24,500 in MP11, \$204,987 in MP13, and \$282,730 in MP14 that the Wirtz
6 Trust had acquired, held, or reinvested in reliance upon a misleading private offering
7 memorandum that Greenberg had authored and that contained the materially misstated
8 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
9 Hoffman.
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11 80. Diana Wykes is a resident of the State of Arizona. At the time of the
12 Mortgages Ltd bankruptcy, Wykes owned investment interests in the amount of \$80,570 in
13 MP15 that Wykes had acquired, held, or reinvested in reliance upon a misleading private
14 offering memorandum that Greenberg had authored and that contained the materially
15 misstated financial statements of Mortgages Ltd and the false “clean” audit opinion of
16 Mayer Hoffman.
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19 81. Dave Zanecki is a resident of the state of Idaho. At the time of the Mortgages
20 Ltd bankruptcy, Zanecki owned MP15 investment interests in the amount of \$727,211.46
21 that Zanecki had acquired, held, or reinvested in reliance upon a misleading private offering
22 memorandum that Greenberg had authored and that contained the materially misstated
23 financial statements of Mortgages Ltd and the false “clean” audit opinion of Mayer
24 Hoffman.
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1 concert with the other Defendants to intentionally and maliciously harm Plaintiffs. In
2 particular, but not by way of limitation, Greenberg actively participated in the illegal
3 enterprise described in this Complaint knowing that the illegal enterprise was engaging in a
4 pattern of racketeering activity.

5
6 85. Defendant Robert S. Kant (“Kant”) and Ellen P. Kant are husband and wife
7 and residents of Arizona. Kant is a Greenberg shareholder in its Phoenix office, whose
8 practice includes concentrations in corporate and securities law. Kant has caused acts or
9 events to occur within Arizona out of which these claims have arisen. At all time material
10 to this Complaint, Kant acted for and on behalf of his marital community. Kant acted in
11 concert with other members of the illegal enterprise alleged herein to intentionally and
12 maliciously harm Plaintiffs. In particular, but not by way of limitation, Kant actively
13 participated in the illegal enterprise described in this Complaint knowing that the illegal
14 enterprise was engaging in a pattern of racketeering activity. At all time material to this
15 Complaint, Kant acted within the course and scope of his agency for Greenberg.

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19 86. Greenberg and Kant shall, from time to time, be referred to herein as “the
20 Lawyer Defendants.”

21
22 **The Auditor Defendants**

23 **Mayer Hoffman McCann, P.C.**

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25 87. Defendant Mayer Hoffman McCann, P.C. (“Mayer Hoffman”) is a national
26 accounting and auditing firm organized as a Missouri professional corporation, with offices
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1 in Phoenix and other locations. Mayer Hoffman caused acts or events to occur within
2 Arizona out of which these claims have arisen. Mayer Hoffman acted in concert with the
3 Defendants to intentionally and maliciously harm Plaintiffs. In particular, but not by way of
4 limitation, Mayer Hoffman actively participated in the illegal enterprise described in this
5 Complaint knowing that the illegal enterprise was engaging in a pattern of racketeering
6 activity.
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9 88. Mayer Hoffman provided audit services for Mortgages Ltd and ML Securities.
10 For the years 2005 through 2007, Mayer Hoffman signed “clean” audit opinions issued
11 under its own corporate name. However, in performing its audit services, Mayer Hoffman
12 was actually part of a much larger venture. As described below, despite representations of
13 CBIZ, Inc. to the SEC and the public, CBIZ jointly conducted the audits of Mortgages, Ltd
14 and ML Securities.
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16
17 89. CBIZ, Inc.

18 90. Defendant CBIZ, Inc. (“CBIZ”) is a Delaware corporation in the business of
19 providing professional services including accounting and auditing services, and with offices
20 in Tucson and other cities. Defendant CBIZ caused acts or events to occur within Arizona
21 out of which these claims have arisen. Defendant CBIZ acted in concert with the
22 Defendants to intentionally and maliciously harm Plaintiffs. In particular, but not by way of
23 limitation, as alleged herein through other CBIZ entities, CBIZ actively participated in the
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1 illegal enterprise described in this Complaint knowing that the illegal enterprise was
2 engaging in a pattern of racketeering activity.

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4 91. CBIZ is a publicly traded company. As a result, CBIZ has public reporting
5 responsibilities. CBIZ regularly and routinely files reports with the Securities and
6 Exchange Commission. In those documents, CBIZ represents to the SEC and the public
7 that the statements CBIZ files therein are true and correct.

8
9 92. CBIZ maintains relationships with CPA firms that conduct audit services
10 through what CBIZ refers to an “alternative practice structure.” In essence, an alternative
11 practice structure consists of an accounting firm divided into two separate entities, a
12 professional corporation and a business corporation, thus attempting to separate the attest
13 (audit) function activities from the business services such as consulting, financial planning,
14 tax compliance and planning and other business and advisory services. The accounting
15 (professional) firm purports to perform all of the audit/attest functions including audits,
16 reviews, and compilations. Typically, in an alternative practice structure, the accounting
17 firm is 100% owned by certified public accountants and is managed by a managing member
18 who is also a CPA. Generally, in an alternative practice structure, the owners of the
19 accounting firm are employees of that accounting firm as well as employees of the business
20 services company – in this case CBIZ. There is in such an arrangement a long term
21 “administrative services agreement” (“ASA”) between the professional accounting
22 corporation and the business corporation relating to the operation of the joint business.
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1 93. From the professional accounting firm perspective, the alternative practice
2 structure, strictly adhered to, is necessary in order to maintain independence in the auditing
3 process. An improperly constructed relationship between a business corporation and its
4 related accounting corporation within the alternative practice structure could seriously
5 compromise the auditor's independence and jeopardize the integrity of any audits
6 performed.
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9 94. CBIZ purports to maintain an alternative practice structure relationship with
10 various accounting firms across the country, including Defendant Mayer Hoffman. CBIZ
11 erroneously believes that its alternative practice structure, with the accompanying ASA with
12 each accounting corporation, insulates CBIZ from liability from the errors, omissions, and
13 other wrongful conduct committed by the accounting firm in the course of performing
14 professional accounting services, including audit services. However, because of the way
15 CBIZ and Mayer Hoffman actually structured their relationship, the way they staffed and
16 performed audits, including audits for Mortgages Ltd. and ML Securities, and because of
17 the way CBIZ markets and represents its services to the public and the SEC, CBIZ cannot
18 escape responsibility for the acts of Mayer Hoffman, as alleged herein.
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22 95. In CBIZ public filings with the SEC, CBIZ has indeed characterized its
23 relationship with Mayer Hoffman as an alternative practice structure, governed by an ASA.
24 However, CBIZ acknowledges in its public filings that most of the "managers/shareholders
25 of the CPA firms are also CBIZ employees..." Such is the case and such has been the case
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1 with Mayer Hoffman auditors, including those auditors and partners of Mayer Hoffman who
2 worked on and were responsible for the audits of Mortgages Ltd. and ML Securities for
3 2005, 2006, and 2007. At all relevant times, those auditors and partners of Mayer Hoffman
4 have been employees and agents of CBIZ. Moreover, the audits of Mayer Hoffman
5 McCann conducted for Mortgages, Ltd and ML Securities were staffed by accountants and
6 other employees who were not only Mayer Hoffman McCann employees, but who were also
7 CBIZ employees. Consequently, the acts and omissions of Mayer Hoffman, as alleged
8 herein, were in fact also the acts of CBIZ and CBIZ is liable for the acts and omissions of
9 Mayer Hoffman, as alleged herein.
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13 96. In its public filings with the SEC, CBIZ describes its business as a unified
14 “provider.” For example, in its 2006 Annual Report (10k), CBIZ states the following about
15 its business:
16

17 CBIZ believes that our diverse and integrated services offerings results
18 in advantages for both the client and for CBIZ. By providing custom
19 solutions that help our clients manage their finances, employees and
20 technology, CBIZ enables our clients to focus their resources on their
21 own core business and operational competencies. Additionally,
22 working with one provider for several solutions enables our clients to
23 utilize their resources more efficiently by eliminating the need to
24 coordinate with multiple service providers. For example, the employee
25 data used to process payroll can also be used by a CBIZ health and
26 welfare insurance agent and benefits consultant to provide an
27 appropriate benefits package to a client’s employee base. In addition,
28 the relationship our accounting and tax advisors have with their clients
allows us to identify financial planning, wealth management, and other
business opportunities. **The ability to combine several services and
offer them through one trusted provider distinguishes CBIZ from
other service providers.**

1 (2006 10k, p. 3) (emphasis added)

2 97. Thus, CBIZ represents to the public that it is “one trusted provider” for all the
3 services it offers under the umbrella of the CBIZ name. This certainly includes the audit
4 services provided to Mortgages Ltd. and ML Securities, as described herein. In substance
5 and form, CBIZ has represented and continues to represent to the public that it stands
6 behind its combined services and that it is in effect a joint enterprise or joint venture
7 operating for the benefit and convenience of its clients.
8

9 98. CBIZ shares the revenue of Mayer Hoffman for Mayer Hoffman’s accounting
10 services, including its audit services, including those services provided to Mortgages Ltd
11 and ML Securities. The ASA itself establishes that CBIZ receives 85% of Mayer
12 Hoffman’s gross revenues as CBIZ’s “services fee.” In addition, CBIZ provides various
13 function and support items for Mayer Hoffman in its audit work, including accounting
14 personal, administrative services, office space, marketing material, equipment, and even
15 collection services.
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19 99. Based upon public representations by Mayer Hoffman and CBIZ, it is clear
20 that CBIZ and Mayer Hoffman desired to create the belief in the public that CBIZ and
21 Mayer Hoffman were and are joint ventures. In fact, based upon those representations,
22 CBIZ and Mayer Hoffman did in fact create in the public mind the perception that Mayer
23 Hoffman and CBIZ were and are joint ventures in providing services under the umbrella of
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1 CBIZ business services, including those audit services provided to Mortgages Ltd and ML
2 Securities.

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4 100. In the promotional brochure that Mayer Hoffman distributed to prospective
5 clients, including Mortgages Ltd, Mayer Hoffman described the close relationship Mayer
6 Hoffman has with CBIZ. In particular, the CBIZ/Mayer Hoffman promotional brochure
7 states as follows:
8

9 Mayer Hoffman McCann, P.C.'s expertise may be supplemented with
10 resources available through our association with CBIZ, Inc...This
11 model provides the resources to fill your management and operational
12 needs, allowing you to focus on your core business. **CBIZ consists of**
13 **the nations top business service providers working together to**
14 **function as your single, powerful resource for outsourced business**
solutions. Nationally, CBIZ is the 10th largest accounting services
15 firm, the #1 benefits specialist (as ranked by Business Insurance and a
16 leading valuation services firm).

17 (About Mayer Hoffman McCann, P.C. p. 3)(emphasis added)

18 **CBIZ MHM, LLC**

19 101. Defendant CBIZ MHM, LLC ("CBIZ MHM") is a Delaware limited liability
20 company, authorized to do business in the state of Arizona with an office situated in and
21 conducting business in Maricopa County, Arizona. Defendant CBIZ MHM caused acts or
22 events to occur within Arizona out of which these claims have arisen. Defendant CBIZ
23 MHM acted in concert with the Defendants to intentionally and maliciously harm Plaintiffs.
24 In particular, but not by way of limitation, Defendant CBIZ MHM actively participated in
25 the illegal enterprise described in this Complaint knowing that the illegal enterprise was
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1 engaging in a pattern of racketeering activity. In its current website for the Phoenix office,
2 CBIZ MHM states that “CBIZ MHM, LLC became part of the National CBIZ family in
3 1999. Miller Wagner & Company, PLLC’s evolution to Mayer Hoffman McCann, PC is
4 the next logical step.” Moreover, on the CBIZ website for the Phoenix, Arizona office,
5 CBIZ MHM represents that it is “Arizona’s 7th largest accounting and business consulting
6 firm”. However, it appears that CBIZ MHM has now assumed responsibility for the Mayer
7 Hoffman office in Phoenix, Arizona, including any and all liabilities arising out of Mayer
8 Hoffman performance of audits for Mortgages Ltd and ML Securities for 2005, 2006 and
9 2007.

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13 102. CBIZ MHM was formerly known as CBIZ Accounting, Tax & Advisory
14 Services, LLC (“CBIZ TAS”). CBIZ caused CBIZ TAS to change its name in September
15 2008, following the death and demise of Scott Coles and Mortgages Ltd. CBIZ expressly
16 identified CBIZ TAS in its 2006 10-K filing with the SEC as one of its 59 subsidiaries.
17 CBIZ has dominated and controlled the business, operations, and financial affairs of CBIZ
18 TAS and CBIZ MHM. Jerome P. Grisko, Jr., President and Chief Operating Office of
19 CBIZ, is the manager of CBIZ MHM. As a result of the high degree of control and
20 domination over CBIZ TAS/CBIZ MHM, CBIZ is thus liable for the acts and omissions of
21 CBIZ TAS and CBIZ MHM, as alleged herein. In particular, but not by way of limitation,
22 CBIZ was aware of, authorized, and sanctioned the acts of agents and employees of CBIZ
23 TAS/CBIZ MHM as alleged herein. CBIZ is thus liable for the acts and omissions of those
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1 agents and employees. Plaintiffs shall hereinafter refer to CBIZ MHM and CBIZ TAS as
2 CBIZ MHM.

3
4 103. At all times material to this case, Mayer Hoffman partners and the audit
5 partners and audit team members of Mayer Hoffman who worked on the Mortgages Ltd and
6 ML Securities audits for 2005, 2006, and 2007 were agents and employees of CBIZ MHM
7 and, as a result, CBIZ. These employees and agents of Mayer Hoffman routinely and
8 regularly indicated to Mortgages Ltd and ML Securities that they were acting during the
9 relevant audits as representatives of both Mayer Hoffman and CBIZ.
10

11 104. CBIZ Accounting, Tax & Advisory Services of Phoenix, LLC
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13 105. Defendant CBIZ Accounting, Tax & Advisory Services of Phoenix, LLC
14 (“CBIZ TASPFX”) is a Delaware limited liability company authorized to do business in the
15 state of Arizona. CBIZ TASPFX was formerly known as CBIZ Miller Wagner, LLC.
16 CBIZ TASPFX is also listed in CBIZ’s 2006 10-K filing with the SEC as one of CBIZ’s 59
17 subsidiaries. CBIZ TASPFX gave material assistance to Mayer Hoffman in conducting the
18 audits of Mortgages Ltd and MI Securities and otherwise caused acts or events to occur
19 within Arizona out of which these claims have arisen. CBIZ TASPFX acted in concert with
20 the Defendants to intentionally and maliciously harm Plaintiffs. In particular, but not by
21 way of limitation, CBIZ TASPFX actively participated in the illegal enterprise described in
22 this Complaint knowing that the illegal enterprise was engaging in a pattern of racketeering
23 activity.
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1 106. CBIZ has dominated and controlled the business, operations, and financial
2 affairs of CBIZ TASPHEX. Jerome P. Grisko, Jr., President and Chief Operating Office of
3 CBIZ, is also the manager of CBIZ TASPHEX. The only member of record for CBIZ
4 TASPHEX is ONECBIZ, Inc., an Ohio corporation that is also a subsidiary of CBIZ. As a
5 result of the high degree of control and domination over CBIZ TASPHEX, CBIZ is thus
6 liable for the acts and omissions of CBIZ TASPHEX, as alleged herein. In particular, but not
7 by way of limitation, CBIZ was aware of, authorized, and sanctioned the acts of agents and
8 employees of CBIZ TASPHEX as alleged herein. CBIZ is thus liable for the acts and
9 omissions of those agents and employees.
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13 107. As set forth herein, CBIZ, CBIZ MHM, and CBIZ TASPHEX (collectively “the
14 CBIZ entities”) and Mayer Hoffman were joint venturers and otherwise acted in concert, in
15 connection with the preparation and issuance of the audit reports for Mortgages Ltd’s 2005,
16 2006, and 2007 financial statements, and in connection with all conduct of defendant Mayer
17 Hoffman described below in this Complaint. Accordingly the CBIZ entities and Mayer
18 Hoffman are jointly and severally liable for such conduct. Further, the CBIZ entities acted
19 as controlling persons of Mayer Hoffman, within the meaning of A.R.S. §44-1999 in
20 connection with all conduct of Mayer Hoffman described below, and are jointly and
21 severally liable for such conduct. Therefore, references to Mayer Hoffman in this Complaint
22 shall also intend to refer to the CBIZ entities. Mayer Hoffman and the CBIZ entities shall,
23 from time to time in this Complaint, be referred to as “the Auditor Defendants.”
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Hirsch & Shah CPAs, LLC

108. Defendant Hirsch & Shah CPAs, LLC, (“Hirsch & Shah”) is an Arizona limited liability company. The principals of Hirsch & Shah are also principals of Radical Bunny, LLC. For many years, Hirsch & Shah performed accounting and tax services for Mortgages Ltd and Scott Coles. In particular, but not by way of limitation, Hirsch & Shah provided tax services to certain Pool investments, providing K1 forms to certain investors, including certain Plaintiffs.

109. At all times relevant to this case, Tom Hirsch acted for and on behalf of Hirsch & Shah. Hirsch & Shah is liable for the acts of Tom Hirsch, including the acts of Radical Bunny. Hirsch & Shah otherwise caused acts or events to occur within Arizona out of which these claims have arisen. Hirsch & Shah acted in concert with the Defendants to intentionally and maliciously harm Plaintiffs. In particular, but not by way of limitation, Hirsch & Shah actively participated in the illegal enterprise described in this Complaint knowing that the illegal enterprise was engaging in a pattern of racketeering activity.

110. The auditor Defendants, the lawyer Defendants, and Hirsch & Shaw acted in concert with one another in carrying out the acts alleged herein for the purpose of advancing the illegal enterprise. Consequently, the auditor Defendants, the lawyer Defendants, and Hirsch & Shaw are jointly and severely liable for the conduct of one another as alleged herein.

1 proceeds. Plaintiffs allege herein that the life insurance policies were acquired by the illegal
2 enterprise through its pattern of racketeering activity and, consequently a constructive trust
3 should be imposed on all of the proceeds thereof.
4

5 113. Defendant Haley Brooke Coles is a resident of Maricopa County, Arizona.
6 Defendant Haley Brooke Coles caused acts or events to occur within Arizona out of which
7 these claims have arisen. Haley Brooke Coles is the non-minor daughter of Scott Coles.
8 Plaintiffs have named Haley Brooke Coles as a Defendant in this case, not because they
9 currently believe Haley Brooke Coles participated in the illegal enterprise set forth herein.
10 Rather, Plaintiffs name Haley Brooke Coles as a Defendant in this case for purposes of
11 Count Seven for a constructive trust over the insurance proceeds from the life insurance on
12 the life of Scott Coles. Haley Brooke Coles received a substantial amount of life insurance
13 proceeds. Plaintiffs allege herein that the life insurance policies were acquired by the illegal
14 enterprise through its pattern of racketeering activity and, consequently a constructive trust
15 should be imposed on all of the proceeds thereof.
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19 **III. FACTUAL BACKGROUND**

20 *“PONZI ARRESTED; LIABILITIES PUT AT*
21 *\$7,000,000...INVESTORS GROW IN NUMBER...*

22 *“...Some 40,000 investors entrusted a total variously*
23 *estimated at from \$15,000,000 to \$20,000,000 to Ponzi in a*
24 *scheme which postal officials to-day declared to be*
25 *absolutely impossible of fulfillment.”*

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1 **A. Scott Coles' Ambition and Greed Transformed Mortgages Ltd From a**
2 **Bastion of Trust Into a Vehicle of Fraud and Betrayal.**

3 114. During the many years he worked at Mortgages Ltd under his father's
4 leadership, Scott Coles learned the conservative business plan and practices of his father's
5 company. However, once he ascended to the position of sole ownership and control of
6 Mortgages Ltd, Coles jettisoned those conservative principles and launched into a frenzied
7 campaign of explosive growth fueled and enabled by massive fraud.
8

9 115. Through his revocable trust, SMC Revocable Trust, Scott Coles owned and
10 controlled Mortgages Ltd and ML Securities. There was in fact no independent board of
11 directors. The underwriting function at Mortgages Ltd was an illusion. The only corporate
12 governance and internal control on loans was, effectively, Scott Coles.
13

14 **1. Mortgages Limited Had a Unitary Financing Plan.**

15 116. Mortgages Ltd was a hard money lender. Mortgages Ltd loaned money to
16 borrowers for commercial, industrial and residential properties for acquisition, entitlement,
17 development, construction and investment. Historically, the majority of Mortgages Ltd's
18 loans were high interest, short-term loans secured by real estate, including multifamily
19 residential projects, office buildings, and mixed-use projects within Arizona.
20

21 117. Mortgages Ltd loaned out very little of its own money. Instead, Mortgages
22 Ltd utilized a simple, two-pronged financing plan to obtain the money it loaned to
23 borrowers. One prong of Mortgages Ltd's financing plan was to raise funds from investors
24 through private offerings and then loan that money to Mortgages Ltd's "borrowers" in
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1 exchange for promissory notes secured by deeds of trust on the borrowers' real property.
2 Under this part of the financing plan, "investors" acquired their securities through either the
3 "Pass-Through" program or the "Pools" program.
4

5 118. Under the Pass-Through investment program, Mortgages Ltd would enter into
6 a loan arrangement with a borrower, taking a promissory note and deed of trust in return,
7 which Mortgages Ltd would record. Mortgages Ltd would then solicit through a private
8 offering memorandum and then receive "investor" money to "participate" in that particular
9 loan. Mortgages Ltd would then assign an interest – the fractionalized interest – in the note
10 and deed of trust to each individual investor. The Pass-Through programs used by
11 Mortgages Ltd were the Revolving Opportunity Loan Program ("Rev-Op" investment),
12 Capital Opportunity Loan Program, Annual Opportunity Loan Program, Opportunity Plus
13 Loan Program, Performance Plus Loan Program, or other similar programs. When
14 Plaintiffs acquired fractional interests by means of the Pass-Through program, those
15 fractional interests belonged to and were the property of the respective purchaser/Plaintiff,
16 not Mortgages Ltd. However, Mortgages Ltd may have owned a fractional interest in some
17 of the same loans in its own name.
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22 119. From 2006 through June 2, 2008, Mortgages Ltd and ML Securities offered
23 Pass-Through investments to the public, including Plaintiffs, by means of 2 private offering
24 memoranda authored by Defendants Kant and Greenberg and containing the incomplete,
25 inaccurate and/or misleading audited financial statements of Mortgages Ltd and clean audit
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1 opinions of Mayer Hoffman, despite knowledge by Defendants that the audits were not
2 clean. In acquiring, retaining, or reacquiring their respective investment securities, as set
3 forth below, Plaintiffs received, read and relied upon one or more of the foregoing private
4 offering memoranda.
5

6 120. The Revolving Opportunity Loan program (“RevOp program”) was similar to
7 the Pass-Through program, but included additional benefits and incentives. It was a
8 program through which Mortgages Ltd and ML Securities offered fractionalized interests in
9 various loans to qualified, accredited participants. The RevOp program was particularly
10 attractive to higher net worth participants because of its purported liquidity. The RevOp
11 program was, fundamentally, a Pass-Through investment program, with extra features.
12 Mortgages Ltd and ML Securities began the RevOp program in 2005 and it continued into
13 2008.
14
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16 121. In the RevOp program, investors were guaranteed to receive a preferred rate
17 of return regardless of actual collections by Mortgages Ltd on the underlying real estate
18 loans. RevOp participants signed the operative documents as participants in any other Pass
19 Through Participation program. In addition to the operative documents, RevOp investors
20 were required to sign the Revolving Opportunity Loan Program Purchase Agreement
21 (“RevOp Agreement”), which was authored by the Lawyer Defendants.
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24 122. The “Pools” were another funding vehicle Mortgages Ltd and ML Securities
25 devised to attract money to Mortgages Ltd. Also known as “MP Funds,” the “Pools” were
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1 (at the time of Mortgages Ltd's bankruptcy) nine limited liability companies: MP122009
2 LLC (known as MP9), MP062011 LLC (known as MP10), MP122030 (known as MP11),
3 Mortgages Ltd. Opportunity Fund MP12 L.L.C. (known as MP12), Mortgages Ltd.
4 Opportunity Fund MP13 L.L.C. (known as MP13), Mortgages Ltd. Opportunity Fund MP14
5 L.L.C. (known as MP14), Mortgages Ltd. Opportunity Fund MP15 L.L.C. (known as
6 MP15), Mortgages Ltd. Opportunity Fund MP16 L.L.C. (known as MP16), Mortgages Ltd.
7 Opportunity Fund MP17 L.L.C. (known as MP17). Each fund was a separate Arizona
8 limited liability company and Mortgages Ltd was the sole manager of each LLC. Thus,
9 Mortgages Ltd controlled the Pools. An interested investor would acquire a membership
10 interest in one or more of the Pool LLCs. The Pools, in turn, acquired fractional interests in
11 Mortgages Ltd's loans and collateral. These fractional interests are the property of the
12 Pools, not of Mortgages Ltd. The "Pool" investor had no managerial control whatsoever
13 over any of the Pools.
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18 123. From 2006 through June 2, 2008, Mortgages Ltd and ML Securities offered
19 Pool investments to the public, including Plaintiffs, by means of 9 private offering
20 memoranda authored by Defendants Kant and Greenberg and containing the incomplete,
21 inaccurate and/or misleading audited financial statements of Mortgages Ltd and clean audit
22 opinions of Mayer Hoffman, despite knowledge by Defendants that the audits were not
23 clean.
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1 124. The other prong of Mortgages Ltd's financing plan was to acquire funds from
2 Radical Bunny, LLC, one of the members of the illegal enterprise. In exchange, Mortgages
3 Ltd allegedly issued Radical Bunny, LLC, promissory notes reflecting the loans. It was
4 through this aspect of the financing plan that Radical Bunny became the financier of the
5 entire illegal enterprise. Radical Bunny was formed for the sole purpose of funding
6 Mortgages Ltd using funds provided through the sale of unregistered securities.
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8

9 125. Radical Bunny also participated in the Pass-Through program through
10 Mortgages Ltd and ML Securities.
11

12 126. The transactions by which Radical Bunny loaned money to Mortgages Ltd,
13 and each of the 11 offerings prepared by Greenberg for Mortgages Ltd and ML Securities
14 and containing Mayer Hoffman's clean audit opinions, were part and parcel of a single
15 unitary financing scheme for Mortgages Ltd, despite the fact that these financing schemes
16 spanned a period of almost two years.
17

18 127. Each aspect of the financing scheme involved the issuance of the same or
19 substantially similar class of securities. While the Pool investor obtained a limited liability
20 company membership interest, all transactions revolved around an issuance or transfer of
21 debt securities. In all instances, the consideration for issuance or transfer of the debt
22 securities or membership interests was cash.
23

24 128. Moreover, the private offerings and the transactions with Radical Bunny were
25 ostensibly made for the same general purpose: to provide Mortgages Ltd with funds to loan
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1 to borrowers and from which to pay fees to the illegal enterprise. Indeed, Mortgages Ltd,
2 ML Securities, the Auditor Defendants, the Lawyer Defendants, and Hirsch & Shah
3 enabled, allowed, facilitated, and otherwise caused the unregistered securities to Radical
4 Bunny and by Radical Bunny in order to avoid the registration requirements of federal and
5 state laws and in order to sell those unregistered securities to an unlimited number of
6 unaccredited investors.
7

8
9 129. Consequently, as a result of the foregoing factors, (1) each of the 11 offerings
10 of Mortgages Ltd and ML Securities from June 30, 2006 through June 2, 2008; (2) the
11 transactions by which Mortgages Ltd obtained over \$197,000,000 from Radical Bunny; and
12 (3) the transactions by which Radical Bunny raised the funds it provided to Mortgages Ltd,
13 should be integrated into a single unified offering. As the members of the illegal enterprise
14 knew, that offering should have been, but was not, registered.
15

16
17 **2. Mortgage Ltd/Scott Coles Betrayed the Fiduciary Duties**
Owed to Plaintiffs.
18

19 130. Mortgages Ltd and Scott Coles took upon themselves fiduciary duties to
20 Plaintiffs. That duty was ingrained into every major document Plaintiffs had to sign to
21 acquire their interests. That duty was also an iron-clad by-product of everything Scott Coles
22 and Mortgages Ltd said and did to draw Plaintiffs into their investments and to keep them
23 there. That duty was part of everything Chuck Coles had instilled into the culture and
24 business of Mortgages Ltd. In the end, that fiduciary duty meant nothing to Scott Coles and
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1 the illegal enterprise. It became a malicious and manipulative tool they could use to cloak
2 their fraud and protect the illegal enterprise.

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4 131. With Greenberg's express help and approval, Mortgages Ltd built the
5 fiduciary duty into its agreements with Plaintiffs. Each participant who entered into the
6 Pass-Through program, including all RevOp participants, were required to sign a document
7 that has been referred to as the "Agency Agreement." In most instances, Scott Coles signed
8 the Agency Agreement on behalf of the participant and on behalf of Mortgages Ltd. The
9 Agency Agreement purports to give Mortgages Ltd the authority to act in various ways to
10 perform all of the tasks necessary to carry out the intent of the respective agreements each
11 participant signed when paying money to Mortgages Ltd. In fact, each participant and Scott
12 Coles understood that Scott Coles controlled Mortgages Ltd's performance under the
13 Agency Agreement. The Agency Agreement created a fiduciary duty on the part of
14 Mortgages Ltd and Scott Coles to every participant in the Pass-Through loan and RevOp
15 programs.

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19 132. The Pool participants became members of an LLC of which Mortgages Ltd
20 was the Manager. Thus, because he controlled Mortgages Ltd, Scott Coles likewise took
21 upon himself a fiduciary obligation as the de facto manager of the Pool LLCs to each
22 member of the Pool LLCs.

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25 133. Scott Coles/Mortgages Ltd also took upon themselves fiduciary duties to
26 Plaintiffs by the things Scott Coles said and did. Coles proudly and regularly announced to
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1 the world and to Plaintiffs that trust and confidence were the foundation of the relationship
2 with Plaintiffs.

3
4 134. Scott Coles communicated often with all participants in all programs of
5 Mortgages Ltd, whether it be Pass-Through, RevOp, or Pool participants. Scott Coles often
6 communicated with these interested parties by mail and newsletter from Mortgages Ltd.
7 Scott Coles utilized the U.S. Mail system to communicate with these interested parties,
8 including Plaintiffs. In these communications, Scott Coles routinely omitted material facts
9 about the financial condition and status of loans at Mortgages Ltd and, while at the same
10 time reinforcing his request and agreement that he served as a fiduciary to each and every
11 one of the participants who had committed money to Mortgages Ltd in any of its programs.
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14 135. Scott Coles' omissions and overt misrepresentations in his communications to
15 his participants, including Plaintiffs, was calculated to either lure new participants into
16 Mortgages Ltd programs or persuade existing participants to remain with Mortgages Ltd
17 and continue to allow Mortgages Ltd to function in its capacity as a loan servicing operation
18 and thereby make additional fees. Scott Coles' letter of November 7, 2007 typifies Scott
19 Coles' fraudulent communications with Mortgages Ltd participants. In that letter, Coles
20 states that "our borrowers are bankable and their projects represent the best collateral
21 available when the loans were made." Given what Coles knew about the monster loans he
22 had agreed to during 2007, this statement was manifestly and materially misleading and
23 false. Moreover, this letter, as well as many other letters, create the impression in the mind
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1 of the reader that “all is well” at Mortgages Ltd, when in fact, just the opposite was true. In
2 this letter, and others, Scott Coles failed to disclose the truth about the dangerous and
3 deteriorating picture of Mortgages Ltd’s financial health. In each and every instance of
4 communication with participants, Scott Coles deliberately chose to omit material
5 disclosures.
6

7
8 136. The November 7, 2007 letter from Scott Coles to all participants is significant
9 for another reason. It sets forth clearly and unequivocally Scott Coles’ understanding and
10 agreement that he was acting as a fiduciary to every participant in every program of
11 Mortgages Ltd, including Plaintiffs. In that letter, Scott Coles says:
12

13 Our overarching commitment is to protect your principal and to
14 ensure superior returns on your investment, which is why you have
15 told us that you invest here... My father, Charles J. Coles, founded
16 our company on one simple premise: integrity. Integrity is reflected
17 in all that we do and how we do it. Living this passion is the
18 cornerstone of Mortgages Ltd. When it comes to protecting and
19 managing your wealth, especially in a highly competitive market
20 place, integrity is the only asset that matters.

21 137. Thus, Scott Coles acknowledged and, indeed, solicited the trust and
22 confidence of every participant in every Mortgages Ltd program, including Plaintiffs, with
23 this language and language similar to it in other correspondence and communication directly
24 to participants, including Plaintiffs. Coles wanted participants to believe that his role was to
25 protect and manage their wealth, in particular, the cash principal each participant had placed
26 at Mortgages Ltd.
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1 138. Even as late as April of 2008, Scott Coles was sending communications to
2 participants, including Plaintiffs, that were materially misleading, while at the same time
3 continuing to solicit and acknowledge their relationship of trust and confidence. For
4 example, on approximately April 4, 2008, using the U.S. Mail system to do so, Scott Coles
5 sent a materially misleading letter to all participants (Scott Coles referred to them as
6 “investors”) relating to the Tempe Land Company loan and the Centerpoint Project. In that
7 letter, Scott Coles says nothing to the participants of the troubles with that particular project
8 or the loan itself. Scott Coles says nothing to the participants about Mortgages Ltd’s
9 inability to fund the full amount of that loan. Rather, Scott Coles details for the investors
10 certain misleading and slanted observations about that project and, indeed, solicits the
11 investors to participate in a new promissory note, calling it a “spectacular project.” At the
12 end of the letter, as with every communication with investors, Scott Coles solicits and
13 acknowledges the relationship of trust and confidence to each participant, including
14 Plaintiffs. He simply said, “Once again, we appreciate your continued trust and support.”

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19 139. On April 14, 2008, in a letter to each participant, including Plaintiffs, Scott
20 Coles announced a new “product” of Mortgages Ltd – the “Value-To-Loan Opportunity
21 Fund” In that correspondence, Scott Coles details the Value-To-Loan Opportunity Fund
22 (“VTL”) and calls it “one of the most innovative products Mortgages Ltd has created in its
23 45-year history and we have a patent pending on it.” Essentially, the purpose of the VTL
24 fund was to loan money to the Pools. However, in reality, the VTL program was nothing
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1 more than Scott Coles' veiled and misleading effort to continue to pump money into the
2 Pools and to further mask the deepening and declining financial disaster at Mortgages Ltd.
3
4 However, Scott Coles did not announce nor market VTL in that way to Plaintiffs.

5 140. Mortgages Ltd and the Lawyer Defendants created and enabled the VTL
6 investment program as a vehicle by which they could disguise the deepening insolvency and
7 serious financial condition of Mortgages Ltd. In fact, Mortgages Ltd and the Lawyer
8 Defendants intended VTL to play an important part in the overall Ponzi scheme of the
9 illegal enterprise. In particular, the illegal enterprise intended VTL to be a mechanism by
10 which the impound accounts would be funded and by which investors could be paid
11 "interest," to create the appearance that the particular loans were being funding and were in
12 fact paying off.
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15 141. Coles convened a general meeting on May 5, 2008, at the offices of
16 Mortgages Ltd in Phoenix, Arizona to promote and solicit participation in the VTL. At the
17 top of the agenda for that meeting, Scott Coles put the following statement, attributed to
18 him: "Though times may be difficult, together we will navigate through." Truly, Scott
19 Coles saw himself and Mortgages Ltd as fiduciaries to each and every participant, including
20 Plaintiffs.
21
22

23 142. In short, Scott Coles' and Mortgages Ltd's entire way of doing business, and
24 the foundation of every effort to reach out and maintain relationships with participants,
25 focused upon the acknowledgement that they personally owed a fiduciary obligation to each
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1 participant. In reality, Scott Coles and Mortgages Ltd controlled the mechanism by which
2 all participants, including Plaintiffs', financial interests were managed, changed, and
3 otherwise handled. He controlled Plaintiffs' property interests.
4

5 143. Scott Coles and Mortgages Ltd betrayed every fiduciary duty they had to
6 Plaintiffs, with the knowing and substantial assistance of the Auditor Defendants, the
7 Lawyer Defendants, and Hirsch and Shaw.
8

9 144. Scott Coles and Mortgages Ltd breached their fiduciary duty to Plaintiffs in at
10 least two ways. First, they created and enforced a culture of deception and concealment,
11 misrepresenting facts and failing to disclose material facts to Plaintiffs in nearly every facet
12 of their relationship. Second, Scott Coles and Mortgages Ltd conducted the business of
13 Mortgages Ltd in a manner solely calculated to benefit and protect the illegal enterprise.
14 Members of the illegal enterprise, including Coles and Mortgages Ltd conducted the
15 business of Mortgages Ltd in conscious and malicious disregard for the rights of Plaintiffs.
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18 145. Plaintiffs raise in this Complaint three fundamental areas where Scott Coles
19 and Mortgages Ltd conducted the business of Mortgages Ltd in a manner solely calculated
20 to benefit and protect the illegal enterprise. First, acting in concert with the Lawyer
21 Defendants and Auditor Defendants, Coles, Mortgages Ltd, and ML Securities issued 11
22 private offering memoranda that materially misrepresented the financial condition and
23 operations of Mortgages Ltd. Second, Coles made unilateral decisions about placing Pass-
24 Through program investors, including Plaintiffs, into various loans, without their knowledge
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1 and approval. Third, beginning in 2006, Coles and Mortgages Ltd made five jumbo loans
2 that were not in the best interest of Plaintiffs.

3
4 (a) **Acting in Concert With the Lawyer Defendants and the**
5 **Auditor Defendants, Coles, Mortgages Ltd, and ML**
6 **Securities Created and Maintained a Culture of Deception,**
7 **Which Included Issuing 11 Private Offering Memoranda**
8 **That Fraudulently Misrepresented the Financial Condition**
9 **and Operations of Mortgages Ltd.**

10 146. One of the enduring slogans of Mortgages Ltd was “We see things
11 differently.” A more accurate version of that slogan would be “We see things differently ...
12 because when we manipulate the truth, anything is possible.” Acting in concert with the
13 Lawyer Defendants and the Auditor Defendants, Coles and Mortgages Ltd created,
14 maintained, and enforced a culture of deception at Mortgages Ltd. Indeed, from that
15 cultural of deception, acting in concert with the Lawyer Defendants and Auditor
16 Defendants, Coles and Mortgages Ltd issued 11 private offering memoranda that willfully,
17 maliciously, and materially misrepresented the financial condition and the operations of
18 Mortgages Ltd.

19
20 147. The massive fraud at Mortgages Ltd was in fact the subject of a lengthy
21 investigation by the United States Securities and Exchange Commission. After that
22 investigation, on January 19, 2010, the SEC issued an Order Instituting Administrative
23 Proceedings (SEC Order No. 34-61377 dated January 19, 2010). ML Securities consented
24 to the Order, which contains pointed findings about the rampant fraud that had been
25 occurring at Mortgages Ltd and ML Securities. Paragraphs 148 through 172 below are from
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1 the SEC Order. Plaintiffs adopt and incorporate into this Complaint the findings of the SEC
2 as follows:

3
4 148. “MLS made oral and written misrepresentations to investors concerning the
5 safety and liquidity of the investment and risks associated with the investment. MLS led
6 investors to believe that the loans MLtd. had underwritten were safer than they actually
7 were, and investors were unaware that MLtd. was taking on larger and riskier loans. MLS
8 misrepresented how the declining market conditions that worsened throughout 2007
9 impacted the safety of the investment, and how MLtd. and its principal had increasingly
10 resorted to selling their personal assets to prop up MLtd.”
11

12
13 149. “. . . MLS is an Arizona limited liability company with its principal place of
14 business in Phoenix, Arizona. MLS has been registered with the Commission since 2004 as
15 a broker-dealer. MLS is solely owned by SMC Revocable Trust, a family trust established
16 by MLS’s deceased president and CEO, Scott M. Coles, who was also the sole trustee.”
17

18 150. “Mortgages Ltd. is an Arizona-based private lender which, from 2004 to June
19 2, 2008, raised more than \$741 million from about 2,700 investors nationwide through
20 MLS. MLtd. also received more than \$197 million in the form of promissory notes from its
21 largest investor, Radical Bunny, LLC.”
22

23 151. “Scott M. Coles (“Coles”) owned, operated and managed MLtd. until his
24 death on June 2, 2008.”
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1 152. “Radical Bunny, LLC (“Radical Bunny”) is an Arizona limited liability
2 company co-managed by four individuals. Between 1996 and 2008, Radical Bunny raised
3 funds from investors in a series of unregistered securities offerings and either invested or
4 loaned the offerings proceeds to MLtd.”
5

6 153. “From its inception in 2004 through June 2008, MLS raised \$741 million
7 from approximately 2,700 investors nationwide through the offer and sale of securities
8 issued by MLtd. MLtd. maintained an inventory of high interest, short-term loans it made to
9 real estate developers, which MLtd. then securitized and sold through eleven private
10 placement offerings made through MLS. Investors had the option to invest either in specific
11 loans (the “pass-through investors”) or in one of several funds (the “pooled fund investors”)
12 that purchased various loans or portions of loans originated by MLtd. MLtd. typically
13 created an “impound account” that would take a portion of the loan amount, set it aside, and
14 use those funds to make the periodic interest payments to the investors for the term of the
15 investment.”
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19 154. “In lieu of commissions, MLtd. paid MLS a monthly placement fee. From
20 January 2007 to June 2008 (the “relevant period”), MLS’s monthly placement fees totaled
21 \$6,973,785. During the relevant period, MLS employed eight to ten registered
22 representatives at a time. MLS did not advertise. New investors came to MLS through
23 word-of-mouth referrals from existing investors.”
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1 155. “Before investing, investors received a private offering memorandum
2 (“POM”), subscription agreement, the most recent quarterly report for the funds, and current
3 newsletter. Pass-through investors also received a loan summary sheet that detailed the
4 specific loan. MLtd. also sent newsletters to existing investors. The POMs contained broad,
5 general statements regarding MLtd.’s loan origination business and general risk factors. The
6 POMs did not address the specific practices employed by MLtd. and related risks, and were
7 never amended or updated to reflect these facts. Moreover, while investors received the
8 audited financial statements for MLtd. for the years ended December 31, 2005 and 2006,
9 there was very little discussion about its liquidity position, market risk and loan funding
10 practices and investors received no information about Coles’s financial condition. Such
11 information became increasingly important as Coles and MLtd. resorted to purchasing the
12 non-performing loans to maintain the illusion that its loans were all ‘performing’.”
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17 156. “From 2001 through 2006, Coles and MLtd. increasingly originated
18 significantly larger, but fewer, loans. Many of these loans contained “delayed funding”
19 terms which obligated MLtd. to fund substantial portions of the loan in stages rather than
20 the entire amount upfront. The concentration of MLtd.’s loan portfolio in fewer, larger loans
21 and the delayed funding commitments magnified the effects of deteriorating market
22 conditions that began to impact MLtd. in late 2006 and continued throughout 2007. Coles
23 and MLtd. pursued various strategies to stave off a liquidity crisis but these strategies only
24 increased the risks to the investors.”
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1 157. “Beginning around December 2006, Coles and MLtd. received indications
2 that some of its borrowers were at risk of becoming delinquent. Such information was
3 known to MLS because Coles was both the manager of MLtd. and the president of MLS. He
4 also made available such information to MLS personnel. At the beginning of 2007, MLS
5 management recognized, and warned Coles of, the potential threats to MLtd. posed by the
6 concentration of few, big loans. Specifically, MLtd.’s vice-president of operations discussed
7 with Coles MLtd.’s liquidity issues, which were attributed to conditions in the real estate
8 market and the fact that some of MLtd.’s borrowers were not paying off loans as they
9 matured. Another officer alerted Coles that while MLtd.’s fundraising from investors was
10 sufficient to meet its existing loan funding obligations, the amount of incoming investor
11 funds was insufficient to originate new loans. He told Coles, as did MLS’s president, that
12 MLtd.’s individual loan commitments were too large and that it wasn’t prudent to create this
13 concentration of risk. Coles continually brushed these warnings aside, and marginalized
14 those who disagreed with his management decisions. In addition, MLS’s management was
15 concerned about the risks that its largest investor, Radical Bunny, posed to MLtd. Radical
16 Bunny was conducting its own unregistered securities offering to invest in MLtd. and
17 already had become a significant source of capital for MLtd.”

23 158. “By summer 2007, MLtd. stopped writing new loans with one or two
24 exceptions later in the fall. In October 2007, MLtd. faced increased loan workouts. In most
25 instances, Coles and MLtd. negotiated an extension of time to repay principal, with interest
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1 payments due in the interim. As a result, Coles and MLtd. maintained the illusion that the
2 loans were current. Further, the impound accounts masked nonperforming loans because
3 interest payments continued to be made to investors from these prefunded accounts.”
4

5 159. “Conditions worsened in 2008. By February 2008, Coles and MLtd. expected
6 \$70 million in loan payoffs but only \$1 – 2 million in payoffs occurred. From January
7 through May 2008, MLtd.’s chief financial officer, at Coles’ direction, called Radical
8 Bunny daily to seek funding from it and used these funds to meet MLtd.’s delayed funding
9 obligations (a portion of which went to the impound account to pay investors). Still, MLtd.
10 continued to solicit and accept new investment capital until Coles’s death in June 2008.”
11
12

13 160. “. . . In early 2008, as MLtd.’s loan portfolio unraveled and its cash flow
14 situation continued to deteriorate, Coles sent investor newsletters containing
15 misrepresentations concerning the safety of investment, the performance of the loan
16 portfolio, and strength of MLtd.”
17

18 161. “The POMs contained over twelve pages of disclosures relating to the
19 investment risk, but these statements were broad and general and none of the disclosures
20 discussed the risks, known to Coles and MLS by 2007, of MLtd.’s increasingly concentrated
21 loan portfolio and the demands it placed on MLtd.’s liquidity. . . .”
22

23 162. “MLS further misrepresented the level of risk to its pooled fund investors
24 because Coles knew that MLtd.’s borrowers were experiencing difficulties in obtaining the
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1 takeout financing that would be used to repay MLtd. and, consequently, the risk of loss this
2 presented to the investors' principal.”

3
4 163. “MLS misrepresented the strength of MLtd.s' business because Coles, and
5 MLS registered representatives, knew that by the summer 2007, MLtd. stopped originating
6 loans. This was a significant fact as it went directly to the financial health of MLtd., a loan
7 originator that was no longer originating loans.”

8
9 164. “MLS misrepresented the performance of MLtd.'s loans. As the number of
10 nonperforming loans grew significantly, which put the pooled fund investors' principal at
11 risk of repayment, Coles simply bought up these loans to remove them from the portfolio.”

12
13 165. “When soliciting investors, MLS and its registered representatives
14 emphasized the fact that during its long existence, no investor in MLtd. had ever lost any of
15 his or her principal. This statement was misleading. In fact, contrary to what MLS's
16 registered representatives told investors, by late 2007 MLtd. failed to honor its
17 commitments to redeem investor requests for principal.”

18
19 166. “In addition, MLS made misleading statements regarding loan performance.
20 In January 2008, MLS issued a newsletter that described MLtd.'s securities as “predictable
21 investments.” The newsletter states: “A predictable investment, by our definition, is an
22 investment that is short-term, liquid and measurable – receiving monthly payments.” This
23 was misleading because MLS's definition of “predictable” focused only on one aspect – the
24 issuance of monthly interest payments, which continued while MLtd. extended the payoff
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1 dates for its borrowers rather than exercise its option to foreclose – while ignoring the fact
2 that investors who expected the return of their principal at the conclusion of their loan term
3 would learn that those expectations were misplaced. According to MLS’s chief compliance
4 officer, Coles opted to use the word “predictable” in the newsletter over her objections
5 against doing so.”

6
7 167. “Similarly, in an investor letter dated February 21, 2008, MLS stated that “[a]t
8 the present time, all of our loans are current.” In another investor letter dated March 26,
9 2008, MLS stated that “there are no current delinquencies to investors.” Both of these letters
10 misled investors into thinking that their investment was safe because MLtd.’s borrowers
11 were impliedly making interest payments and satisfying payoffs at maturity. In actuality,
12 MLtd. routinely plucked troubled loans from its investor pools, repackaged and sold them at
13 a higher note rate to others, or Coles purchased them himself. Such practices cosmetically
14 enhanced the appearance of the pools’ performance.”

15
16 168. “Although MLtd.’s increased concentration in a few large loans was well
17 known throughout MLS, and Coles was alerted to risks of making such loans, investors
18 were not told of the risks that such concentration posed to them.”

19
20 169. “From September 2005 to June 2008, MLtd. borrowed \$197 million from
21 Radical Bunny. Radical Bunny raised the money that it loaned to MLtd. from hundreds of
22 investors to whom it issued promissory notes. By early 2007, notes held by Radical Bunny
23 were maturing and MLtd. was obligated to pay them a much higher rate of return in
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1 exchange for Radical Bunny’s continued capital infusions. As MLtd. faced decreased
2 payoffs of loans, Radical Bunny became increasingly important as a source of capital to
3 MLtd.”
4

5 170. “Investors had no way of knowing of Radical Bunny’s critical role in
6 providing capital to MLtd. These funds enabled MLtd. to continue its lending operations,
7 which ultimately impacted MLtd.’s ability to pay investors’ principal.”
8

9 171. “In January 2007, MLtd. and Radical Bunny met and discussed a number of
10 issues concerning their relationship. Among the concerns raised at that meeting, which
11 Coles attended, were the following: (1) whether MLtd. had accepted money that Radical
12 Bunny had raised pursuant to an unregistered offering of securities; (2) whether some of the
13 monies that MLtd. accepted from Radical Bunny came from unaccredited investors; and (3)
14 whether Radical Bunny had failed to provide its investors with offering documents making
15 the appropriate disclosures and audited financial statements.”
16
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18 172. “Radical Bunny’s offering was never registered; and MLtd. never ceased
19 accepting the monies that Radical Bunny continued to raise through its unregistered
20 offering. Neither MLtd. nor MLS ever disclosed to investors that Radical Bunny had failed
21 and continued to fail to comply with the securities registration provisions, or that MLtd. had
22 relied and continued to rely on Radical Bunny’s unregistered offering proceeds to fund
23 virtually all of its business activity. Indeed, MLtd. accepted about \$120 million from
24 Radical Bunny after the compliance issues first surfaced.”
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1 176. Eventually, the temptation to violate these fundamental principles became too
2 great for Scott Coles. Under Scott Coles' way of doing business at Mortgages Ltd, the
3 higher the loan amount to a borrower, the more money Mortgages Ltd and Scott Coles
4 would make. Furthermore, the more Mortgages Ltd would loan to the borrower, the more
5 "fractionalized interests" would be at Scott Coles' disposal to, in turn, sell to either
6 incoming participants or any of Mortgages Ltd's "Pools." The higher the loan-to-value
7 ratio, the more fractionalized interests Scott Coles could pack into one loan. Thus, a loan
8 that exceeded the \$20 million dollar historical limit and 50% loan-to-value ratio would
9 allow Mortgages Ltd to dramatically increase the fees it earned in its normal operations.
10

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13 177. Scott Coles blatantly ignored the conservative and wise business practices of
14 his father in making decisions about the size and nature of loans to make to borrowers, all
15 calculated to feed the expanding growth of Mortgages Ltd and provide Scott Coles and
16 Mortgages Ltd with exorbitant fees. In particular, beginning in late 2006 and continuing
17 into 2007 and 2008, Scott Coles ignored not only his father's wise past business practices,
18 but also the advice of others within Mortgages Ltd, and made 5 monster loans on huge
19 projects within the Phoenix metropolitan area, in the approximate amount of \$637,000,000
20 knowing that Mortgages Ltd could not fund those loans. In order to attempt to handle these
21 monster loans, Scott Coles built into these agreements the concept of a "delayed funding"
22 process. Under this unreasonable lending practice, Scott Coles agreed to provide a large
23 portion of the loan proceeds to borrowers in increments. Although Scott Coles knew
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1 Mortgages Ltd was not able to fund these loans when made, he created this “delayed
2 funding” process in order to cloak Mortgages Ltd’s inability to pay.
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4 178. Scott Coles began his plan in late 2006. He began negotiations with Central
5 PHX Partners, LLC for Mortgages Ltd to provide funding and other construction loan
6 services sufficient to complete the project known as “Chateaux on Central.” On
7 approximately March 9, 2007, escrow closed on the loan. The principal amount of the loan
8 was \$47 million dollars. At the time Scott Coles agreed to and entered into this loan, he
9 knew that Mortgages Ltd did not have the financial resources to fully fund the loan. Indeed,
10 Scott Coles had placed many Plaintiffs in the Chateaux loan knowing that Mortgages Ltd
11 did not have the financial resources to fund it, but did not tell that to the participants he
12 placed in that loan.
13
14

15 179. In late 2006, Scott Coles also agreed to a series of loans to entities known as
16 the “Grace Entities,” consisting of Osborn III Partners, LLC, 44th & Camelback Property,
17 LLC, Central & Monroe, LLC, Portales Place Property, LLC, and 70th Street Property, LLC.
18 Scott Coles agreed to a total loan commitment to these collective entities in the approximate
19 amount of \$120 million. At the time Scott Coles agreed to the loan commitments to Grace
20 Entities, Scott Coles knew that Mortgages Ltd could not and would not have the financial
21 ability to fully fund that loan. Despite this, Scott Coles solicited new participants to acquire
22 fractionalized interests in the Grace Entities loans and placed existing participants, including
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1 Plaintiffs, in those loans, in violation of his fiduciary duty. He placed various participants,
2 including Plaintiffs, in these loans in violation of his fiduciary duty.
3

4 180. On approximately March 21, 2007, Scott Coles caused Mortgages Ltd to issue
5 a loan commitment to Tempe Land Company (“TLC”) in the designated loan amount of
6 \$150,200,000.00 to enable TLC to develop the “Centerpoint Project” next to Tempe Town
7 Lake in Tempe, Arizona. TLC executed and delivered to Mortgages Ltd a promissory note
8 dated March 20, 2007 in the designated loan amount of \$150,200,000.00, together with a
9 deed of trust and other security documents.
10

11 181. The Centerpoint Project was a poorly conceived and executed development
12 plan on the part of TLC. Scott Coles knew that TLC’s development plan for the
13 Centerpoint Project required funds far beyond the \$150 million dollar level and that the
14 Centerpoint Project, as conceived, was not capable of full and final development.
15
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17 182. At the time Scott Coles agreed to the TLC loan, he knew that Mortgages Ltd
18 could not fully fund that loan. Despite that, Scott Coles solicited certain Plaintiffs to
19 acquire fractionalized interests in the TLC loan. In order to entice Plaintiffs to agree to
20 acquire these fractionalized interests, Scott Coles knowingly failed to disclose to Plaintiffs
21 the true financial condition of Mortgages Ltd, including but not limited to the fact that
22 Mortgages Ltd could not fully fund the TLC loan and that the Centerpoint Project was ill-
23 conceived and not capable of completion as presented. Moreover, for those Plaintiffs who
24 were, at the time of the TLC loan, already owners of fractionalized interests or participants
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1 in the Pools, Scott Coles unilaterally moved certain Plaintiffs into the TLC loan, knowing
2 that Mortgages Ltd could never fund that loan and that the Project itself was ill-conceived.
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4 183. At about the same time as the TLC loan commitment, Scott Coles agreed to a
5 \$130 million dollar loan commitment to University & Ash, LLC. Scott Coles agreed to this
6 loan commitment knowing that Mortgages Ltd could not fund it. However, Scott Coles
7 never told any Plaintiff that fact either prior to any Plaintiff agreeing to acquire a
8 fractionalized interest in the University & Ash loan or prior to Scott Coles' unilateral
9 decision to move any existing "investor" into that loan.
10

11 184. Also at this approximate time, Scott Coles agreed to a \$190 million dollar loan
12 commitment to Rightpath Limited Development Group, LLC and others, for development
13 of the Los Angeles Dodgers training facility in Glendale, Arizona. At the time he agreed to
14 that loan commitment in May of 2007, Scott Coles knew that Mortgages Ltd could not fund
15 that entire loan commitment. He likewise knew of the TLC commitment and the impending
16 University & Ash commitment. Despite this knowledge, Scott Coles solicited Plaintiffs to
17 acquire fractionalized interests in the Rightpath loan and, in many cases, unilaterally placed
18 existing "investors" in that loan without disclosing the truth about Mortgages Ltd's financial
19 condition and capacity.
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23 185. During this same approximate period of time, Scott Coles agreed to other
24 exorbitant and otherwise unreasonable loan commitments to borrowers, knowing that
25 Mortgages Ltd did not have the ability to fund those loans. Scott Coles then solicited
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1 Plaintiffs to acquire fractionalized interests in those loans or unilaterally placed existing
2 investors/Plaintiffs in those loans, without disclosing the truth to those Plaintiffs about the
3 financial condition and capacity of Mortgages Ltd or the viability of any respective project
4 for which the loans had been made. Scott Coles agreed to these unreasonable loans in order
5 to maximize the opportunity for Mortgages Ltd and, consequently himself, to earn
6 increasingly exorbitant fees. This fleecing of participants was a malicious breach of Scott
7 Coles' fiduciary duty to those participants, including Plaintiffs.
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10 186. In order to convince the borrowers on these monster loans to agree to the loan
11 terms, including the giving of personal guarantees, Coles misrepresented material facts to
12 the borrowers. This placed each of these monster loans in an extremely precarious position
13 legally. No investor, including each Plaintiff, would have agreed to own any portion of
14 these monster loans had they known the risk Coles had created by misrepresenting facts to
15 the borrowers. Such a risk was never disclosed to Plaintiffs at any time.
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18 187. Once he had agreed to these monster loans, Scott Coles hid from Plaintiffs the
19 fact that Mortgages Ltd could not fund them, even under the delayed funding mechanism
20 that Coles and the Lawyer Defendants had fraudulently devised. Moreover, once the
21 borrowers who had signed up for these monster loans began to complain to Mortgages Ltd
22 about the lack of funding, Coles also hid that fact from Plaintiffs, with the active assistance
23 of the Lawyer Defendants and the Auditor Defendants. Indeed, the complaints from these
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1 borrows grew louder and louder and, ultimately, they began to file suit against Mortgages
2 Ltd.

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4 188. For example, on March 28, 2008, Central PHX Partners, LLC filed suit
5 against Mortgages Ltd for breach of contract, anticipatory breach, negligent
6 misrepresentation, and unjust enrichment. Greenberg resolved that lawsuit quickly and
7 quietly, resulting in a dismissal with prejudice on May 23, 2008.
8

9 189. Two days before the Central PHX Partners' lawsuit was dismissed, Rightpath
10 filed suit in Maricopa County Superior Court for fraud, racketeering and other wrongs
11 arising out of the monster loan Scott Coles agreed to with Rightpath. In that complaint,
12 Rightpath justifiably accused Mortgages Ltd of operating a Ponzi scheme and an illegal
13 enterprise based, in large part, upon the scheme of Mortgages Ltd to defraud Rightpath into
14 agreeing to the loan. The fundamental operative fact in the Rightpath litigation was that
15 Mortgages Ltd had failed to fund and could not fund the loan as agreed upon.
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18 190. The Maricopa County Superior Court docket shows that Rightpath served its
19 lawsuit on Mortgages Ltd on May 21, 2008 and served Scott Coles personally on May 27,
20 2008. Six days after Scott Coles was served, he took his own life.
21

22 191. Thus, during 2007 and 2008, borrowers of Mortgages Ltd began to seriously
23 complain about the lack of funding. However, Scott Coles and the illegal enterprise kept
24 those problems quiet. They did so for the express purpose of continuing the illusion that
25 Mortgages Ltd was financially healthy and that Plaintiffs' investments were safe.
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1 fractional interests had in loans, without disclosing the change to the investor/Plaintiff in
2 advance. For example, in March of 2008, Scott Coles and Mortgages Ltd subordinated the
3 position of certain Plaintiffs in the loan known as the 44th & Camelback Property, LLC loan
4 without obtaining the necessary consent from each respective Plaintiff.
5

6 197. Scott Coles and Mortgages Ltd maliciously abused the agency power that
7 Plaintiffs purported to give them in the various agreements Plaintiffs signed to initiate or
8 alter their securities holdings through Mortgages Ltd and ML Securities. In each instance,
9 by making the misrepresentations and fraudulent omissions set forth in this Complaint,
10 Mortgages Ltd, ML Securities, and Scott Coles fraudulently induced Plaintiffs to enter into
11 each agreement purporting to grant Mortgages Ltd agency power. In particular, but not by
12 way of limitation, Mortgages Ltd, Scott Coles, and ML Securities fraudulently induced
13 Plaintiffs to agree to alternative dispute provisions contained in all such agreements.
14 Mortgages Ltd, Scott Coles, and ML Securities did so for the express purpose of further
15 concealing the illegal activities of the illegal enterprise and making it more difficult for
16 Plaintiffs to obtain meaningful relief. At all times, the Auditor Defendants, Lawyer
17 Defendants, and Hirsch & Shah aided and abetted Mortgages Ltd, Scott Coles, and ML
18 Securities in this fraudulent inducement through the conduct set forth herein.
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23 **3. Mortgages Ltd Made Exorbitant Fees From Nearly Every**
24 **Aspect of its Relationships With Investors and Borrowers.**
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1 198. Mortgages Ltd made its profit primarily from loan origination fees and by
2 retaining the difference between the interest received from the borrowers and the interest
3 paid to the investors, the “interest rate spread.” Mortgages Ltd was ostensibly entitled to
4 various fees and charges in conjunction with the loans made to borrowers. Generally, the
5 higher the loan amount, the higher the fees and charges. For example, the “Private Offering
6 Memorandum dated July 10, 2006 for Pass-Through Participations in Loans Originated or
7 Acquired by Mortgages Ltd” (the “POM”) stated that Mortgages Ltd was entitled to
8 “receive certain compensation for services rendered regardless of the returns to the
9 Participation holders.” In particular, Mortgages Ltd maintained it was entitled to:

- 10 - a “Loan Commitment Fee” (generally 1.0% of the requested Loan amount);
- 11 - a “Property Inspection Fee;”
- 12 - “Origination Points” on each Loan generally ranging between 3.0% to 6.5%
13 of the principal amount of the Loan;
- 14 - The “Interest Rate Spread,” meaning the difference between the interest rate
15 charged to the borrower and the interest rate paid to the Participation holders
16 (generally between 1% and 2%);
- 17 - A “Servicing Fee” typically ranging from \$10.00 to \$50.00 per month;
- 18 - The “Default Interest Spread” which is the difference between the stated
19 interest rate on the Loan and the interest rate provided for in the event of
20 default;

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- Any “Prepayment Penalty;” and
- Any “Late Charges.”

199. The Agency Agreement provided that Mortgages Ltd would act as the servicer on the loans and purported to give Mortgages Ltd authority to take certain actions with respect to the loans. The Agency Agreement states that Mortgages Ltd was entitled to:

- Retain fees and charges assessed under the loan documents and collected by Mortgages Ltd, including commitment fees, origination fees or points, late charges, maturity late charges, administrative fees, property inspection fees, prepayment penalties or premiums, notice fees and services.
- Deduct from payments received by Participant a portion of the interest payments on any loan in which Participant acquires an interest in an amount determined by Mortgages Ltd at the time of the origination of such loan and/or a servicing fee.
- Collect and retain any interest on the principal balance of any loan which is over and above the normal rate set forth in the applicable promissory note, including the default interest rate provided for in the applicable loan documents.
- Collect and retain any interest that accrues on any impound accounts to the extent permitted by applicable law.
- Collect and retain any assumption fees and charges.

- Collect and retain any extension fees and forbearance fees.

(See Agency Agreement, at pages 4-5).

200. Thus, Scott Coles, with the active advice and assistance from the Lawyer Defendants, built into Mortgages Ltd's agreements with the participants on the one hand and the borrowers on the other hand the right and opportunity to make significant fees regardless of how the particular loans may at any point be performing. Especially during the final 3 years of Scott Coles' life, these fees were significant, particularly with the monstrous size of the unreasonable loans Scott Coles was authorizing. These fees were extremely exorbitant, particularly given the fact that Mortgages Ltd was committing little, if any, of its own money into any of these projects. Rather, Mortgages Ltd's role seemed primarily to be a facilitator and agent in arranging for and servicing funding for loans that Mortgages Ltd had originated. This placed Mortgages Ltd – particularly Scott Coles, individually – right in the middle of borrowers and participants, creating not only significant fiduciary duties to participants, but also the serious possibility of a conflict of interest.

B. As the Willing and Active Confederates of Scott Coles, Defendants Participated in the Illegal Enterprise Knowing That the Enterprise Was Conducting its Affairs Through a Pattern of Racketeering Activity.

“...’Cause a man with a briefcase can steal more money/Than any man with a gun...”

-Don Henley
“Gimme What You Got”

201. Radical Bunny, Mayer Hoffman, and Greenberg each had its own specialized role within the illegal enterprise. As set forth below, Radical Bunny was the financier,

1 providing Mortgages Ltd with nearly \$200 million dollars in cash through the sale of
2 unregistered securities. Mortgages Ltd drew upon the fruits of Radical Bunny's illegal
3 fundraising like a piggy bank.
4

5 202. Greenberg was the *consiglieri* of the illegal enterprise, providing legal
6 strategy and advice, legal documentation, and legal muscle to ensure the continued
7 operation of the illegal enterprise. Greenberg authored 11 private offering memoranda
8 during the time it served as Mortgages Ltd's chief outside legal counsel. Greenberg
9 controlled the content and disclosures in those private offering memoranda. Greenberg used
10 the private offering memoranda as a vehicle by which the illegal enterprise perpetuated the
11 illusion that Mortgages Ltd was financially stable and a good investment. Through the
12 private offering memoranda, Greenberg concealed the rampant fraud at Mortgages Ltd.
13 Greenberg also created and documented the entire legal infrastructure for Mortgages Ltd's
14 fraudulent empire, making it possible for Scott Coles and Mortgages Ltd to create the
15 illusion of propriety.
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19 203. Mayer Hoffman and the CBIZ entities audited the financial statement of
20 Mortgages Ltd. Not only did Mayer Hoffman fail to detect material problems with the
21 financial statement of Mortgages Ltd, Mayer Hoffman willfully turned a blind eye to the
22 Radical Bunny debacle. In issuing "clean" audit opinions for Mortgages Ltd for 2005,
23 2006, and 2007, Mayer Hoffman lied to the public, including Plaintiffs, about having
24 followed generally accepted auditing standards in conducting the audits and about whether
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1 the financial statements fairly presented the financial condition of Mortgages Ltd under
2 generally accepted accounting standards.

3
4 **1. As the Financier of the Illegal Enterprise, Radical Bunny Raised**
5 **Money For Mortgages Ltd By Illegally Selling Unregistered**
6 **Securities.**

7
8 204. One of the key players in Mortgages Ltd’s rapid growth, especially over the
9 last three years of Mortgages Ltd’s corporate life, was an Arizona limited liability company
10 known as “Radical Bunny, LLC” (“Radical Bunny”). The members of Radical Bunny were
11 Tom Hirsch, Harish Shah, and Ms. Berta “Bunny” Walder.

12
13 205. Radical Bunny was formed and operated for the sole purpose of raising money
14 from unaccredited investors to in turn invest in Mortgages Ltd. The close relationship
15 between Mortgages Ltd and Radical Bunny is evident even in the similarity of their
16 respective logos:



19
20 206. Radical Bunny sprung from earlier efforts of Tom Hirsch, a CPA and close
21 family friend of the Coles family. In 1997, Hirsch became aware that he could not lawfully
22 invest in Mortgages Ltd because he was not an “accredited investor.” Therefore, he formed
23 a joint venture organized as “Horizon Partners” to pool his funds with three others—his
24 accounting firm partner Howard Walder, Walder’s wife Berta (“Bunny”) Walder, and
25 Harish Shah, another of Hirsch’s business partners. All four partners were unaccredited
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1 investors. Not content with investing their own funds, however, Hirsch and his partners
2 soon enlisted their clients, friends, and acquaintances to invest in Mortgages Ltd through
3 Horizon Partners. The four set a minimum amount of \$25,000 for investing in Horizon.
4 Eventually, 100 individuals—most or all of whom were unaccredited investors—invested
5 \$25-\$35 million in Horizon, which in turn fed those funds into Mortgages Ltd deeds of
6 trust. Horizon took a “management fee” of one quarter of a percent from the interest paid
7 by Mortgages Ltd, and passed the rest through to its investors.
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9

10 207. In substance, when Mortgages Ltd sold investments to Horizon Partners,
11 Horizon served as a surrogate for Mortgages Ltd’s sales to Horizon’s non-accredited
12 members - an artifice to camouflage illegal sales. The sales to Horizon were the first phase
13 of a decade-long, far-ranging scheme by Mortgages Ltd, Coles, and the four Horizon
14 founders to circumvent the registration requirements of the securities laws. In promoting its
15 pool investments, Mortgages Ltd represented that these offerings were not registered, in
16 purported reliance on the Reg D. But in the case of Mortgages Ltd’s dealings with Hirsch,
17 Horizon, and Radical Bunny, all parties were knowingly violating the law.
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19

20 208. On June 24, 1999, two years after forming Horizon Partners, Hirsch and his
21 partners incorporated “Radical Bunny, LLC (“Radical Bunny”),” attaching Mrs. Walder’s
22 nickname to this new vehicle for evading the securities laws. With Radical Bunny, the
23 partners increased the minimum investment amount to \$50,000.
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1 209. Like Horizon, Radical Bunny was a feeder fund for Mortgages Ltd. From
2 inception and throughout its existence Radical Bunny's sole business purpose, like Horizon,
3 was to serve as an unregistered broker/dealer for Mortgages Ltd, illegally funneling cash
4 from individual unaccredited investors into Mortgages Ltd. In November 2003, Mortgages
5 Ltd entered into a "Consulting Agreement" with Radical Bunny signed by Scott Coles and
6 Tom Hirsch. Under the Agreement, Mortgages Ltd would pay Radical Bunny \$200,000,
7 purportedly for "assistance and consultation" in the "marketing, growth and development"
8 of Mortgages Ltd's business. But as the President of a successful, forty-year old mortgage
9 bank, Scott Coles did not need Tom Hirsch or Radical Bunny for their marketing expertise.
10 Rather, through the so-called "Consulting Agreement," Mortgages Ltd and Coles sought to
11 disguise \$200,000 of illegal commission payments to an undisclosed, unregistered broker-
12 dealer (Radical Bunny) who was selling unregistered investments in Mortgages Ltd.
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17 210. Beginning in about September 2005, Radical Bunny changed the form but not
18 the substance of its illegal dealings with Mortgages Ltd. Instead of investing in individual
19 Mortgages Ltd loans or deeds of trust, Radical Bunny made high-interest loans to
20 Mortgages Ltd. By the end of 2006, Radical Bunny had loaned \$127 million to Mortgages
21 Ltd, and at Dec. 31, 2007, \$173 million.
22

23 211. Radical Bunny had raised this money by selling investment interests to
24 hundreds of members, without a registration statement, without selling through a registered
25 broker/dealer, and without ever providing subscription agreements to potential investors in
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1 order to evaluate their sophistication and suitability. Radical Bunny's investment offerings
2 constituted the fraudulent sale of unregistered securities.

3
4 212. The scheme Hirsch and Radical Bunny devised for capitalizing the Radical
5 Bunny Fund was more than suspicious. It was blatantly unlawful. Hirsch and Radical
6 Bunny capitalized the Radical Bunny Fund by selling "contracts for investments" to 900
7 mostly elderly and unsophisticated investors. Radical Bunny used open seminars at the
8 Orange Tree Resort in Scottsdale to solicit investors. During these seminars, Hirsch would
9 walk up and down the aisle giving personal testimony to the financial acumen of Scott
10 Coles. Mr. Hirsch promised financial rewards through Mortgages Ltd to anyone that was
11 willing to invest in the Radical Bunny Fund. He guaranteed returns of 11 percent to those
12 who were willing to accept Scott Coles' program. Hirsch counseled potential investors to
13 mortgage their houses, if necessary.

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17 213. Hirsch even used his position as CPA, within the course and scope of his
18 agency for Hirsch & Shah, to solicit his own clients to invest in Radical Bunny and take
19 advantage of its investments with Mortgages Ltd.

20
21 214. In raising money, Hirsch and Radical Bunny failed to register any securities or
22 conduct a suitability analysis of the investors. Hirsch and Radical Bunny also made
23 material and outlandish misrepresentations of fact. For example, Hirsch would claim that
24 the only risk associated with Mortgages Ltd and its operations was a "dirty" bomb. Hirsch
25 explained that the underlying real estate collateral and Mortgages Ltd would always hold its
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1 value, regardless of the health of the developer-borrower, and that the only thing that could
2 affect the value of the land was a nuclear contamination of the underlying real estate.
3
4 Hirsch would be quick to state that, even in the face of such a catastrophe, Mortgages Ltd
5 could always look to the rich developer who borrowed the money to recover the principal
6 loan amount. Radical Bunny's message was clear and unambiguous: Mortgages Ltd and
7 Scott Coles had thought about every potential issue and they were several steps ahead of
8 any problem. According to Hirsch and Radical Bunny, this was a very safe investment and
9 anyone would be foolish not to invest.
10

11 215. Thus, in substance, throughout the period from 1997 through June 2008, as
12 Mortgages Ltd raised hundreds of millions of dollars from the Horizon investors and then
13 from the growing "Radical Bunny family," Coles, Mortgages Ltd, Radical Bunny and
14 Hirsch were continuously violating federal and state securities laws.
15

16
17 2. **As Consiglieri For the Illegal Enterprise, Greenberg Used Its**
18 **High-Priced Legal Acumen to Hide the Unlawful Conduct of the**
19 **Illegal Enterprise.**

20 **"The Inquest was over, the letter was public, the Bank was broken,**
21 **the other model structures of straw had taken fire and were turned**
22 **to smoke. The admired piratical ship had blown up, in the midst of**
23 **a vast fleet of ships of all rates, and boats of all sizes; and on the**
24 **deep was nothing but ruin; nothing but burning hulls, bursting**
25 **magazines, great guns self-exploded tearing friends and neighbours**
26 **to pieces, drowning men clinging to unseaworthy spars and going**
27 **down every minute, spent swimmers floating dead, and sharks."**

28 *Little Dorrit*, Ch. 26, "Reaping the
Whirlwind," by Charles Dickens, on
the aftermath of the collapse of
Merdles' bank

1 216. Scott Coles hired Greenberg in 2006 for a reason: High profile; highly trained;
2 high price tag; and, as Greenberg proved time and time again during the two years following
3 their initial engagement by Mortgages Ltd, highly committed to protecting the illegal
4 enterprise.
5

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7
8 (a) **Greenberg Knew That Radical Bunny Was Raising Money**
9 **Illegally, But Said Nothing to Plaintiffs.**

10 217. At the time Coles hired Greenberg in 2006, Coles and Mortgages Ltd knew
11 that Radical Bunny was raising money by selling unregistered securities. However, no one
12 at Mortgages Ltd did anything to stop the flow of illegal money. Mortgages Ltd had come
13 to depend on that illegal money. In fact, Mortgages Ltd would refer unaccredited investors
14 to Radical Bunny to avoid the complications that would ensue from selling securities to an
15 unaccredited investor. It became part of Mortgages Ltd's unified financing scheme to refer
16 unaccredited investors to Radical Bunny.
17

18 218. By late 2005, Mortgages Ltd's revenues had significantly decreased, to the
19 point where monthly revenues in November and December had fallen by almost 50%.
20 Increasingly during 2006, as Radical Bunny's lengthening list of investors created an open
21 line of credit for Mortgages Ltd, the relationship between Hirsch and Coles assumed greater
22 importance in the management of Mortgages Ltd's business. In 2006, Hirsch conferred
23 regularly with Coles, and attended Mortgages Ltd's weekly "corporate status" meetings
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1 with senior Mortgages Ltd officers including Coles. By late 2006, if not earlier, Coles and
2 Hirsch had wrongfully agreed that Radical Bunny's loans to Mortgages Ltd would be
3 automatically "rolled over," without bothering to confer with Radical Bunny's investors or
4 obtain an investment decision from them. For Radical Bunny, a benefit of "rolling over" the
5 notes was to increase the total amount owed by Mortgages Ltd to Radical Bunny. Each of
6 those renewals, however, represented another unregistered securities offering and sale.
7
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9 219. During this time, Mayer Hoffman was fraudulently claiming that it had
10 conducted audits of Mortgages Ltd according to GAAS and was, in fact, giving fraudulent
11 clean audit opinions for Mortgages Ltd's financial statements.
12

13 220. This is the environment into which Greenberg arrived in 2006. For lawyers of
14 the training and experience of Kant and his team, the signs of illegality were there to be
15 seen. The date of Greenberg's first private offering memorandum for Mortgages Ltd and
16 ML Securities was May 15, 2006, which presumably means that prior to that time
17 Greenberg had conducted due diligence on the business of Mortgages Ltd and ML
18 Securities. Any thorough due diligence of Mortgages Ltd and ML Securities would have
19 revealed the fact that Mortgages Ltd was receiving money from Radical Bunny that had
20 been raised through the sale of unregistered securities. Moreover, the subject of Radical
21 Bunny's illegal fund raising was certainly on the mind of Mortgages Ltd at the time
22 Greenberg was hired.
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1 221. The issue of Radical Bunny soon became radioactive. The concern became so
2 acute that, in late 2006 or early 2007, Kant orchestrated an “all hands” meeting at
3 Mortgages Ltd to discuss the Radical Bunny issue. In Kant’s words, the purpose of the
4 meeting was to “discuss the arrangements between Radical Bunny and Mortgages Ltd and
5 any issues that the activities of Radical Bunny was pursuing, any ramifications that they
6 could have on Mortgages Ltd.”
7

8
9 222. Representatives of Mortgages Ltd and Radical Bunny attended the meeting.

10 223. Jeff Newman, Mortgages Ltd’s Senior Vice President of Operations at the
11 time also attended the meeting. He was concerned that Radical Bunny was now a major
12 source of Mortgages Ltd’s capital and that Radical Bunny’s illegality therefore threatened
13 Mortgages Ltd. Newman knew “there wasn’t an offering document” for Radical Bunny’s
14 securities sales. “I was concerned. Mike Denning was concerned. I would assume Todd
15 Brown was concerned...That was the capital of Mortgages Ltd...it basically would finance
16 all the assets at Mortgages Ltd.”
17

18 224. The principals of Radical Bunny attended the meeting, including Tom Hirsch.
19 It is clear that Kant did not plan this meeting as a “fact-finding” excursion. Kant came to
20 this meeting knowing about Radical Bunny’s illegal practice of raising money through
21 unregistered securities.
22

23 225. During this meeting, Kant told the group that he had “serious concerns under
24 various federal and state securities laws” about the way Radical Bunny was raising money.
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1 He made it “very, clear, crystal clear” that Kant believed Radical Bunny was violating the
2 securities laws in the way it was raising money. Kant told Hirsch that some day Hirsch’s
3 picture was going to be on the front page of the Arizona Republic and Kant did not want to
4 see Scott Coles’ picture next to him. Kant believed there would be some “law enforcement
5 action” against Radical Bunny and Mr. Hirsch as a result of Radical Bunny’s illegal
6 offerings.
7

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9 226. Kant’s statements to Hirsch in this meeting, and in subsequent meetings,
10 reflect Kant’s clear understanding that Radical Bunny’s illegal conduct could, and would,
11 implicate and create liability for Mortgages Ltd.
12

13 227. However, Kant did more in this meeting than announce the obvious. He also
14 gave Radical Bunny legal advice. Kant discussed with Hirsch various ways in which a legal
15 offering could be done and various rules of conducting a valid private offering.
16

17 228. Kant did not develop a game plan as a result of this meeting. Indeed, despite
18 knowing that his client, Mortgages Ltd was accepting millions of dollars in illegal money
19 from Radical Bunny, Kant did nothing. Mortgages Ltd continued receiving much needed
20 cash from Radical Bunny, the financier of the illegal enterprise.
21

22 229. Despite Coles’ efforts to obtain money from investors to fund the 5 monster
23 loans, the pressure mounted to get those funds from Radical Bunny. In fact, to fund these
24 five loans, Mortgages Ltd relied on loans from Radical Bunny’s illegal fund-raising. Thus
25 Mortgages Ltd’s continuing ability to fund the large loans—and consequently its ability to
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1 remain a going concern—was directly tied to Radical Bunny’s ongoing illegal securities
2 offering.

3
4 230. For Kant and Greenberg, a consequence of their client’s dependence on
5 Radical Bunny for capital to fund a few huge loans that comprised the core of Mortgages
6 Ltd’s portfolio was to heighten the materiality of ongoing securities violations at Radical
7 Bunny, and increase the responsibility to provide accurate, complete and honest
8 representations. Instead, in preparing the Mortgages Ltd offering documents, Defendants
9 concealed those violations.
10

11 231. During 2007, even after the first meeting with Radical Bunny, Kant prepared
12 at least four more offering memoranda for Mortgages Ltd:
13

14 Mortgages Ltd Opportunity Fund 15 (March 30, 2007);
15 MP 122030 (also known as MP 11, April 12, 2007);
16 Mortgages Ltd Opportunity Fund 16 (Nov. 1, 2007);
17 Mortgages Ltd Opportunity Fund 17 (Nov. 2, 2007).

18 232. In these memoranda, Kant continued to conceal that Mortgages Ltd had
19 received and was receiving funds which had been raised illegally.

20 233. In late March and early April 2007, as Kant was drafting the private offering
21 documents for MP15 and for the April 12, 2007 MP11, Mortgages Ltd’s own officers were
22 discussing “whether Mortgages Ltd should continue to accept money from Radical Bunny
23 to fund Mortgages Ltd’s loans.” Despite these concerns, Kant allowed Mortgages Ltd to
24 continue to accept Radical Bunny money.
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1 234. Following the first meeting, Mortgages Ltd referred Radical Bunny to another
2 Phoenix law firm, Quarles & Brady. On May 2, 2007, Quarles & Brady partner Chris
3 Hoffmann advised Radical Bunny's Tom Hirsch and "Bunny" Walder of Quarles & Brady's
4 conclusions from their investigation and research: that Radical Bunny had been selling
5 securities without registration, that Radical Bunny should stop selling, and that it should
6 offer rescission to the Radical Bunny investors. Radical Bunny ignored the advice, and
7 continued on its illegal course until June 2008.
8

9
10 235. Greenberg was aware of that advice from Quarles & Brady, yet never
11 instructed Mortgages Ltd to cease accepting money from Radical Bunny. By this time,
12 Radical Bunny had become the literal lifeline for Mortgages Ltd.
13

14 236. In May or June 2007, Mortgages Ltd's strained finances forced it to cease
15 originating new loans, thereby shutting down the engine of Mortgages Ltd's 44-year old
16 business. Mortgages Ltd's last loan was made in about August 2007.
17

18 237. According to Michael Denning, while in a typical month Mortgages Ltd could
19 count on about \$40 million of income to fund monthly obligations, in the Fall of 2007 "we
20 were able to raise, continued to raise approximately 15, 20 million dollars to be able to fund
21 the obligations we had; it left no money available for new loans so new loans were cut off at
22 that point in time."
23

24 238. Kant would have been aware that Mortgages Ltd had halted new lending;
25 experienced counsel in his position would know the material facts about his client's
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1 business (or, in this case, the cessation of it) during a 12-month period while preparing four
2 private placement memoranda to be used by the client to solicit new investments.

3
4 239. Also in about May or June 2007, a dispute arose between Kant and some of
5 the Quarles & Brady attorneys, particularly Robert Bornhoft. Bornhoft accused Kant of
6 dragging his feet on helping Radical Bunny to perfect a promised security interest in
7 Mortgages Ltd's assets; Kant, on the other hand, expressed frustration that Radical Bunny
8 had persisted in selling unregistered securities. However, Kant's professed frustration never
9 rose to the level of instructing his client, Mortgages Ltd, to cease accepting money from
10 Radical Bunny.
11

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13 240. Moreover, Kant never advised Mortgages Ltd to cease all private offering
14 activity. Kant never advised Mortgages Ltd that Mortgages Ltd's relationship with Radical
15 Bunny had blown Mortgages Ltd's Reg. D exemption for each and every offering of
16 Mortgages Ltd from and after May 15, 2006. Moreover, Kant and Greenberg never
17 disclosed these facts to any investor.
18

19
20 241. Into the summer of 2007, Mortgages Ltd continued to accept illegally raised
21 money from Radical Bunny and kept up its own private offering efforts using private
22 offering memoranda that fraudulently omitted any reference to Radical Bunny's illegal
23 activities and the consequences to Mortgages Ltd of losing its Reg D exemption. As of
24 August 2007, Radical Bunny's outstanding loans to Mortgages Ltd had increased to about
25 \$160 million.
26

1 242. Claiming to be frustrated by the lack of progress to solve the issues Kant
2 raised with Hirsch at the first meeting, Kant called a second “all hands” meeting at
3 Mortgages Ltd for August 13, 2007.
4

5 243. From the time of the first meeting until the second meeting on August 13,
6 2007, nothing had changed about the way Radical Bunny was raising money illegally.
7 Unfortunately for Plaintiffs, no one at Mortgages Ltd and no one at Greenberg cared enough
8 about that fact to stop accepting Radical Bunny’s money and alert investors, including
9 Plaintiffs, of the consequences of Radical Bunny’s actions and of Mortgages Ltd’s inaction.
10

11 244. Representatives of Mortgages Ltd, Kant, representatives of Radical Bunny,
12 and Quarles & Brady lawyers Moya and Bornhoft attended the August 13, 2007, meeting, at
13 Mortgages Ltd’s offices. Kant describes what he said to Hirsch:
14

15 I expressed my frustration that this had been going on for a long period of
16 time without any resolution...I basically said either they—after talking
17 about these offerings, **I either said to [Hirsch] “They put people in jail
18 for this” or “someday you’re going to go to jail for this if you don’t
19 stop...I said it directly to Mr. Hirsch, and the words ‘go to jail’ were
20 clearly used. There could be no question, at least in my view, of what
21 he was doing. Frankly, I don’t know how any experienced securities
22 lawyer could disagree with it...”**

23 (Transcript of Deposition of Robert S. Kant, before SEC, Dec. 17, 2008, pp. 21, 24)

24 (emphasis added)

25 245. Nevertheless, even as he was issuing these warnings, Kant understood that
26 Radical Bunny was still selling unregistered securities. Kant understood that Radical Bunny
27 was making money doing it. Moreover, Kant did nothing to alert investors, including
28

1 Plaintiffs, or advise Mortgages Ltd to stop accepting Radical Bunny money. In fact,
2 Radical Bunny’s illegal securities offerings and fundraising continued after the August 13,
3 2007, meeting.
4

5 246. Meanwhile, Kant and Greenberg were drafting offering documents for
6 Mortgages Ltd (two more Mortgages Ltd private placement memoranda would be
7 distributed in November 2007). Kant knew Mortgages Ltd was dependent for new capital
8 on money from Radical Bunny; at 2007 year-end, Mortgages Ltd owed Radical Bunny \$173
9 million.
10

11 247. In September 2007, Kant further proved that he was not merely the lawyer for
12 Mortgages Ltd. He was the lawyer for the illegal enterprise. With an “all for one and one
13 for all” approach, Kant prepared a draft of an offering memorandum for Radical Bunny, for
14 which Greenberg was paid \$20,000. The section of the draft captioned “Risk Factors”
15 concealed that Radical Bunny had been selling unregistered securities for at least two years,
16 and that Radical Bunny was exposed to regulatory and other sanctions including, as Kant
17 had warned Radical Bunny, imprisonment of the Radical Bunny managers. Upon
18 information and belief, Kant would have been well aware that any regulatory action against
19 Radical Bunny would also have included injunctive relief against Radical Bunny,
20 effectively terminating Radical Bunny’s money raising for Mortgages Ltd—almost certainly
21 a lethal event for both Radical Bunny and Mortgages Ltd.
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1 248. Thus, by at least late 2006 (but most certainly before that), Kant and
2 Greenberg knew without question that Radical Bunny was selling unregistered securities to
3 raise money to “loan” to Mortgages Ltd to keep Mortgages Ltd afloat.
4

5 249. By at least November 2007, Mortgages Ltd had stopped paying Greenberg’s
6 invoices. Consequently, the Greenberg knew that money from Radical Bunny was the only
7 possible source of payment of their fees. Consequently, Greenberg did not advise
8 Mortgages Ltd to cease accepting money from Radical Bunny, even though Greenberg
9 knew that Radical Bunny was raising that money in violation of state and federal securities
10 laws, and even though Greenberg knew that Radical Bunny’s involvement in Mortgages
11 Ltd’s fundraising forfeited Mortgages Ltd’s Reg D exemption on its offerings from and
12 after May 15, 2006. Eventually Mortgages Ltd paid Greenberg more than \$250,000 in fees
13 during 2008. Mortgages Ltd paid those fees from money received from Radical Bunny.
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17 **(b) Greenberg Authored 11 Fraudulent Private Offering**
18 **Memoranda For Mortgages Ltd and ML Securities**
19 **Intending to Deceive Plaintiffs.**

20 250. In addition to the illegal source of cash provided by Radical Bunny,
21 Mortgages Ltd relied upon private offerings to raise money to operate its hard money
22 lending business.

23 251. Mortgages Ltd began sponsoring private “Regulation D” offerings in 1995.
24 Mortgages Ltd engaged Greenberg in 2006. Greenberg’s first private offering
25 memorandum for Mortgages Ltd/ML Securities is dated May 15, 2006. It is an amendment
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1 to Mortgages Ltd's private offering for "MP 11." In that memorandum, Greenberg included
2 the following notice: "The validity of the Interests being offered is being passed on for the
3 Manager by Greenberg Traurig, LLP, Phoenix, Arizona." A similar notice appears in every
4 private offering memorandum Greenberg prepared for Mortgages Ltd/ML Securities.
5

6 252. Greenberg prepared 10 other private offering memoranda for Mortgages
7 Ltd/ML Securities. Eight of those offerings were for "Pool" investments:
8

- 9 • MP 12 -- June 30, 2006
- 10 • MP 13 -- June 30, 2006
- 11 • MP 14 -- June 30, 2006
- 12 • MP 15 -- March 30, 2007
- 13 • MP 11 -- April 12, 2007
- 14 • MP 16 -- November 1, 2007
- 15 • MP 17 -- November 2, 2007
- 16 • Value to Loan -- January 28, 2008

17 253. The most lucrative Pool offering to occur on Greenberg's watch was the
18 offering for Pool 15 ("MP 15"), raising approximately \$147,320,540. Many Plaintiffs
19 acquired securities from and through Mortgages Ltd/ML Securities in that offering.
20

21 254. The two remaining private offering memoranda Greenberg prepared were for
22 the "Pass-Through" investment program:
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- 1 • July 10, 2006
- 2
- 3 • February 11, 2008

4 255. The most lucrative offering in the history of Mortgages Ltd was the Pass-
5 Through offering dated July 10, 2006, raising an estimated \$229,000,000. Many Plaintiffs
6 acquired their securities from and through Mortgages Ltd/ML Securities in that offering.
7

8 256. Each of the referenced private offering memoranda misrepresented material
9 facts, for example and by way of illustration only and without limitation:

10 a) that the securities were offered in reliance upon an exemption from
11 registration under the federal securities laws provided by Regulation D of the
12 Securities Act of 1933, when in fact the MP offerings were not exempt;

13 b) that the investments would be sold only to “accredited investors” as
14 defined in Regulation D, when in fact at least since 2005 Mortgages Ltd and ML
15 Securities were selling to unaccredited investors whom it referred to Radical Bunny,
16 knowing and intending that those investors would be caused by Radical Bunny to
17 pool their funds for investment in Mortgages Ltd;
18

19 c) that the Company’s loan portfolio can be expected to be a relatively
20 small number of Borrowers “as a result of funds available to the company,” when in
21 fact Scott Coles intended to and did concentrate the company’s portfolio in over
22 \$600 million handful of loans, unnecessarily, recklessly, against the advice of his
23 senior officers and not because of any issue of “funds available to the company”;
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d) that the Company “expects to satisfy redemption requests promptly,” when in fact at least by 2007 Coles and Mortgages Ltd knew that they lacked ability to do this and began telling investors that only a “good faith” effort was required; and

e) that Mortgages Ltd “will conduct certain due diligence relating to each Loan in order to evaluate various factors that it considers material to such determination....”

257. Each of the private offering memoranda also omitted material facts, for example and by way of illustration only and without limitation:

a) that since 1997 Mortgages Ltd had been violating the securities laws, in particular the accreditation requirements under Rule 501 of Regulation D of the Securities Act of 1933;

b) that Mortgages Ltd had knowingly been receiving since 1999 and was continuing to knowingly receive loans consisting of funds raised from the illegal sale of unregistered securities;

c) that Mortgages Ltd’s source of these illegally raised funds was a company, Radical Bunny, LLC, to which Mortgages Ltd regularly referred unaccredited investors who would not be eligible to invest directly in Mortgages Ltd, in effect a scheme by Mortgages Ltd to avoid the registration provisions of federal and Arizona law;

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d) that, in substance and in essence, since its formation in 1999, Radical Bunny was acting as an undisclosed and unregistered dealer on behalf of Mortgages Ltd, and that Radical Bunny’s violations of the securities laws therefore also posed to Mortgages Ltd a threat of federal and state regulatory sanction, and an existential threat with respect to Mortgages Ltd’s solvency and ability to fund loan commitments;

e) that by the end of 2005, Mortgages Ltd owed Radical Bunny, LLC over \$38 million on account of the illegally raised funds which Radical Bunny had provided to Mortgages Ltd; over \$127 million by the end of 2006; over \$172 million by year-end 2007; and that the loss of Radical Bunny as a source of funds at any time from or after September 2005 would have been difficult if not impossible for Mortgages Ltd to replace;

f) that both Mortgages Ltd and Radical Bunny knew that Radical Bunny’s sales of securities—the proceeds of which were being provided to Mortgages Ltd—“violated numerous provisions of federal and state securities laws”;

g) that the very legal counsel drafting the private offering memoranda (Greenberg) was aware that Radical Bunny’s fundraising activities blatantly violated state and federal securities law and that, as a result, Mortgages Ltd and ML Securities could not invoke any exemption from registration for any of the offerings reflected in any of the private offering memoranda;

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h) that in order to prevent having to disclose non-performing or impaired loans, Mortgages Ltd and Coles extended the maturity dates of the loans or that Coles purchased the loans himself without causing Mortgages Ltd to record the impairment in those loans.

i) that Mortgages Ltd was engaged in a Ponzi scheme;

j) that Mortgages Ltd was defrauding borrowers to induce them into loans, in particular the monster loan referred to herein, that Mortgages Ltd was placing investors in, including Plaintiffs;

k) that Mortgages Ltd was placing investors, including Plaintiffs, into the foregoing loans that, because of Mortgages Ltd's conduct, were subject to rescission and otherwise unstable and high risk;

l) that the financial statements contained in each private offering memoranda were materially misstated;

m) that, in auditing financial statement of Mortgages Ltd for 2005, 2006, and 2007, the Auditor Defendants knowingly and consciously violated GAAS;

n) that Mortgages Ltd had been insolvent since at least 2005;

o) that Mortgages Ltd had materially departed from its historic underwriting principles in that the underwriting function at Mortgages Ltd was non-existent;

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p) that Scott Coles was looting Mortgages Ltd through the use of his sole member and controlled LLC, SM Coles, LLC;

q) that Scott Coles was utilizing funds of the illegal enterprise to acquire tens of millions of life insurance for himself, to be paid to his family and not to Mortgages Ltd, ML Securities, or any other entity for the benefit of investors, including Plaintiffs;

r) that Mortgages Ltd was violating its fiduciary duty; and

s) that Mortgages Ltd was out of compliance with the Arizona State requirements for entities holding a Mortgage Banker License.

258. Greenberg authored the foregoing private offering memoranda knowing of the foregoing misrepresentations and omissions, intending to deceive Plaintiffs and to further the unlawful objectives of the illegal enterprise. Indeed, in the 11 private offering memoranda that Greenberg authored, Greenberg included the same basic risk disclosure language in each of those memoranda. Greenberg failed and refused to amend the risk disclosure in the private offering memoranda to reflect the then current actual risks facing investors. Greenberg failed and refused to do so, not out of negligence, but out of a desire to conceal from the investing public, including Plaintiffs, the truth about the operations and offerings of Mortgages Ltd and ML Securities. Greenberg never amended the private offering memoranda to reflect material changes in the business, and financial position, and operations of Mortgages Ltd and ML Securities.

1 (c) **Greenberg Created and Implemented the Legal Structure**
2 **By Which Scott Coles and Mortgages Ltd Breached Their**
3 **Fiduciary Duty to Plaintiffs.**

4 259. As alleged herein, Scott Coles and Mortgages Ltd owed fiduciary duties to
5 Plaintiffs as investors. Scott Coles and Mortgages Ltd breached those fiduciary duties, as
6 alleged herein.
7

8 260. Scott Coles and Mortgages Ltd could not have violated their fiduciary duties
9 to Plaintiffs or committed any other acts alleged herein without the knowing and substantial
10 assistance of Greenberg. In fact, Greenberg acted in concert with Scott Coles and
11 Mortgages Ltd in those breaches of fiduciary duty.
12

13 261. For example, Greenberg advised Mortgages Ltd and Scott Coles on how to
14 structure each of the five monster loans referred to herein. Moreover, Greenberg drafted
15 and negotiated the material legal documents needed for Mortgages Ltd to make those ill-
16 advised loans. At the time, Greenberg knew that Mortgages Ltd could not perform the
17 terms of those agreements, thus aiding and abetting not only the breach of fiduciary duty to
18 Plaintiffs, but also aiding and abetting Mortgages Ltd's misrepresentations to borrowers on
19 the monster loans.
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21

22 262. Greenberg also authored the material agreements that framed the relationship
23 between Mortgages Ltd and each investor, including Plaintiffs. For example, Greenberg
24 authored the Subscription Agreement, the Agency Agreement, the Revolving Opportunity
25 Loan Program Purchase Agreement, and all documents by which each Plaintiff authorized
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1 the acquisition of fractional interests, including but not limited to the agreement referred to
2 as the “Direction to Purchase.” In each instance, Greenberg knew that the agreements failed
3 to disclose material facts to the Plaintiff signing the agreement. In particular, but not by
4 way of limitation, each Revolving Opportunity Loan Program Purchase Agreement failed
5 to disclose that Mortgages Ltd could not perform under the agreement and that each RevOp
6 investor who signed such an agreement would not receive any proceeds from the
7 investment.
8
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10 (d) **Greenberg Orchestrated and Led the Cover-up**
11 **Assault Against an Employee of ML Securities Who**
12 **Attempted to Blow the Whistle on the Illegal**
13 **Enterprise.**

14 263. With Greenberg as the “bodyguard” of the illegal enterprise walking point,
15 Greenberg enforced within Mortgages Ltd an active policy of non-disclosure and deception.
16 Those who attempted to speak out against such a policy were retaliated against. No better
17 example of this exists than that of Robert G. Furst (“Furst”), former Senior Managing
18 Director of ML Securities.
19

20 264. ML Securities hired Furst in the fall of 2005 as a Managing
21 Director/Registered Representative to manage investor accounts and solicit new investors.
22 Furst is a trained lawyer who practiced law for more than 2 decades before joining ML
23 Securities. In his capacity as Senior Managing Director, Furst had significant contact with
24 many Mortgages Ltd investors, including RevOp investors, many with millions of dollars at
25 risk with Mortgages Ltd.
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1 265. Based upon his personal experience within ML Securities, Furst grew
2 concerned about the propriety of the policies and practices of Mortgages Ltd and ML
3 Securities. In particular, he grew very concerned about the level of disclosure Mortgages
4 Ltd and ML Securities was making to existing and prospective investors.
5

6 266. Furst grew so concerned that he drafted a “disclosure” document that he
7 believed should go on the front of each private offering memorandum. However,
8 Greenberg, specifically Kant, vetoed his effort.
9

10 267. Furst did not limit his warnings to those within Mortgages Ltd and ML
11 Securities. In fact, concerned about the welfare of investors for whom he was responsible,
12 and feeling it his duty to protect investors even at the risk of losing his job, Furst began to
13 urge caution to the investors, even steering investors away from certain loans Furst believed
14 to be unreasonably risky.
15

16 268. Despite unjustified acrimony and resistance from others within Mortgages
17 Ltd, and at huge personal risk, Furst decided to come forward. In March of 2008, Furst
18 addressed his concerns with Coles and others within Mortgages Ltd and ML Securities. On
19 Monday, March 24, 2008, Furst sent an e-mail to George Everette, Vice President of
20 Mortgages Ltd, in which he stated that he wanted to:
21
22

23 “[a]ssume a leadership role within the firm to independently
24 investigate, expose and eliminate all deceptive practices and
25 other wrongdoing in Mortgages Ltd. Securities;” and

26 “[w]ork with independent counsel and regulators (if necessary)
27 to immediately address these issues (including issues of
28

1 ongoing and systemic securities fraud and other deceptive
2 practices) in relation to both prospective and existing
3 investors.”

4
5 269. On Friday, March 28, 2008, Furst met with Jon Cohen, Esq., a senior partner
6 at Snell & Wilmer, a prominent Phoenix law firm, to discuss the numerous legal issues
7 which concerned him about Mortgages Ltd, ML Securities and their senior management.
8 Furst retained Jon Cohen, Esq. to represent him.

9
10 270. Furst then met with Eva Yang, the Chief Compliance Officer of ML
11 Securities, to (a) notify her that he had retained Jon Cohen, Esq., of Snell & Wilmer, to
12 represent him, and (b) inform her that he was concerned about numerous fraudulent and/or
13 deceptive practices of Mortgages Ltd, ML Securities and their senior management.
14

15 271. In retaliation, when Furst reported for work on the next business day
16 (Monday, March 31, 2008), he received written notice that ML Securities had suspended his
17 employment with pay.
18

19 272. Greenberg advised ML Securities to take this action against Furst.

20 273. The next day, April 1, 2008, Furst sent an email to Mortgages Ltd, listing the
21 following 14 issues he believed Mortgages Ltd must immediately address:
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- 23 • Revolving opportunity program investors who are victims of a default by
24 Mortgages Ltd.
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- Capital opportunity program investors who are victims of a default by Mortgages Ltd.
- Mortgages Ltd./Radical Bunny securities issues
- Mortgage pool investors disclosure issues
- Value-to-loan fund disclosure issues
- Investors who did not grant discretion to Mortgages Ltd.
- Investors who wanted to receive their 2007 reinvested interest but did not receive it
- Mortgages Ltd. 401(k) plan participant issues
- Broker dealers and registered investment advisors disclosure issues
- Solvency issues of Mortgages Ltd.
- Loan summary sheets and related disclosure issues
- Borrowers who are victims of a default by Mortgages Ltd.
- Loan workouts questioned by investors
- Discrimination in treatment among investors by Mortgages Ltd.

274. Instead of acknowledging Furst’s concerns in a meaningful, good faith manner, Mortgages Ltd forwarded the email to Greenberg. One week later, on April 8, 2008, Furst and his lawyer met with Kant and a Greenberg partner named John Lomax, with no meaningful result.

1 275. While Furst’s employment was still suspended with pay, and in order to
2 discredit Furst, squelch his justified complaints about fraud and wrongful conduct, and
3 protect the illegal enterprise, Mortgages Ltd, ML Securities, and Greenberg, agreed to lie
4 about Furst. They devised the false story that, in the course of their “investigation,” they
5 had discovered that Plaintiff was not “well suited” for Mortgages Ltd and that he had
6 “misrepresented his credentials.”
7

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9 276. ML Securities fired Furst on April 25, 2008.

10 277. Greenberg advised ML Securities to fire Furst.

11
12 278. On or about May 19, 2008, Greenberg prepared and filed with FINRA for ML
13 Securities a Form U-5, Uniform Termination Notice for Securities Industry Registration.
14 Federal law requires the filing of such a form when an employee of any entity overseen by
15 FINRA is separated from employment. The law requires that the U-5 be truthful and filed
16 in good faith. However, Greenberg knowingly included in the U-5 the “lie” that Greenberg,
17 Mortgages Ltd, ML Securities had devised to discredit Furst. In particular, Greenberg wrote
18 the following in the U-5:
19

20 For months, we tried to work with Plaintiff to adjust his
21 compensation. During a March meeting, he raised concerns
22 about possible operational and legal issues. The firm asked
23 for specifics and when Plaintiff did not respond in a timely
24 manner, he was suspended. While suspended we again tried
25 to reach an agreement with him about his role and
26 compensation. In the interim, we learned that he may not be
27 well suited to continue working for us. For example, it
28 appears he may have misrepresented his credentials.

1 279. Greenberg prepared the false U-5 for the specific purpose of discrediting
2 Furst, ruining his reputation in the securities industry, retaliating against Furst because he
3 complained about fraudulent practices Greenberg knew were occurring, and concealing the
4 pattern of racketeering of the illegal enterprise.
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9 (e) **After the Death of Scott Coles, Greenberg Devised and**
10 **Implemented a Fraudulent Scheme to Transfer**
11 **Ownership of Mortgages Ltd in Order to Conceal and**
 Protect the Illegal Enterprise.

12 280. Immediately following the death of Scott Coles, Greenberg worked in concert
13 with Radical Bunny to ensure the continuation of control by Greenberg over the illegal
14 enterprise and to conceal the wrongdoing of the illegal enterprise.
15

16 281. At the time of Scott Coles' suicide, Mr. Cole's interest in Mortgages Ltd was
17 owned by the SMC Revocable Trust. Tom Hirsch, a principal of Radical Bunny and long-
18 time confidant and family friend of Coles, was named as the Trustee of the SMC Revocable
19 Trust.
20

21 282. Following the death of Scott Coles, Greenberg realized it must take quick
22 action to take control of Mortgages Ltd and coverup the unlawful activities of the illegal
23 enterprise.
24

25 283. Less than a week after Mr. Coles committed suicide, Greenberg, as counsel
26 for Mortgages Ltd, created a sham limited liability company named NMLC, LLC. Kant is
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1 identified specifically as the statutory agent of that sham LLC. Greenberg prepared the
2 Articles of Organization of NMLC, LLC. Kant signed the Articles. According to the
3 Articles of Organization, the “purpose of the Company is to vote all shares of capital stock
4 of Mortgages Ltd, an Arizona corporation, in any all matters requiring a vote of
5 shareholders of Mortgages Ltd, or as required under applicable law.” The sole member of
6 the sham limited liability company was a loan officer of Mortgages Ltd, Laura Martini.
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9 284. After the formation of the sham LLC, Greenberg advised Hirsch to transfer all
10 voting rights of Mortgages Ltd to the newly formed NMLC, LLC. He did so. Thereafter,
11 Hirsch resigned as trustee for the SMC Revocable Trust, but not before appointing three
12 former insiders, including George Everette, as directors of Mortgages Ltd.
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14 **3. As the Auditor of the Illegal Enterprise, Mayer Hoffman Hid**
15 **From Plaintiffs the Tell-Tale Signs of the Massive Fraud Taking**
16 **Place at Mortgages Ltd by Issuing Fraudulent “Clean” Audit**
17 **Opinions for Mortgages Ltd’s Financial Statements.**

18 "Get your facts first, and then you can distort them as much as you please."

19 Mark Twain

20 285. Beginning in approximately 1998, Mortgages Ltd engaged Miller Wagner &
21 Company (Mayer Hoffman’s predecessor in interest) as its outside independent auditor. An
22 auditor is a critical link between businesses seeking to raise money – like Mortgages Ltd –
23 and the investing public. The role of the auditor is to examine the financial statements of a
24 company and render an opinion as to whether those financial statements fairly depict or
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1 “present” the financial condition of the company under “Generally Accepted Accounting
2 Principles,” usually referred to by their shorthand name “GAAP.”
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4 286. However, an auditor is not supposed to be a mere rubber stamp for
5 management. An auditor holds a position of great trust with the investing public. The
6 United States Supreme Court describes the auditor’s role as a “watchdog” for the public:
7

8 By certifying the public reports that collectively depict a corporation's
9 financial status, the independent auditor assumes a *public* responsibility
10 transcending any employment relationship with the client. The independent
11 public accountant performing this special function owes ultimate allegiance
12 to the corporation's creditors and stockholders, as well as to the investing
13 public. This “public watchdog” function demands that the accountant
14 maintain total independence from the client at all times and requires
15 complete fidelity to the public trust.

16 *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984).

17 287. Mayer Hoffman accepted its engagement with Mortgages Ltd in 1998
18 understanding its “watchdog” role. Mayer Hoffman understood when it accepted its
19 engagement that Mortgage Ltd raised money through private offerings. Mayer Hoffman
20 also understood the nature of Mortgages Ltd’s business. Mayer Hoffman knew from the
21 very beginning of its engagement with Mortgages Ltd that existing and prospective
22 investors like Plaintiffs would be relying upon the audited financial statements of Mortgages
23 Ltd, and the audit opinion of Mayer Hoffman attached to those financial statements, in order
24 to make investment and reinvestment decisions. For every audit that Mayer Hoffman ever
25 performed for Mortgages Ltd, Mayer Hoffman was keenly aware of this reliance.
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1 288. Unfortunately for those relying upon Mayer Hoffman’s work as Mortgages
2 Ltd’s auditor, including Plaintiffs, Mayer Hoffman consciously abdicated its proper role as
3 auditor. As Mortgages Ltd fell deeper into insolvency beginning in 2005, Mayer Hoffman
4 chose not to report it. As Mortgages Ltd accepted millions and millions of dollars in
5 illegally obtained money from Radical Bunny, Mayer Hoffman constructed audits of
6 Mortgages Ltd that would protect that illegal enterprise. Instead of acting like a watchdog
7 auditor and warning the public, in each of the audit reports for Mortgages Ltd for 2005,
8 2006, and 2007, Mayer Hoffman told three lies to the public, including Plaintiffs:
9

- 10 • “We conducted our audits in accordance with U.S. generally accepted auditing
11 standards.”
- 12 • “We believe that our audits provide a reasonable basis for our opinion.”
- 13 • “In our opinion, the financial statements referred to above present fairly, in all
14 material respects, the financial position of Mortgages Ltd....and the results of
15 its operations and its cash flows for the years in conformity with U.S.
16 generally accepted accounting principles.”

17 289. Mayer Hoffman’s statements, generally referred to as unqualified or “clean”
18 opinions, signaled to the world that the world could rely upon the financial statements of
19 Mortgages Ltd. Mayer Hoffman gave no hint about the financial disaster that was in
20 progress at Mortgages Ltd.
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- 3. The auditor must exercise due professional care in the performance of the audit and the preparation of the report.

Standards of Field Work

- 1. The auditor must adequately plan the work and must properly supervise any assistants.
- 2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.
- 3. The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

Standards of Reporting

- 1. The auditor must state in the auditor's report whether the financial statements are presented in accordance with generally accepted accounting principles.
- 2. The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.
- 3. When the auditor determines that informative disclosures are not reasonably adequate, the auditor must so state in the auditor's report.

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4. The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor's report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefor in the auditor's report. In all cases where an auditor's name is associated with financial statements, the auditor should clearly indicate the character of the auditor's work, if any, and the degree of responsibility the auditor is taking, in the auditor's report.

292. The Statements on Auditing Standards “SAS” are issued by the Auditing Standards Board and are considered interpretations of GAAS. The Statements on Auditing Standards derive their authority from Rule 202 of the Code of Professional Conduct governing members of the American Institute of Certified Public Accountants. GAAS and SAS are considered to be the minimum standards of performance for auditors. SAS are organized generally under two designation systems. One contains an original “SAS” number organized chronologically. The other designation system is an “AU” number, organized by topic. This Complaint utilizes the AU designation. The AU classification system is organized according to the categories of Generally Accepted Auditing Standards. For example, the GAAS general standards are interpreted in the AU200 series, the GAAS standards for fieldwork are interpreted in the AU300 series. The GAAS standards of reporting are interpreted in AU series 400 and 500.

1 diligently perform, in good faith and with integrity, the
2 gathering and objective evaluation of evidence...

3 Gathering and objectively evaluating audit evidence requires
4 the auditor to consider the competency and sufficiency of the
5 evidence. Since evidence is gathered and evaluated
6 throughout the audit, professional skepticism should be
7 exercised throughout the audit process...

8 The auditor neither assumes that management is dishonest nor
9 assumes unquestioned honesty. In exercising professional
10 skepticism, the auditor should not be satisfied with less than
11 persuasive evidence because of a belief that management is
12 honest.

13 (AU 230.07, .08, .09)

14 297. Plaintiffs have alleged in this Complaint many instances of Mayer Hoffman's
15 failure to exercise due care in performing the audits of Mortgages Ltd and ML Securities.
16 However, it is not Plaintiffs' intention to merely recite acts of mere negligence on the part
17 of Mayer Hoffman. Rather, Mayer Hoffman's failure to exercise due care was willful and
18 conscious. Mayer Hoffman's failure to exercise appropriate professional skepticism in
19 accordance with the foregoing provisions of AU 230 was cataclysmic. In addition to the
20 allegations in other parts of this Complaint about Mayer Hoffman's failure to exercise due
21 care, Plaintiffs highlight one issue in particular as a stunning example showing that Mayer
22 Hoffman exercised no professional skepticism in its audit work for Mortgages Ltd. That
23 example chronicles Scott Coles' looting of Mortgages Ltd.

24 298. The first private offering memorandum authored by Defendant Greenberg was
25 dated May 15, 2006. That private offering memorandum included financial statements of
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1 Mortgages Ltd and ML Securities as of October 31, 2004, and October 31, 2005. Mayer
2 Hoffman audited those financial statements. The balance sheet in those financial statements
3 included a line item under “Current Assets” labeled “Due from related party - \$2, 205,000.”
4 Footnote 3 of the financial statements notes only this about that asset: “The Company holds
5 a note receivable of \$2,205,000 at October 31, 2005 from the Company’s sole stockholder.
6 The note is noninterest bearing and is expected to be repaid from the proceeds of company
7 distributions to the sole shareholder.” The actual underlying “Unsecured Promissory Note”
8 reflecting that alleged debt is in the permanent file of Mayer Hoffman’s work papers. That
9 document shows that the debt is actually due July 20, 2006. More importantly, however,
10 Christopher J. Olson, Mortgages Ltd’s CFO, signed the promissory note on behalf of
11 Mortgages Ltd. Rather than exercise its professional skepticism and question this
12 transaction as a possible improper looting of the company, however, Mayer Hoffman did
13 nothing. Instead, Mayer Hoffman simply noted the transaction without acknowledging to
14 the public, including Plaintiffs, that it was a significant material weakness in the internal
15 controls of Mortgages Ltd for the CFO of the company to be the signatory to a Promissory
16 Note from the sole and controlling owner of the company. This material weakness in the
17 internal controls of Mortgages Ltd is similarly reflected in evidence in the work papers of
18 Mayer Hoffman that Mr. Olson, the CFO, was relieved of his duties and the financial
19 controls of the corporation left to the uncertain and inconsistent guidance of under-qualified
20 personnel.
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1 299. Mayer Hoffman’s failure to exercise professional skepticism on the \$2 million
2 “loan” from Mortgages Ltd to Scott Coles in 2005 pales in comparison, however, to what
3 happened in 2006. Contained in the permanent file of Mayer Hoffman’s work papers is a
4 “Single Principal Payment Note” dated December 31, 2006. From the document identifier
5 in the bottom left hand corner of each page of the 6 page document, it appears that
6 Greenberg drafted the document. The document purports to be a promissory note from
7 SMC Coles, LLC, as the borrower, and Mortgages Ltd, identified as the “lender.” The face
8 amount of the promissory note is a shocking \$48,430,920. “Schedule A” to the Note is a list
9 of property of SM Coles, LLC pledged as collateral for the loan. That Schedule represents
10 that the fair market value of SM Coles LLC’s holdings was \$123,010,000. Greenberg
11 drafted Schedule A.
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15 300. Mayer Hoffman discussed this astronomical “loan” in footnote 5 of the
16 “audited’ financial statements for the year 2006, included in every private offering
17 memorandum Mortgages Ltd and ML Securities issued in 2007 and 2008. In that footnote,
18 Mayer Hoffman reveals that Mortgages Ltd had made “interest-free advances” in the
19 amount of \$48,430,920 to Scott Coles’ entity, SM Coles, LLC for the purpose of acquiring
20 real estate for investment purposes. Mayer Hoffman states at the end of the footnote that
21 “[t]he sole shareholder intends to repay this note from distributions or other related party
22 transactions, borrowings from third party lenders secured by the real estate held by SM
23 Coles, LLC or from the disposition of these real estate assets.”
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1 301. Mayer Hoffman’s nonchalant description of this outrageous “loan” reflects
2 Mayer Hoffman’s knowing complicity in Scott Coles’ fleecing of Mortgages Ltd. What had
3 actually happened during 2005 and 2006 was that Scott Coles unilaterally disbursed over
4 \$48 million to his personal, sole member LLC, for the purpose of enriching himself. That
5 series of transfers reflects an internal control weakness of massive proportions. The sole
6 and controlling shareholder of Mortgages Ltd had looted the company of over \$48 million.
7 That was approximately 5 times the amount of retained earnings and more than 3 times net
8 income for the entire company for 2006. Because Mayer Hoffman consciously chose to
9 ignore its duty to exercise professional skepticism, there is no indication on the financial
10 statements, Mayer Hoffman’s “clean audit opinion” for 2006, or any other means showing
11 that in fact Mayer Hoffman had identified a major and continuing weakness in the internal
12 controls of Mortgages Ltd. Mayer Hoffman’s failure to identify this internal control
13 weakness and this bright red flag of fraud is so egregious that it could not be the product of
14 mere negligence. Only an auditor that had consciously and utterly abandoned its role as an
15 auditor under GAAS could ignore the looting of Scott Coles the way Mayer Hoffman did.
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20 302. Greenberg knowingly assisted Mayer Hoffman in covering up the looting by
21 Scott Coles.
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23 303. In addition to the allegations set forth herein that demonstrate plainly that
24 Mayer Hoffman’s conduct in performing the 2005, 2006 and 2007 audits fell well below the
25 acceptable standard of care, Plaintiffs restate in paragraphs 305 to 307 below, and
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1 incorporate herein, specific provisions of the Arizona Department of Financial Institutions
2 Consent Order dated July 27, 2009.

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4 304. “The May 31, 2008 [Mortgages Ltd] financial statements misrepresented the
5 true financial condition of Respondent [Mortgages Ltd] because Respondent failed to accrue
6 and record various items. Respondent did not record reserves for loan impairment or the
7 decline in value of it owned real estate portfolio.”
8

9 305. “Respondent did not accrue a reserve for a \$6 million loan to SMC Revocable
10 Trust, whose collectibility is uncertain and did not disclose that it had guaranteed a \$12
11 million loan taken out by SM Coles LLC.”
12

13 306. “The recordation of all relevant adjustments would have had a negative
14 impact of \$57.5 million on Respondent’s balance sheet. Respondent’s equity at May 31,
15 2008 would have gone from \$9.8 million dollars to a negative equity of <\$47.7 million
16 dollars>.”
17

18 307. The findings of the foregoing Consent Order were the result of Mayer
19 Hoffman’s failure to follow GAAS in conducting its audits of Mortgages Ltd.
20

21 308. During its audits of Mortgages Ltd and ML Securities for 2005, 2006, and
22 2007, Mayer Hoffman had available to it the loan files and financial records of Mortgages
23 Ltd. Mayer Hoffman had access to documents that plainly demonstrated that Mortgages Ltd
24 did not follow typical mortgage industry practices regarding underwriting of real estate
25 loans. Moreover, Mayer Hoffman had access to financial records of Mortgages Ltd that
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1 clearly show that Mortgages Ltd had no policies and procedures in place providing for
2 regular reviews by management of the potential impairment of real estate held by
3 Mortgages Ltd. In addition, Mayer Hoffman was aware that Mortgages Ltd utilized an
4 unreliable and improper valuation methodology for its financial statements. Mayer
5 Hoffman knew, but ignored, the fact that extrapolating values for real estate from
6 collections on loans was an improper valuation methodology. Mayer Hoffman likewise had
7 access to financial records of Mortgages Ltd showing that Mortgages Ltd failed to properly
8 and reliably evaluate creditworthiness of borrowers of guarantors.

11 309. Thus, Mayer Hoffman was aware that the real estate values for loans that
12 Mortgages Ltd underwrote were dramatically and materially impaired and that the value of
13 the real estate assets Mortgages Ltd was reporting on its balance sheet was materially
14 overstated. In particular, but not by way of limitation, the five monster loan referred to
15 above were materially impaired, but Mayer Hoffman consciously chose to ignore its
16 knowledge and obligation for reporting that impairment.

19 **(2) Mayer Hoffman Violated all 3 GAAS Standards of**
20 **Field Work.**

21 310. In carrying out the audits of Mortgages Ltd's financial statements for 2005,
22 2006, and 2007, Mayer Hoffman willfully violated all three GAAS Standards of Field
23 Work. Mayer Hoffman failed to audit Mortgages Ltd. in a manner consistent with Mayer
24 Hoffman's knowledge that Radical Bunny was in fact a "related party" under FAS 57.
25 Mayer Hoffman's failure was not merely negligent, however. It was wilfull.
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1 311. Plaintiffs do not merely allege that Mayer Hoffman failed to detect that
2 Radical Bunny was a related party under FAS 57. Rather, Plaintiffs allege that Mayer
3 Hoffman knew that Radical Bunny was a related party under FAS 57 and knew that the
4 amount of the “notes payable” from Radical Bunny was at all times material to the financial
5 statements of Mortgages Ltd., and willfully failed to conduct the audits accordingly.
6

7 312. Because of its knowledge of the ownership structure of Mortgages Ltd.,
8 Mayer Hoffman knew that Scott Coles’ revocable trust, SMC Revocable Trust, owned all
9 the stock of Mortgages Ltd. Mayer Hoffman also knew that Tom Hirsch was the trustee of
10 the SMC Revocable Trust. Mayer Hoffman knew that Tom Hirsch and Hirsch & Shah
11 continued to do accounting and tax work for Mortgages Ltd. during the years at issue.
12 Mayer Hoffman knew that Tom Hirsch was a member and the manager of Radical Bunny,
13 the source of the radioactive “notes payable.” By the spirit and letter of FAS 57, Tom
14 Hirsch and Radical Bunny were related parties to Mortgages Ltd. under FAS 57. Radical
15 Bunny did not need to undertake any audit procedures under AU 334 to reach that
16 conclusion. Mayer Hoffman had ongoing, continuous institutional knowledge of that fact.
17

18 313. Mayer Hoffman never identified Radical Bunny by name in the financial
19 statements of Mortgages Ltd. or the footnotes to them. This was not because Mayer
20 Hoffman did not know the name Radical Bunny. Indeed, the work papers of Mayer
21 Hoffman are replete with the name Radical Bunny. Instead, the only entry on the balance
22 sheet of Mortgages Ltd to reflect the massive debt to Radical Bunny was an entry for “Notes
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1 payable.” That entry, in and of itself, violated GAAS. Furthermore, Mayer Hoffman knew
2 that “Notes payable” reflected on Mortgages Ltd’s financial statement did not reflect arms-
3 length transactions between Mortgages Ltd. and Radical Bunny. In addition to the facts set
4 forth above, Mayer Hoffman knew that Radical Bunny never paid the notes when they were
5 due. Instead, Mortgages Ltd merely rolled the notes into new notes with new maturities.
6 Moreover, Mayer Hoffman knew that Radical Bunny never required Mortgages Ltd to repay
7 the notes in cash. Rather, Mortgages Ltd would at times pay on the notes by assigning loan
8 participations, even though the financial statements of Mortgages Ltd do not reflect that
9 assignment. Radical Bunny’s “Notes” were not collateralized by assets of Mortgages Ltd
10 and no security agreement on the notes even existed.
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14 314. Mayer Hoffman was well aware of the history between Mortgages Ltd and
15 Radical Bunny. For example, Mayer Hoffman has in the permanent file in its work papers a
16 November 1, 2003, agreement between Mortgages Ltd and Radical Bunny. The agreement
17 is entitled “Consulting Agreement.” The agreement glaringly reflects the existence of a
18 close, unusual, and special fiduciary relationship between Radical Bunny and Mortgages
19 Ltd., a relationship that Mayer Hoffman abjectly ignored in its audits. Indeed, the
20 agreement describes a partnership between Mortgages Ltd and Radical Bunny for the
21 development and growth of Mortgages Ltd’s business. The agreement acknowledges that
22 Radical Bunny will be given access to confidential information about Mortgages Ltd that
23 Radical Bunny is prohibited from disclosing.
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1 315. Saturated with the knowledge that Radical Bunny was a related party, Mayer
2 Hoffman proceeded to conduct the 2005, 2006, and 2007 audits of Mortgages Ltd as if
3 Radical Bunny was not a related party. As a result, Mayer Hoffman ignored all three of the
4 Standards of Field Work and all of the material requirements of AU 334. As a result, the
5 work papers of Mayer Hoffman contain none of the audit evidence of a proper audit. There
6 is no audit evidence in the work papers that Mayer Hoffman properly expanded its audit
7 under AU 334 to fully consider all aspects of the Radical Bunny-Mortgages Ltd.
8 relationship and transactions, an analysis that would have required gathering and analysis of
9 audit evidence about Radical Bunny's source of its funds. Indeed, it was as if no audit had
10 been done as to the Radical Bunny debt. The meager "confirmation" sheet Mayer Hoffman
11 sent to Tom Hirsch every year does not evidence a proper audit. It does nothing but
12 underscore how willful Mayer Hoffman's violations of GAAS were.
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17 316. Indeed, Mayer Hoffman surrendered its independence and all pretense to
18 professional skepticism in auditing Mortgages Ltd for 2005-2007. Mayer Hoffman failed to
19 comply with GAAS Field Standard 1, and the related AU 311, 314, 316, and 318 by failing
20 to plan its audit in a manner consistent with Mayer Hoffman's knowledge of certain "red
21 flags" that signaled increased audit risk and increased risk of fraud in the financial
22 statements of Mortgages Ltd. Had Mayer Hoffman audited Mortgages Ltd's financial
23 statements with the proper independence and professional skepticism, and had Mayer
24 Hoffman chosen to comply the GAAS Field Standards, Mayer Hoffman would have
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1 properly evaluated these red flags, expanded its audits, and reported the fraud of the illegal
2 enterprise. However, as with the Radical Bunny debt, it was as if no audit had been
3 performed.
4

5 317. In conducting the Mortgages Ltd. audits for the years 2005, 2006, and 2007,
6 Mayer Hoffman recognized, but failed to conduct the audits consistent with its knowledge
7 of, the following red flags:
8

- 9 • Mortgages Ltd. stopped making new loans.
- 10 • Mortgages Ltd. terminated its employee profit-sharing payments.
- 11 • Mortgages Ltd. stopped paying investor redemption requests
12 because of lack of available cash.
- 13 • Radical Bunny was a related party under FAS 57, as set forth above.
- 14 • Mortgages Ltd.'s debt to Radical Bunny exploded from \$14.8
15 million on October 31, 2005, to over \$197 million on June 30, 2008.
- 16 • There were highly unorthodox and commercially unreasonable terms
17 and practices between Radical Bunny and Mortgages Ltd regarding
18 the Radical Bunny debt, as set forth above.
- 19 • Radical Bunny had been a close business consultant and fiduciary
20 partner to Scott Coles and Mortgages Ltd. since at least 2003.
- 21 • Mortgages Ltd could not fund the “monster” loans.
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- 1 • Mortgages Ltd created and used the delayed funding mechanism in
2 its monster loans.
- 3
- 4 • Borrowers began to file suit against Mortgages Ltd.
- 5 • Coles' single member LLC, SM Coles, LLC, began acquiring assets
6 on a massive scale and Scott Coles was looting Mortgages Ltd to
7 accomplish those acquisitions;
- 8
- 9 • Signs of existence of a "Ponzi Scheme" in the manner in which
10 Mortgages Ltd funded loans and paid interest to investors emerged.
- 11
- 12 • Mortgages Ltd announced it was terminating the RevOp program.
- 13 • Mortgages Ltd initiated the "Value to Loan" pool investment
14 program, designed to loan money to other Pool LLCs.
- 15
- 16 • Scott Coles possessed total legal and actual control over the affairs
17 of Mortgages Ltd, including the underwriting and loan approval
18 process.
- 19
- 20 • Scott Coles sought to exercise unilateral control over the loans the
21 Pass-Through and RevOp investors were in.
- 22 • Mortgages Ltd had no effective, operating board of directors.
- 23
- 24 • Three members of senior management of Mortgages Ltd resigned
25 prior to the 2007 audit report.
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- 1 • There was a close relationship between the president of Mortgages
2 Ltd and outside counsel, Greenberg Traurig.
- 3
- 4 • Failure of Mortgages Ltd. to adhere to past lending discipline, such
5 as loan to value ratios.
- 6
- 7 • The debt due Mortgages Ltd investors increased from about \$498
8 million at October 31, 2005, to approximately \$733 million at June
9 30, 2008.
- 10 • Mortgages Ltd's interest expense quadrupled, increasing from \$13
11 million at October 31, 2005, to \$60 million at December 31, 2007.
- 12
- 13 • Scott Coles requested, then cancelled, a formal audit for SM Coles,
14 LLC, for 2007.
- 15
- 16 • Mortgages Ltd. requested, and Mayer Hoffman performed, formal
17 audits for Pools 9-14 for 2006, but never included those audited
18 financial statements in any private offering memorandum and never
19 released them generally to investors, including Plaintiffs.
- 20

21 318. Mayer Hoffman knew the existence of the foregoing red flags, but audited
22 Mortgages Ltd for the years 2005, 2006, and 2007 as if these red flags did not exist.
23 Consequently, Mayer Hoffman's actual audit opinions for those years are materially and
24 deliberately misleading, as are the financial statements of Mortgages Ltd for those years.

25
26 **(3) Mayer Hoffman Violated GAAS Reporting**
27 **Standard 1.**

1 companies: MP122009 LLC (known as MP9), MP062011 LLC (known as MP10),
2 MP122030 (known as MP11), Mortgages Ltd. Opportunity Fund MP12 L.L.C. (known as
3 MP12), Mortgages Ltd. Opportunity Fund MP13 L.L.C. (known as MP13), Mortgages Ltd.
4 Opportunity Fund MP14 L.L.C. (known as MP14), Mortgages Ltd. Opportunity Fund MP15
5 L.L.C. (known as MP15), Mortgages Ltd. Opportunity Fund MP16 L.L.C. (known as
6 MP16), Mortgages Ltd. Opportunity Fund MP17 L.L.C. (known as MP17). Each fund was
7 a separate Arizona limited liability company and Mortgages Ltd was the sole manager of
8 each LLC. Thus, Mortgages Ltd controlled the Pools. An interested investor would acquire
9 a membership interest in one or more of the Pool LLCs. The Pools, in turn, acquired
10 fractional interests in Mortgages Ltd's loans and collateral. These fractional interests were
11 the property of the Pools, not of Mortgages Ltd.
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15 322. Although only 9 "Pools" remained at the time of the Mortgages Ltd
16 bankruptcy, the history of the Pool investment program dates all the way back to 1995 at
17 Mortgages Ltd. In all, Mortgages Ltd created 17 Pools. Beginning in 2005, Scott Coles and
18 Mortgages Ltd began to greatly emphasize the Pool investment program to new investors.
19 Scott Coles did so as a way of further consolidating his control over the entire empire or
20 Mortgages Ltd. Coles also sought vigorously to persuade existing investors who were in
21 bad loans or who wanted to take Coles up on his offer of anytime redemption to go instead
22 into one of the remaining Pool LLCs. Coles' efforts at pushing investors into the Pools was,
23 in fact, Coles' way of stopping a "run on the bank" and of preserving cash for Mortgages
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1 Ltd. In any event, throughout the history of Mortgages Ltd with Scott Coles at the helm, the
2 Pools were a key component of the overall business.

3
4 323. However, despite the key place the Pools occupied in the business of
5 Mortgages Ltd, no financial statement for which Mayer Hoffman ever issued an audit
6 opinion ever contained the financial information about the many Pool LLCs. That omission
7 violated GAAP. The resulting financial statements were materially misstated because of the
8 erroneous “off balance sheet” accounting treatment made at the time the loans made by
9 Mortgages, Ltd were securitized and transferred to the Pool LLCs..
10

11 324. Mayer Hoffman’s failure to include the assets and liabilities of the Pool LLCs
12 with Mortgages Ltd’s financial statements was not mere negligence. It was knowing and
13 intentional. Off-balance sheet accounting treatment of the Pool LLCs so seriously violated
14 GAAP that it could only have been the result of knowing and intentional conduct by Mayer
15 Hoffman.
16
17

18 325. The assets and liabilities of the Pool LLCs should never have been accounted
19 for “off balance sheet.” Such erroneous accounting treatment precluded millions of dollars
20 of impaired and uncollectible mortgage loans and corresponding debt from being
21 represented as assets and liabilities of Mortgages Ltd’s 2005, 2006, and 2007 balance
22 sheets.
23

24 326. GAAP (FAS 140) permits “off balance sheet” accounting treatment in
25 connection with the transfer of financial assets by an entity such as Mortgages Ltd to a
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1 transferee like the Pool LLCs only in those situations where the transferor has surrendered
2 control over transferred assets and the transferee entity. Because Mortgages Ltd and Scott
3 Coles controlled the Pool LLCs as described herein, Mayer Hoffman should not have
4 permitted Mortgages Ltd to exclude the assets and liabilities of the Pool LLCs from
5 Mortgages Ltds' balance sheet.

6
7 327. In addition, because Mortgages Ltd and Scott Coles exercised significant
8 control over borrowers and the finding of loans obtained from Mortgages Ltd and
9 transferred to the Pool LLCs, the "risk of loss" was not effectively transferred from
10 Mortgages Ltd to the Pool LLCs and their investors, as required by GAAP. Among other
11 things, this is evidenced by Scott Coles buying up non-performing loans from the Pool
12 LLCs to insure that the Pools LLC investors would be bear the risk of non-payment of
13 principal on investor notes.

14
15 328. In addition, GAAP (as interpreted by FIN 46R) requires consolidation of the
16 assets and liabilities of entity A and entity B when entity A has a controlling financial
17 interest in entity B, usually found where entity A owns a controlling interest in entity B.
18 Under those circumstances, where the other equity holders in entity B lack the ability
19 through voting or similar rights to "make decisions about an entity's activities that have a
20 significant effect on the success of the entity," consolidation is required under GAAP. Such
21 was the case during the entire time Mortgages Ltd. was raising money through its "Pool"
22 Investment Program.

1 329. Individual “investors” acquired or held membership interests in the Pool
2 LLCs. Mortgages Ltd served as the manager of each of these LLCs (“the LLCs”). The
3 Operating Agreement for each of the LLCs provided that the manager, Mortgages Ltd,
4 “shall have complete control of and shall be responsible for the management of the
5 Company business....” Investors in the LLCs could remove Mortgages Ltd as manager
6 only by a 75% supermajority vote and only if Mortgages Ltd “has engaged in willful
7 misconduct or fraud” against the LLCs.
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10 330. The private offering memoranda for each of the Pool LLC offerings likewise
11 emphasized control by Mortgages Ltd. The memoranda stated that, “The Manager has the
12 exclusive right to manage the business and affairs of the Company, including deciding the
13 Loans in which the Company will acquire an interest,” and that “The Manager will control
14 the operations of the Company, including the Loans in which the Company will have an
15 interest.” Further, the “Investment Risks” section of each memorandum represented that,
16
17 **“Investors must be willing to rely on the Manager”** [emphasis in original]. The Manager
18 will have the right to make all decisions with respect to the management and operation of
19 the business and affairs of the Company, including selecting, evaluation, negotiating,
20 acquiring, making, servicing, and disposing of Loans...Accordingly, no investor should
21 purchase Interests unless such investor is willing to entrust all aspects of the management of
22 the Company to the Manager...
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1 333. GAAP (FAS 5 and 114) requires the recording of loan loss reserves in those
2 situations where a loan(s) has been impaired when it is probable that all principal and
3 interest will not be collected by the lender according to the contractual terms of the loan
4 agreement. Mayer Hoffman knew that Mortgages Ltd's loan underwriting and loan
5 approval process lacked proper guidelines and practices. Mayer Hoffman knew that Scott
6 Coles controlled the loan underwriting and loan approval process. Mayer Hoffman also
7 knew that Mortgages Ltd was unable to fund existing commitments to borrowers. Mayer
8 Hoffman also knew that borrowers were delinquent. Mayer Hoffman likewise knew that, to
9 avoid having to disclose non-performing or impaired loans, Mortgages Ltd and Scott Coles
10 repeatedly extended the maturity dates of loans or that Coles purchased impaired loans
11 himself without causing Mortgages Ltd to record loss reserves on such loans, as required by
12 GAAP.
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16 334. Mayer Hoffman's failed to identify impairment of loans included on
17 Mortgages Ltd's balance sheet, as well as "off-balance sheet" loans included in the Pool
18 LLCs (which should always have been reported on Mortgages Ltd's balance sheet as
19 required by GAAP, as discussed above). Likewise, Mayer Hoffman failed to ensure that
20 Mortgages Ltd had properly recorded loan loss reserves as required by GAAP.
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23 335. These GAAP violations were so obvious in the financial records of Mortgages
24 Ltd and from the knowledge of Mayer Hoffman that Mayer Hoffman's failure to require
25 Mortgages Ltd to properly reflect accurate loan loss reserves can only be the result of a
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1 conscious and willful decision on the part of Mayer Hoffman to allow the financial
2 statements of Mortgages Ltd to blatantly violate GAAP. As a consequence Mortgages
3 Ltd's 2005, 2006 and 2007 financial statements were materially misstated.
4

5 **C. As a Result of Radical Bunny's Involvement, Mortgages Ltd Was Selling**
6 **Unregistered Securities From at Least Early 2006.**

7 336. To protect investors from fraud and to ensure that investors receive sufficient
8 information prior to investing, the federal government requires companies issuing securities
9 to comply with certain registration procedures. The SEC has promulgated limited
10 exemptions from the registration requirement under Regulation D, 17 *CFR* §230.501 et seq.
11 ("Reg D"). Of relevance to this case, Rule 506 of Reg D permits a company to raise
12 unlimited funds without registering its securities so long as it sells its securities to accredited
13 investors. An accredited investor is one who possesses a net worth of more than \$1 million
14 or annual income of more than \$200,000 (\$300,000, counting a spouse) for each of the two
15 years preceding the date of the investment. Under Rule 506, a company may sell its
16 securities to no more than thirty-five unaccredited investors, however those investors must
17 be "sophisticated," which the SEC defines as having "sufficient knowledge and experience
18 in financial and business matters to make them capable of evaluating the merits and risks of
19 the prospective investment." See <http://www.sec.gov/answers/rule506.htm>. If a company
20 sells its unregistered securities to more than thirty-five unaccredited investors, it is guilty of
21 selling unregistered securities, which is a felony. A.R.S. 44-1841(B). Moreover, as Rule
22 501 of Reg D makes clear, if a mix of unaccredited and accredited investors pool their
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1 resources and form an entity for the sole purpose of investing in another company's
2 unregistered securities, each unaccredited investor in the entity counts towards the thirty-
3 five-person limit. In other words, the investment entity does not count as only one
4 unaccredited investor, allowing the company to sell to an additional thirty-four unaccredited
5 persons. Rather, if the investment entity consists of thirty-six or more unaccredited
6 investors, then the company commits a felony by selling unregistered securities to the
7 entity.
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9

10 337. Radical Bunny was raising money illegally at the time Mortgages Ltd hired
11 Greenberg in 2006, and at the time Greenberg completed its first private offering
12 memorandum for Mortgages Ltd on May 15, 2006.
13

14 338. As alleged herein, the transactions by which Radical Bunny loaned money to
15 Mortgages Ltd or and each of the 11 offerings prepared by Greenberg for Mortgages Ltd
16 and ML Securities and containing Mayer Hoffman's clean audit opinions were part and
17 parcel of a single unitary financing scheme for Mortgages Ltd, despite the fact that these
18 financing schemes spanned a period of almost two years.
19

20 339. Each aspect of the financing scheme involved the issuance the same or
21 substantially similar class of securities. While the Pool investor obtained a limited liability
22 company membership interest, all transactions revolved around an issuance or transfer of
23 debt securities. In all instances, the consideration for issuance or transfer of the debt
24 securities or membership interests was cash. Moreover, the private offerings and the
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1 transactions with Radical Bunny were ostensibly made for the same general purpose: to
2 provide Mortgages Ltd with funds to loan to borrowers .
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4 340. Consequently, as a result of the foregoing factors, each of the 11 offerings of
5 Mortgages Ltd and ML Securities from June 30, 2006 through June 2, 2008, and the
6 transactions by which Mortgages Ltd obtained funds from Radical Bunny, should be
7 integrated into a single unified offering.
8

9 341. Because of the foregoing integration, and because of the presence of Radical
10 Bunny in the integrated offering, each and every sale of each investment security through
11 every private offering Greenberg authored and approved for Mortgages Ltd and ML
12 Securities from May 15, 2006, through February 2, 2008, was the sale of unregistered
13 securities. Thus, the “business” of the illegal enterprise, both through Radical Bunny’s sales
14 of securities to its members and through Mortgages Ltd’s sales to the 2700 “investors,” was
15 the sale of unregistered securities.
16
17

18 **D. The Illegal Enterprise Acquired or Maintained Millions of Dollars of Life**
19 **Insurance on Scott Coles’ Life, But the Proceeds Went to the Young**
20 **Widow, Ex-Wife, and Children of Scott Coles.**

21 342. Prior to his suicide in June of 2008, Scott Coles arranged for and put in place
22 life insurance on his life in excess of \$50,000,000. Although Coles had told many existing
23 and prospective investors in ML Securities that Mortgages Ltd had sufficient “key man” life
24 insurance in the vent of his untimely death, those representations were false. In fact, what
25 Coles actually did was to misappropriate funds of his own illegal enterprise, acquire or
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1 maintain more than \$50,000,000 in life insurance on his life, and name his family members
2 and ex-wife as the beneficiaries.

3
4 343. At the time Coles died, not one dime of life insurance proceeds was
5 designated to be paid as “key man” insurance. Coles had designated Ashley Coles (or her
6 Trust), Francine Coles, and his children’s Trust as the beneficiaries of the millions and
7 millions of dollars in life insurance proceeds.
8

9 344. Following Coles suicide, Coles’ widow, Ashley Coles, and his ex-wife,
10 Francine Coles, made competing claims on various life insurance policies on the life of
11 Scott Coles. Consequently, the respective insurance companies initiated three separate
12 interpleader actions in the United States District Court regarding the alleged disputes
13 between Ashley Coles and Francine Coles.
14

15 345. These disputes and interpleader cases all arose during the time of the
16 Mortgages Ltd bankruptcy.
17

18 346. Neither Francine Coles, Ashley Coles, the insurance companies, nor any other
19 third-party advising any of the foregoing gave any former Mortgages Ltd investor, including
20 Plaintiffs, notice of the interpleader actions. Instead, Ashley Coles and Francine Coles, with
21 the help of other third-parties, convened a secret “mediation,” during which they purported
22 to reach an agreement about the distribution of part of the life insurance proceeds payable
23 from the life insurance policies on Scott Coles’ life. Ashley Coles and Francine Coles then
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1 took the product of their secret negotiations to the federal court and obtained orders
2 allowing them each to take millions of dollars in life insurance proceeds.

3
4 347. Because Scott Coles acquired and maintained the life insurance policies with
5 funds of the illegal enterprise, and through racketeering, *A.R.S.* §13-2314.04(D)(6)
6 mandates that a constructive trust be imposed over such property, including all life
7 insurance proceeds paid to any beneficiary thereunder, including but not limited to Ashley
8 Coles, Francine Coles, Haley Brooke Coles, and any other person or entity.

9
10 **IV. CLAIMS FOR RELIEF**

11 **A. Claims Against the Lawyer Defendants, Auditor Defendants, and Hirsch**
12 **& Shah.**

13 **COUNT ONE**

14 **(Illegally Conducting an Enterprise: A.R.S. §13-2312)**

15
16 348. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

17 349. As alleged herein, Mortgages Ltd; Scott M. Coles; Mortgages Ltd Securities;
18 SM Coles, LLC; SMC Revocable Trust; Radical Bunny, LLC; Hirsch & Shah CPAs, LLC;
19 Greenberg Traurig, LLP; Robert S. Kant; Mayer Hoffman McCann, P.C.; and CBIZ, Inc.
20 (and the CBIZ entity Defendants herein) constituted an enterprise (“the illegal enterprise”)
21 under *A.R.S.* §13-2301(D)(2), inasmuch as they were associated in fact. The illegal
22 enterprise functioned as a continuing unit, with an existence separate and apart from the
23 pattern of racketeering activity alleged herein and separate and distinct from those
24 Defendants and persons against whom Plaintiffs allege a claim for participation in the
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1 illegal enterprise. The illegal enterprise existed to advance the interests of its individual
2 members that made up its membership. The illegal enterprise functioned as a continuing
3 unit with the common purpose of deliberately (1) concealing and facilitating the unlawful
4 sale of unregistered securities by Radical Bunny, Mortgages Ltd, and ML Securities; (2)
5 concealing the true financial condition of Mortgages Ltd and defrauding potential and
6 existing investors; (3) creating and perpetuating the false perception that Mortgages Ltd and
7 ML Securities were properly operating and complying with all material legal requirements;
8 (4) enabling and concealing Mortgages Ltd's and Scott Coles' breach of fiduciary duty to
9 "investors," including Plaintiffs; and (5) protecting the wealth of Scott M. Coles.
10
11

12
13 350. As alleged herein, the Lawyer Defendants, the Auditor Defendants, and
14 Hirsch & Shah participated directly and indirectly in the conduct of the enterprise, in
15 violation of A.R.S. §13-2312 (B).
16

17 351. The Lawyer Defendants, the Auditor Defendants, and Hirsch & Shah acted in
18 concert with each other and with the other members of the illegal enterprise in order to carry
19 out the unlawful conduct alleged herein, including the pattern of racketeering activity, and
20 for financial gain.
21

22 352. At all times when the Lawyer Defendants, the Auditor Defendants, and Hirsch
23 & Shah were participating in the conduct of the enterprise, each of them knew that the
24 illegal enterprise was being conducted through a pattern of racketeering activity, in violation
25 of A.R.S. §13-2301(D)(2) and A.R.S. §13-2314.04(A).
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1 353. As alleged herein, the illegal enterprise was engaged in the following
2 predicate act of racketeering activity under *A.R.S.* §13-2301(D)(4)(b)(xix): intentional sale
3 of unregistered securities.
4

5 354. In particular, the illegal enterprise engaged in the intentional sale of
6 unregistered securities through Radical Bunny. As alleged herein, Radical Bunny, a
7 member of the illegal enterprise and otherwise characterized as a director or high
8 managerial agent of the enterprise, intentionally sold unregistered securities since at least
9 2005 and continuing through the time of death of Scott Coles. Moreover, as direct result of
10 Radical Bunny's sale of unregistered securities, Mortgages Ltd lost its exemption under
11 Regulation D and applicable Arizona law for each and every offering of Mortgages Ltd or
12 ML Securities from at least May 15, 2006 and thereafter. Therefore, the illegal enterprise
13 was also engaged in the intentional sale of unregistered securities through Mortgages Ltd
14 and ML Securities, both of which can be characterized as a director or high managerial
15 agent of the illegal enterprise.
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19 355. The illegal enterprise engaged in a pattern of racketeering activity. The last
20 offering by Mortgages Ltd and ML Securities prior to the death of Scott Coles –and itself an
21 act of racketeering--was February 11, 2008. Other acts of racketeering activity occurred
22 within five years of that offering. Moreover, Radical Bunny's illegal sales of unregistered
23 securities continued beyond February 2008. The last act of racketeering activity relating to
24 Radical Bunny occurred within five years of a prior act of a racketeering activity.
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1 each of those audit opinions and audited financial statements in making their decisions
2 about whether to acquire, hold, or roll-over their securities offered from and through
3 Mortgages Ltd and ML Securities.
4

5 360. In connection with their decisions to acquire, hold, or roll-over their
6 investment securities offered from and through Mortgages Ltd and ML Securities, Plaintiffs
7 received, reviewed and relied upon the audit opinions of the Auditor Defendants and the
8 audited financial statements of Mortgages Ltd for the years 2005, 2006, and 2007.
9

10 361. In each of the audit opinions they issued for Mortgages Ltd for the years 2005,
11 2006, and 2007, the Auditor Defendants made false statements of material fact to Plaintiffs
12 intending to deceive Plaintiffs into acquiring, holding, or rolling-over investment interests
13 from one of the investment programs of Mortgages Ltd and ML Securities. In particular,
14 the Auditor Defendants made the following three false and material misrepresentations of
15 fact in each of the three audit opinions referred to above:
16
17

- 18 • “We conducted our audits in accordance with U.S. generally accepted auditing
19 standards.”
- 20 • “We believe that our audits provide a reasonable basis for our opinion.”
- 21 • “In our opinion, the financial statements referred to above present fairly, in all
22 material respects, the financial position of Mortgages Ltd....and the results of
23 its operations and its cash flows for the years in conformity with U.S.
24 generally accepted accounting principles.”
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1 362. The Auditor Defendants made the foregoing false and material
2 misrepresentations to Plaintiffs knowing that the statements were false.
3

4 363. As more fully described in paragraphs 115-336 of this Complaint, the Auditor
5 Defendants knew that they had not followed GAAS in conducting their audits of Mortgages
6 Ltd's financial statements for 2005, 2006, and 2007.
7

8 364. As more fully described in paragraphs 115-336 of this Complaint, the
9 Auditor Defendants knew that the audits they performed did not give the Auditor
10 Defendants a reasonable basis to issue "clean" audit opinions on the financial statements of
11 Mortgages Ltd for 2005, 2006, and 2007.
12

13 365. As more fully described in paragraphs 115-336 of this Complaint, the Auditor
14 Defendants knew that the financial statements of Mortgages Ltd did not fairly present the
15 financial position of Mortgages Ltd in conformity with GAAP for 2005, 2006, and 2007.
16

17 366. In addition to expressly making the foregoing misrepresentations of material
18 fact in their audit opinions for 2005, 2006, and 2007, the Auditor Defendants were aware of,
19 but consciously concealed from and failed to disclose to Plaintiffs the significance of,
20 numerous other material facts that further prove the falsity of the Auditor Defendants'
21 statements that they had followed GAAS, that their audits supported a clean opinion, and
22 that Mortgages Ltd's financial statements complied with GAAP. These fraudulently
23 concealed and omitted facts are also referred to as "red flags."
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1 367. In conducting their audits of Mortgages Ltd for 2005, 2006, and 2007, the
2 Auditor Defendants were aware of, fraudulently concealed, and failed to disclose to
3 Plaintiffs the following red flags:
4

- 5 • Mortgages Ltd. stopped making new loans.
- 6 • Mortgages Ltd. terminated its employee profit-sharing payments.
- 7 • Mortgages Ltd. stopped paying investor redemption requests
8 because of lack of available cash.
- 9 • Radical Bunny was a related party under FAS 57, as set forth above.
- 10 • Mortgages Ltd's debt to Radical Bunny exploded from \$14.8 million
11 on October 31, 2005, to over \$197 million on June 30, 2008.
- 12 • There were highly unorthodox and commercially unreasonable terms
13 and practices between Radical Bunny and Mortgages Ltd regarding
14 the Radical Bunny debt, as set forth above.
- 15 • Radical Bunny had been a close business consultant and fiduciary
16 partner to Scott Coles and Mortgages Ltd. since at least 2003.
- 17 • Radical Bunny was raising money to invest in or loan to Mortgages
18 Ltd through the sale of unregistered securities.
- 19 • There were serious weaknesses in the internal controls at Mortgages
20 Ltd.
- 21 • Mortgages Ltd could not fund the "monster" loans.
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- 1 • Mortgages Ltd created and used the delayed funding mechanism in
2 its monster loans.
- 3
- 4 • Borrowers began to file suit against Mortgages Ltd.
- 5 • Coles' single member LLC, SM Coles, LLC, began acquiring assets
6 on a massive scale and Scott Coles was looting Mortgages Ltd to
7 accomplish those acquisitions;
- 8
- 9 • Signs of existence of a "Ponzi Scheme" in the manner in which
10 Mortgages Ltd funded loans and paid interest to investors emerged.
- 11
- 12 • Mortgages Ltd announced it was terminating the RevOp program.
- 13 • Mortgages Ltd initiated the "Value to Loan" pool investment
14 program, designed to loan money to other Pool LLCs.
- 15
- 16 • Scott Coles possessed total legal and actual control over the affairs
17 of Mortgages Ltd, including the underwriting and loan approval
18 process.
- 19
- 20 • Scott Coles sought to exercise unilateral control over the loans the
21 Pass-Through and RevOp investors were in.
- 22 • Mortgages Ltd had no effective, operating board of directors.
- 23
- 24 • Three members of senior management of Mortgages Ltd resigned
25 prior to the 2007 audit report.
- 26
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- 1 • There was a close relationship between the president of Mortgages
2 Ltd and outside counsel, Greenberg Traurig.
- 3
- 4 • Failure of Mortgages Ltd. to adhere to past lending discipline, such
5 as loan to value ratios.
- 6
- 7 • The debt due Mortgages Ltd investors increased from about \$498
8 million at October 31, 2005, to approximately \$733 million at June
9 30, 2008.
- 10
- 11 • Mortgages Ltd's interest expense quadrupled, increasing from \$13
12 million at October 31, 2005, to \$60 million at December 31, 2007.
- 13
- 14 • Scott Coles requested, then cancelled, a formal audit for SM Coles,
15 LLC, for 2007.
- 16
- 17 • Mortgages Ltd. requested, and Mayer Hoffman performed, formal
18 audits for Pools 9-14 for 2006, but never included those audited
19 financial statements in any private offering memorandum and never
20 released them generally to investors, including Plaintiffs.
- 21
- 22 • The financial statements of Mortgages Ltd were materially misstated
23 as a result of Mortgages Ltd's failure to properly value its assets.
- 24
- 25 • The financial statements of Mortgages Ltd were materially
26 misstated as a result of Mortgages Ltd's failure to record appropriate
27 loan loss reserves.
- 28

- 1 • The financial statements of Mortgages Ltd were materially misstated
- 2 as a result of Mortgages Ltd's failure to properly consolidate and
- 3 account for the Pool LLCs.
- 4
- 5 • Mortgages Ltd had been insolvent since 2005.
- 6 • Scot Coles was looting Mortgages Ltd.
- 7

8 368. As revealed in the foregoing misrepresentations of material fact, fraudulent
9 omissions of material fact, and concealed knowledge of red flags, the Auditor Defendants
10 consciously, willfully, and maliciously intended to deceive Plaintiffs into acquiring,
11 holding, or rolling-over investment securities offered by and through Mortgages Ltd and
12 ML Securities.

13

14 369. In making their investments, and in making their decisions to hold or roll-over
15 funds already placed with Mortgages Ltd, Plaintiffs reasonably and justifiably relied on the
16 forgoing misrepresentations and omissions, which, taken together or separately, were
17 material misrepresentations and omissions.

18

19 370. In making their investments, and in making their decisions to hold or roll-over
20 funds already placed with Mortgages Ltd, Plaintiffs made their decisions on the justifiable,
21 reasonable basis and understanding that the facts which the Auditor Defendants omitted and
22 concealed did not exist.

23

24

25 371. The subject matter of the forgoing misrepresentations and omissions related
26 directly to the Plaintiffs' losses and damage from their investments from Mortgages Ltd and
27

1 ML Securities, which losses and damages would have been foreseeable had the true facts
2 been disclosed to Plaintiffs. Had Plaintiffs known the truth, they would have chosen not to
3 acquire the investment securities from and through Mortgages Ltd and ML Securities.
4

5 372. As alleged herein, the Lawyer Defendants, with Defendant Robert Kant as the
6 primary author, drafted and approved for distribution 11 separate private offering
7 memoranda. At the time the Lawyer Defendants drafted each of those private offering
8 memoranda, the Lawyer Defendants knew and expected that Mortgages Ltd and ML
9 Securities would be using the private offering memoranda as part of the unified financing
10 scheme referred to above and that the private offering memoranda would be given to the
11 public. The Lawyer Defendants thus knew and expected that existing and prospective
12 investors of Mortgages Ltd and ML Securities, such as Plaintiffs, would be receiving and
13 relying upon each of those private offering memoranda in making their decisions about
14 whether to acquire, hold, or roll-over their securities offered from and through Mortgages
15 Ltd and ML Securities.
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19 373. Each of the 11 private offering memoranda that the Lawyer Defendants
20 authored specifically identified Greenberg Traurig. Each Pass-Through Program private
21 offering memoranda states that “[t]he legality of the Participations offered hereby will be
22 passed on for the Company by Greenberg Traurig, LLP, Phoenix, Arizona.” Each Pool
23 Program private offering memoranda states that “The validity of the Interests being offered
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1 is being passed on for the Manager by Greenberg Traurig, LLP, Phoenix, Arizona.” Thus,
2 Plaintiffs knew that Greenberg had drafted and approved each private offering memoranda.
3

4 374. In each of the 11 private offering memoranda they authored for Mortgages Ltd
5 and ML Securities, the Lawyer Defendants made false statements of material fact to
6 Plaintiffs intending to deceive Plaintiffs into acquiring, holding, or rolling-over investment
7 interests from one of the investment programs of Mortgages Ltd and ML Securities. In
8 particular, the Lawyer Defendants made the following false and material misrepresentations
9 of fact in each of the 11 private offering memoranda:
10

- 11 • “The participations are being offered and sold in reliance on an exemption
12 from the registration requirements of the Securities Act of 1933 and state
13 securities laws” [Pass-Through Program];
- 14 • “The interests are being offered and sold in reliance on an exemption from the
15 registration requirements of the Securities Act of 1933 and state securities
16 laws” [Pool Program];
- 17 • “The offering of Participations...is being made only to ‘accredited investors’
18 as defined in Regulation D under the Securities Act of 1933 [Pass-Through
19 Program];
- 20 • “The Company is offering [these interests], only to ‘accredited investors’ as
21 defined in Regulation D under the Securities Act of 1933...” [Pool program].
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1 375. The Lawyer Defendants made the foregoing false and material
2 misrepresentations to Plaintiffs knowing that the statements were false.
3

4 376. As more fully described in paragraphs 217-249 above, the Lawyer Defendants
5 knew at the time of each private offering memoranda that the offerings of Mortgages Ltd
6 and MI Securities, as reflected in each of the 11 private offering memoranda, were not
7 exempt from registration under any federal or state statute or regulation and that, in fact, the
8 offerings constituted the sale of unregistered securities.
9

10 377. In addition to making the foregoing misrepresentations of material facts, the
11 Lawyer Defendants failed to state material facts in the 11 private offering memoranda
12 referred to above. Those omissions rendered each of the 11 private offering memoranda
13 deceptive and misleading. In particular, the Lawyer Defendants knowingly and maliciously
14 omitted the following material facts:
15

- 16 • that since 1997 Mortgages Ltd had been violating the securities laws, in
17 particular the accreditation requirements under Rule 501 of Regulation D of
18 the Securities Act of 1933;
- 19 • that Mortgages Ltd had knowingly been receiving since 1999 and was
20 continuing to knowingly receive loans consisting of funds raised from the
21 illegal sale of unregistered securities;
- 22 • that Mortgages Ltd's source of these illegally raised funds was a company,
23 Radical Bunny, LLC, to which Mortgages Ltd regularly referred unaccredited
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1 investors who would not be eligible to invest directly in Mortgages Ltd, in
2 effect a scheme by Mortgages Ltd to avoid the registration provisions of
3 federal and Arizona law;
4

- 5 • that, in substance and in essence, since its formation in 1999, Radical Bunny
6 was acting as an undisclosed and unregistered dealer on behalf of Mortgages
7 Ltd, and that Radical Bunny’s violations of the securities laws therefore also
8 posed to Mortgages Ltd a threat of federal and state regulatory sanction, and
9 an existential threat with respect to Mortgages Ltd’s solvency and ability to
10 fund loan commitments;
11
- 12 • that by the end of 2005, Mortgages Ltd owed Radical Bunny, LLC over \$38
13 million on account of the illegally raised funds which Radical Bunny had
14 provided to Mortgages Ltd; over \$127 million by the end of 2006; over \$172
15 million by year-end 2007; and that the loss of Radical Bunny as a source of
16 funds at any time from or after September 2005 would have been difficult if
17 not impossible for Mortgages Ltd to replace;
18
- 19 • that both Mortgages Ltd and Radical Bunny knew that Radical Bunny’s sales
20 of securities—the proceeds of which were being provided to Mortgages Ltd—
21 “violated numerous provisions of federal and state securities laws”;
22
- 23 • that the very legal counsel drafting the private offering memoranda
24 (Greenberg) was aware that Radical Bunny’s fundraising activities blatantly
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1 violated state and federal securities law and that, as a result, Mortgages Ltd
2 and ML Securities could not invoke any exemption from registration for any
3 of the offerings reflected in any of the private offering memoranda;
4

- 5 • that in order to prevent having to disclose non-performing or impaired loans,
6 Mortgages Ltd and Coles extended the maturity dates of the loans or that
7 Coles purchased the loans himself without causing Mortgages Ltd to record
8 the impairment in those loans;
9
- 10 • that Mortgages Ltd was engaged in a Ponzi scheme;
11
- 12 • that Mortgages Ltd was defrauding borrowers to induce them into loans, in
13 particular the monster loan referred to herein, that Mortgages Ltd was placing
14 investors in, including Plaintiffs;
15
- 16 • that Mortgages Ltd was placing investors, including Plaintiffs, into the
17 foregoing loans that, because of Mortgages Ltd's conduct, were subject to
18 rescission and otherwise unstable and high risk;
19
- 20 • that Mortgages Ltd had materially departed from its historic underwriting
21 principles in that the underwriting function at Mortgages Ltd was non-
22 existent;
23
- 24 • that Scott Coles was looting Mortgages Ltd through the use of his sole
25 member and controlled LLC, SM Coles, LLC;
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- 1 • that Scott Coles was utilizing funds of the illegal enterprise to acquire tens of
- 2 millions of life insurance for himself, to be paid to his family and not to
- 3 Mortgages Ltd, ML Securities, or any other entity for the benefit of investors,
- 4 including Plaintiffs;
- 5
- 6 • that Mortgages Ltd was violating its fiduciary duty; and
- 7
- 8 • that Mortgages Ltd was out of compliance with the Arizona State
- 9 requirements for entities holding a mortgage banker license.

10 378. As revealed in the foregoing misrepresentations of material fact and
11 fraudulent omissions of material fact, the Lawyer Defendants consciously, willfully, and
12 maliciously intended to deceive Plaintiffs into acquiring, holding, or rolling-over investment
13 securities offered by and through Mortgages Ltd and ML Securities.

14
15 379. In making their investments, and in making their decisions to hold or roll-over
16 funds already placed with Mortgages Ltd, Plaintiffs reasonably and justifiably relied on the
17 forgoing misrepresentations and omissions, which, taken together or separately, were
18 material misrepresentations and omissions.

19
20 380. In making their investments, and in making their decisions to hold or roll-over
21 funds already placed with Mortgages Ltd, Plaintiffs made their decisions on the justifiable,
22 reasonable basis and understanding that the facts which the Lawyer Defendants omitted and
23 concealed did not exist.

1 381. The subject matter of the forgoing misrepresentations and omissions related
2 directly to the Plaintiffs' losses and damage from their investments from Mortgages Ltd and
3 ML Securities, which losses and damages would have been foreseeable had the true facts
4 been disclosed to Plaintiffs. Had Plaintiffs known the truth, they would have chosen not to
5 acquire the investment securities from and through Mortgages Ltd and ML Securities.
6

7 382. As alleged herein, Hirsch & Shah is liable for the acts and omissions of
8 Radical Bunny, Tom Hirsch, and each of the other principals of Radical Bunny. At all
9 times material to this case, Hirsch & Shaw knew of the foregoing misrepresentations and
10 omissions of the Auditor Defendants and Lawyer Defendants. With that knowledge, and for
11 the purpose of accomplishing the fraudulent intent of the Lawyer Defendants and the
12 Auditor Defendants, Hirsch & Shaw acted in concert with, knowingly aided and abetted,
13 and otherwise gave substantial assistance to the Lawyer Defendants and the Auditor
14 Defendants in carrying out their acts of fraud, as alleged herein. Hirsch & Shah likewise
15 intended to deceive Plaintiffs.
16
17

18 383. As alleged herein, Mortgages Ltd, ML Securities, and Scott Coles made
19 fraudulent misrepresentations to Plaintiffs and omitted to disclose material facts to the
20 Plaintiffs in order to deceive Plaintiffs into acquiring, holding, or rolling-over investment
21 interests from one of the investment programs of Mortgages Ltd and ML Securities.
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24 384. As revealed in the foregoing misrepresentations of material fact and
25 fraudulent omissions of material fact, Mortgages Ltd, ML Securities, and Scott Coles
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1 consciously, willfully, and maliciously intended to deceive Plaintiffs into acquiring,
2 holding, or rolling-over investment securities offered by and through Mortgages Ltd and
3 ML Securities.
4

5 385. In making their investments, and in making their decisions to hold or roll-over
6 funds already placed with Mortgages Ltd, Plaintiffs reasonably and justifiably relied on
7 those misrepresentations and omissions of Mortgages Ltd, ML Securities, and Scott Coles,
8 which, taken together or separately, were material misrepresentations and omissions.
9

10 386. In making their investments, and in making their decisions to hold or roll-over
11 funds already placed with Mortgages Ltd, Plaintiffs made their decisions on the justifiable,
12 reasonable basis and understanding that the facts which Mortgages Ltd, ML Securities, and
13 Scott Coles omitted and concealed did not exist.
14

15 387. The subject matter of the forgoing misrepresentations and omissions of
16 Mortgages Ltd, ML Securities, and Scott Coles related directly to the Plaintiffs' losses and
17 damage from their investments from Mortgages Ltd and ML Securities, which losses and
18 damages would have been foreseeable had the true facts been disclosed to Plaintiffs. Had
19 Plaintiffs known the truth, they would have chosen not to acquire the investment securities
20 from and through Mortgages Ltd and ML Securities.
21

22 388. At all times material to this case, the Lawyer Defendants, the Auditor
23 Defendants, and Hirsch & Shaw knew of the foregoing misrepresentations and omissions of
24 Mortgages Ltd, ML Securities, and Scott Coles. With that knowledge, and for the purpose
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1 of accomplishing the fraudulent intent of Mortgages Ltd, ML Securities, and Scott Coles,
2 and as alleged herein, the Lawyer Defendants, the Auditor Defendants, Hirsch & Shaw
3 acted in concert with, knowingly aided and abetted, and otherwise gave substantial
4 assistance to Mortgages Ltd, ML Securities, and Scott Coles in carrying out their acts of
5 fraud, as alleged herein.
6

7
8 389. As a direct and proximate result of the wrongful and fraudulent conduct of the
9 Lawyer Defendants, the Auditor Defendants, Hirsch & Shaw, Plaintiffs have been damaged.

10
11 390. The Lawyer Defendants, the Auditor Defendants and Hirsch & Shaw acted
12 willfully, maliciously, with an evil mind and in utter and callous disregard for the rights and
13 interests of Plaintiffs, justifying the imposition of punitive damages.

14
15 391. As alleged herein, the Auditor Defendants, the Lawyer Defendants, and
16 Hirsch & Shaw conspired and acted in concert together and with Mortgages Ltd, ML
17 Securities, and Scott Coles to cause the fraudulent misrepresentations and omission alleged
18 herein. Therefore, each of the Lawyer Defendants, the Auditor Defendants, and Hirsch &
19 Shaw is jointly and severally liable.
20

21 **COUNT THREE**

22 **(Aiding and Abetting Breach of Fiduciary Duty)**

23 392. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

24
25 393. Scott Coles and Mortgages Ltd owed fiduciary duties to Plaintiffs.
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1 394. By its conduct described above, Scott Coles and Mortgages Ltd breached their
2 fiduciary duties to Plaintiffs.
3

4 395. As alleged herein, and at all time material to this Complaint, the Lawyer
5 Defendants, the Auditor Defendants and Hirsch & Shaw were aware of the fiduciary duties
6 that Scott Coles and Mortgages Ltd owed to Plaintiffs.
7

8 396. As alleged herein, and at all time material to this Complaint, the Lawyer
9 Defendants, the Auditor Defendants and Hirsch & Shaw induced, aided and abetted, and
10 otherwise gave substantial assistance to Scott Coles and Mortgages Ltd to enable them to
11 breach their fiduciary duties to Plaintiffs.
12

13 397. As a direct and proximate result of the wrongful conduct of the Lawyer
14 Defendants, the Auditor Defendants and Hirsch & Shaw in aiding and abetting the breach of
15 fiduciary duty, Plaintiffs have been damaged.
16

17 398. The Lawyer Defendants, the Auditor Defendants and Hirsch & Shaw acted
18 willfully, maliciously, with an evil mind and in utter and callous disregard for the rights and
19 interests of Plaintiffs, justifying the imposition of punitive damages.
20

21 399. Defendants' knowing and substantial assistance and participation proximately
22 caused loss and damage to each of Plaintiffs and rendered Defendants liable for the relief
23 described below in Plaintiffs' demand for relief.
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1 410. As alleged herein in Paragraphs 383-391, Mortgages Ltd, ML Securities and,
2 Scott Coles jointly made misleading representations and omission in connection with the
3 sale of securities, in violation of *A.R.S.* §44-1991(A)(2).
4

5 411. As alleged herein, the Lawyer Defendants violated *A.R.S.* §44-1991(A)(1),
6 (2) and, (3) and participated in or induced the unlawful sale of securities to Plaintiffs, within
7 the meaning the meaning of *A.R.S.* §44-2003(A).
8

9 412. As alleged herein, the Auditor Defendants violated *A.R.S.* §44-1991(A)(1),
10 (2) and, (3) and participated in or induced the unlawful sale of securities to Plaintiffs, within
11 the meaning the meaning of *A.R.S.* §44-2003(A).
12

13 413. The Lawyer Defendants and the Auditor Defendants are jointly and severally
14 liable under *A.R.S.* §44-2003(A) to the same extent as Mortgages Ltd, ML Securities, and
15 Scott Coles for the unlawful sales and violations of *A.R.S.* §44-1991(A). But for the
16 bankruptcies of Mortgages Ltd and Radical Bunny and death of Scott Coles, those entities
17 and persons would likewise be jointly and severally liable under *A.R.S.* §44-2003(A).
18

19 414. Pursuant to *A.R.S.* §44-2001(A), the Lawyer Defendants and the Auditor
20 Defendants are liable for rescission. To the extent not excused by equitable principles or
21 otherwise made futile by the facts of this case, Plaintiffs hereby tender to Defendants all
22 consideration received in connection with the securities that Plaintiffs purchased and offer
23 to do any and all other acts required for rescission under common law or *A.R.S.* §44-
24 2001(A).
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COUNT SIX

(Aiding and Abetting Primary Violations of Arizona Securities Act)

415. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

416. As alleged herein, Mortgages Ltd, ML Securities, and Scott Coles committed primary violations of the Arizona Securities Act, A.R.S. §44-1991(A)(1), (2), and (3).

417. As further alleged herein, the Auditor Defendants and the Lawyer Defendants knew about the primary violations of Mortgages Ltd, ML Securities, and Scott Coles.

418. As alleged herein, knowing of the primary violation by Mortgages Ltd, ML Securities, and Scott Coles, the Lawyer Defendants and Auditor Defendants aided and abetted and otherwise made a necessary contribution to the underlying scheme, giving rise to aiding and abetting liability under A.R.S. §44-1991(A).

419. The Lawyer Defendants and the Auditor Defendants acted in concert with each other and with Mortgages Ltd, ML Securities, and Scott Coles in the foregoing wrongful conduct.

420. As alleged herein, the Lawyer Defendants and Auditor Defendants aided and abetted the primary violations of Mortgages Ltd, ML Securities, and Scott Coles intentionally, willfully, with an evil mind, and maliciously, justifying the imposition of punitive damages.

421. As a direct and proximate result of the wrongful conduct of the Lawyer Defendants and the Auditor Defendants. Plaintiffs have suffered damages in an amount to

1 be proved at trial, and for which Defendants are liable as set forth below in Plaintiffs'
2 demand for relief.

3
4 **COUNT SEVEN**

5 **(Violations of Arizona Consumer Fraud Act, A.R.S. §§44-1521 et seq.)**

6 422. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

7
8 423. As alleged herein, the Lawyer Defendants and the Auditor Defendants
9 employed deception, deceptive acts or practices, fraud, false pretenses, false promises,
10 misrepresentations, and concealment, suppression and omission of material facts with the
11 intent that Plaintiffs rely upon such concealment, suppression, or omission in connection
12 with the sale or advertisement of merchandise within the state of Arizona, in violation of
13 Arizona's Consumer Fraud Act, A.R.S. §44-1521 et seq.

14
15 424. As a direct and proximate result of Defendants' violations of A.R.S. §44-1521
16 et seq., Plaintiffs have suffered damages in an amount to be proved at trial, and for which
17 Defendants are liable as set forth below in Plaintiffs' demand for relief.

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19 **C. Claims Against the Constructive Trust Defendants.**

20 **COUNT EIGHT**

21 **(Constructive Trust)**

22
23 425. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

24
25 426. As alleged herein, the illegal enterprise acquired, through racketeering, life
26 insurance policies on the life of Scott Coles. At least some of those life insurance policies
27
28

1 have provided proceeds that have been paid to Francine Coles, Ashley Coles, and Hailey
2 Coles, for themselves or in their capacities as representatives for others.

3
4 427. Pursuant to *A.R.S.* §13-2314.04(d)(6), a constructive trust should be imposed
5 over all proceeds distributed to these Defendants, and all other unpaid life insurance
6 proceeds on the life of Scott Coles.

7
8 **EXPERT PROOF**

9 Plaintiffs hereby certify that under *A.R.S.* §12-2602 expert testimony is required to
10 prove some or all claims against the Auditor Defendants.

11
12 **DEMAND FOR RELIEF**

13 WHEREFORE, Plaintiffs demand judgment against all Defendants jointly and
14 severally as follows:

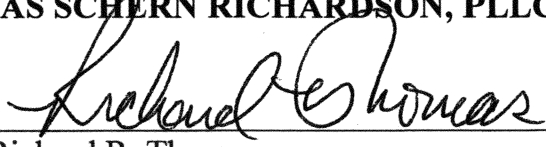
- 15 A. Rescission or rescissionary damages in an amount to be proven at trial;
16
17 B. Actual and consequential damages in an amount to be proven at trial;
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19 C. Treble damages pursuant to *A.R.S.* §13-2314.04(A);
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21 D. A constructive trust over all life insurance proceeds on the life of Scott M.
22 Coles acquired through the use of funds of the illegal enterprise.
23
24 E. Costs, expert fees, and reasonable attorneys' fees pursuant to *A.R.S.*
25 §13-2314.04;
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27 F. Punitive damages in a just amount;
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G. Pre- and post-judgment interest as allowed by law; and

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H. Any other relief the Court and/or jury deem just and proper.

DATED this 16th day of September, 2010.

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By 

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