

EXHIBIT 3

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13 **IN THE SUPERIOR COURT OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 DELERY GULLORY and KATHY
16 GULLORY, husband and wife; BEAR
17 TOOTH MOUNTAIN HOLDINGS, LLP, an
18 Arizona limited liability partnership;
19 CORNERSTONE REALTY AND
20 DEVELOPMENT, INC., an Arizona
21 corporation, WILLIAM L. HAWKINS
22 FAMILY, LLP, an Arizona limited liability
23 partnership; CORNERSTONE REALTY
24 AND DEVELOPMENT, INC. DEFINED
25 BENEFIT PLAN AND TRUST; AJ
26 CHANDLER 25 ACRES, an Arizona limited
27 liability company; QUEEN CREEK XVIII,
28 LLC, an Arizona limited liability company;
PUEBLO SERENO MOBILE HOME PARK,
LLC, an Arizona limited liability company;
MICHAEL JOHNSON INVESTMENTS II,
LLC, Arizona limited liability company;
WILLIAM C. LEWIS, As Trustee of the
WILLIAM C. LEWIS TRUST DATED
AUGUST 1, 1989, AS AMENDED;
RICHARD K. UNDERWOOD, As Trustee
Of THE RICHARD K. UNDERWOOD
REVOCABLE TRUST DATED OCTOBER
31, 1995, AS AMENDED; ELFRIEDE

Case No. * CV2009-091501
COMPLAINT

1 SCHOBER; EVA SPERBER-PORTER, a
2 married woman; BASELINE AND VAL
3 VISTA LIMITED PARTNERSHIP, an
4 Arizona limited partnership; LITCHFIELD
5 ROAD ASSOCIATES LIMITED
6 PARTNERSHIP, an Arizona limited
7 partnership; MARK SVEJDA, a married man;
8 VOLKER ROSSNAGEL; TRINE
9 HOLDINGS, LLC, Arizona limited liability
10 company; YUVAL and MIRIT CAINE;
11 WEKSLER-CASSELMAN INVESTMENTS;
12 MORLEY ROSENFELD, M.D. P.C.
13 RESTATED PROFIT SHARING PLAN;
14 MELVIN L. DUNSWORTH JR., Trustee of
15 THE REVOCABLE LIVING TRUST OF
16 MELVIN DUNSWORTH, JR. DATED
17 DECEMBER 23, 2003; EVERTSON OIL
18 COMPANY, INC., a corporation; JAMES C.
19 SCHNECK, Trustee of THE JAMES C.
20 SCHNECK REVOCABLE TRUST; JASON
21 C. SCHNECK; JAMES C. SCHNECK,
22 BRETT M. MCFADDEN; LONNIE JOEL
23 KRUEGER, Trustee of THE LONNIE JOEL
24 KRUEGER FAMILY TRUST; LON
25 KRUEGER; ORVILLE and ALTHEA
26 KRUEGER FAMILY TRUST; ORVILLE
27 AND ALTHEA KRUEGER, husband and
28 wife; MARYANNE KRUEGER, a married
woman; LON KRUEGER, TRUSTEE FOR
THE JAMES C. IRREVOCABLE TRUST;
ROBERT MAURICE FACCIOLA, Trustee of
THE ROBERT MAURICE FACCIOLA
TRUST; ROBERT FACCIOLA; BRUCE
DENNIS BUCKLEY AND ALIVIA
BUCKLEY As Trustees of THE BRUCE
DENNIS AND ALIVIA VIRGINIA
BUCKLEY REVOCABLE LIVING TRUST
DATED JUNE 4, 1985 AND AMENDED
DECEMBER 7, 1994; BRUCE BUCKLEY;
MARK LOBERG; LOUIS R. VAZQUEZ,
M.D.; JAN M. STERLING, Trustee of THE

1 JAN M. STERLING LIVING TRUST; JAN
2 M. STERLING; JAN M. STERLING
3 LIVING TRUST; LEAH L. LEWIS, Trustee
4 Of THE LEAH L. LEWIS TRUST DATED
5 FEBRUARY 23, 2000; LEAH L. LEWIS;
6 STEPHEN B. HOWELL, M.D., Trustee of
7 THE STEPHEN B. HOWELL, M.D.
8 COMBINATION RETIREMENT TRUST,
9 DATED DECEMBER 16, 1998; STEPHEN
10 B. HOWELL; BRETT W. HOWELL;
11 JUSTIN HOWELL; PAMELA R.
12 ANDERSON; KAREN E. LAMB, Trustee of
13 THE KAREN E. LAMB LIVING TRUST
14 DATED FEBRUARY 26, 2007; KAREN E.
15 LAMB; DELBERT R. LEWIS, JR., Trustee
16 of THE DELBERT R. LEWIS, JR. FAMILY
17 TRUST UTA DATED DECEMBER 31,
18 1997; LOUIS B. MURPHEY; JOSEPH L.
19 AND HELEN M. BALDINO, Trustees of
20 THE BALDINO FAMILY REVOCABLE
21 TRUST DATED MAY 26, 1994; HELEN M.
22 BALDINO; JOSEPH L. BALDINO; JOSEPH
23 L. BALDINO, Trustee of THE MERIDIAN
24 FINANCIAL CORPORATION PROFIT
25 SHARING AND RETIREMENT TRUST;
26 HELEN M. BALDINO AND JOSEPH L.
27 BALDINO, ALAN and TERRI BANDLER,
husband and wife; husband and wife;
SHELDON EPSTEIN, M.D.; HEATHER R.
EPSTEIN; MICHAEL D. EPSTEIN;
JONATHAN & LYNDA BLIVEN,
TRUSTEES OF THE JONATHAN &
LYNDA BLIVEN FAMILY TRUST; CRAIG
ALLISON, Trustee of THE CRAIG
ALLISON LIVING TRUST; DONALD
ANDERSON; STEPHEN D. BARBOUR;
JANE A. BARTELME; MORRIS GORDON
BAGNE; JUNE BEHRENDT; STEVEN
BROTSMAN & SIGRID VAN BLADEL,
Trustees of THE STEVEN BROTSMAN &
SIGRID VAN BLADEL REVOCABLE

1 TRUST; SHERYL CALCAVECCHIA;
2 ERIKA CARLSON, Trustee Of THE ERIKA
3 CARLSON TRUST; FIFTH AGE OF MAN
4 FOUNDATION (CORP); WALTER J.
5 CLARKE; BEVERLY CLARKE, TRUSTEE
6 OF THE BEVERLY CLARKE TRUST;
7 BEVERLY CLARKE; WILLIAM
8 EDWARDS; DONALD FRUCHTMAN;
9 STEPHEN FRANKLIN, TRUSTEE OF THE
10 STEPHEN FRANKLIN TRUST; MICHAEL
11 C. GALLAGA; DAVE GOLDMAN;
12 GERALD GROSS, Trustee of THE GERALD
13 GROSS FAMILY TRUST; GERALD
14 GROSS and THELMA A. GROSS, husband
15 and wife; STEPHEN C. GRESSER, Trustee
16 Of THE STEPHEN C. GRESSER 1995
17 TRUST; FREDERICK C. HEITMAN;
18 DONNA R. HEITMAN; STEPHEN &
19 DEBORAH HOOKER, Trustees of THE
20 STEPHEN & DEBORAH HOOKER TRUST;
21 STEPHEN L. HOOKER; DEBORAH L.
22 HOOKER; MICHAEL KLIMANSKI;
23 ELIZABETH KRENZEL; JEANNE LEWIS,
24 Trustee Of THE JEANNE LEWIS
25 REVOCABLE TRUST; STEPHEN
26 LESHNER; NANCY LUTZ; THOMAS
27 LUTZ; PATRICK MALLONEE; WILLIAM
28 J. MILLER & SANDRA B. MILLER,
Trustees of THE WILLIAM J. MILLER &
SANDRA B. MILLER FAMILY TRUST;
NORMAN THARP, Trustee of THE
NORMAN THARP FAMILY TRUST;
GREGORY PATTERSON; KATALIN A.
RADER; ROBERT RADER; THE RADER
FAMILY TRUST; KURT SEEMANN; THE
JAYESH K. & VAISHALI SHAH FAMILY
TRUST; JAYESH SHAH; SUSAN E.
SHIPLEY; JOHN K. SOLHEIM & BROOKE
L. SOLHEIM JOINT; DAVID BRIAN
STANTON; DAVID BRIAN STANTON,
Trustee Of THE DAVID BRIAN STANTON

1 REVOCABLE TRUST; SCOTT B.
2 SUMMERS; BETTY J. TATRO;
3 KATHLEEN K. TOMASULO; KATHLEEN
4 K. TOMASULO, Trustee of THE
5 KATHLEEN K. TOMASULO CREDIT
6 SHELTER TRUST; DARREN C.
7 TREASURE; URQUIETA SMYTHE, Trustee
8 of THE URQUIETA SMYTHE FAMILY
9 TRUST; JOHN S. VANDERHEIDE, Trustee
10 OF THE JOHN S. VANDERHEIDE TRUST;
11 CHARLES VOSE; CHARLES B. WINN;
12 JOHN C. VINSON and TAEKO VINSON,
13 Trustees of the JOHN CHARLES VINSON
14 FAMILY TRUST; ROBERT G. FURST,
15 TRUSTEE OF THE ROBERT G. FURST &
16 ASSOC. LTD. PENSION PLAN; ROBERT
17 G. FURST; DAVID FURST, TRUSTEE OF
18 THE FURST FAMILY TRUST; DAVID
19 FURST, TRUSTEE OF THE DHF
20 CORPORATION RETIREMENT TRUST;
21 INVESTOR CLOUT, an Arizona general
22 partnership; JOHN DOES 1-100; JANE
23 DOES 1-100; BLACK & WHITE
24 CORPORATIONS 1-100; and XYZ
25 PARTNERSHIPS 1-100,

18 Plaintiffs,

19 v.

20 THE ESTATE OF SCOTT M. COLES,
21 through Gerald K. Smith, Personal
22 Representative,

22 Defendant.

23
24 For their Complaint against Defendant, and pursuant to *A.R.S. §14-3110*, Plaintiffs
25 allege the following:
26

27 ///

1 **I. INTRODUCTION**

2 "We do not care anything for the heaviest storms in these big
3 ships. It is fog that we fear. The big icebergs that drift into
4 warmer water melt much more rapidly under water than on the
5 surface, and sometimes a sharp, low reef extending two or
6 three hundred feet beneath the sea is formed. If a vessel should
7 run on one of these reefs half her bottom might be torn away."

8 **Captain Smith, Commander of Titanic, prior to the ship's
9 maiden voyage.**

10 1. This case chronicles two tragedies. One defies any comforting explanation,
11 but certainly commands compassion. For reasons perhaps only he knew, on June 2, 2008,
12 Scott M. Coles took his own life, leaving behind grieving family members and friends. It is
13 Scott Coles' death that has now created his probate estate and is the framework for these
14 claims by these Plaintiffs at this time.

15 2. The second tragedy actually predates the death of Scott Coles. It is the demise
16 of Mortgages Ltd, at one time the largest private lender in Arizona. Shrouded in the fog
17 created by the deception, betrayal, and malfeasance of Scott M. Coles, Mortgages Ltd. hit
18 the proverbial ice berg and now lies crippled and sinking in the bankruptcy court. Like
19 unsuspecting and trusting passengers on that ship, Plaintiffs – having entrusted Coles with
20 over \$150,000,000 of their money, collectively – are the victims of Scott Coles' arrogance,
21 greed, and thoughtless self-interest.

22 3. Plaintiffs are all successful and capable business people who, on their own
23 behalf or for entities they controlled, justifiably entrusted Scott Coles with significant – in
24 some instances, huge – amounts of money to acquire interests in loans secured by deeds of
25 trust on Arizona real estate. Scott Coles requested and welcomed that trust. Scott Coles
26 trust on Arizona real estate. Scott Coles requested and welcomed that trust. Scott Coles
27 trust on Arizona real estate. Scott Coles requested and welcomed that trust. Scott Coles
28

1 personally owed fiduciary duties to each and every one of the Plaintiffs in this case. In the
2 end, Scott Coles utterly betrayed that trust and violated those fiduciary duties.

3
4 4. In the more than 10 months since Scott Coles died, Plaintiffs have begun to
5 discover what Scott Coles hid before he died – Mortgages Ltd was on the brink of corporate
6 death and that it got to that point because Scott Coles shredded the fundamental principles
7 upon which his father founded the company and transformed Mortgages Ltd into a
8 monument of greed and deception. Scott Coles began to make outrageous loans that
9 Mortgages Ltd could not fund. He manipulated Plaintiffs' "investment" interests to suit his
10 own agenda, placing them in these outrageous loans. He began to lie to Plaintiffs about the
11 condition of Mortgages Ltd to avoid a "run on the bank." He manipulated the financial
12 statements of Mortgages Ltd and, together with Mortgages Ltd's auditors, created and
13 maintained materially misstated financial statements to deceive the world as a whole about
14 the true financial condition of Mortgages Ltd.
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18 5. In the case of some Plaintiffs, Scott Coles' failure to tell those Plaintiffs the
19 whole truth about the condition of Mortgages Limited caused them to agree to begin doing
20 business with Mortgages Limited and turn over millions of dollars to Scott Coles. In other
21 cases, Scott Coles' deception caused Plaintiffs to *keep* their millions of dollars with
22 Mortgages Limited, even when they had the right and opportunity to withdraw it. Scott
23 Coles' personal misconduct damaged each Plaintiff and now, despite the dark cloud of Scott
24 Coles' personal tragedy, and as is their lawful right to do so, Plaintiffs ask Scott Coles'
25 Estate to answer for the wrongs of Scott Coles.
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1 **II. PARTIES, JURISDICTION, AND VENUE**

2 6. This Complaint organizes the named Plaintiffs according to the various
3 “investment” programs within Mortgages Ltd (hereinafter “ML”). A portion of the named
4 Plaintiffs are “RevOp” investors. A portion of the Plaintiffs are “Pass-Through” investors.
5 A portion of the Plaintiffs are members of the limited liability companies known as the
6 “Pools.” Some Plaintiffs were in two or more of these programs, but for purposes of
7 general introduction, appear here in only one category.
8

9 7. There may be other participants in other programs of ML who have claims
10 against Scott Coles who have not yet been included as Plaintiffs in this or any other case.
11 For that reason, Plaintiffs have identified John Does 1-100, Jane Does 1-100, Black &
12 White Corporations 1-100; XYZ Partnerships 1-100 in the event that additional Plaintiffs
13 become known to these Plaintiffs and are identified and added appropriately to this case at a
14 future date. ML and the Estate of Scott M. Coles are aware or should be aware of all other
15 potential Plaintiffs from the existing list of participants in any of the programs of ML at the
16 time of the death of Scott Coles.
17

18 **REVOP PLAINTIFFS: GROUP 1**

19 8. The RevOp program was, in essence, a program much like the Pass-Through
20 Participation loan program (described below), selling fractionalized interests in various
21 loans to qualified, accredited participants. However, in the RevOp program, Scott Coles
22 typically targeted higher net worth individuals. The RevOp program provided a preferred
23 rate of return for investors. Payments to the RevOp participants were guaranteed by ML
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1 regardless of actual collections by ML from the borrowers. RevOp participants signed the
2 operative documents as participants in any other Pass Through Participation program. In
3 addition, there is an additional document called the Loan Program Purchase Agreement
4 relating to the RevOp program.
5

6 9. The RevOp program was particularly attractive to higher net worth
7 participants because of its liquidity. Scott Coles created and promoted the RevOp program
8 for that particular reason, knowing that the higher net worth individuals would commit
9 higher dollars to the RevOp program if those dollars were relatively liquid. Indeed, the
10 RevOP program provided its participants with various levels of liquidity.
11

12 10. In the ML bankruptcy, the Trustee for Radical Bunny, LLC has filed a motion
13 challenging the property interest of the RevOp participants, alleging that the RevOp
14 participants owned nothing more than unsecured debt and not any valid and enforceable
15 security interest in any of the real property related to any loan of ML. The RevOp Plaintiffs
16 have, through other counsel or other avenues, challenged that motion by the Trustee for
17 Radical Bunny. If it has determined by the bankruptcy court that the RevOp participants
18 possess nothing more than unsecured claims against ML, the damages of the RevOp
19 Plaintiffs in this case will increase proportionately. The following persons and entities are
20 the RevOp Plaintiffs:
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24 11. Delery and Kathy Guillory are residents of Maricopa County, Arizona.
25 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
26 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
27

1 damage to Delery and Kathy Guillory in an amount to be established at trial, but in no event
2 less than \$9,000,459.15, the amount of funds placed with ML at the time of ML's
3 bankruptcy.
4

5 12. Bear Tooth Mountain Holdings, LLP is an Arizona limited liability
6 partnership located in Maricopa County, Arizona. Through the conduct alleged herein,
7 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
8 and omissions, Scott Coles proximately caused damage to Bear Tooth Mountain Holdings,
9 LLP in an amount to be established at trial, but in no event less than \$5,578,906.39, the
10 amount of funds placed with ML at the time of ML's bankruptcy.
11
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13 13. Cornerstone Realty and Development, Inc. is an Arizona corporation
14 authorized to do and is doing business in Maricopa County, Arizona. Through the conduct
15 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
16 misrepresentations and omissions, Scott Coles proximately caused damage to Cornerstone
17 Realty and Development, Inc. in an amount to be established at trial, but in no event less
18 than \$75,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
19
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21 14. William L. Hawkins Family, LLP is an Arizona limited liability partnership
22 located in Maricopa County, Arizona. Through the conduct alleged herein, including but
23 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
24 Scott Coles proximately caused damage to William L. Hawkins Family, LLP in an amount
25 to be established at trial, but in no event less than \$3,165,992.43, the amount of funds
26 placed with ML at the time of ML's bankruptcy.
27
28

1 15. Cornerstone Realty and Development, Inc. Defined Benefit Plan was
2 established within Maricopa County, Arizona. Through the conduct alleged herein,
3 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
4 and omissions, Scott Coles proximately caused damage to Cornerstone Realty and
5 Development, Inc. Defined Benefit Plan in an amount to be established at trial, but in no
6 event less than \$525,000.00, the amount of funds placed with ML at the time of ML's
7 bankruptcy.
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10 16. AJ Chandler 25 Acres, LLC is an Arizona limited liability company located in
11 Maricopa County, Arizona. Through the conduct alleged herein, including but not limited
12 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
13 Coles proximately caused damage to AJ Chandler 25 Acres, LLC in an amount to be
14 established at trial, but in no event less than \$5,243,336.88, the amount of funds placed with
15 ML at the time of ML's bankruptcy.
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18 17. Queen Creek XVIII, LLC is an Arizona limited liability company located in
19 Maricopa County, Arizona. Through the conduct alleged herein, including but not limited
20 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
21 Coles proximately caused damage to Queen Creek XVIII, LLC in an amount to be
22 established at trial, but in no event less than \$6,546,458.49, the amount of funds placed with
23 ML at the time of ML's bankruptcy.
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26 18. Pueblo Sereno Mobile Home Management, LLC is an Arizona limited
27 liability company located in Maricopa County, Arizona. Through the conduct alleged
28

1 herein, including but not limited to, his breach of fiduciary duty and fraudulent
2 misrepresentations and omissions, Scott Coles proximately caused damage to Pueblo Sereno
3 Mobile Home Management, LLC in an amount to be established at trial, but in no event less
4 than \$6,907,963.58, the amount of funds placed with ML at the time of ML's bankruptcy.
5

6 19. Michael Johnson Investments is established within Maricopa County,
7 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
8 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
9 caused damage to Michael Johnson Investments in an amount to be established at trial, but
10 in no event less than \$1,000,000.00, the amount of funds placed with ML at the time of
11 ML's bankruptcy.
12

13 20. The William C. Lewis Trust Dated August 1, 1989 was established within
14 Maricopa County, Arizona. Through the conduct alleged herein, including but not limited
15 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
16 Coles proximately caused damage to The William C. Lewis Trust Dated August 1, 1989 in
17 an amount to be established at trial, but in no event less than \$22,981,000.00, the amount of
18 funds placed with ML at the time of ML's bankruptcy.
19

20 21. Richard K. Underwood, as Trustee of The Richard K. Underwood Revocable
21 Trust Dated October 31, 1995, As Amended was established within Maricopa County,
22 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
23 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
24 caused damage to Richard K. Underwood, as Trustee of The Richard K. Underwood
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1 Revocable Trust Dated October 31, 1995, As Amended in an amount to be established at
2 trial, but in no event less than \$2,000,000.00, the amount of funds placed with ML at the
3 time of ML's bankruptcy.
4

5 22. The Revocable Living Trust of Melvin L. Dunsworth, Jr., Dated December
6 23, 2003 was established outside of Maricopa County, Arizona. Mr. Dunsworth is
7 domiciled outside the State of Arizona. Through the conduct alleged herein, including but
8 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
9 Scott Coles proximately caused damage to the Revocable Living Trust of Melvin L.
10 Dunsworth, Jr., Dated December 23, 2003 in an amount to be established at trial, but in no
11 event less than \$6,089,960.00, the amount of funds placed with ML at the time of ML's
12 bankruptcy.
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15 23. The Robert Maurice Facciola Trust was established outside the County of
16 Maricopa, Arizona. Robert Facciola is domiciled outside the State of Arizona. Through the
17 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
18 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to the
19 Robert Maurice Facciola Trust and to Robert Facciola in an amount to be established at
20 trial, but in no event less than \$9,840,000.00, the amount of funds placed with ML at the
21 time of ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford
22 Investment Partners, LLC was the authorized agent of the Robert Maurice Facciola Trust
23 and Robert Facciola in dealings with Scott Coles and ML. Scott Coles made the
24 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
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1 24. Mark Loberg is a resident of Maricopa County, Arizona. Through the conduct
2 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
3 misrepresentations and omissions, Scott Coles proximately caused damage to Mark Loberg
4 in an amount to be established at trial, but in no event less than \$1,000,000.00, the amount
5 of funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
6 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of Mark
7 Loberg in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
8 omissions alleged herein to Walter Clarke in that agency capacity.
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11 25. Louis R. Vazquez is domiciled outside the State of Arizona. Through the
12 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
13 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
14 Louis R. Vazquez in an amount to be established at trial, but in no event less than
15 \$1,000,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
16 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
17 authorized agent of Louis R. Vazquez in dealings with Scott Coles and ML. Scott Coles
18 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
19 capacity.
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23 26. The Jan M. Sterling Living Trust was established outside the County of
24 Maricopa, Arizona. Jan Sterling is domiciled outside the State of Arizona. Through the
25 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
26 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to the
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1 Jan M. Sterling Living Trust and to Jan M. Sterling in an amount to be established at trial,
2 but in no event less than \$4,260,295.28, the amount of funds placed with ML at the time of
3 ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment
4 Partners, LLC was the authorized agent of the Jan M. Sterling Living Trust and Jan M.
5 Sterling in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
6 omissions alleged herein to Walter Clarke in that agency capacity.
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9 27. The Leah L. Lewis Trust, Dated February 23, 2000 was established in
10 Maricopa County, Arizona. Leah Lewis is a resident of Maricopa County, Arizona.
11 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
12 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
13 damage to the Leah L. Lewis Trust, Dated February 23, 2000 and Leah L. Lewis in an
14 amount to be established at trial, but in no event less than \$7,692,963.58, the amount of
15 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
16 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of the Leah L.
17 Lewis Trust, Dated February 23, 2000 in dealings with Scott Coles and ML. Scott Coles
18 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
19 capacity.
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23 28. Yuval Caine and Mirit Caine are residents of Maricopa County, Arizona.
24 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
25 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
26 damage to Yuval Caine and Mirit Caine in an amount to be established at trial, but in no
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1 event less than \$750,000.00, the amount of funds placed with ML at the time of ML's
2 bankruptcy.

3
4 29. The Stephen B. Howell, M.D. Combination Retirement Trust, Dated
5 December 16, 1998 was established outside the County of Maricopa, Arizona. Stephen B.
6 Howell, M.D. is domiciled outside of the State of Arizona. Through the conduct alleged
7 herein, including but not limited to, his breach of fiduciary duty and fraudulent
8 misrepresentations and omissions, Scott Coles proximately caused damage to the Stephen
9 B. Howell, M.D. Combination Retirement Trust, Dated December 16, 1998, and to Stephen
10 B. Howell, M.D. in an amount to be established at trial, but in no event less than
11 \$855,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
12 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
13 authorized agent of the Stephen B. Howell, M.D. Combination Retirement Trust, Dated
14 December 16, 1998, and Stephen B. Howell, M.D. in dealings with Scott Coles and ML.
15 Scott Coles made the misrepresentations and omissions alleged herein to Walter Clarke in
16 that agency capacity.
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21 30. The Lonnie Joel Krueger Family Trust was established in Maricopa County,
22 Arizona. Lonnie Krueger resides within Maricopa County, Arizona. Through the conduct
23 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
24 misrepresentations and omissions, Scott Coles proximately caused damage to the Lonnie
25 Joel Krueger Family Trust in an amount to be established at trial, but in no event less than
26 \$2,180,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
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1 31. Pamela R. Anderson is domiciled outside Maricopa County, Arizona. Through
2 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
4 Pamela R. Anderson in an amount to be established at trial, but in no event less than
5 \$500,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
6 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
7 authorized agent of Pamela R. Anderson in dealings with Scott Coles and ML. Scott Coles
8 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
9 capacity.
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13 32. The Karen E. Lamb Living Trust Dated February 26, 2007 was established
14 outside Maricopa County, Arizona. Through the conduct alleged herein, including but not
15 limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
16 Scott Coles proximately caused damage to the Karen E. Lamb Living Trust Dated February
17 26, 2007 in an amount to be established at trial, but in no event less than \$1,200,000.00, the
18 amount of funds placed with ML at the time of ML's bankruptcy. At all times material to
19 this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
20 the Karen E. Lamb Living Trust Dated February 26, 2007 in dealings with Scott Coles and
21 ML. Scott Coles made the misrepresentations and omissions alleged herein to Walter
22 Clarke in that agency capacity.
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26 33. The Delbert R. Lewis, Jr. Family Trust UTA Dated December 31, 1997 was
27 established in Maricopa County, Arizona. Through the conduct alleged herein, including
28

1 but not limited to, his breach of fiduciary duty and fraudulent misrepresentations and
2 omissions, Scott Coles proximately caused damage to the Delbert R. Lewis, Jr. Family Trust
3 UTA Dated December 31, 1997 in an amount to be established at trial, but in no event less
4 than \$1,000,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
5 At all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was
6 the authorized agent of the Delbert R. Lewis, Jr. Family Trust UTA Dated December 31,
7 1997 in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
8 omissions alleged herein to Walter Clarke in that agency capacity.
9

11 34. Louis B. Murphey is a resident of Benson, Arizona. Through the conduct
12 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
13 misrepresentations and omissions, Scott Coles proximately caused damage to Louis B.
14 Murphey in an amount to be established at trial, but in no event less than \$6,000,000.00, the
15 amount of funds placed with ML at the time of ML's bankruptcy.
16
17

18 35. Morley Rosenfield, M.D., P.C. Restated Profit Sharing Plan is an Arizona
19 corporation located in Maricopa County, Arizona. Through the conduct alleged herein,
20 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
21 and omissions, Scott Coles proximately caused damage to Morley Rosenfield, M.D., P.C.
22 Restated Profit Sharing Plan in an amount to be established at trial, but in no event less than
23 \$4,959,322.31, the amount of funds placed with ML at the time of ML's bankruptcy.
24
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26 36. Evertson Oil Company, Inc. is a foreign corporation. Through the conduct
27 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
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1 misrepresentations and omissions, Scott Coles proximately caused damage to Evertson Oil
2 Company, Inc. in an amount to be established at trial, but in no event less than
3 \$1,000,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
4

5 37. The James C. Schneck Revocable Trust was established outside the State of
6 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
7 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
8 caused damage to the James C. Schneck Revocable Trust in an amount to be established at
9 trial, but in no event less than \$8,820,000.00, the amount of funds placed with ML at the
10 time of ML's bankruptcy.
11

12 38. Jason C. Schneck and James C. Schneck are residents of Wisconsin. Through
13 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
14 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
15 Jason C. Schneck and James C. Schneck in an amount to be established at trial, but in no
16 event less than \$100,000.00, the amount of funds placed with ML at the time of ML's
17 bankruptcy.
18

19 39. Brett McFadden is a resident of Maricopa County, Arizona. Through the
20 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
21 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
22 Brett McFadden in an amount to be established at trial, but in no event less than
23 \$1,000,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
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1 then solicit and then receive "investor" money to "participate" in that particular loan. ML
2 would then assign an interest – the fractionalized interest – in the note and deed of trust to
3 each individual investor.
4

5 44. The pass-through programs used by ML were the Revolving Opportunity
6 Loan Program, Capital Opportunity Loan Program, Annual Opportunity Loan Program,
7 Opportunity Plus Loan Program, Performance Plus Loan Program, or other similar
8 programs. The fractional interests of the Pass-Through investors in the loans and liens on
9 real estate collateral belong to and are the property of the Pass-Through Plaintiffs, not to
10 ML. ML may own a fractional interest in some of the same loans in its own name. The
11 following persons and entities are the Pass-Through Plaintiffs:
12
13

14 45. Eva Sperber-Porter, a married woman, is a resident of Maricopa County,
15 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
16 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
17 caused damage to Eva Sperber-Porter in an amount to be established at trial, but in no event
18 less than \$3,671,285.56, the amount of funds placed with ML at the time of ML's
19 bankruptcy.
20
21

22 46. Baseline and Val Vista Limited Partnership is an Arizona limited partnership
23 located in Maricopa County, Arizona. Through the conduct alleged herein, including but
24 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
25 Scott Coles proximately caused damage to Baseline and Val Vista Limited Partnership in an
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1 amount to be established at trial, but in no event less than \$3,353,307.01, the amount of
2 funds placed with ML at the time of ML's bankruptcy.

3
4 47. Litchfield Road Associates Limited Partnership is an Arizona limited
5 partnership located in Maricopa County, Arizona. Through the conduct alleged herein,
6 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
7 and omissions, Scott Coles proximately caused damage to Litchfield Road Associates
8 Limited Partnership in an amount to be established at trial, but in no event less than
9 \$3,718,788.78, the amount of funds placed with ML at the time of ML's bankruptcy.

10
11 48. Mark Svejda, a married man, is a resident of Maricopa County, Arizona.
12 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
13 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
14 damage to Mark Svejda, in an amount to be established at trial, but in no event less than
15 \$186,523.67, the amount of funds placed with ML at the time of ML's bankruptcy.

16
17
18 49. Elfriede Schober is a German citizen. Through the conduct alleged herein,
19 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
20 and omissions, Scott Coles proximately caused damage to Elfriede Schober in an amount to
21 be established at trial, but in no event less than \$163,828.24, the amount of funds placed
22 with ML at the time of ML's bankruptcy. At all times material to this case, Mark Svejda
23 was the authorized agent of Elfriede Schober in dealings with Scott Coles and ML. Scott
24 Coles made the misrepresentations and omissions alleged herein to Mark Svejda in that
25 agency capacity.
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1 50. Volker Rossnagel is a German citizen. Through the conduct alleged herein,
2 including but not limited to, his breach of fiduciary duty and fraudulent misrepresentations
3 and omissions, Scott Coles proximately caused damage to Volker Rossnagel in an amount
4 to be established at trial, but in no event less than \$232,552.71, the amount of funds placed
5 with ML at the time of ML's bankruptcy. At all times material to this case, Mark Svejda
6 was the authorized agent of Volker Rossnagel in dealings with Scott Coles and ML. Scott
7 Coles made the misrepresentations and omissions alleged herein to Mark Svejda in that
8 agency capacity.
9

10
11 51. The Jeanne Lewis Revocable Trust was established in Maricopa County,
12 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
13 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
14 caused damage to the Jeanne Lewis Revocable Trust in an amount to be established at trial,
15 but in no event less than \$412,236.83, the amount of funds placed with ML at the time of
16 ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment
17 Partners, LLC was the authorized agent of the Jeanne Lewis Revocable Trust in dealings
18 with Scott Coles and ML. Scott Coles made the misrepresentations and omissions alleged
19 herein to Walter Clarke in that agency capacity.
20
21

22 52. Bruce Dennis Buckley and Alivia Buckley are residents of Arizona. The
23 Bruce Dennis and Alivia Virginia Buckley Revocable Living Trust Dated June 4, 1994 was
24 established in Maricopa County, Arizona. Through the conduct alleged herein, including but
25 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
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1 Scott Coles proximately caused damage to Bruce Dennis Buckley and Alivia Buckley, as
2 Trustees of the Bruce Dennis and Alivia Virginia Buckley Revocable Living Trust Dated
3 June 4, 1994 in an amount to be established at trial, but in no event less than \$900,953.72,
4 the amount of funds placed with ML at the time of ML's bankruptcy.
5

6 53. Bruce D. Buckley is a resident of Maricopa County, Arizona. Through the
7 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
8 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
9 Bruce D. Buckley in an amount to be established at trial, but in no event less than
10 \$252,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
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12

13 54. Brett Howell is domiciled outside of Maricopa County, Arizona. Through the
14 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
15 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
16 Brett Howell in an amount to be established at trial, but in no event less than \$87,417.06,
17 the amount of funds placed with ML at the time of ML's bankruptcy. At all times material
18 to this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
19 Brett Howell in dealings with Scott Coles and ML. Scott Coles made the
20 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
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22

23 55. Justin Howell is domiciled outside of Maricopa County, Arizona. Through
24 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
25 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
26 Justin Howell in an amount to be established at trial, but in no event less than \$75,935.59,
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1 the amount of funds placed with ML at the time of ML's bankruptcy. At all times material
2 to this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
3 Justin Howell in dealings with Scott Coles and ML. Scott Coles made the
4 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
5

6 56. Craig Allison, Trustee of the Craig Allison Living Trust is domiciled outside
7 the State of Arizona. Through the conduct alleged herein, including but not limited to, his
8 breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles
9 proximately caused damage to Craig Allison in an amount to be established at trial, but in
10 no event less than \$150,000.00, the amount of funds placed with ML at the time of ML's
11 bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment Partners,
12 LLC was the authorized agent of Craig Allison, Trustee of the Craig Allison Living Trust in
13 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
14 alleged herein to Walter Clarke in that agency capacity.
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18 57. Donald Anderson is domiciled outside the State of Arizona. Through the
19 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
20 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
21 Donald Anderson in an amount to be established at trial, but in no event less than
22 \$200,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
23 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
24 authorized agent of Donald Anderson in dealings with Scott Coles and ML. Scott Coles
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1 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
2 capacity.

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4 58. Stephen D. Barbour is a resident of Maricopa County, Arizona. Through the
5 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
6 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
7 Stephen D. Barbour in an amount to be established at trial, but in no event less than
8 \$236,507.81, the amount of funds placed with ML at the time of ML's bankruptcy. At all
9 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
10 authorized agent of Stephen D. Barbour in dealings with Scott Coles and ML. Scott Coles
11 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
12 capacity.
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15 59. Jane A. Bartelme is a resident of Maricopa County, Arizona. Through the
16 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
17 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
18 Jane A. Bartelme in an amount to be established at trial, but in no event less than
19 \$1,036,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
20 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
21 authorized agent of Jane A. Bartelme in dealings with Scott Coles and ML. Scott Coles
22 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
23 capacity.
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1 60. Morris Gordon Bagne is domiciled outside the State of Arizona. Through the
2 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
4 Morris Gordon Bagne in an amount to be established at trial, but in no event less than
5 \$265,950.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
6 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
7 authorized agent of Morris Gordon Bagne in dealings with Scott Coles and ML. Scott Coles
8 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
9 capacity.
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11
12 61. June Behrendt is domiciled outside the State of Arizona. Through the conduct
13 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
14 misrepresentations and omissions, Scott Coles proximately caused damage to June Behrendt
15 in an amount to be established at trial, but in no event less than \$644,729.73, the amount of
16 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
17 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of June
18 Behrendt in dealings with Scott Coles and ML. Scott Coles made the misrepresentations
19 and omissions alleged herein to Walter Clarke in that agency capacity.
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22 62. The Jonathan & Lynda Bliven Family Trust, was established in Maricopa
23 County, Arizona. Through the conduct alleged herein, including but not limited to, his
24 breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles
25 proximately caused damage to the Jonathan & Lynda Bliven Family Trust in an amount to
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1 be established at trial, but in no event less than \$5,700,000.00, the amount of funds placed
2 with ML at the time of ML's bankruptcy.

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4 63. The Stephen Brotsman & Sigrid Van Bladel Revocable Trust is domiciled
5 outside the State of Arizona. Through the conduct alleged herein, including but not limited
6 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
7 Coles proximately caused damage to the Stephen Brotsman & Sigrid Van Bladel Revocable
8 Trust in an amount to be established at trial, but in no event less than \$200,000.00, the
9 amount of funds placed with ML at the time of ML's bankruptcy. At all times material to
10 this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
11 Stephen Brotsman & Sigrid Van Bladel Revocable Trust in dealings with Scott Coles and
12 ML. Scott Coles made the misrepresentations and omissions alleged herein to Walter
13 Clarke in that agency capacity.
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17 64. Sheryl Calcavecchia is a resident of Maricopa County, Arizona. Through the
18 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
19 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
20 Sheryl Calcavecchia in an amount to be established at trial, but in no event less than
21 \$100,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
22 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
23 authorized agent of Sheryl Calcavecchia in dealings with Scott Coles and ML. Scott Coles
24 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
25 capacity.
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1 65. The Erika Carlson Trust is domiciled outside the State of Arizona. Through
2 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to the
4 Erika Carlson in an amount to be established at trial, but in no event less than \$250,000.00,
5 the amount of funds placed with ML at the time of ML's bankruptcy. At all times material
6 to this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
7 Erika Carlson Trust in dealings with Scott Coles and ML. Scott Coles made the
8 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
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11 66. Fifth Age of Man Foundation (Corp) is a foreign corporation. Through the
12 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
13 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
14 Fifth Age of Man Foundation (Corp) in an amount to be established at trial, but in no event
15 less than \$100,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
16 At all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was
17 the authorized agent of Fifth Age of Man Foundation (Corp) in dealings with Scott Coles
18 and ML. Scott Coles made the misrepresentations and omissions alleged herein to Walter
19 Clarke in that agency capacity.
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23 67. Walter Clarke is domiciled outside the State of Arizona. Through the conduct
24 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
25 misrepresentations and omissions, Scott Coles proximately caused damage to Walter Clarke
26 in an amount to be established at trial, but in no event less than \$150,950.00, the amount of
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1 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
2 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of Walter
3 Clarke in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
4 omissions alleged herein to Walter Clarke in that agency capacity.
5

6 68. Beverly Clark is a resident of Maricopa County, Arizona. Through the
7 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
8 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
9 Beverly Clark in an amount to be established at trial, but in no event less than \$230,000.00,
10 the amount of funds placed with ML at the time of ML's bankruptcy. At all times material
11 to this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
12 Beverly Clark in dealings with Scott Coles and ML. Scott Coles made the
13 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
14
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16 69. William Edwards is domiciled outside the State of Arizona. Through the
17 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
18 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
19 William Edwards in an amount to be established at trial, but in no event less than
20 \$250,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
21 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
22 authorized agent of William Edwards in dealings with Scott Coles and ML. Scott Coles
23 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
24 capacity.
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1 70. Donald J. Fruchtman, is a resident of Maricopa County, Arizona. Through the
2 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
4 Donald J. Fruchtman in an amount to be established at trial, but in no event less than
5 \$280,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
6 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
7 authorized agent of Donald J. Fruchtman in dealings with Scott Coles and ML. Scott Coles
8 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
9 capacity.
10

11
12 71. The Stephen Franklin Trust, was established outside the State of Arizona.
13 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
14 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
15 damage to Stephen Franklin Trust in an amount to be established at trial, but in no event less
16 than \$191,015.62, the amount of funds placed with ML at the time of ML's bankruptcy. At
17 all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
18 authorized agent of the Stephen Franklin Trust in dealings with Scott Coles and ML. Scott
19 Coles made the misrepresentations and omissions alleged herein to Walter Clarke in that
20 agency capacity.
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23 72. Micheal C. Gallaga is a resident of Maricopa County, Arizona. Through the
24 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
25 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
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1 Michael C. Gallaga in an amount to be established at trial, but in no event less than
2 \$91,015.62, the amount of funds placed with ML at the time of ML's bankruptcy. At all
3 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
4 authorized agent of Micheal C. Gallaga in dealings with Scott Coles and ML. Scott Coles
5 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
6 capacity.
7

8
9 73. The Gerald Gross Family Trust was established in Maricopa County, Arizona.
10 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
11 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
12 damage to the Gerald Gross Family Trust in an amount to be established at trial, but in no
13 event less than \$530,046.44, the amount of funds placed with ML at the time of ML's
14 bankruptcy.
15

16
17 74. Gerald and Thelma Gross are residents of Maricopa County, Arizona.
18 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
19 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
20 damage to Gerald and Thelma Gross in an amount to be established at trial, but in no event
21 less than \$1,006,479.79, the amount of funds placed with ML at the time of ML's
22 bankruptcy.
23

24
25 75. Frederick C. Heitman is domiciled outside the State of Arizona. Through the
26 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
27 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
28

1 Frederick C. Heitman in an amount to be established at trial, but in no event less than
2 \$500,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
3 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
4 authorized agent of Frederick C. Heitman in dealings with Scott Coles and ML. Scott Coles
5 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
6 capacity.
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9 76. Donna R. Heitman is domiciled outside the State of Arizona. Through the
10 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
11 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
12 Donna R. Heitman in an amount to be established at trial, but in no event less than
13 \$140,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
14 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
15 authorized agent of Donna R. Heitman in dealings with Scott Coles and ML. Scott Coles
16 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
17 capacity.
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21 77. Stephen L. Hooker is a resident of Maricopa County, Arizona. Through the
22 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
23 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
24 Stephen L. Hooker in an amount to be established at trial, but in no event less than
25 \$152,188.37, the amount of funds placed with ML at the time of ML's bankruptcy. At all
26 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
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1 authorized agent of Stephen L. Hooker in dealings with Scott Coles and ML. Scott Coles
2 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
3 capacity.
4

5 78. Deborah L. Hooker is a resident of Maricopa County, Arizona. Through the
6 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
7 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
8 Deborah L. Hooker in an amount to be established at trial, but in no event less than
9 \$125,858.99, the amount of funds placed with ML at the time of ML's bankruptcy. At all
10 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
11 authorized agent of Deborah L. Hooker in dealings with Scott Coles and ML. Scott Coles
12 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
13 capacity.
14
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16
17 79. The Stephen and Deborah Hooker Trust, was established in Maricopa County,
18 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
19 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
20 caused damage to Stephen and Deborah Hooker Trust in an amount to be established at trial,
21 but in no event less than \$50,000.00, the amount of funds placed with ML at the time of
22 ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment
23 Partners, LLC was the authorized agent of Stephen and Deborah Hooker Trust in dealings
24 with Scott Coles and ML. Scott Coles made the misrepresentations and omissions alleged
25 herein to Walter Clarke in that agency capacity.
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1 80. Elizabeth Krenzel, is domiciled outside the State of Arizona. Through the
2 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
4 Elizabeth Krenzel in an amount to be established at trial, but in no event less than
5 \$85,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
6 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
7 authorized agent of Elizabeth Krenzel in dealings with Scott Coles and ML. Scott Coles
8 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
9 capacity.
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13 81. Lon J. Krueger and Maryanne B. Krueger, are residents of Maricopa County,
14 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
15 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
16 caused damage to Lon J. Krueger and Maryanne B. Krueger in an amount to be established
17 at trial, but in no event less than \$472,588.35, the amount of funds placed with ML at the
18 time of ML's bankruptcy.
19

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21 82. Stephen Leshner, is a resident of Maricopa County, Arizona. Through the
22 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
23 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
24 Stephen Leshner in an amount to be established at trial, but in no event less than
25 \$53,274.66, the amount of funds placed with ML at the time of ML's bankruptcy. At all
26 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
27

1 authorized agent of Stephen Leshner in dealings with Scott Coles and ML. Scott Coles
2 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
3 capacity.
4

5 83. Nancy Lutz, is domiciled outside the State of Arizona. Through the conduct
6 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
7 misrepresentations and omissions, Scott Coles proximately caused damage to Nancy Lutz in
8 an amount to be established at trial, but in no event less than \$430,000.00, the amount of
9 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
10 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of * in
11 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
12 alleged herein to Walter Clarke in that agency capacity.
13
14

15 84. Thomas Lutz is domiciled outside the State of Arizona. Through the conduct
16 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
17 misrepresentations and omissions, Scott Coles proximately caused damage to Thomas Lutz
18 in an amount to be established at trial, but in no event less than \$160,000.00, the amount of
19 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
20 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of * in
21 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
22 alleged herein to Walter Clarke in that agency capacity.
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25 85. Patrick S. Mallonee is a resident of Maricopa County, Arizona. Through the
26 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
27

1 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
2 Patrick S. Mallonee in an amount to be established at trial, but in no event less than
3 \$207,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
4 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
5 authorized agent of Patrick S. Mallonee in dealings with Scott Coles and ML. Scott Coles
6 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
7 capacity.
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10 86. William J. Miller and Sandra B. Miller Family Trust, was established in
11 Maricopa County, Arizona. Through the conduct alleged herein, including but not limited
12 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
13 Coles proximately caused damage to William J. Miller and Sandra B. Miller Family Trust in
14 an amount to be established at trial, but in no event less than \$2,000,000.00, the amount of
15 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
16 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of * in
17 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
18 alleged herein to Walter Clarke in that agency capacity.
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22 87. Norman Tharp Family Trust is outside the County of Maricopa, Arizona.
23 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
24 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
25 damage to Norman Tharp Family Trust in an amount to be established at trial, but in no
26 event less than \$250,000.00, the amount of funds placed with ML at the time of ML's
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1 bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment Partners,
2 LLC was the authorized agent of Norman Tharp Family Trust in dealings with Scott Coles
3 and ML. Scott Coles made the misrepresentations and omissions alleged herein to Walter
4 Clarke in that agency capacity.
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6 88. Gregory Patterson is a resident of Maricopa County, Arizona. Through the
7 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
8 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
9 Gregory Patterson in an amount to be established at trial, but in no event less than
10 \$106,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
11 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
12 authorized agent of Gregory Patterson in dealings with Scott Coles and ML. Scott Coles
13 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
14 capacity.
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18 89. Katalin A. Rader is domiciled outside the State of Arizona. Through the
19 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
20 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
21 Katalin A. Rader in an amount to be established at trial, but in no event less than
22 \$435,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
23 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
24 authorized agent of Katalin A. Rader in dealings with Scott Coles and ML. Scott Coles
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1 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
2 capacity.

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4 90. Robert K. Rader is domiciled outside the State of Arizona. Through the
5 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
6 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
7 Robert K. Rader in an amount to be established at trial, but in no event less than
8 \$567,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
9 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
10 authorized agent of Robert K. Rader in dealings with Scott Coles and ML. Scott Coles
11 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
12 capacity.
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15 91. The Rader Family Trust, outside Maricopa County, Arizona. Through the
16 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
17 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
18 The Rader Family Trust in an amount to be established at trial, but in no event less than
19 \$1,500,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
20 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
21 authorized agent of the Rader Family Trust in dealings with Scott Coles and ML. Scott
22 Coles made the misrepresentations and omissions alleged herein to Walter Clarke in that
23 agency capacity.
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1 92. Kurt Seemann is domiciled outside the State of Arizona. Through the conduct
2 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
3 misrepresentations and omissions, Scott Coles proximately caused damage to Kurt Seemann
4 in an amount to be established at trial, but in no event less than \$110,000.00, the amount of
5 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
6 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of Kurt
7 Seemann in dealings with Scott Coles and ML. Scott Coles made the misrepresentations
8 and omissions alleged herein to Walter Clarke in that agency capacity.
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11 93. The Jayesh K. and Vaishali Shah Family Trust are outside the State of
12 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
13 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
14 caused damage to the Jayesh K. and Vaishali Shah Family Trust in an amount to be
15 established at trial, but in no event less than \$300,000.00, the amount of funds placed with
16 ML at the time of ML's bankruptcy. At all times material to this case, Walter Clarke of
17 Oxford Investment Partners, LLC was the authorized agent of The Jayesh K. and Vaishali
18 Shah Family Trust in dealings with Scott Coles and ML. Scott Coles made the
19 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
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23 94. Jayesh Shah is domiciled outside the State of Arizona. Through the conduct
24 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
25 misrepresentations and omissions, Scott Coles proximately caused damage to Jayesh Shah
26 in an amount to be established at trial, but in no event less than \$199,500.00, the amount of
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1 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
2 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of Jayesh Shah
3 in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
4 omissions alleged herein to Walter Clarke in that agency capacity.
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6 95. Susan E. Shipley, is domiciled outside the State of Arizona. Through the
7 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
8 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
9 Susan E. Shipley in an amount to be established at trial, but in no event less than
10 \$100,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
11 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
12 authorized agent of Susan E. Shipley in dealings with Scott Coles and ML. Scott Coles
13 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
14 capacity.
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18 96. John K. Solheim and Brooke L. Solheim are residents of Maricopa County,
19 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
20 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
21 caused damage to John K. Solheim and Brooke L. Solheim in an amount to be established at
22 trial, but in no event less than \$22,400.00, the amount of funds placed with ML at the time
23 of ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment
24 Partners, LLC was the authorized agent of John K. Solheim and Brooke L. Solheim in
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1 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
2 alleged herein to Walter Clarke in that agency capacity.

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4 97. David Brian Stanton is domiciled outside the State of Arizona. Through the
5 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
6 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
7 David Brian Stanton in an amount to be established at trial, but in no event less than
8 \$120,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
9 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
10 authorized agent of David Brian Stanton in dealings with Scott Coles and ML. Scott Coles
11 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
12 capacity.
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15 98. David Brian Stanton Revocable Trust, outside the State of Arizona. Through
16 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
17 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
18 David Brian Stanton Revocable Trust in an amount to be established at trial, but in no event
19 less than \$513,020.81, the amount of funds placed with ML at the time of ML's bankruptcy.
20 At all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was
21 the authorized agent of David Brian Stanton Revocable Trust in dealings with Scott Coles
22 and ML. Scott Coles made the misrepresentations and omissions alleged herein to Walter
23 Clarke in that agency capacity.
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1 99. Scott B. Summers is a resident of Maricopa County, Arizona. Through the
2 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
3 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
4 Scott B. Summers in an amount to be established at trial, but in no event less than
5 \$358,500.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
6 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
7 authorized agent of Scott B. Summers in dealings with Scott Coles and ML. Scott Coles
8 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
9 capacity.
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12 100. Betty J. Tatro is a resident of Maricopa County, Arizona. Through the
13 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
14 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
15 Betty J. Tatro in an amount to be established at trial, but in no event less than \$100,000.00,
16 the amount of funds placed with ML at the time of ML's bankruptcy. At all times material
17 to this case, Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of
18 Betty J. Tatro in dealings with Scott Coles and ML. Scott Coles made the
19 misrepresentations and omissions alleged herein to Walter Clarke in that agency capacity.
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22 101. Kathleen K. Tomasulo, domiciled outside the State of Arizona. Through the
23 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
24 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
25 Kathleen K. Tomasulo in an amount to be established at trial, but in no event less than
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1 \$1,154,585.28, the amount of funds placed with ML at the time of ML's bankruptcy. At all
2 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
3 authorized agent of Kathleen K. Tomasulo in dealings with Scott Coles and ML. Scott
4 Coles made the misrepresentations and omissions alleged herein to Walter Clarke in that
5 agency capacity.
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7 102. The Kathleen K., Tomasulo Credit Shelter Trust, outside the State of Arizona.
8 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
9 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
10 damage to the Kathleen K. Tomasulo Credit Shelter Trust in an amount to be established at
11 trial, but in no event less than \$273,429.38, the amount of funds placed with ML at the time
12 of ML's bankruptcy. At all times material to this case, Walter Clarke of Oxford Investment
13 Partners, LLC was the authorized agent of Kathleen K., Tomasulo Credit Shelter Trust in
14 dealings with Scott Coles and ML. Scott Coles made the misrepresentations and omissions
15 alleged herein to Walter Clarke in that agency capacity.
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18 103. Darren C. Treasure is a resident of Maricopa County, Arizona. Through the
19 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
20 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
21 Darren C. Treasure in an amount to be established at trial, but in no event less than
22 \$100,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
23 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
24 authorized agent of Darren C. Treasure in dealings with Scott Coles and ML. Scott Coles
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1 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
2 capacity.

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4 104. The Urquietta Smythe Family Trust, outside the State of Arizona. Through
5 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
6 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to the
7 Urquietta Smythe Family Trust in an amount to be established at trial, but in no event less
8 than \$120,485.78, the amount of funds placed with ML at the time of ML's bankruptcy. At
9 all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
10 authorized agent of Urquietta Smythe Family Trust in dealings with Scott Coles and ML.
11 Scott Coles made the misrepresentations and omissions alleged herein to Walter Clarke in
12 that agency capacity.
13

14
15 105. John S. VanderHeide Trust was established in Maricopa County, Arizona.
16 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
17 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
18 damage to John S. VanderHeide Trust in an amount to be established at trial, but in no event
19 less than \$200,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
20 At all times material to this case, Walter Clarke of Oxford Investment Partners, LLC was
21 the authorized agent of John S. VanderHeide Trust in dealings with Scott Coles and ML.
22 Scott Coles made the misrepresentations and omissions alleged herein to Walter Clarke in
23 that agency capacity.
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1 106. Charles Vose is domiciled outside the State of Arizona. Through the conduct
2 alleged herein, including but not limited to, his breach of fiduciary duty and fraudulent
3 misrepresentations and omissions, Scott Coles proximately caused damage to Charles Vose
4 in an amount to be established at trial, but in no event less than \$500,000.00, the amount of
5 funds placed with ML at the time of ML's bankruptcy. At all times material to this case,
6 Walter Clarke of Oxford Investment Partners, LLC was the authorized agent of Charles
7 Vose in dealings with Scott Coles and ML. Scott Coles made the misrepresentations and
8 omissions alleged herein to Walter Clarke in that agency capacity.
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11 107. Charles B. Winn is domiciled outside the State of Arizona. Through the
12 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
13 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
14 Charles B. Winn in an amount to be established at trial, but in no event less than
15 \$150,000.00, the amount of funds placed with ML at the time of ML's bankruptcy. At all
16 times material to this case, Walter Clarke of Oxford Investment Partners, LLC was the
17 authorized agent of Charles B. Winn in dealings with Scott Coles and ML. Scott Coles
18 made the misrepresentations and omissions alleged herein to Walter Clarke in that agency
19 capacity.
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23 108. John C. Vinson and Taeko Vinson, Trustees of the John Charles Vinson
24 Family Trust are residents of Maricopa County, Arizona. Through the conduct alleged
25 herein, including but not limited to, his breach of fiduciary duty and fraudulent
26 misrepresentations and omissions, Scott Coles proximately caused damage to John C.
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1 Vinson in an amount to be established at trial, but in no event less than \$578,826.39, the
2 amount of funds placed with ML at the time of ML's bankruptcy.

3
4 109. Robert G. Furst, as Trustee of the Robert G. Furst & Assoc., Ltd. Pension Plan
5 resides in Maricopa County, Arizona. Through the conduct alleged herein, including but
6 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
7 Scott Coles proximately caused damage to Robert G. Furst, as Trustee of the Robert G.
8 Furst & Assoc., Ltd. Pension Plan in an amount to be established at trial, but in no event less
9 than \$653,908.39, the amount of funds placed with ML at the time of ML's bankruptcy.

10
11 110. Robert G. Furst is a resident of Maricopa County, Arizona. Through the
12 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
13 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
14 Robert G. Furst in an amount to be established at trial, but in no event less than \$67,103.62,
15 the amount of funds placed with ML at the time of ML's bankruptcy.

16
17 111. David Furst, as Trustee of the Furst Family Trust resides in Maricopa County,
18 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
19 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
20 caused damage to David Furst, as Trustee of the Furst Family Trust in an amount to be
21 established at trial, but in no event less than \$311,757.23, the amount of funds placed with
22 ML at the time of ML's bankruptcy.

23
24 112. David Furst, as Trustee of the DHF Corporation Retirement Trust resides in
25 Maricopa County, Arizona. Through the conduct alleged herein, including but not limited
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1 to, his breach of fiduciary duty and fraudulent misrepresentations and omissions, Scott
2 Coles proximately caused damage to David Furst, as Trustee of the DHF Corporation
3 Retirement Trust in an amount to be established at trial, but in no event less than
4 \$305,413.44, the amount of funds placed with ML at the time of ML's bankruptcy.
5

6 **POOLS PLAINTIFFS: GROUP 3**
7

8 113. The "Pools" were also another funding vehicle Scott Coles devised to attract
9 money to ML. Also known as "MP Funds," the "Pools" were (at the time of ML's
10 bankruptcy) nine limited liability companies: MP122009 LLC (known as MP9), MP062011
11 LLC (known as MP10), MP122030 (known as MP11), Mortgages Ltd. Opportunity Fund
12 MP12 L.L.C. (known as MP12), Mortgages Ltd. Opportunity Fund MP13 L.L.C. (known as
13 MP13), Mortgages Ltd. Opportunity Fund MP14 L.L.C. (known as MP14), Mortgages Ltd.
14 Opportunity Fund MP15 L.L.C. (known as MP15), Mortgages Ltd. Opportunity Fund MP16
15 L.L.C. (known as MP16), Mortgages Ltd. Opportunity Fund MP17 L.L.C. (known as
16 MP17). Each fund is a separate Arizona limited liability company and ML is the sole
17 manager of each LLC. Thus, Scott Coles controlled the Pools. The Pool participants are
18 holders of membership interests in those LLCs. The fractional interests of the Pools in the
19 loans and liens on real estate collateral belong to and are the property of the Pools, not ML.
20
21 The following persons and entities are the Pools Plaintiffs in this case:
22
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24
25 114. Joseph L. and Helen M. Baldino, Trustees of the Baldino Family Revocable
26 Trust, Dated May 26, 1994; Joseph L. Baldino, Trustee of the Meridian Financial
27

1 Corporation Profit Sharing and Retirement Trust; Helen M. Baldino and Joseph Baldino;
2 Joseph Baldino; Helen Baldino. These trusts were established in Maricopa County,
3 Arizona. Joseph and Helen Baldino are residents of Maricopa County, Arizona. Through
4 the conduct alleged herein, including but not limited to, his breach of fiduciary duty and
5 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to the
6 Baldinos in an amount to be established at trial, but in no event less than \$5,442,371.42, the
7 amount of funds placed with ML at the time of ML's bankruptcy.
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10 115. Sheldon and Karen Epstein, reside in Maricopa County, Arizona. Through the
11 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
12 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
13 Sheldon and Karen Epstein in an amount to be established at trial, but in no event less than
14 \$2,208,953.38, the amount of funds placed with ML at the time of ML's bankruptcy.
15

16 116. Heather Epstein, resides outside Maricopa County, Arizona. Through the
17 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
18 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
19 Heather Epstein in an amount to be established at trial, but in no event less than
20 \$163,046.44, the amount of funds placed with ML at the time of ML's bankruptcy.
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22 117. Michael Epstein, resides outside Maricopa County, Arizona. Through the
23 conduct alleged herein, including but not limited to, his breach of fiduciary duty and
24 fraudulent misrepresentations and omissions, Scott Coles proximately caused damage to
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1 Michael Epstein in an amount to be established at trial, but in no event less than
2 \$115,531.62, the amount of funds placed with ML at the time of ML's bankruptcy.

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4 118. Dave and Lois Goldman, are residents of Maricopa County, Arizona.
5 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
6 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
7 damage to Dave Goldman in an amount to be established at trial, but in no event less than
8 \$361,276.89, the amount of funds placed with ML at the time of ML's bankruptcy.

9
10 119. Alan and Terri L. Bandler are residents of Maricopa County, Arizona.
11 Through the conduct alleged herein, including but not limited to, his breach of fiduciary
12 duty and fraudulent misrepresentations and omissions, Scott Coles proximately caused
13 damage to Alan and Terri Bandler in an amount to be established at trial, but in no event
14 less than \$2,472,279.89, the amount of funds placed with ML at the time of ML's
15 bankruptcy.

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18 120. Orville E. Krueger and Althea M. Krueger, are residents of Maricopa County,
19 Arizona. Through the conduct alleged herein, including but not limited to, his breach of
20 fiduciary duty and fraudulent misrepresentations and omissions, Scott Coles proximately
21 caused damage to Orville E. Krueger and Althea M. Krueger in an amount to be established
22 at trial, but in no event less than \$440,000.00, the amount of funds placed with ML at the
23 time of ML's bankruptcy.

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26 121. The Orville E. Krueger and Althea M. Krueger Family Trust, was established
27 in Maricopa County, Arizona. Through the conduct alleged herein, including but not

1 limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
2 Scott Coles proximately caused damage to the Orville E. Krueger and Althea M. Krueger in
3 an amount to be established at trial, but in no event less than \$73,801.00, the amount of
4 funds placed with ML at the time of ML's bankruptcy.
5

6 122. Lon Krueger, as Trustee of the James C. Schneck Irrevocable Trust, is a
7 resident of Maricopa County, Arizona. Through the conduct alleged herein, including but
8 not limited to, his breach of fiduciary duty and fraudulent misrepresentations and omissions,
9 Scott Coles proximately caused damage to Lon Krueger, Trustee for the James C. Schneck
10 Irrevocable Trust in an amount to be established at trial, but in no event less than
11 \$598,000.00, the amount of funds placed with ML at the time of ML's bankruptcy.
12

13
14 Walter Clarke is associated with Oxford Investment Partners, LLC ("Oxford"), a
15 comprehensive financial services firm located in Phoenix, Arizona. Walter Clarke is
16 President of Oxford and, at all relevant times, was the authorized agent of certain RevOp
17 Plaintiffs and Pass-Through Plaintiffs in this case. At all times relevant to this Complaint,
18

19 Walter Clarke was the authorized agent of the following RevOp Plaintiffs:
20

- 21 ▪ Mark Loberg
- 22 ▪ Louis R. Vazquez, MD
- 23 ▪ Jan M. Sterling
- 24 ▪ Leah L. Lewis
- 25 ▪ Stephen Howell, MD
- 26 ▪ Pamela Anderson
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- Karen E. Lamb
- Delbert R. Lewis

At all times relevant to this Complaint, Walter Clarke was the authorized agent of the following Pass-Through Plaintiffs:

- Craig Allison
- Donald Anderson
- Stephen Barbour
- Jane Bartelme
- Morris Gordon Bagne
- June Bhrendt
- Stephen Brotsman & Sigrid Van Bladel
- Sheryl Calcavecchia
- Erika Carlson
- Fifth Age of Man Foundation Corp
- Karen E. Lamb
- Walter J. Clarke
- Beverly Clarke
- William Edwards
- Robert Facciola
- Donald Fruchtman

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- Stephen Franklin
- Michael Gallaga
- Stephen Gresser
- Frederick Heitman
- Donna Heitman
- Stephen Hooker
- Deborah Hooker
- Stephen Howell, MD
- Brett Howell
- Justin Howell
- Michael Klimansky
- Elizabeth Krenzel
- Leah L. Lewis
- Jeanne Lewis
- Stephen Leshner
- Nancy Lutz
- Thomas Lutz
- Patrick Mallonee
- William and Sandra Miller
- Norman Tharp

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- Gregory Patterson
- Katalin Rader
- Robert Rader
- Jayesh K. and Vaishali Shah
- Susan Shipley
- John K. Solheim and Brooke L. Solheim
- Jan M. Sterling
- David Brian Stanton
- Scott B. Summers
- Betty Tatro
- Kathleen Tomasulo
- Darren Treasure
- Kurt Seemann
- Urquieta Smythe
- John Vanderheide
- Charles Vose
- Charles B. Winn

123. As set forth below, Walter Clarke had discussions and communications with Scott Coles regarding various investments of Clarke's clients in ML. During those conversations and communications, Scott Coles made material misrepresentations to Clarke

1 and omitted to disclose material facts, rendering his statements otherwise misleading. As a
2 result of Scott Coles' misrepresentations, Clarke made certain investment decisions for and
3 on behalf of his aforementioned clients. Because of Clarke's position as an authorized
4 agent of the aforementioned Plaintiffs, Scott Coles misrepresentations to Clarke were, as a
5 matter of law, were misrepresentations to each of the aforementioned Plaintiffs.
6

7 THE PERSONAL REPRESENTATIVE

8
9 124. Gerald K. Smith ("Smith" or "PR") is the lawfully appointed personal
10 representative of the Estate of Scott M. Coles ("Estate"). Plaintiffs do not accuse Smith of
11 any personal wrongdoing in this case. Rather, Smith is named in this case solely to comply
12 with the Arizona Probate Code *Arizona Rules of Civil Procedure* and to allow the Plaintiffs
13 to lawfully assert their claims against the Estate.
14

15 125. The claims of all Plaintiffs herein have arisen from the same series of
16 transactions or occurrences. Many questions of law and fact are common to all Plaintiffs
17 and will arise and be litigated in this case. The claims of Plaintiffs are logically related.
18 Therefore, the claims of all Plaintiffs are properly included herein pursuant to *Ariz.R.Civ. P.*
19 *20(a)*.
20
21

22 126. All Plaintiffs have satisfied all conditions precedent to the filing of this
23 Complaint, including the prior submission of a claim to the personal representative. In
24 some cases, Plaintiffs have complied with that requirement by filing their own individual
25 claims with the personal representative. The remaining Plaintiffs are deemed to have
26 satisfied that requirement as a result of the claim submitted to the personal representative by
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1 the Official Investors' Committee arising out of the ML bankruptcy. (See **Exhibit 1**
2 hereto). In all cases, the personal representative has disallowed the claims and Plaintiffs
3 have filed this Complaint in a timely manner, pursuant to *A.R.S. §14-3804(3)* and Rule 17,
4
5 *Ariz.R.Civ.P.*

6 127. Plaintiffs' claims herein are based upon facts that Plaintiffs discovered and
7 otherwise became aware of following the death of Scott Coles on June 2, 2008.
8

9 128. Jurisdiction and venue are proper in this Court.

10 **III. GENERAL FACTUAL ALLEGATIONS**

11
12 129. Mr. Charles Coles founded Mortgages Ltd. in 1963 as a conservative private
13 lending company. He was known as a disciplined, tough-minded, and honest businessman.
14 Under the conservative leadership of Mr. Coles, ML was a success, weathering even the
15 unpredictable Arizona real estate downturns. In 1986, Charles' third son, Scott Martin
16 Coles, joined ML. Mr. Coles stepped down as the president and chief executive officer of
17 ML in 1992. After Mr. Coles died in 1998, Scott Coles took the helm of his father's 35 year
18 old company.
19

20
21 130. The stock of ML is owned by the SMC Revocable Trust U/T/A Dated
22 December 22, 1994, as amended ("SMC Trust"), the beneficiaries of which are Ashley
23 Coles (widow of Scott M. Coles) and two children of Scott Coles from his first marriage.
24 Until he died, Scott Coles controlled the SMC Trust. Upon information and belief,
25 Plaintiffs allege that Scott Coles used the SMC Trust as an instrument of his wrongdoing, as
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1 alleged herein. As further alleged herein, Coles created and controlled an illegal enterprise.
2 The SMC Trust was part and parcel of that illegal enterprise.

3
4 131. Tomas Hirsch ("Hirsch") was the trustee of the SMC Trust until shortly after
5 Scott Coles died. Hirsch aided and abetted Scott Coles in his misuse of the SMC Trust and
6 illegal control of an enterprise. As alleged herein, Hirsch and Scott Coles utilized the SMC
7 Trust as an instrumentality of their wrongdoing and to perpetrate the fraud and breach of
8 duty as set forth herein.

9
10 132. Scott Coles operated ML as its autocratic dictator, controlling the investment
11 decisions on the part of ML's participants, including Plaintiffs. Scott Coles controlled and
12 dominated the decisions of ML regarding who to loan money to and the terms and
13 conditions upon which money could be loaned, often ignoring the very underwriting
14 principles that his father had established and that had made ML a model of stability and
15 consistency, even through difficult financial times.

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18 133. Currently, the factual allegations of this Complaint against the Estate focus
19 primarily on a period of time including and following 2005, when Scott Coles aggressively
20 sought to grow ML's business. Because Plaintiffs all began their relationship with ML at
21 various times, and pursuant to various programs, certain key time periods vary for each
22 Plaintiff. For example, the initial decision to participate in ML's programs was a critical
23 time for all participant Plaintiffs. Obviously, that date varies for each Plaintiff. Moreover,
24 depending upon the nature of the program each Plaintiff was involved in, each Plaintiff had,
25 at various points along the way, the opportunity to withdraw the funds committed to ML
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1 and pursue other ventures or uses of that money. Because the depth and extent of ML's
2 false financial statements are just now coming to light, unless any particular Plaintiff made
3 its initial decision to participate in ML during 2006, 2007 or 2008, many of the individual
4 claims in this case will focus upon Plaintiff's individualized decisions to leave their monies
5 in the Pools or fractionalized interests programs ("rollover"). Thus, a significant number of
6 Plaintiffs' current claims arise from a rollover decision and the impact of Scott Coles' active
7 misrepresentations and breach of fiduciary duty had over those rollover decisions. In the
8 case of these Plaintiffs, those facing a rollover decision during 2006-2008 agreed to keep
9 their funds involved with ML's business rather than remove the money. However, Plaintiffs
10 continue their investigation.

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14 134. Coles often made Plaintiffs' rollover decisions for them, contrary to their
15 express instructions or desires, and generally to further Scott Coles' personal agenda. In
16 every such situation, Scott Coles alone controlled the decision to rollover each particular
17 participant's funds. In doing so, Scott Coles breached his fiduciary duties to each
18 participant, whether a Pass-Through, RevOp, or Pool participant.

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20
21 135. Plaintiffs have filed this Complaint in order to comply with the 60-day filing
22 requirement of the Arizona Probate Code. In doing so, Plaintiffs have been as thorough as
23 current discovery and analysis allows. Plaintiffs anticipate filing an amended complaint as
24 their investigation and discovery continues.

1 A. **Coles Takes the Reins of ML, Transforms It Into the Proverbial**
2 **Money Machine, and Dominates and Controls Its Affairs.**

3 136. The business of ML appears complex at first blush. However, its basic
4 method of doing business was very simple: ML received money from various persons and
5 entities and loaned it to others. ML itself made money on both transactions. Thus, on one
6 side of ML's business, the company underwrote loans for commercial, industrial and
7 residential properties for acquisition, entitlement, development, construction and
8 investment. Historically, the majority of ML's loans were short-term loans secured by real
9 estate, including multifamily residential projects, office buildings, and mixed-use projects
10 within Arizona. During the past three years especially, Coles caused ML to make wildly
11 inappropriate loans. At the time of its bankruptcy, ML had outstanding loans of
12 approximately \$894 million in approximately sixty-six real estate projects. Since the filing
13 of the bankruptcy, ML has stopped making new loans.
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17 137. ML loaned very little of its own money to its "borrowers". Instead, it
18 acquired money from various third-party sources, like Plaintiffs. Through its licensed
19 broker dealer, Mortgages Ltd. Securities, ML received money raised from approximately
20 2,700 persons or entities for placement into loans secured by real estate located in Arizona,
21 as described above. Under the advice and substantial assistance of its lawyers, and utilizing
22 financial information audited and approved by its accountants, ML prepared private offering
23 materials to submit to its potential sources of money, seeking and purporting to deal only
24 with accredited investors, thereby avoiding the registration requirements of federal and state
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1 law. Plaintiffs attach hereto as **Exhibits 2 and 3**, respectively, sample Private Offering
2 Memoranda from the programs represented by this group of Plaintiffs – Pass-Through
3 Participation and Pools. **Exhibit 4** is a “Revolving Opportunity Loan Program Purchase
4 Agreement.” As further alleged herein, and as Plaintiffs expect to establish as this case
5 progresses, these Private Offering Memoranda (and others issued by ML) contain material
6 misrepresentations of fact and omit material statements of fact necessary to make these
7 Private Offering Memoranda true, causing some or all of the Plaintiffs to rely upon the
8 information contained therein in making their decision to either place money with ML in the
9 first place or leave money with ML in a roll-over decision.
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13 138. As with everything else within ML, Scott Coles knew of and controlled the
14 content and truthfulness (or lack thereof) of these offering materials, but relying nonetheless
15 on the professional opinions of his accountants and lawyers. Under these documents
16 prepared by MS and its counsel, in exchange for payment of their money, Plaintiffs received
17 either (1) direct fractionalized interests in loans and deeds of trust; or (2) membership
18 interests in limited liability companies that themselves held fractionalized interests in loans
19 and deeds of trust.
20

21
22 139. While all persons or entities providing money to ML have been loosely
23 referred to as “investors,” most of them are not investors at all. In fact, none of them are
24 investors in ML. Only those who acquired membership interests in limited liability
25 companies could be considered “investors” of any kind. However, they became investors in
26 the respective LLCs, not in ML. Each respective LLC “owned” the fractionalized interests
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1 in loans and deeds of trust that ML had originated. Those persons and entities receiving the
2 direct fractionalized interests were likewise not "investors" in ML. They owned their
3 respective fractionalized interests.
4

5 140. Each participant who entered into the Pass-Through participation or RevOp
6 programs were required to sign a document that has been referred to in the ML bankruptcy
7 matter as the "Agency Agreement." A true and correct copy of a sample Agency
8 Agreement from the Pass-Through Loan Participation program is attached hereto and
9 incorporated herein as **Exhibit 5**.
10

11 141. In most instances, Scott Coles signed the Agency Agreement on behalf of the
12 participant and on behalf of ML. The Agency Agreement purports to give ML the authority
13 to act in various ways to perform all of the tasks necessary to carry out the intent of the
14 respective agreements each participant signed when paying money to ML. In fact, each
15 participant and Scott Coles understood that Scott Coles controlled ML's performance under
16 the Agency Agreement.
17
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19 142. Because of Scott Coles' control over ML, the Agency Agreement itself
20 created a fiduciary duty on the part of Scott Coles to every participant in the Pass-Through
21 loan and RevOp programs. Moreover, as detailed herein, through his own conduct in
22 dealing with and controlling the interests and property of all participants, including the
23 Plaintiffs herein, Scott Coles requested and took upon himself the trust and confidence of
24 these participants and, consequently, owed fiduciary duties to these participants, including
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1 these Plaintiffs. Indeed, Scott Coles had near total control over the property of Plaintiffs,
2 further enforcing his role as a fiduciary of each Plaintiff.

3
4 143. The Pool participants became members of an LLC of which ML was the
5 Manager. Thus, because he controlled ML, Scott Coles likewise took upon himself a
6 fiduciary obligation as the *de facto* manager of the Pool LLCs to each member of the Pool
7 LLCs.

8
9 144. ML made its profit primarily from loan origination fees and by retaining the
10 difference between the interest received from the borrowers and the interest paid to the
11 investors, the "interest rate spread." ML was ostensibly entitled to various fees and charges
12 in conjunction with the loans made to borrowers. Generally, the higher the loan amount, the
13 higher the fees and charges. For example, the "Private Offering Memorandum dated July
14 10, 2006 for Pass-Through Participations in Loans Originated or Acquired by Mortgages
15 Ltd." (the "POM") stated that ML was entitled to "receive certain compensation for services
16 rendered regardless of the returns to the Participation holders." In particular, ML
17 maintained it was entitled to:

- 18 - a "Loan Commitment Fee" (generally 1.0% of the requested Loan amount);
- 19 - a "Property Inspection Fee;"
- 20 - "Origination Points" on each Loan generally ranging between 3.0% to 6.5%
- 21 of the principal amount of the Loan;
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- 1 - The "Interest Rate Spread," meaning the difference between the interest rate
- 2 charged to the borrower and the interest rate paid to the Participation holders
- 3 (generally between 1% and 2%);
- 4
- 5 - A "Servicing Fee" typically ranging from \$10.00 to \$50.00 per month;
- 6
- 7 - The "Default Interest Spread" which is the difference between the stated
- 8 interest rate on the Loan and the interest rate provided for in the event of
- 9 default;
- 10
- 11 - Any "Prepayment Penalty;" and
- 12 - Any "Late Charges."

13 145. The Agency Agreement provided that ML would act as the servicer on the

14 loans and purported to give ML authority to take certain actions with respect to the loans.

15 The Agency Agreement states that ML was entitled to:

- 16
- 17 a. Retain fees and charges assessed under the loan documents and collected by
- 18 ML, including commitment fees, origination fees or points, late charges,
- 19 maturity late charges, administrative fees, property inspection fees,
- 20 prepayment penalties or premiums, notice fees and services.
- 21
- 22 b. Deduct from payments received by Participant a portion of the interest
- 23 payments on any loan in which Participant acquires an interest in an amount
- 24 determined by ML at the time of the origination of such loan and/or a
- 25 servicing fee.
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- 1 c. Collect and retain any interest on the principal balance of any loan which is
2 over and above the normal rate set forth in the applicable promissory note,
3 including the default interest rate provided for in the applicable loan
4 documents.
5
6 d. Collect and retain any interest that accrues on any impound accounts to the
7 extent permitted by applicable law.
8
9 e. Collect and retain any assumption fees and charges.
10
11 f. Collect and retain any extension fees and forbearance fees.

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

13 146. Thus, Scott Coles (with help from ML's lawyers) built into ML's agreements
14 with the participants on the one hand and the borrowers on the other hand the right and
15 opportunity to make significant fees regardless of how the particular loans may at any point
16 be performing. Especially during the final 3 years of Scott Coles' life, these fees were
17 significant, particularly with the monstrous size of the unreasonable loans Scott Coles was
18 authorizing. These fees were extremely exorbitant, particularly given the fact that ML was
19 committing little, if any, of its own money into any of these projects. Rather, ML's role
20 seemed primarily to be a facilitator and agent in arranging for and servicing funding for
21 loans that ML had originated. This placed ML – particularly Scott Coles, individually –
22 right in the middle of borrowers and participants, creating not only significant fiduciary
23 duties to participants, but also the serious possibility of a conflict of interest.
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1 147. As the President and Chief Financial Officer of ML, and in his effort to
2 continue to dominate and control the affairs of ML and the illegal enterprise alleged herein,
3 Scott Coles communicated often with all participants in all programs of ML, whether it be
4 Pass-Through, RevOp, or Pool participants. Scott Coles often communicated with these
5 interested parties by mail and newsletter from ML. Scott Coles utilized the U.S. Mail
6 system to communicate with these interested parties, including Plaintiffs. In these
7 communications, Scott Coles routinely omitted material facts about the financial condition
8 and status of loans at ML and, while at the same time reinforcing his request and agreement
9 that he served as a fiduciary to each and every one of the participants who had committed
10 money to ML in any of its programs.
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14 148. Scott Coles' omissions and overt misrepresentations in his communications to
15 his participants, including Plaintiffs, was calculated to either lure new participants into ML
16 programs or persuade existing participants to remain with ML and continue to allow ML to
17 function in its capacity as a loan servicing operation and thereby make additional fees.
18 Scott Coles' letter of November 7, 2007 (Exhibit 6 hereto) typifies Scott Coles' fraudulent
19 communications with ML participants. In that letter, Coles states that "our borrowers are
20 bankable and their projects represent the best collateral available when the loans were
21 made." Given what Coles knew about the monster loans he had agreed to during 2007, this
22 statement was manifestly and materially misleading and false. Moreover, this letter, as well
23 as many other letters, create the impression in the mind of the reader that "all is well" at
24 ML, when in fact, just the opposite was true. In this letter, and others, Scott Coles failed to
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1 disclose the truth about the dangerous and deteriorating picture of ML's financial health. In
2 each and every instance of communication with participants, Scott Coles deliberately chose
3 to omit material disclosures.
4

5 149. There may be other misstatements and misrepresentations in Scott Coles'
6 November 7, 2007 letter – and others – that will be revealed through further discovery in
7 this matter.
8

9 150. The November 7, 2007 letter from Scott Coles to all participants is significant
10 for another reason. It sets forth clearly and unequivocally Scott Coles' understanding and
11 agreement that he was acting as a fiduciary to every participant in every program of ML,
12 including Plaintiffs. In that letter, Scott Coles says "Our overarching commitment is to
13 protect your principal and to ensure superior returns on your investment, which is why you
14 have told us that you invest here... My father, Charles J. Coles, founded our company on
15 one simple premise: integrity. Integrity is reflected in all that we do and how we do it.
16 Living this passion is the cornerstone of Mortgages Ltd. When it comes to protecting and
17 managing your wealth, especially in a highly competitive market place, integrity is the only
18 asset that matters." Thus, Scott Coles acknowledged and, indeed, solicited the trust and
19 confidence of every participant in every ML program, including Plaintiffs, with this
20 language and language similar to it in other correspondence and communication directly to
21 participants, including Plaintiffs. Coles wanted participants to believe that his role was to
22 protect and manage their wealth, in particular, the cash principal each participant had placed
23 at ML.
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1 151. 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 ML’s inability to fund
9 the full amount of that loan. Rather, Scott Coles details for the investors certain and
10 misleading and slanted observations about that project and, indeed, solicits the investors to
11 participate in a new promissory note, calling it a “spectacular project.” At the end of the
12 letter, as with every communication with investors, Scott Coles solicits and acknowledges
13 the relationship of trust and confidence to each participant, including Plaintiffs. He simply
14 said “Once again, we appreciate your continued trust and support.” (See Exhibit 7 hereto).
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19 152. On April 14, 2008, in a letter to each participant, including Plaintiffs, Scott
20 Coles announced a new “product” of ML – the “Value-To-Loan Opportunity Fund” (See
21 Exhibit 8 hereto). In that correspondence, Scott Coles details the Value-To-Loan
22 Opportunity Fund (“VTL”) and calls it “one of the most innovative products Mortgages,
23 Ltd. has created in its 45-year history and we have a patent pending on it.” Essentially, the
24 purpose of the VTL fund was to loan money to the Pools. However, in reality, the VTL
25 program was nothing more than Scott Coles’ veiled and misleading effort to continue to
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1 pump money into the Pools and to further mask the deepening and declining financial
2 disaster at ML. However, Scott Coles did not announce nor market VTL in that way to
3 Plaintiffs.
4

5 153. Moreover, Scott Coles actively undertook to solicit and encourage existing
6 participants, including RevOp Plaintiffs, to terminate their RevOp status and to move into
7 the VTL or a Pool investment. Few, if any, RevOp Plaintiffs agreed to do that. However,
8 in the process of soliciting those RevOp Plaintiffs to make such a change, Scott Coles never
9 told them the truth about the true financial condition of ML, causing RevOp Plaintiffs to
10 remain with ML.
11

12 154. Coles convened a general meeting on May 5, 2008 at the offices of ML in
13 Phoenix, Arizona to promote and solicit participation in the VTL. At the top of the agenda
14 for that meeting, Scott Coles put the following statement, attributed to him: "Though times
15 may be difficult, together we will navigate through." Truly, Scott Coles saw himself as a
16 fiduciary to each and every participant, including Plaintiffs.
17

18 155. In short, Scott Coles entire way of doing business, and the foundation of his
19 very effort to reach out and maintain relationships with participants, focused upon his
20 acknowledgement that he personally owed a fiduciary obligation to each participant. In
21 reality, Scott Coles controlled the mechanism by which all participants, including
22 Plaintiff's, financial interests were managed, changed, and otherwise handled. He controlled
23 Plaintiffs' property interests. Whenever Scott Coles would direct that one participant's
24 interest in a loan be terminated and that that interest be put into another loan, he did so with
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1 the express understanding that he owed a fiduciary obligation to that participant and all
2 others.

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4 156. Scott Coles' obligation as a fiduciary required a full and adequate disclosure
5 of all material facts affecting all participants and their interests, whenever those interests
6 were impacted. That duty required Scott Coles to act in Plaintiffs' best interest in handling
7 and controlling that property interest. Unfortunately for Plaintiffs, Scott Coles breached that
8 duty maliciously, regularly, and continuously, unbeknownst to Plaintiffs.
9

10 **B. Coles Breaks His Father's Rules To Fuel ML's Reckless "Growth".**

11
12 157. In order to facilitate a level of growth for ML that satisfied his increasing
13 greed, Scott Coles had to break at least two of his father's fundamental underwriting rules
14 on loans made to borrowers. In fact, because of Scott Coles, the underwriting function at
15 ML became an illusion at ML unbeknown to Plaintiffs.
16

17 158. Scott Coles' father had built ML on conservative lending practices. Scott
18 Coles' father made it a specific practice and policy of ML to never loan any one borrower
19 more than \$20 million dollars. In addition, Mr. Charles Coles maintained a very
20 conservative "loan-to-value ratio" on loans to borrowers. Paying hollow lip service to these
21 fundamental principles, Scott Coles routinely told Plaintiffs that he would never make a
22 loan to any one borrower more than \$20 million dollars and would maintain a loan-to-value
23 ratio of no more than 50% on any one loan.
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26 159. Eventually, the temptation to violate these fundamental principles became too
27 great for Scott Coles. Under Scott Coles' way of doing business at ML, the higher the loan
28

1 amount to a borrower, the more money ML and Scott Coles would make. Furthermore, the
2 more ML would loan to the borrower, the more "fractionalized interests" would be at Scott
3 Coles' disposal to, in turn, sell to either incoming participants or any of ML's "Pools." The
4 higher the loan-to-value ratio, the more fractionalized interests Scott Coles could pack into
5 one loan. Thus, a loan that exceeded the \$20 million dollar historical limit and 50% loan-to-
6 value ratio would allow ML to dramatically increase the fees it earned in its normal
7 operations.
8
9

10 160. Scott Coles failed to disclose to Plaintiffs that he had relinquished his
11 commitment to these underwriting principles.
12

13 1. **Coles Conceals the Unlawful Activities and Role of Radical**
14 **Bunny From Plaintiffs.**

15 161. One of the key players in ML's rapid growth, especially over the past three
16 years, has been an Arizona limited liability company known as "Radical Bunny, LLC"
17 ("Radical Bunny"). The members of Radical Bunny are Tom Hirsch, Harish Shah, and Ms.
18 Berta "Bunny" Walder. Radical Bunny is itself in bankruptcy.
19
20

21 162. During the entire time Radical Bunny had a business relationship with ML,
22 neither Radical Bunny nor any of its management has held any banking license, mortgage
23 license, or securities license. Radical Bunny has never registered any of its investment
24 vehicles with either the State of Arizona or the Securities & Exchange Commission. Upon
25 information and belief, Plaintiffs allege that Hirsch dominated and controlled the business
26 affairs of Radical Bunny.
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1 163. Radical Bunny has been the investment advisor and manager of an alleged
2 fund known as the "Radical Bunny Fund" ("RB Fund"). Through this RB Fund, Radical
3 Bunny funneled approximately \$197,000,000.00 to ML or the Pools. In purpose, practice,
4 and effect, Radical Bunny and the RB Fund were instrumentalities of Scott Coles and ML
5 designed and used for the sole purpose of providing funding for Scott Coles' discretionary
6 and self-serving use within ML. As set forth in more detail below, Scott Coles knowingly
7 and fraudulently concealed from Plaintiffs the true nature and role of the RB Fund and
8 Radical Bunny. Based upon the conduct of Hirsch and Scott Coles, as described herein,
9 Radical Bunny, together with the RB Fund, were part and parcel of the illegal enterprise that
10 Scott Coles controlled. Scott Coles concealed these material facts about Radical Bunny
11 from Plaintiffs, in order to induce Plaintiffs to either provide funds to ML or agree to leave
12 funds with ML. Scott Coles wanted Plaintiffs to believe that their monies were safe with
13 ML, when in fact they were not.

14 164. In design, purpose, and effect, Radical Bunny (with the RB Fund) and ML
15 were joint venture partners. As a result, funds Radical Bunny provided to ML may not have
16 been loans at all. Rather, as a matter of law, they may have been contributions to ML's
17 equity.

18 165. The scheme Hirsch and Radical Bunny devised for capitalizing the RB Fund
19 was more than suspicious. It was blatantly unlawful. Hirsch and Radical Bunny capitalized
20 the RB Fund by selling "contracts for investments" to 900 mostly elderly and
21 unsophisticated investors. Radical Bunny used open seminars at the Orange Tree Resort in
22

1 Scottsdale to solicit investors. During these seminars, Hirsch would walk up and down the
2 aisle giving personal testimony to the financial acumen of Scott Coles. Mr. Hirsch
3 promised financial rewards through ML to anyone that was willing to invest in the RB
4 Fund. He guaranteed returns of 11 percent to those who were willing to accept Scott Coles'
5 program. Hirsch counseled potential investors to mortgage their houses, if necessary.
6

7
8 166. In raising money, Hirsch and Radical Bunny failed to register any securities or
9 conduct a suitability analysis of the investors. Hirsch and Radical Bunny also made
10 material and outlandish misrepresentations of fact. For example, Hirsch would claim that
11 the only risk associated with ML and its operations was a "dirty" bomb. Hirsch explained
12 that the underlying real estate collateral and ML would always hold its value, regardless of
13 the health of the developer-borrower, and that the only thing that could affect the value of
14 the land was a nuclear contamination of the underlying real estate. Hirsch would be quick
15 to state that, even in the face of such a catastrophe, ML could always look to the rich
16 developer who borrowed the money to recover the principal loan amount. Radical Bunny's
17 message was clear and unambiguous: ML and Scott Coles had thought about every potential
18 issue and they were several steps ahead of any problem. According to Hirsch and Radical
19 Bunny, this was a very safe investment and anyone would be foolish not to invest.
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23 167. Scott Coles knew or should have known of the conduct of Hirsch, as described
24 herein. Given the overt cheerleading Hirsch did for Coles at the Radical Bunny "revival
25 meetings," and in light of the fact that Radical Bunny funneled the money it raised to Coles
26 and ML, it is inconceivable that Scott Coles was unaware of the methods and conduct of
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1 Hirsch and Radical Bunny in raising money. Thus, upon information and belief, Plaintiffs
2 allege that Scott Coles knew of, agreed with, consented to, approved of, and otherwise
3 ratified the methods and statements of Hirsch and Radical Bunny in their unlawful
4 solicitations and receipt of monies from unaccredited investors.
5

6 168. The unscrupulous and unlawful methods of Hirsch and Radical Bunny directly
7 benefited Scott Coles and ML. As further alleged below, Scott Coles made overt
8 misrepresentations to participants, including Plaintiffs, that he had his own personal line of
9 credit and that he had the "bank of Scott Coles" to fall back on to be allowed any bad loans
10 and to take out any participants who were in these bad loans. In reality, Scott Coles had
11 Radical Bunny and the RB Fund to use as his personal bank. Moreover, it is abundantly
12 clear from the history of payments from Radical Bunny to ML that Scott Coles and Hirsch
13 worked hand in hand to provide Scott Coles and ML with cash necessary to keep ML afloat
14 and to continue to conceal the fraud and malfeasance of Scott Coles.
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17

18 2. **Coles Makes Irresponsible Monster Loans and Puts**
19 **Plaintiffs Into Those Loans, Knowing ML Could Not Fund**
20 **Them.**

21 169. As alleged above, Scott Coles blatantly ignored the conservative and wise
22 business practices of his father in making decisions about the size and nature of loans to
23 make to borrowers, all calculated to feed the expanding growth of ML and provide Scott
24 Coles and ML with exorbitant fees. In particular, beginning in late 2006 and continuing
25 into 2007 and 2008, Scott Coles ignored not only his father's wise past business practices,
26 but also the advice of others within ML, and made monster loans on huge projects within
27
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1 the Phoenix metropolitan area, knowing that ML could not fund those loans. In order to
2 attempt to handle these monster loans, Scott Coles built into these agreements the concept
3 of a “delayed funding” process. Under this unreasonable lending practice, Scott Coles
4 agreed to provide a large portion of the loan proceeds to borrowers in increments. Although
5 Scott Coles knew ML was not able to fund these loans when made, he created this “delayed
6 funding” process in order to cloak ML’s inability to pay.
7

8
9 170. Scott Coles’ decision to make these monster loans was the epitome of
10 arrogance and betrayal of his fiduciary duty to Plaintiffs.

11 171. In late 2006, Scott Coles began negotiations with Central PHX Partners, LLC
12 for ML to provide funding and other construction loan services sufficient to complete the
13 project known as “Chateaux on Central.” On approximately March 9, 2007, escrow closed
14 on the loan. The principal amount of the loan was \$47 million dollars. At the time Scott
15 Coles agreed to and entered into this loan, he knew that ML did not have the financial
16 resources to fully fund the loan. Indeed, Scott Coles had placed many Plaintiffs in the
17 Chateaux loan knowing that ML did not have the financial resources to fund it, but did not
18 tell that to the participants he placed in that loan.
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22 172. In late 2006, Scott Coles also agreed to a series of loans to entities that have
23 been referred to in the ML bankruptcy as the “Grace Entities,” consisting of Osborn III
24 Partners, LLC, 44th & Camelback Property, LLC, Central & Monroe, LLC, Portales Place
25 Property, LLC, and 70th Street Property, LLC. Scott Coles agreed to a total loan
26 commitment to these collective entities in the approximate amount of \$120 million. At the
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28

1 time Scott Coles agreed to the loan commitments to Grace Entities, Scott Coles knew that
2 ML could not and would not have the financial ability to fully fund that loan. Despite this,
3 Scott Coles solicited new participants to acquire fractionalized interests in the Grace Entities
4 loans and placed existing participants, including Plaintiffs, in those loans, in violation of his
5 fiduciary duty. He placed various participants, including Plaintiffs, in these loans in
6 violation of his fiduciary duty.
7

8
9 173. On approximately March 21, 2007, Scott Coles caused ML to issue a loan
10 commitment to Tempe Land Company ("TLC") in the designated loan amount of
11 \$150,200,000.00 to enable TLC to develop the "Centerpoint Project" next to Tempe Town
12 Lake in Tempe, Arizona. TLC executed and delivered to ML a promissory note dated
13 March 20, 2007 in the designated loan amount of \$150,200,000.00, together with a deed of
14 trust and other security documents.
15

16
17 174. Upon information and belief, Plaintiffs allege that the Centerpoint Project was
18 and is a poorly conceived and executed development plan on the part of TLC. Plaintiffs
19 allege, upon information and belief, that Scott Coles knew or should have known that TLC's
20 development plan for the Centerpoint Project required funds far beyond the \$150 million
21 dollar level and that the Centerpoint Project, as conceived, was not capable of full and final
22 development.
23

24
25 175. At the time Scott Coles agreed to the TLC loan, he knew that ML could not
26 fully fund that loan. Despite that, Scott Coles solicited Plaintiffs to acquire fractionalized
27 interests in the TLC loan. In order to entice Plaintiffs to agree to acquire these
28

1 fractionalized interests, Scott Coles knowingly failed to disclose to Plaintiffs the true
2 financial condition of ML, including but not limited to the fact that ML could not fully fund
3 the TLC loan and that the Centerpoint Project was ill-conceived and not capable of
4 completion as presented. Moreover, for those Plaintiffs who were, at the time of the TLC
5 loan, already owners of fractionalized interests or participants in the Pools, Scott Coles
6 unilaterally moved certain Plaintiffs into the TLC loan, knowing that ML could never fund
7 that loan and that the Project itself was ill-conceived.
8
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10 176. At about the same time as the TLC loan commitment, Scott Coles agreed to a
11 \$130 million dollar loan commitment to University & Ash, LLC. Scott Coles agreed to this
12 loan commitment knowing that ML could not fund it. However, Scott Coles never told any
13 Plaintiff that fact either prior to any Plaintiff agreeing to acquire a fractionalized interest in
14 the University & Ash loan or prior to Scott Coles' unilateral decision to move any existing
15 "investor" into that loan.
16
17

18 177. Also at this approximate time, Scott Coles agreed to a \$190 million dollar loan
19 commitment to Rightpath Limited Development Group, LLC and others, for development
20 of the Los Angeles Dodgers training facility in Glendale, Arizona. At the time he agreed to
21 that loan commitment in May of 2007, Scott Coles knew that ML could not fund that entire
22 loan commitment. He likewise knew of the TLC commitment and the impending
23 University & Ash commitment. Despite this knowledge, Scott Coles solicited Plaintiffs to
24 acquire fractionalized interests in the Rightpath loan and, in many cases, unilaterally placed
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1 existing "investors" in that loan without disclosing the truth about ML's financial condition
2 and capacity.

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4 178. During this same approximate period of time, Scott Coles agreed to other
5 exorbitant and otherwise unreasonable loan commitments to borrowers, knowing that ML
6 did not have the ability to fund those loans. Scott Coles then solicited Plaintiffs to acquire
7 fractionalized interests in those loans or unilaterally placed existing investors/Plaintiffs in
8 those loans, without disclosing the truth to those Plaintiffs about the financial condition and
9 capacity of ML or the viability of any respective project for which the loans had been made.
10 Scott Coles agreed to these unreasonable loans in order to maximize the opportunity for ML
11 and, consequently himself, to earn increasingly exorbitant fees. This fleecing of participants
12 was a malicious breach of Scott Coles' fiduciary duty to those participants, including
13 Plaintiffs.
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16
17 **C. Coles Hides ML's Catastrophic Financial Condition From**
18 **Investors.**

19 179. In order to continue to attract new money into ML and to avoid existing
20 "investors" from making a "run on the bank," Scott Coles knew he could never disclose to
21 prospective or existing participants the true and worsening financial condition of ML,
22 particularly beginning in early 2007. By at least the time of the Grace Entities transaction,
23 and most likely before, Scott Coles knew that ML was insolvent and that its financial
24 statements were materially misstated and were, in fact, misleading existing and prospective
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1 participants and borrowers. Scott Coles had a duty to tell participants, including Plaintiffs,
2 the truth about that.

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4 **1. Coles Knew That ML's Financial Statements Were**
5 **Materially Misstated.**

6 180. Scott Coles controlled the financial statements of ML. By at least the end of
7 2006, and most likely before, Scott Coles knew that the financial statements of ML were
8 materially misstated. In particular, but not by way of limitation, by at least the end of 2006
9 and most likely before, Scott Coles knew that the financial statements of ML materially
10 misstated the value of loans ML reflected on its financial statements. Scott Coles knew that
11 the financial statements reflected no impairment to or reserve for troubled loans.
12 Furthermore, Scott Coles knowingly failed to report the declining value of its real estate
13 portfolio. The financial statements of ML likewise failed to accrue a reserve for a \$6
14 million dollar loan to the SMC Trust and did not disclose that ML had guaranteed a \$12
15 million dollar loan taken out by SM Coles, LLC. Scott Coles controlled these omissions
16 and, with the active and substantial assistance of ML's accountants and lawyers, kept that
17 information off the financial statements of ML and away from the existing and prospective
18 participants, including Plaintiffs.
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23 181. Had Scott Coles allowed ML's financial statements to accurately reflect the
24 true financial condition of ML, including but not limited to, appropriate adjustments
25 described herein, those adjustments would have had, at a minimum, a negative impact of
26 approximately \$57.5 million dollars as of May 31, 2008. ML's stated equity of its sole
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1 shareholder (the SMC Trust) would have gone from approximately \$9.8 million dollars to a
2 negative equity of \$47.7 million dollars. Thus, the materially misstated financial statements
3 of ML directly benefited Scott Coles and the SMC Trust and enabled Scott Coles to
4 continue to control not only ML, but also the illegal enterprise alleged herein.
5

6 182. Moreover, according to a 2008 audit of the financial statements of ML by the
7 Arizona State Department of Financial Institutions, ML, under the control of Scott Coles,
8 failed to observe generally accepted accounting principles in preparation of its financial
9 statements. In particular, the ADFI's 2008 audit concluded that in its May 31, 2008
10 unaudited financial statements, ML failed to record mortgages held for investment and sale
11 at the lower cost of fair market value. In addition, ML failed to recognize on its financial
12 statements that the cost of mortgages held as security for RevOp participants exceeded their
13 fair market value. According to the audit, ML failed to recognize the decline in fair market
14 value of its real estate investments held for sale, failed to assess the collectibility of a \$6
15 million dollar note receivable from Scott Coles, and failed in other material ways to
16 properly and adequately maintain its financial statements.
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20 183. There may be other deficiencies and misstatements under generally accepted
21 accounting principles in ML's financial statements, including any and all financial
22 statements published in any private offering memorandum of ML for any of its programs.
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24 184. Moreover, Scott Coles knew that the appraisals he obtained on various
25 potential loans and projects were materially overstated. In addition, but not by way of
26 limitation, Scott Coles knew of and ratified the unlawful activities of Hirsch and Radical
27

1 Bunny, as set forth above, and knew that the financial statements of ML did not accurately
2 reflect that unlawful activity.

3
4 185. Upon information and belief, Plaintiffs allege that Scott Coles had substantial
5 and active assistance from professionals such as accountants and lawyers in not only
6 maintaining ML's materially misstated financial statements, but also establishing and
7 controlling the illegal enterprise alleged herein. It is not the purpose of this case to bring
8 those claims against ML's professionals at the present time. Therefore, nothing in this
9 Complaint should be construed as relinquishing or releasing any professional or other agent
10 of Scott Coles or ML from any and all liability for their conduct relating to the business of
11 ML in any way.
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14 **IV. CLAIMS FOR RELIEF**

15 **COUNT ONE**

16 **(Breach of Fiduciary Duty)**

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18 186. Plaintiffs incorporate herein all foregoing paragraphs of this Complaint.

19 187. As alleged herein, Scott Coles personally owed each Plaintiff a fiduciary duty.

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21 188. As alleged herein, Scott Coles breached that fiduciary duty, proximately
22 causing each Plaintiff damage.

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24 189. In breaching his fiduciary duty to each Plaintiff, Scott Coles acted willfully,
25 intentionally, maliciously, and with an evil mind, justifying the imposition of punitive
26 damages.
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- Scott Coles failed to disclose to Plaintiffs that ML could not fund the monster loans to the Grace Entities, Central PHX Partners, Rightpath Limited Development Group, LLC, and Tempe Land Company;
 - Scott Coles failed to disclose to Plaintiffs that, by the summer of 2007, major borrowers were in default;
 - Scott Coles failed to disclose to Plaintiffs the true nature and role of Radical Bunny in the financial affairs of ML;
 - Scott Coles failed to disclose to Plaintiffs that the audited and unaudited financial statements of ML were materially misstated and that, in fact, ML was insolvent;
 - Scott Coles failed to disclose to Plaintiffs that he no longer deemed it important to comply with ML's historic underwriting practices of limiting loans to any borrower to \$20 million dollars and limiting the loan-to-value ratio to 50%;
 - Scott Coles made other misrepresentations and material omissions that induced Plaintiffs to rely to their detriment, as will be revealed through further investigation and discovery and will be the subject of further amendments to this Complaint.

- 1 • Scott Coles failed to disclose to Plaintiffs that the audited and
2 unaudited financial statements of ML were materially misstated
3 and that, in fact, ML was insolvent; and
- 4
5 • Scott Coles failed to disclose to Plaintiffs that he no longer
6 deemed it important to comply with ML's historic underwriting
7 practices of limiting loans to any borrower to \$20 million
8 dollars and limiting the loan-to-value ratio to 50%;
- 9
10 • Scott Coles made other misrepresentations and material
11 omissions that induced Plaintiffs to rely to their detriment, as
12 will be revealed through further investigation and discovery
13 and will be the subject of further amendments to this
14 Complaint.
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16
17 198. Plaintiffs justifiably relied upon the misrepresentations and omissions of Scott
18 Coles in making their respective decisions on whether to place money in ML for use in one
19 of ML's investment programs or allow ML to retain monies previously placed for that
20 purpose. Consequently, Plaintiffs relied upon misrepresentations and omissions to their
21 detriment.
22

23 199. As a direct and proximate result of the misrepresentations and fraudulent
24 omission of Scott Coles, as set forth in this Complaint, Plaintiffs have been damaged.
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1 212. As a direct and proximate result of Scott Coles' misrepresentations in
2 connection with sale of securities, as alleged herein, each Plaintiff has suffered actual
3 damages.
4

5 213. As alleged herein, Scott Coles' conduct violates Section 12(2) of the 1933
6 Securities Act, *15 U.S.C.A. § 771(a)(2)*.
7

8 214. Moreover, Scott Coles was a control person over ML pursuant to *15 U.S.C.A.*
9 *§ 77o*.
10

11 215. Plaintiffs have elected to bring this Section 12(2) claim in this Court. This
12 Court has subject matter jurisdiction over this case. There is no complete diversity in this
13 case.
14

15 WHEREFORE, Plaintiffs each pray for judgment against the Estate of Scott
16 M. Coles as follows:

- 17 A. For all direct and consequential damages, in an amount to be
18 established at trial;
- 19 B. For prejudgment interest pursuant to *15 U.S.C.A. § 771(a)(2)*;
- 20 C. For each Plaintiff's costs and reasonable attorney's fees pursuant to
21 Section 11(e) of the 1933 Act, *15 U.S.C.A. § 77k(e)*; and
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- 23 D. For all other relief justified under the circumstances of this case.
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COUNT SEVEN

(Illegal Control of an Enterprise: A.R.S. § 13-2314.04)

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

217. As alleged herein, Scott Coles formed, operated, maintained, and actively concealed and financially benefited from an enterprise, as defined in *A.R.S. § 13-2301 (D)(2)*. That enterprise consisted of the association in fact of Radical Bunny, Tom Hirsch, the SMC Trust, SMC Coles, LLC, and ML.

218. As alleged herein, Scott Coles acquired and maintained control of the enterprise as defined in *A.R.S. § 13-2301 (D)(1)*.

219. As alleged herein, Scott Coles committed illegal control of an enterprise by acquiring and maintaining control of the enterprise through racketeering.

220. As alleged herein, Plaintiffs have sustained reasonably foreseeable injury through a pattern of racketeering activity, or by a violation of *A.R.S. § 13-2312* involving a pattern of racketeering activity, as alleged herein.

221. As alleged herein, the pattern of unlawful activity consists of at least two acts involving mail fraud, wire fraud, and a scheme or artifice to defraud, the last act of which occurred within five years of the prior act. As alleged herein, the unlawful acts were related to each other and amounted to or posed a threat of continued unlawful activity. The unlawful acts had the same of similar purposes, results, participants, victims, and methods of commission.

1 222. As a direct, foreseeable, and proximate result of the pattern of unlawful
2 activity of Scott Coles, Plaintiffs have been damaged.

3
4 223. In carrying out the pattern of unlawful activity, as alleged herein, Scott Coles
5 acted intentionally, willfully, maliciously, and with an evil mind, justifying the imposition
6 of punitive damages.

7
8 WHEREFORE, Plaintiffs each pray for judgment against the Estate of Scott Coles as
9 follows:

- 10 A. For all direct and consequential damages, in an amount to be
11 established at trial, trebled pursuant to *A.R.S.* § 13-2314.04 (A);
12
13 B. For Plaintiffs' costs and reasonable attorneys fees pursuant to *A.R.S.* §
14 13-2314.04;
15
16 C. For punitive damages in an amount to be established in the sound
17 discretion of the jury; and
18
19 D. For all other relief justified under the circumstances of this case.

20 DATED this 30th day of April, 2009.

21 **THOMAS SCHERN RICHARDSON, PLLC**

22
23 By 

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