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Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

DERRY DEAN SPARLIN, SR., a single man,

Plaintiff;

v.

MICHAEL N. FIGUEROA and JANE DOE FIGUEROA, husband and wife; JEFFREY S. UTSCH and IBON MARITZA UTSCH, husband and wife; ROBERT F. BARNITT and LISA S. BARNITT, husband and wife; GLEN W. KERSLAKE and JANE DOE KERSLAKE, GREGG T. SASSE and LESLEY CAROLE SASSE, husband and wife; TERRA RANCHO GRANDE, L.L.C., an Arizona limited liability company; and WESTERN RECOVERY SERVICES, L.L.C., an Arizona limited liability company; LCS LAND HOLDING CO., L.L.C., an Arizona limited liability company; PROSPERITY INVESTMENTS, L.L.C., an Arizona limited liability company; WESTERN ASSOCIATES DEVELOPMENT CO., L.L.C., an Arizona limited liability company; WESTERN MANAGEMENT SERVICES, L.L.C., an Arizona limited liability company; POLLUX PROPERTIES, L.L.C., an Arizona limited liability company; ANTARES PROPERTIES, L.L.C., an Arizona limited liability company; HERMES PROPERTIES, L.L.C., an Arizona limited liability

No. C2011-7971

AMENDED COMPLAINT

(Securities Fraud/Common Law Fraud/Breach of Fiduciary Duties)

New Tucson, 55, 28

western associates "draining" TRG, management fees, 12

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company; OLD PUEBLO INVESTMENTS, INC., an Arizona corporation; TUCSON ACQUISITION AND DEVELOPMENT CORPORATION, an Arizona corporation; COLONIANUEVA, INC., an Arizona corporation; and DOES I through XXX,

Defendants.

The Plaintiff, Derry Dean Sparlin, Sr., by and through his attorney undersigned, for his claim against the Defendants, hereby alleges as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Derry Dean Sparlin, Sr. was, at all times relevant hereto, a resident of the county of Pima, state of Arizona, and is currently a resident of Springfield, Virginia.

2. The Defendants, Michael N. Figueroa and Jane Doe Figueroa were, at all times relevant hereto, husband and wife, and residents of the county of Pima, state of Arizona, and, at all times relevant hereto, the Defendant, Michael N. Figueroa, was acting for, on behalf, and in furtherance of his marital community with the Defendant Jane Doe Figueroa. Furthermore, the Defendant, Michael N. Figueroa, was, at all times relevant hereto, either individually or acting through entities under his control and/or management, either a member, manager, director, officer, employee, agent, and/or representative of the Defendants, Terra Rancho Grande, L.L.C., Western Recovery Services, L.L.C., LCS Land Holding Co., L.L.C., Western Associates Development Co., L.L.C., Western Management Services, L.L.C., Antares Properties, L.L.C., Hermes Properties, L.L.C., and Old Pueblo Investments, Inc., and was, at all relevant times, acting for, on behalf, and in furtherance of the business of the said Defendants, with respect to the wrongful acts hereinafter alleged.

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3. The Defendants, Jeffrey S. Utsch and Ibon Maritza Utsch were, at all times relevant hereto, husband and wife, and residents of the county of Pima, state of Arizona, and, at all times relevant hereto, the Defendant, Jeffrey S. Utsch, was acting for, on behalf, and in furtherance of his marital community with the Defendant Ibon Maritza Utsch. Furthermore, the Defendant, Jeffrey S. Utsch, was, at all times relevant hereto, either individually or acting through entities under his control and/or management, either a member, manager, director, officer, employee, agent, and/or representative of the Defendants, Terra Rancho Grande, L.L.C., Western Recovery Services, L.L.C., Pollux Properties, L.L.C., LCS Land Holding Company, L.L.C., Western Associates Development Co., L.L.C., Western Management Services, L.L.C., Antares Properties, L.L.C., Hermes Properties, L.L.C., and Tucson Acquisition and Development Corporation, and was, at all relevant times, acting for, on behalf, and in furtherance of the business of the said Defendants, with respect to the wrongful acts hereinafter alleged.

4. The Defendants, Robert F. Barnitt and Lisa S. Barnitt were, at all times relevant hereto, husband and wife, and residents of the county of Maricopa, state of Arizona, and, at all times relevant hereto, the Defendant, Robert F. Barnitt, was acting for, on behalf, and in furtherance of his marital community with the Defendant Lisa S. Barnitt. Furthermore, the Defendant, Robert F. Barnitt, was, at all times relevant hereto, either individually or acting through entities under his control and/or management, either a member, manager, director, officer, employee, agent, and/or representative of the Defendants, Prosperity Investments, L.L.C., and/or Hermes Properties, L.L.C., and was, at all relevant times, acting for, on behalf, and in furtherance of the business of the said Defendants, with respect to the wrongful acts hereinafter alleged.

5. The Defendants, Glen W. Kerslake and Jane Doe Kerslake were, at all times relevant hereto, husband and wife, and residents of the county of Pima, state of Arizona, and, at all times relevant hereto, the Defendant, Glen W. Kerslake, was acting for, on behalf, and in furtherance of his marital community with the Defendant Jane Doe Kerslake. Furthermore, the Defendant, Glen W. Kerslake, was, at all times relevant hereto, either individually or acting through entities under his control and/or management, either a member, manager, director, officer, employee, agent, and/or representative of the Defendants, Terra Rancho Grande, L.L.C., LCS Land Holding Co., L.L.C., Western Associates Development Co., Inc., Western Management Services, L.L.C., Antares Properties, L.L.C., Hermes Properties, L.L.C., Pollux Properties, L.L.C., and Colonianueva, Inc., and was, at all relevant times, acting for, on behalf, and in furtherance of the business of the said Defendants, with respect to the wrongful acts hereinafter alleged.

6. The Defendants, Gregg T. Sasse and Lesley Carole Sasse were, at all times relevant hereto, husband and wife, and residents of the county of Pima, state of Arizona, and, at all times relevant hereto, the Defendant, Gregg T. Sasse, was acting for, on behalf, and in furtherance of his marital community with the Defendant Lesley Carole Sasse. Furthermore, the Defendant, Gregg T. Sasse, was, at all times relevant hereto, either individually or acting through entities under his control and/or management, either a member, manager, director, officer, employee, agent, representative, and/or otherwise affiliated with the Defendants, Terra Rancho Grande, L.L.C., LCS Land Holding Co., L.L.C., and/or Western Associates Development Co., L.L.C., and was, at all relevant times, acting for, on behalf, and in furtherance of the business of the said Defendants, with respect to the wrongful acts hereinafter alleged.

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7. The Defendant, Terra Rancho Grande, L.L.C. (hereinafter "TRG") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona.

8. The Defendant, Western Recovery Services, L.L.C. (hereinafter "Western Recovery") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona.

9. The Defendant, LCS Land Holding Co., L.L.C. (hereinafter "LCS") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendant, Hermes Properties, L.L.C.

10. The Defendant, Prosperity Investments, L.L.C. (hereinafter "Prosperity") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Paradise Valley, Maricopa County, Arizona.

11. The Defendant, Western Associates Development Co., L.L.C. (hereinafter "Western Associates") was, at all times relevant hereto, a limited liability company duly

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formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendants Western Management Services, L.L.C., TRG, Pollux Properties, L.L.C., Antares Properties, L.L.C., and Hermes Properties, L.L.C.

12. The Defendant, Western Management Services, L.L.C. (hereinafter "Western Management") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendants LCS and Pollux Properties, L.L.C.

13. The Defendant, Pollux Properties, L.L.C. (hereinafter "Pollux") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona.

14. The Defendant, Antares Properties, L.L.C. (hereinafter "Antares") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona.

15. The Defendant, Hermes Properties, L.L.C. (hereinafter "Hermes") was, at all times relevant hereto, a limited liability company duly formed and existing pursuant to the

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laws of the state of Arizona and was, until January 25, 2010, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona and, from January 26, 2010 to the present, is doing and transacting business within the county of Maricopa, state of Arizona, with its principal place of business located in Paradise Valley, Arizona.

16. The Defendant, Old Pueblo Investments, Inc. was, at all times relevant hereto, a corporation duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendants Western Associates and Western Management.

17. The Defendant, Tucson Acquisition and Development Corporation was, at all times relevant hereto, a corporation duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendants Western Associates, and Western Management.

18. The Defendant, Colonianueva, Inc. was, at all times relevant hereto, a corporation duly formed and existing pursuant to the laws of the state of Arizona and was, at all times relevant hereto, doing and transacting business within the county of Pima, state of Arizona, with its principal place of business located in Tucson, Arizona. Furthermore, at all relevant times, it was a manager of Defendant Western Associates.

19. The individual Defendants referred to by the name of "Jane Doe" are fictitious names which are being used to represent the respective wives of the named individual

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Defendants. The Plaintiff will seek permission to substitute the true names of the said fictitious Defendants when they become known.

20. Upon information and belief, the Defendants Does I through XXX, are persons and/or corporations or limited liability companies, and/or other types of entities whose true names are not presently known to the Plaintiff. Alternatively, it is alleged that each of the Defendants has caused an event to occur within the state of Arizona out of which the Plaintiff's claims arise. When the true names of the said fictitious Defendants become known to the Plaintiff, he will seek leave of the Court to amend this Complaint to reflect such true names, together with appropriate charging allegations. However, at this time, Does 1 through 20 are particularly designated as persons acting as officers, directors, members, employees, agents, servants, representatives, or otherwise on behalf, in furtherance, and/or for the benefit, of each of the Defendants, and who assisted or otherwise participated in one of more of the acts alleged herein and out of which the Plaintiff's claims arise. Does 21 through 30 are designated as other corporations, partnerships, limited liability companies, trusts, or other such business or artificial entities and their shareholders, members, partners, officers, directors, employees, agents, servants, or other representatives who assisted or otherwise participated in one or more of the acts alleged herein, and out of which the Plaintiff's claims arise.

21. All of the acts, events, and occurrences hereinafter complained of, occurred and arose, or emanated from or within, the county of Pima, state of Arizona.

FACTUAL HISTORY

22. The Plaintiff, Derry Dean Sparlin, Sr. (hereinafter "Sparlin"), is a 78-year old retired scientist and oil industry consultant, whose acquired wealth came primarily from the

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estate of his late second wife. It is this inherited fund of money that became the source for the investments which the Plaintiff made with the Defendants, subject of this Complaint.

23. Plaintiff's first introduction to the Defendants came through his third wife, Elaine Evans Bromley (now deceased), sometime in 2002, prior to their marriage on January 1, 2003. Sparlin was introduced to Michael N. Figueroa, a friend of Elaine's, who identified himself as a real estate broker and investor.

24. Although Figueroa was, in fact, a licensed real estate broker, he was neither licensed nor, at any time, authorized by any federal or state regulatory agency to act as a securities broker, dealer, trader, or salesperson.

25. Despite the scope of his unlicensed status, Figueroa utilized his close relationship with the Plaintiff's third wife to ingratiate himself to the Plaintiff and to gain the Plaintiff's trust and confidence by touting his successes and accomplishments, including, but not limited to, his successful accumulation of wealth as a result of his investment acumen. As a direct result of Figueroa's efforts to cultivate a close relationship with the Plaintiff, he persuaded Sparlin to disclose to him the nature and extent of his assets which, at the time, had a value of approximately three million dollars ($3,000,000.00).

26. Despite the Plaintiff's apparent wealth, however, Sparlin was not a sophisticated investor, having little experience in either stock or real estate investment over the course of his seventy plus years. This fact, which was made very clear to Figueroa at the outset, became the springboard to Figueroa's opportunity, and the fraudulent investment scheme which he carried out and directed over the next six plus years.

27. Beginning with $750,000.00 in investments over an initial three-week period between March 21, 2003, and April 10, 2003, the Plaintiff was persuaded by Figueroa to make

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a succession of investments over the next 6½ years, comprised of either loans, stock purchases, or acquisitions of membership interests in various limited liability companies owned or controlled by, or otherwise affiliated with, Figueroa.

28. In order to facilitate the investments, Figueroa persuaded the Plaintiff to execute a Power of Attorney on September 23, 2003, granting Figueroa broad authority to invest and contract on the Plaintiff's behalf. The Plaintiff executed this Power of Attorney after having previously executed a similar Power of Attorney with his wife, permitting Figueroa to arrange financing for the purchase of their personal residence, an arrangement that proved successful.

29. Each of the successive investments had, among other common elements, one prominent trait: each of the entities and investment vehicles into which Figueroa directed the Plaintiff's money were either owned, wholly or in part, or controlled by Figueroa or one of his sixty plus entities, corporations, or limited liability companies, which he owned in whole or in part either directly or indirectly, or which he controlled or was otherwise formally associated with. In other words, the various investments in which the Plaintiff was persuaded to participate, or in which the Plaintiff entered solely through Figueroa's liberal use of the authority granted to him by the Power of Attorney, were in entities and investments in which Figueroa or one of his entities would be a direct beneficiary.

30. Following the initial investments, the pattern of a scheme developed in which initial investment funds were transferred or converted to other investments, either promissory notes, stock, or limited liability company membership interests. Likewise, the Plaintiff's investment stakes continued to grow, at its peak reaching more than two million one hundred thousand dollars ($2,100,000.00), before collapsing to a loss of more than one million dollars ($1,000,000.00).

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31. During the course of these Figueroa-directed investments, there was one constant: each of the investments continued to be directed to Figueroa-controlled or affiliated entities in which Figueroa and his partners received direct financial benefit, despite the continuous financial losses suffered by the Plaintiff.

TRG TRANSACTION

32. The largest and most conspicuous of these investments, and clearly illustrative of the self-dealing and fraud perpetrated by Figueroa and his associates, including the Defendants Jeffrey S. Utsch, Glen W. Kerslake, Robert F. Barnitt, and Gregg T. Sasse, was a highly touted, but wholly misrepresented real estate development project through the vehicle known as the Defendant TRG.

33. On August 13, 2004, TRG purchased a 72.3 acre parcel of land in Pima County, Arizona for two million five hundred thousand dollars ($2,500,000.00).

34. On August 11, 2004, Figueroa solicited an investment from the Plaintiff in the form of a loan to be used for the residential development of that 72.3 acre parcel.

35. The solicitation, in the form of a two-page memorandum dated August 4, 2004, sought four million two hundred thousand dollars ($4,200,000.00), and represented that the full value of the land, after improvements, would be six million three hundred thousand dollars ($6,300,000.00).

36. Accompanying the two-page memorandum was an "independent evaluation" of the property by the Defendant, Gregg T. Sasse, dated August 6, 2003, which was used to support the $6.3 million dollar valuation contained in the solicitation memorandum. Sasse was neither an appraiser nor independent, since he was affiliated with the Defendant, Western

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Recovery, a fact not disclosed in the solicitation memorandum or otherwise made known to the Plaintiff.

37. Based upon the documents provided to him, and the representations made by Figueroa, the Plaintiff initially invested $500,000.00 in exchange for a purported 11.905% interest in the debt secured by a Deed of Trust on the property.

38. Figueroa then persuaded Sparlin to convey this interest to a company called Hadrianus Terra, L.L.C., another entity controlled by the Defendants Figueroa and Utsch, in exchange for a membership interest in that entity.

39. On July 15, 2005, Sparlin, through Hadrianus, invested another $150,000.00 in TRG, and on June 26, 2006, Sparlin, again through Hadrianus, invested another $150,000.00 to his TRG investment, thereby increasing his total stake in the TRG project to $800,000.00.

40. While Sparlin was increasing his investment in TRG based upon the Defendants continued positive representations of its value, the Defendants Figueroa, Utsch, Barnitt, Western Recovery, and other entities related to the Defendants, were systematically withdrawing their own investments coincidental with the infusion of new investor funds.

41. At the same time, TRG's management, through the Defendant, Western Associates, was slowly depleting TRG's available capital through management fees they paid to themselves.

42. By draining TRG's capital as investor funds came in, these insiders succeeded in both reducing their stake in TRG, as well as their financial risk. Equally as important, by their capital withdrawals, these insiders succeeded in ensuring that insufficient funds were available to TRG to be able to accomplish its development plan, even if that plan were capable of success.

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43. These insiders, the Defendants named herein, were clearly operating on knowledge not disclosed to, or otherwise known by, the non-insider investors, including the Plaintiff, Sparlin. In fact, the extent of the non-disclosed knowledge was profound, material, and wholly damning for the TRG project.

44. These insiders, Defendants Figueroa, Utsch, Barnitt, Kerslake, Western Recovery, and their related entities, had ample motivation to limit their own financial exposure by shifting the substantial investment risk to other outside investors who were not privy to the same knowledge about TRG's dubious prospects.

45. From the outset, the proposed TRG development faced serious if not insurmountable hurdles, the nature and risks of which were wholly omitted from the solicitation memorandum given to the Plaintiff.

46. The land for the development of the proposed subdivision by TRG was located in a Class AE flood zone established by the Federal Emergency Management Agency ("FEMA").

47. Because FEMA requires local governments to restrict the approval of new developments in Class A flood zones in order to participate in the Federal Flood Insurance Program, the land which TRG proposed to develop would face a steep uphill battle to not only change its zoning status, but to overcome the FEMA restrictions on new developments.

48. Compounding the already significant problems posed by the FEMA regulations, the entire proposed development parcel fell within an "important riparian area" regulated by local Pima County ordinances, and classified in the most restrictive possible category as a "Hydro-meso riparian habitat".

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49. Pima County's Comprehensive Lands System adopted as part of its 2000 Comprehensive Land Use Plan, directs that "at least 95% of the total acreage of lands within this designation shall be conserved in a natural or undisturbed condition."

50. To assist in implementing this directive, the applicable Pima County ordinance (Pima County Code of Ordinances §16.30.040), first adopted in 1997, requires developers to demonstrate "that no reasonably practicable alternative exists to the proposed impact" on the habitat. "Avoidance" is the preferred alternative, and is "required whenever feasible." Onsite mitigation also may be acceptable if the developer can "provide new habitat of similar value to that which was removed as a result of the construction of physical improvements on the developed or subdivided site."

51. Neither avoidance nor onsite mitigation was possible for the TRG project, however, because the parcel did not include any non-riparian land. As a result, the only conceivable alternative would have been to obtain approval from the Pima County Board of Supervisors for an offsite mitigation plan, which would have involved a monetary contribution to a "mitigation bank" used to acquire and preserve riparian lands and other locations.

52. Upon information and belief, Pima County has never approved an offsite mitigation plan for a Hydro-meso riparian impact even approaching the scale of the TRG project.

53. Even if the mitigation bank alternative had been available, TRG would have owed a substantial sum of money to Pima County as a condition of its approval. Based upon guidelines used to calculate mitigation contributions, the amount would have exceeded the price per acre that TRG paid when it acquired the subject property. Likewise, even if TRG were inclined to make such a payment to Pima County, the systematic and repeated capital

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withdrawals by TRG's insiders, the Defendants herein, left TRG financially unable to pay such a fee.

54. Likewise, the historical failure of prior owners of the TRG property to develop the land was neither addressed nor disclosed to the Plaintiff prior to his $800,000.00 investment. Specifically, a previous equestrian center was rejected in the face of strong community opposition based upon riparian impacts, as well as crowd and traffic concerns.

55. Moreover, on May 18, 2004, Pima County voters approved a bond referendum "for the purchase in fee simple or the acquisition of conservation easement on lands identified as "Habitat Protection Priorities" in the Tucson Basin Project Area. Notably, the Habitat Protection Priorities specifically identified the TRG parcel as a "secondary" priority, the same category assigned to nearly all of the tracts covered by the bond referendum.

56. As early as February 22, 2005, the Pima County Conservation Acquisition omission had referred to the TRG parcel as "a high priority habitat protection priority."

57. The TRG property history, and each of the material facts regarding it, was never disclosed to the Plaintiff in the solicitation memorandum or any other written material. In the face of the parcel's history and the severe restrictions to its development, the ultimate failure of the TRG project was conspicuously foreseeable to anyone with access to this knowledge, including, specifically, to the insider Defendants named herein.

58. Despite the parcel's history and the foreseeable regulatory and legal hurdles facing the TRG project, the Defendants were not deterred from siphoning their own investments in the project from newly acquired investor funds. At the same time, however, the Defendants were assuring the Plaintiff, as well as other outside investors, that the investment

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was not only safe, but, in April 2007 and May of 2008, both Figueroa and Kerslake, respectively, reaffirmed their confidence that approval for the project would be obtained.

59. However, despite the repeated reassurances and representations of the Defendants, the TRG project was doomed from the outset, culminating in the sale of the property by TRG on December 9, 2009 for the total sum of $1,375,000.00, representing a loss of more than one million one hundred thousand dollars ($1,100,000.00) from TRG's original purchase price.

60. Following the receipt of the meager sale proceeds, the Plaintiff received a distribution of $243,953.07, representing a principal loss of approximately $556,000.00, as well as a loss of accumulated interest of more than $400,000.00.

LCS Transaction

61. Following their pattern of promoting new investments through various methods, including the conversion of current investors' existing investment funds and interests, on October 6, 2006, the Defendants, through the Defendant Sasse, provided Sparlin with a Private Offering Memorandum dated September 19, 2006, soliciting a capital investment into a newly formed company called LCS.

62. On December 11, 2006, in order to further induce Sparlin to invest in LCS, Sparlin was provided with a supplement to the Private Offering Memorandum, dated November 3, 2006, as well as an Amended Operating Agreement for LCS.

63. These documents, in conjunction with the original Private Offering Memorandum, describe an equity conversion scheme creating two classes of ownership: Class A membership comprised of corporate management and their associated profit sharing plans,

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and Class B membership comprised of investors whose existing debt interests were converted into equity or who contributed additional cash through the offering.

64. Class A members, who contributed less than $25,000 in capital, were given the equivalent of three million dollars ($3,000,000.00) in membership interests, although subordinated to Class B members for distribution purposes.

65. In full reliance upon the documents provided to him, on December 12, 2006, Sparlin executed the LCS Class B Equity Conversion Agreement, thereby converting his $200,000.00 debt interest in an existing investment into a Class B equity membership interest in LCS.

66. On February 7, 2007, LCS entered into, what was represented to be, a short-term one year financing agreement with the Defendant, Prosperity, which was controlled by the Defendant, Barnitt. In return for a 12% interest rate and 2% consulting fee, Prosperity loaned LCS $1,744,000.00, which was to be repaid by February 15, 2008.

67. On April 30, 2008, Prosperity declared a default when LCS failed to repay the loan. However, after some apparent negotiation, rather than taking action to enforce the loan default, Prosperity agreed to allow LCS time to obtain additional capital, in order to satisfy Prosperity's demand for increased capital reserves in exchange for an extended loan repayment term.

68. On October 10, 2008, in an apparent effort to satisfy Prosperity's loan extension requirements, LCS issued a new Private Offering Memorandum, soliciting capital investments from a new class of investors, offering Class C membership interests in LCS in return.

69. This attempt at attracting new LCS investors failed and, as a result, LCS negotiated a Settlement Agreement with Prosperity in November 2009. The draft Settlement

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Agreement was distributed to LCS members, and provided for a complete transfer of all of the LCS property for, what turned out to be, a small fraction of its actual value.

70. In exchange for the LCS property and $11,475.49 in cash, the LCS Class B members received a $280,000.00 equity membership interest in Defendant Pollux.

71. As a result, Sparlin's proportionate equity membership interest in Pollux was reduced to $24,944.32, less than 13% of his original investment in LCS.

72. However, buried in the Settlement Agreement's fine print were two brief additional provisions neither discussed nor mentioned in the summary of the Agreement's terms (the first three pages of the Agreement) or in any prior or subsequent documents provided to LCS investors.

73. The first provision provided for LCS to assign its membership interest in Hermes (including its land holdings) to Prosperity. The second provision provided for the conveyance to LCS insiders, the Defendant Western Associates, its current and former management team and associated profit sharing plans, a two-acre parcel of commercial property owned by Prosperity Investments III, L.L.C., a separate entity controlled by Defendant Barnitt, that was not a party to the Settlement Agreement, plus an additional equity interest in Pollux (equivalent to 4.34783% of Prosperity's interest in Pollux). The Settlement Agreement with these provisions was fully executed and finalized on December 31, 2009.

74. In soliciting the settlement approval of LCS Class B members, including the Plaintiff, Sparlin, the Defendants represented in the Settlement Agreement, among other things, that:

> 1. ....the fair market value of the LCS property has been substantially reduced due to general adverse market conditions and debt affecting the LCS property, and that the only assets of LCS are the LCS property and a

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> small amount of cash.... As a result ...their membership interests and investments in LCS currently have insubstantial value.... [and] that the Prosperity proposal represents the best method of maximizing the value of the membership interests and investments (as to LCS members)....

75. However, the Defendants failed to disclose to the LCS membership that LCS held substantial value in real estate through its wholly controlled entity, Hermes, including three contiguous parcels separate from the LCS property. Not only had LCS failed to disclose these real estate holdings, it failed to ever disclose the existence of any LCS interest in Hermes.

76. The Defendants also falsely represented that LCS had granted an enforceable security interest to Defendant Prosperity, citing a recorded Deed of Trust by which Antares had conveyed a security interest to Capella Properties, L.L.C., another company managed by Defendants Western Associates and Western Management. At the time that Defendant Prosperity made the loan to LCS, as previously alleged, Antares did not hold title to the property described in the Deed of Trust.

77. In order to further induce the LCS members to approve the Prosperity settlement, the Defendants circulated false and misleading descriptions of the Pollux owned assets, including a project known as Ridgeline Estates.

78. The Defendants made material misrepresentations of fact or omitted material facts that were critical to any evaluation of the Prosperity settlement offer, and particularly to the representation of value to be received by the LCS membership.

79. Among the material factual misrepresentations and/or omissions, the Defendants falsely implied or represented:

> 1. that the Ridgeline Estates' property was fully accessible, and that access through a right-of-way over Arizona State Trust Land had already been obtained when, in fact, it had not;

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2. that approvals for water service to the property were imminent, without disclosing the fact that at least $2.8 million in additional capital was required by the Arizona Corporation Commission before such approval would even be considered; and

3. the Defendants wholly omitted disclosure of the fact that any development of the property would face a substantial risk of failure due to the historic successful opposition to such development proposals in the past by the Whipple Observatory, as well as from local and neighboring residents, and environmentalists.

80. As a result of the Defendants material misrepresentations and omissions, the LCS membership was presented with a false and misleading picture of the proposed settlement, and particularly of the extent and value of the consideration being exchanged between LCS and Prosperity.

81. Had the Defendants fully and truthfully disclosed all of the material facts and risks, the LCS membership, including the Plaintiff Sparlin, would have known that the consideration offered to them, i.e., the Pollux membership interest, had little if any value, and certainly insignificant enough value to support settlement approval.

82. Even more significant than the accumulated misrepresentations and omissions already alleged, was the Defendants' factual representation that, based upon the facts and circumstances as represented and presented by the Defendants, the proposed settlement was "the best method of maximizing the value" for the Class B LCS members.

83. In fact, and to the contrary, the only true winners were the Defendants who proposed and supported this settlement, including, specifically, the Class A members who, at least legally and theoretically, held distribution positions subordinate to the Class B members, including the Plaintiff Sparlin.

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84. In successfully touting the settlement as they did, the Defendants were able to improperly divert the most substantial portion of the consideration received from Prosperity (i.e., the two-acre commercial property plus the additional equity membership interest in Pollux) to their own benefit despite their subordinate position, and to the financial detriment of the Class B members, including the Plaintiff, Sparlin.

85. In fact, the Defendants' material misrepresentations and omissions, as alleged, were calculated to provide the Defendants and Prosperity with a significant economic benefit based upon the value of the LCS property alone.

86. Despite a weakened real estate market, the value of the LCS property was both substantial, substantially greater than the Defendants represented, substantially greater than the debt purportedly encumbering the property, and substantially greater than the meager consideration conveyed to the LCS members, including the Plaintiff, Sparlin.

87. Based upon the authority that was granted by the Class B LCS members, including the Plaintiff Sparlin, in full reliance upon the Defendants' material misrepresentations and omissions as alleged herein, the Defendants conveyed to Defendant Prosperity all of the real estate owned by LCS, all of the beneficial rights to the real estate held by Title Security Agency of Arizona for the benefit of LCS, and all of the real estate held by Hermes. Upon information and belief, the combined real estate holdings transferred to Defendant Prosperity totaled more than 447 acres.

88. Even by conservative valuation standards, and conceding an "as is" forced liquidation sale due to an LCS default, the LCS property had a fair market value, at the time of the settlement with Prosperity, of $12,500.00 per acre, and a liquidation value at that time of $7,500.00 per acre.

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89. The Defendants self-serving misrepresentations to the LCS members, as to the "insubstantial value" of their investment, together with the Defendants' other material misrepresentations and omissions of material fact, as hereinbefore alleged, were calculated to induce, and did in fact induce, the Plaintiff Sparlin to authorize, and consent to, the recommended Settlement Agreement with the Defendant, Prosperity.

90. As a direct and proximate result of the Defendants' material misrepresentations and omission of material facts, the Plaintiff's $200,000.00 investment into LCS virtually dissipated, with a loss of more than 87%, and a continuing uncertainty as to whether even his residual interest exists or exists at its represented value.

MISREPRESENTATIONS AND OMISSIONS / DEFENDANT MICHAEL N. FIGUEROA:

Misrepresentations Regarding Qualifications and Licensing.

91. Figueroa engaged in multiple misrepresentations or omissions of material facts regarding his background and qualifications to handle mortgage financing investments, including at least the following:

a. He stated during his initial meeting with Sparlin in 2002, and he reiterated on subsequent occasions, that he was in the business of arranging financing for real estate development projects and selling interests in these financing deals to private investors, who could realize large returns from these investments.

b. He stated during this same meeting, and on subsequent occasions, that he intended to establish his own bank so that he would not have to depend upon outside financial institutions to obtain loans for his development activities.

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c. He stated in writing that he has "held an Arizona mortgage broker and a banker's license." This statement was made in a document titled "Management of the Companies" and provided to Sparlin by Figueroa at an investor meeting.

d. He stated in the same document that he "was a member of the Arizona Mortgage Brokers Association and was a past president of the group."

e. He also stated in the same document that he "founded and was the sole shareholder of a large asset based mortgage brokerage and banking company . . . which brokered and serviced approximately $40,000,000 in equity loans," and that he had "reviewed and underwritten an additional $65,000,000 in asset-based loans" since 1996.

92. Figueroa knew that these statements were false or misleading for at least the following reasons:

a. The "mortgage brokerage and banking company" founded by Figueroa, to which he referred in his written biography, was Centuras Investment Company, Inc. ("Centuras"). Centuras held a mortgage banking license in Arizona until December 1987, when its license was revoked after the company was placed into receivership due to violations of the Arizona Mortgage Broker Act that included inadequate capitalization and a failure to maintain the required level of net worth.

b. Although Figueroa freely referenced the names of other companies he had run in the past, he never mentioned the name "Centuras" in his written biography or in any other oral or written communications to Sparlin, preventing Sparlin from learning about the circumstances that led to the failure of Centuras.

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c. Figueroa also took other affirmative steps to prevent Sparlin and other investors from learning about Centuras. These steps included, but were not limited to, making false certifications regarding the absence of past bankruptcy or receivership proceedings in annual reports filed with the Arizona Corporations Commission for Old Pueblo Investments, Inc. ("Old Pueblo"), Everest Mortgage Company, Inc. ("Everest"), D'Esprit, Inc. ("D'Esprit"), and Terrion, Inc. ("Terrion"). Since 1998, Figueroa has been required to certify in each annual report that no person serving as an officer or director of the corporation for which the report was filed had ever served as an officer or director in any other corporation during the bankruptcy or receivership of that other corporation or to provide details regarding such past proceedings. Figueroa has signed and filed more than 30 certifications in annual reports for Old Pueblo, Everest, D'Esprit, and Terrion since 1998 falsely claiming that no such past bankruptcy or receivership has occurred, all of which fail to identify or describe the Centuras receivership. Each of these false certifications constitutes a separate class 6 felony pursuant to Ariz. Rev. Stat. 10-202(I).

d. While the Centuras receivership proceeding was ongoing, Figueroa entered into a plea bargain agreement to resolve criminal allegations arising from his activities and was found liable to the receiver for additional damages arising from his unlawful conversion to personal use and refusal to return assets belonging to the receivership.

e. As a result of an Order entered on December 7, 1987 by the Maricopa County Superior Court in the Centuras receivership proceeding, Figueroa has been

permanently enjoined, at all times pertinent to this Complaint, from engaging in further violations of the Arizona Mortgage Broker Act, including, but not limited to, the conduct of mortgage banking or mortgage brokerage activities without a license or failure to meet minimum statutory requirements such as net worth and capitalization.

f. Figueroa has not been licensed as a mortgage banker or mortgage broker since 1987. Any attempt to apply for a license would have been subject to denial due to the findings made by the Court in the Centuras receivership. Ariz. Rev. Stat. §§ 6-905 and 6-945.

g. All of Figueroa's real estate financing activities that are the subject of this Complaint, including the loans and financing arrangements for Terra Rancho Grande and Las Colinas Sagradas ("LCS") in which Figueroa induced Sparlin to invest, constituted mortgage lending and/or mortgage brokerage activities as defined in the Arizona Mortgage Broker Act. Figueroa's involvement in these activities, without the benefit of a license, constituted continuing violations of both the Arizona Mortgage Broker Act and the permanent injunction entered in the Centuras receivership.

93. Sparlin relied on these misrepresentations or omissions by Figueroa in at least the following respects:

a. Had Sparlin known that Figueroa was unlicensed and unauthorized to sell the interests in mortgage financing that he was being encouraged to invest in, Sparlin would not have invested his money in these projects.

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b. Had Sparlin known about Figueroa's history of past violations of law, including both civil and criminal violations, Sparlin would not have entrusted his money in investments in which Figueroa had any involvement.

Misrepresentations Regarding Financial Stability, Capitalization, and Risk

94. Figueroa engaged in multiple misrepresentations or omissions of material facts regarding the adequacy of financial resources available to complete the projects in which he was soliciting investments, and regarding the associated level of investment risk:

a. At a meeting of the "Capital Note Holders and Advisory Board" of Western Recovery Services ("WRS"), held April 12, 2003, Figueroa represented that WRS would adhere to a set of "operating principles" that included "conservative underwriting" based on "loan to value protection of 65% - 75% and alignment with a related company, Real Property Equity Lenders, LLC ("RPEL"), designed to ensure "0 losses."

b. At the "Board meeting" held on October 11, 2003, Figueroa distributed a written Board Meeting Summary representing that Western Recovery Services ("WRS") would conduct its business of "holding, developing and selling residential lots" by adhering to the "fundamental" practice of "own[ing] the real estate (lots) free and clear of debt," which he called "the safest and most prudent manner to own real estate over a six to eight year disposition period." The summary further represented that this could be accomplished by raising "approximately $6 million in cash equity," $4 million of which would be obtained from the conversion of existing capital notes.

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c. Figueroa subsequently represented in writing ("Management of the Company" document, and "Report by Michael N. Figueroa" for October 30, 2004 Board Meeting) that he had in fact "raised $6,000,000 to capitalize Western Recovery Services," which was the amount he said would be needed to accomplish its business plan.

d. Figueroa stated, both at informational meetings held at his house and at investor meetings held at local hotels, that he had assembled a group of experienced real estate professionals who had the capacity to raise sufficient funds to finance the projects in which he was seeking investments.

e. Figueroa also represented, at these same informational meetings and investor meetings, that Terra Rancho Grande, LLC ("TRG"), Antares Properties, LLC, and LCS Holding would be funded with sufficient capital to complete the work that would be needed to prepare the projects for development and sale.

f. Figueroa failed to tell Sparlin, until after he had already completed his investment, that the LCS project would be taking out a $1.7 million loan with an interest rate of 12% plus a 2% "consulting fee," which LCS Holding lacked the resources to pay back.

95. Figueroa knew that these statements were false or misleading for at least the following reasons:

a. Instead of adhering to conservative underwriting principles with favorable loan to value ratios as Figueroa represented, WRS made loans in amounts that greatly exceeded the value of the security it obtained. This included the $4.2 million loan that WRS made to TRG in August 2004, on which Sparlin's TRG

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investment was based. WRS' $4.2 million loan to TRG was secured by a parcel that had a market value of approximately $1.2 million at the time it was made, evidenced by the arms' length transaction in which the parcel was acquired just six weeks earlier.

b. On information and belief, the $6 million in "cash" equity that Figueroa claimed, was not held exclusively in cash, but rather included assets such as receivables on notes from related parties that were unavailable to provide immediate funding as represented in the WRS financials.

c. Neither WRS nor any of the related entities holding the property for the TRG and LCS projects owned that real estate free of debt. To the contrary, both projects were saddled with high-interest loans that the entities could not afford to service for long enough to complete the developments, leading to foreclosure and losses for investors in each project.

d. In August 2004, when Figueroa solicited the first of the Sparlin investments described in this Complaint, and in 2005 and 2006 when he solicited the further investments made by Sparlin, Figueroa had actual knowledge that the capital he had raised was insufficient to accomplish his business plan:

i. Figueroa's representation in October 2003 that WRS could get by with $6 million in capital depended on two key assumptions: first, that it would focus "exclusively" on a project in the Corona de Tucson area of Pima County ("Corona"); and second, that by 2004 it would be selling lots to homebuilders at a rate of 233 per year, generating more than $8 million in annual income that would be

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used to make payments on the development loan and keep that debt at a constant balance of $5 million.

ii. No Corona lots were sold in 2004, putting the project more than $8 million in the hole as compared to the 2003 budget projection. This forced WRS and its successors in interest to incur additional debt on the development loan, increasing its debt far beyond the $5 million it had planned for and requiring a much greater future rate of lot sales to compensate for the added debt service.

iii. Only 54 Corona lots were sold in 2005, putting the project further in the hole: more than 400 lots behind its builder sales projections, creating a funding deficit of $14 million and requiring further draw-downs on the development loan.

iv. Corona lot sales totaled only 89 in 2006, creating further escalating debt.

v. On November 11, 2007, after repeated defaults on a development loan balance that had grown to more than $32 million, the National Bank of Arizona foreclosed on the entire Corona project, cutting off the only source of current revenue for the enterprise.

vi. None of the serious shortfalls in builder sales can be dismissed as the unforeseen result of adverse economic circumstances, since they occurred during favorable real estate market conditions that preceded the subsequent real estate downturn.

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e. Despite Figueroa's promise that WRS would focus exclusively on Corona and his actual knowledge that WRS lacked the capital required for its Corona business plan and had already incurred debt far beyond the level it was capable of servicing, WRS and its affiliated entities took on additional projects including TRG in 2004 and LCS in 2005. With each new project, these entities incurred obligations in excess of the additional revenue that was raised, making up the difference through high interest loans including the Prosperity Loan for the LCS project. Each new project thus plunged the operation even further into an insurmountable debt situation in which default was foreseeable and inevitable.

f. To cover for the lack of capital to satisfy the simultaneous funding needs of Corona and the other projects that were now being undertaken, Figueroa caused money to be moved between different projects in transactions that were never revealed to Sparlin. This included, but was not limited to, a $150,000 loan to TRG made on September 10, 2004 from the Trust holding the Corona lots, secured by liens on certain Corona lots held by the Trust. Such transactions prevented the encumbered lots from being freely marketed or sold to builders for the purpose of producing the income necessary to service the increasing debt load on both projects. They also contradicted Figueroa's October 2003 promise that the lots would be held "free and clear of debt."

g. Even in 2007, while the Corona foreclosure was eminent or underway, Figueroa, through a memo dated April 9, 2007, was still assuring Sparlin that his investments in TRG and LCS were "safe."

96. Sparlin relied on these misrepresentations or omissions by Figueroa in at least the following respects:

a. Figueroa's misrepresentations regarding WRS' underwriting practices and loan to value ratios deprived Sparlin of the opportunity to understand the risk he was accepting. This caused Sparlin to believe that his initial $500,000 investment in TRG was fully secured by a 11.905% interest in a $4.2 million Deed of Trust and that his two subsequent $150,000 investments were fully secured by two 3.571% interests in the same $4.2 million Deed of Trust. Had Sparlin known that the loan for TRG did not have a 67% loan to value ratio as Figueroa represented, but rather was grossly undersecured, Sparlin would not have made any of his investments in TRG.

b. Sparlin understood that significant cash would be needed to complete the work necessary to prepare TRG and LCS for development and sale before he would realize any return on his investments in those projects. Had he known that WRS did not have $6 million in cash as was represented, that it was not adhering to its promise of generating revenue sufficient to service its developing loan debt, that its debt load was being allowed to escalate from the $5 million level described to him in 2003 to many times that amount, and that the real estate was not owned free of debt as Figueroa had promised, he would not have invested in the TRG and LCS projects undertaken by TRG and its successors.

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Misrepresentations Regarding the Value of Real Estate Assets.

97. Figueroa engaged in multiple misrepresentations or omissions of material facts regarding the value of the real estate for the projects in which he solicited investments from Sparlin:

a. Figueroa represented in writing on August 4, 2004 that the $4.2 million Terra Rancho Grande loan, in which he was asking Sparlin to invest, had a "Loan to Value ratio [of] 67%," based on a purportedly "independent" appraisal from Sasse asserting a value of $6.3 million.

b. Figueroa represented in October 2006 that the real estate acquisition cost (and impliedly the value) of the land owned by LCS Landing Holding Co., LLC ("LCS Holding") for the Las Colinas Sagradas project was approximately $4.5 million.

98. Figueroa knew that these statements were false or misleading for at least the following reasons:

a. The Terra Rancho Grande parcel for which Figueroa claimed a value of $6.3 million as of August 4, 2004 had been sold for $1.2 million in an arms' length transaction between unrelated parties on June 21, 2004, just 6 weeks earlier.

b. The entire Terra Rancho Grande parcel was zoned "SR" and not partially "CR-1" as represented by Figueroa, precluding the smaller lot sizes and higher densities required to create 48 subdivided lots worth $6.3 million as claimed.

c. The purportedly "independent" appraisal that Figueroa provided to support his claim of $6.3 million in value for the property was not independent at all, but

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instead was the work product of Sasse, who was a partner of the enterprise and received a salary for his work.

d. The parcel owned by LCS Holding, for which Figueroa claimed an acquisition cost of $4.5 million in October 2006, had actually been acquired for $2,743,117 in May 2005. The $4.5 million figure was not an arm's length transaction, but rather was associated with a transfer between two entities, both of which were controlled by Figueroa.

99. Sparlin relied on these misrepresentations or omissions by Figueroa in at least the following respects:

a. Had Sparlin known that the Terra Rancho Grande lot not only was worth less than Figueroa represented in its current undeveloped state, but also could not be subdivided in order to generate the $6.3 million fully developed value that Figueroa claimed, he would have understood that the project could not possibly produce the returns that Figueroa promised and, thus, he would not have invested in the project.

b. Had Sparlin known that the LCS property was worth significantly less than the value that was represented to him, he would not have invested in that project.

Misrepresentations Regarding Property Characteristics That Materially Affected the Likelihood of Successful Development.

100. Figueroa engaged in multiple misrepresentations or omissions of material facts that were essential to informed judgments about the likelihood of success for the development projects in which he was soliciting investments:

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a. Figueroa never told Sparlin that the entire tract of land where Terra Rancho Grande purportedly would be built was in a Zone AE flood plain subject to restrictions imposed by the Federal Emergency Management Agency and the Pima County Regional Flood Control District. This meant that portions of the land situated directly in the floodway could not be built upon at all and that development approval for the remaining area would require special clearances that may or may not be possible to obtain.

b. Figueroa never told Sparlin that the entire Terra Rancho Grande tract also was classified as an "important riparian area" subject to additional restrictions that either would preclude development of the land or, at best, would require the implementation of expensive mitigation measures that would drain capital and adversely affect any returns for TRG investors.

c. While telling Sparlin in writing that part of the Terra Rancho Grande tract was zoned under the CR-1 classification, which was not true, Figueroa failed to inform Sparlin that the property could not be rezoned from its current SR category to the less restrictive CR-1 classification due to its protected status under the Pima County Comprehensive Lands System.

d. Figueroa never told Sparlin that the prior owners of the tract had sold out after failing to obtain approval for their own plans to develop the property into an equestrian center, which triggered organized objections from neighboring property owners based on various factors including the land's sensitive riparian characteristics.

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e. Figueroa failed to tell Sparlin about several factors that adversely affected the value of shares in Pollux Properties, LLC ("Pollux"), even though he knew at the time that Sparlin was considering whether to approve a settlement that Figueroa and his associates had negotiated in which Sparlin would accept Pollux shares as the primary consideration for his surrender of LCS Holding equity rights that he had originally acquired at Figueroa's urging, including:

i. The fact that there was no currently available or assured means of gaining access to the property that would purportedly be developed;

ii. The fact that the approval of water service for this development was subject to conditions that would require additional infusions of capital that Pollux did not currently have and which, if obtained, would dilute the value of the shares that Sparlin was being asked to accept; and

iii. The fact that the Pollux tract was subject to various environmental issues, including protections afforded to the habitat of the endangered Pima Pineapple cactus and restrictions on light pollution that could affect the nearby Whipple Observatory, all of which could adversely affect both the value of the land and the likelihood that it could be developed as proposed.

101. Figueroa knew that these statements were false or misleading for at least the following reasons:

a. A formal appraisal of the TRG parcel from Steven R. Cole, dated September 22, 2004 and addressed to Figueroa, reported that "the entire subject property" falls within Flood Zone AE pursuant to a Flood Insurance Rate

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Map dated February 8, 1989. According to a memo from Figueroa dated August 4, 2004, Cole's appraisal was in process prior to the initial TRG investment.

b. Handwritten notes on the "Preliminary Lot Layout," which bears a date of July 2004 and was referenced and reportedly attached to a letter from Sasse to Figueroa dated August 6, 2004, establish Figueroa's actual knowledge of the flood zone and riparian restrictions at the time he was soliciting Sparlin's initial investment:

i. The Preliminary Lot Layout shows that the 36-lot design, described in the August 4, 2004 memorandum in which Figueroa solicited Sparlin's initial TRG investment, was designed to comply with Pima County's "Conservation Subdivision Ordinance."

ii. Handwritten notes on the Preliminary Lot Layout reflect that the design was based on information obtained from "Suzanne Shields." Shields was, and still is, Director of the Pima County Regional Flood Control District, which is the primary agency charged with enforcement of flood zone and important riparian area development restrictions.

iii. A bold dotted line is drawn on the Preliminary Lot Layout designating the area with "1000 [feet] from C [center] of Tanque Verde Wash," which places it within the non-buildable floodway. This area encompasses 41.07 acres, which is more than half of the total tract.

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iv. A further handwritten note in the 32.58 acre area outside the floodway states shows the area that "can be filled," which would be possible under flood control regulations but would also create riparian impacts that would have to be mitigated.

c. The title of the Preliminary Lot Layout refers to the tract as the "Sisson Property." Sisson was the last name of the prior owner who sold the tract after failing to obtain approval for her development plans due to neighborhood objections.

d. Figueroa, either personally or through entities under his control, served as manager and statutory agent of Pollux from its creation until January 24, 2011.

MISREPRESENTATIONS AND OMISSIONS/DEFENDANT JEFFREY S. UTSCH:

Defendant Utsch's Misrepresentations Regarding Qualifications and Licensing.

102. Utsch engaged in multiple misrepresentations or omissions of material facts regarding his background and qualifications to handle mortgage financing investments, including at least the following:

a. At the Board Meeting held on April 11, 2003, Utsch introduced himself as the "President/CEO" of WAD. Written materials distributed at that same meeting stated that WAD would "manage the acquisition of additional lots and development of the property for sale to builders," and that it would "be led by Utsch." Utsch represented at this meeting that he had handled hundreds of prior successful real estate transactions and projects since he became Figueroa's

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"partner" in 1993, which had given him the experience necessary to manage an enterprise of this magnitude.

b. In several written documents, including an information memorandum regarding WRS that was provided to Sparlin in 2003 and a memorandum regarding Pollux that Utsch delivered to Sparlin in 2009 in connection with his consideration of the LCS settlement, Utsch stated that he was Vice President of Real Property Equity Lenders, LLC ("RPEL"), which was described as an "Arizona mortgage banker."

103. Utsch knew that these statements were false or misleading for at least the following reasons:

a. Between 1993 and 1998, Utsch conducted his real estate investment, financing, and development activities primarily through an entity known as Sandune Properties, Inc. ("Sandune"), in which he was President/CEO, his wife was Secretary, and he and his wife served as the two directors. Utsch's management of Sandune resulted in two bankruptcies and a history of transactions involving Utsch, Figueroa, and Old Pueblo Investments, Inc. that produced significant losses for the parties with whom they dealt:

i. Between April 18, 1993 and April 20, 1993, the first three days after Sandune was incorporated, three Tucson real estate parcels were transferred to Sandune, including Figueroa's personal residence at the time and a separate property that Utsch had personally acquired less than two weeks earlier.

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ii. In the two weeks following these transactions, Utsch, Figueroa, and Sandune entered into and recorded six Deeds of Trust, Deed of Trust Assignments, and Collateral Assignments in Pima County involving the same properties.

iii. Between April 18, 1993 and May 11, 1993, Sandune also consummated and recorded a series of nine transactions, including a Warranty Deed and several Deeds of Trust and Deed of Trust Assignments, by which it acquired interests in property and real estate debt situated in Maricopa County, Arizona.

iv. On May 11, 1993, less than a month after Sandune had been incorporated and this series of transactions in Pima and Maricopa Counties had commenced, Sandune filed a Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court for the District of Arizona. Sandune's creditors filed more than $780,000 in claims in this proceeding.

v. Sandune emerged from Chapter 11 bankruptcy pursuant to an Order entered January 30, 1995 approving its plan of reorganization over the objections of creditors including Suncost Savings & Loan Association, Lincoln Service Corporation, and All State Resources Corporation, but with the support of Figueroa, Sasse, and other individuals and entities affiliated with them.

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vi. Sandune filed a second Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court for the District of Arizona on June 18, 1999. This second bankruptcy culminated in an Order dated January 10, 2000 directing a final decree and accounting, effectively liquidating the company over the objection of Sandune's largest creditor, Liberty Savings Bank.

b. Utsch never told Sparlin about the existence of Sandune, his involvement in its two bankruptcies and ultimate liquidation, or the losses incurred by Sandune's investors and creditors.

c. RPEL, the "mortgage banker" for which Utsch served as Vice President, did business through referrals of equity loans from a related entity known as "Charter Funding," whose mortgage lending practices were characterized by the following illegal or improper activities that were never revealed to Sparlin:

i. Charter Funding aggressively marketed and originated a book of business comprised primarily of high-risk loans such as "Alt-A" mortgages, which were not guaranteed by government-sponsored entities and commonly did not conform to underwriting standards such as loan-to-value ratio requirements.

ii. Losses from these high-risk loans forced Charter Funding to close and file for bankruptcy protection in August 2007, ultimately leading to its liquidation.

iii. Charter Funding was found to have arranged inflated real estate appraisals to facilitate a property "flipping" scheme, prompting the Illinois Department of Financial and Professional Regulation Division of Banking to impose a civil penalty.

iv. Charter Funding's practices and ultimate financial failure caused the Arizona Department of Financial Institutions to close Charter Funding's home office license on September 6, 2007.

v. Charter Funding's licenses also were revoked by regulatory authorities in other states where it operated.

104. Sparlin relied on these misrepresentations or omissions by Utsch in at least the following respects:

a. Had Sparlin known that Utsch had a history of managing real estate investment firms into bankruptcy and producing losses for his investors and creditors, Sparlin would not have invested his money in projects in which Utsch had any involvement.

b. Had Sparlin known about the loan practices of the entities with which Utsch transacted business as a mortgage banker, it would have dissuaded Sparlin from investing in funding schemes that Utsch helped to arrange, including financing for TRG, LCS Holding, and Pollux.

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Misrepresentations Regarding Financial Stability, Capitalization, and Risk

105. Utsch engaged in multiple misrepresentations or omissions of material acts regarding the adequacy of financial resources available to complete the projects in which he was soliciting investments and regarding the associated level of investment risk:

a. During an in-person meeting between Utsch and Sparlin in August 2004 at the site of the proposed TRG project, arranged for the purpose of encouraging Sparlin to invest in TRG, Utsch told Sparlin that the money he would invest, together with funds contributed by other investors, would allow TRG to prepare the land for a 48-lot development as proposed in the written solicitation memorandum delivered to Sparlin.

b. During an in-person meeting between Utsch and Sparlin in November 2009, in which he delivered written materials describing a proposed settlement in which Sparlin's investment in LCS Holding would be exchanged for equity in Pollux, Utsch told Sparlin that Pollux was free of all debt as the result the equity conversion that took place earlier that year and that it had sufficient capital to bring the project to completion and generate a positive return for investors.

106. Utsch knew that these statements were false or misleading at the time they were made for at least the following reasons:

a. By August 2004, when Utsch made his representations to Sparlin regarding Terra Rancho Grande, WRS had failed to meet its October 11, 2003 projections regarding builder sales for the Corona project. Utsch had helped to develop and present the October 2003 projections, and as Executive Vice President of WRS had first hand information regarding its financial status. As of August 2004,

WRS' sales shortfall had caused it to incur millions of dollars of additional debt that it had not planned for and had no means of paying back. This debt deprived WRS of the sole means by which it could generate short-term income for day-to-day management and development expenses, including but not limited to the needs of TRG.

b. By November 2009, Utsch had actual knowledge that Pollux faced future funding needs that were essential to the completion of the development plan described in the written materials, and that the limited cash possessed by Pollux was completely inadequate to meet these needs. These cash requirements included, but were not limited to, the need to raise additional capital to meet a $2.8 million minimum equity requirement imposed by the Arizona Corporation Commission in an Order dated February 6, 2009.

107. Sparlin relied on these misrepresentations or omissions by Utsch in at least the following respects:

a. Had Sparlin known that WRS did not have sufficient financial resources to complete the preparatory work for TRG, Sparlin would not have invested in that project.

b. Had Sparlin known that Pollux had additional undisclosed funding needs that would prevent the completion of the business plan described in the documents that Utsch provided, Sparlin would not have accepted the proposed settlement by which he surrendered his LCS Holding investment in exchange for shares in Pollux.

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Misrepresentations Regarding the Value of Real Estate Assets

108. Utsch engaged in multiple misrepresentations or omissions of material facts regarding the value of the real estate for the projects in which he solicited investments from Sparlin:

a. Utsch told Sparlin during the August 2004 face-to-face meeting regarding TRG that the parcel, after development into the 48-lot subdivision described in the written materials provided to Sparlin, would have enough value to generate significant returns for investors who became part of the $4.2 million funding base for that project, based on a projected value of $6.3 million.

b. During the November 2009 face-to-face meeting in which Utsch delivered materials regarding the LCS Holdings settlement, Utsch told Sparlin that his existing interests in LCS Holding were worthless due to the debt owed to Prosperity and that the Pollux equity that Sparlin would acquire was the best return he could possibly get.

109. Utsch knew that these statements were false or misleading for at least the following reasons:

a. As President of WAD and Executive Vice President of WRS, Utsch would have had knowledge of facts showing that the $6.3 million asserted value was vastly overstated. These included, but were not limited to, the tract's current SR zoning classification, which required a smaller and less dense development than the 48-lot plan that Utsch described, as well as flood zone and riparian habitat restrictions that precluded rezoning, jeopardized approval, and necessitated expensive mitigation activities if the project could move forward at all.

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b. Utsch was Managing Director of Pollux and a principal of LCS Holding, for which he also held himself out in a November 9, 2009 letter as a "Manager." Utsch also represented one or both entities in the negotiations that led to the settlement agreement he was describing to Sparlin. From these activities, Utsch would have known that he and other LCS Holding managers had a lower distribution priority than Sparlin and other Class B investors, but that the settlement improperly gave the LCS Holding managers (including Utsch) priority with respect to the value received in the settlement including exclusive title to a separate tract of commercial property.

c. As Managing Director of Pollux, Utsch also knew that equity in Pollux had less value than Utsch had represented, due to the absence of any current means of access, the additional equity requirements that would have to be satisfied before water service could commence, and environmental restrictions involving lighting and Pima Pineapple cactus habitat that jeopardized Pollux's development plans.

110. Sparlin relied on these misrepresentations or omissions by Utsch in at least the following respects:

a. Had Sparlin known that the Terra Rancho Grande lot could not be subdivided in order to generate the $6.3 million fully developed value that Utsch claimed, and that it faced additional obstacles that reduced its value, he would have understood that the project could not possibly produce the returns that Utsch promised and thus would not have invested in the project.

b. Had Sparlin known that the LCS Holding settlement that Utsch encouraged him to sign deprived him of the opportunity for a larger return from the investment he

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was surrendering, and that the Pollux shares he was accepting did not have the value that Utsch claimed, he would not have accepted that settlement.

Misrepresentations Regarding Property Characteristics That Materially Affected the Likelihood of Successful Development

111. Utsch engaged in multiple misrepresentations or omissions of material facts that were essential to informed judgments about the likelihood of success for the development projects in which he was soliciting investments:

a. Utsch never told Sparlin that the entire tract of land where Terra Rancho Grande purportedly would be built was in a Zone AE flood plain subject to restrictions imposed by the Federal Emergency Management Agency and the Pima County Regional Flood Control District. This meant that portions of the land situated directly in the floodway could not be built upon at all, and that development approval for the remaining area would require special clearances that may or may not be possible to obtain.

b. Utsch never told Sparlin that the entire Terra Rancho Grande tract also was classified as an "important riparian area" subject to additional restrictions that either would preclude development of the land or, at best, would require the implementation of expensive mitigation measures that would drain capital and adversely affect any returns for TRG investors.

c. While telling Sparlin in writing that part of the Terra Rancho Grande tract was zoned under the CR-1 classification, which was not true, Utsch failed to inform Sparlin that the property could not be rezoned from its current SR category to the

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less restrictive CR-1 classification due to its protected status under the Pima County Comprehensive Lands System.

d. Utsch never told Sparlin that the prior owners of the tract had sold out after failing to obtain approval for their own plans to develop the property into an equestrian center, which triggered organized objections from neighboring property owners based on various factors including the land's sensitive riparian characteristics.

e. Utsch failed to tell Sparlin about several factors that adversely affected the value of shares in Pollux Properties, LLC ("Pollux"), including:

i. The fact that there was no currently available or assured means of gaining access to the property that would purportedly be developed;

ii. The fact that the approval of water service for this development was subject to conditions that would require additional infusions of capital that Pollux did not currently have and which, if obtained, would dilute the value of the shares that Sparlin was being asked to accept; and

iii. The fact that the Pollux tract was subject to various environmental issues, including protections afforded to the habitat of the endangered Pima Pineapple cactus and restrictions on light pollution that could affect the nearby Whipple Observatory, all of which could adversely affect both the value of the land and the likelihood that it could be developed as proposed.

112. Utsch knew that these statements were false or misleading for at least the following reasons:

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a. Handwritten notes on the "Preliminary Lot Layout," which bears a date of July 2004, establish Utsch's actual knowledge of the flood zone and riparian restrictions at the time he was soliciting Sparlin's initial investment:

i. The Preliminary Lot Layout shows that the 36-lot design, which Utsch described to Sparlin in their face-to-face meeting at the TRG tract prior to Sparlin's first TRG investment, was designed to comply with Pima County's "Conservation Subdivision Ordinance."

ii. Handwritten notes on the Preliminary Lot Layout reflect that the design was based on information obtained from "Suzanne Shields." Shields was, and still is, Director of the Pima County Regional Flood Control District, which is the primary agency charged with enforcement of flood zone and important riparian area development restrictions.

iii. A bold dotted line is drawn on the Preliminary Lot Layout designating the area with "1000 [feet] from C [center] of Tanque Verde Wash," which places it within the non-buildable floodway. This area encompasses 41.07 acres, which is more than half of the total tract.

iv. A further handwritten note in the 32.58 acre area outside the floodway states shows the area that "can be filled," which would be possible under flood control regulations but would also create riparian impacts that would have to be mitigated.

v. The title of the Preliminary Lot Layout refers to the tract as the "Sisson Property." Sisson was the last name of the prior owner who sold the tract

after failing to obtain approval for her development plans due to neighborhood objections.

vi. Utsch, at all times pertinent to the events described in this Complaint, served as the Managing Director and controlled the day-to-day operations of Pollux.

MISREPRESENTATIONS AND OMISSIONS/DEFENDANT GREGG T. SASSE:

Misrepresentations Regarding Qualifications.

113. Sasse engaged in multiple misrepresentations or omissions of material facts regarding his background and qualifications to handle real estate projects and investments, including at least the following:

a. At a meeting on April 12, 2003, Sasse was introduced to Sparlin as a new member of WRS's senior management. Sasse represented that he had extensive experience managing new home construction and real estate development projects.

b. On August 6, 2004, Sasse prepared a memorandum requested by Figueroa for the purpose of soliciting investments in TRG from Sparlin and other potential investors, which purported to be a "Lenders independent evaluation" providing an "opinion of value . . . to assist the lender in making a fair and accurate determination of the property value and assist the lender in obtaining financing on that property." Sasse's opinion of value cited "sales comparison" techniques used by real estate appraisers.

c. Beginning with a letter to Sparlin dated October 6, 2006, and continuing through a series of subsequent emails, status reports, and other communications over the

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next three years, Sasse held himself out to Sparlin as the "Project Manager" for LCS Holding.

114. Sasse knew that these statements were false or misleading for at least the following reasons:

a. Sasse's background and training was as a real estate agent and broker. During his service in these positions, Sasse engaged primarily in the marketing and sale of real estate. Sasse did not have material experience managing large scale real estate developments.

b. Sasse was not, and never has been, licensed or qualified as a real estate appraiser. His only experience was a brief period of service as a researcher for another individual who was a qualified commercial real estate appraiser. Sasse did not meet the minimum qualifications established by the Arizona Board of Appraisal for an opinion of the scope he rendered with respect to TRG, which included 300 qualifying course hours specified by the Appraisers Qualifying Board, 3,000 hours of acceptable appraisal experience, and successful completion of the required Certified General Appraiser examination.

c. At the time that Sasse produced his appraisal, Sasse was employed by the group of related entities from which he purported to be "independent," receiving a salary of at least $6,000 per month. Sasse also had his own money invested in these entities, either personally or through corporations and/or profit sharing plans under his control. Sasse thus stood to gain financially from any decisions by Sparlin or other individuals to invest capital in the TRG project through WRS.

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115. Sparlin relied on these misrepresentations or omissions by Sasse in at least the following respects:

a. Sparlin would not have relied on Sasse's appraisal opinion to support his decision to invest in TRG if he had known that Sasse was not qualified to produce such an opinion;

b. Had Sasse's lack of experience in managing large-scale real estate developments been disclosed to Sparlin, this information would have prompted Sparlin to reconsider his decision to invest in the LCS project, for which Sasse was entrusted with primary managerial authority over a proposed development of more than 1,000 homes.

c. Sparlin would not have relied on Sasse's appraisal opinion to support his decision to invest in TRG if he had known of his relationship with related entities or that he had a financial stake in the success of TRG through WRS.

Misrepresentations Regarding the Value of Real Estate Assets.

116. Sasse engaged in multiple misrepresentations or omissions of material facts regarding the value of the real estate for the projects in which Sparlin invested:

a. Sasse stated in his appraisal report for TRG that the "highest and best use of the land will be custom home sites which will support custom homes ranging in value from $500,000 to $600,000." Sasse then developed his opinion of value for those sites by assuming that it the subdivision would yield 48 total lots including "36 CR-1 zoned lots," even though the property was not and could not be zoned in this manner.

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b. In a memorandum dated April 30, 2008 signed by Sasse and Utsch, which Sasse transmitted to Sparlin by email in May 2008, Sasse revealed that LCS Holding had received a default notice on its loan from Prosperity. Sasse also represented in this same memorandum, however, that the project still had significant value that could be realized if new capital could be raised "to keep the interest current and pay for operating expenses each year." Sasse claimed that "interest in the property has increased over the last few months" and that the "strongest leads" were a "Mexican investor/business owner" and a "low income subsidy developer." He also cited "a shortage of affordable housing in the area" as evidence of positive short-term opportunities for successful marketing.

c. After Sparlin, and other investors who were solicited, declined Sasse's plea for additional capital, Sasse ceased communicating his positive assessments of LCS value to Sparlin. Instead, Sasse allowed his co-manager, Utsch, to make the inconsistent and conflicting claim that Sparlin's interests in LCS Holdings were essentially worthless.

117. Sasse knew that his statements were false or misleading for at least the following reasons:

a. As Project Manager, Sasse would have had knowledge of facts showing that the $6.3 million value asserted in his appraisal was vastly overstated. These included, but were not limited to, the tract's current SR zoning classification, which required a smaller and less dense development than the 48-lot plan on which Sasse's appraisal was based, as well as flood zone and riparian habitat

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restrictions that precluded rezoning, jeopardized approval, and necessitated expensive mitigation activities if the project could move forward at all.

b. The Uniform Standards of Professional Appraisal Practice, which establish generally accepted principles for real estate appraisals prepared for the purpose of making lending decisions, would have required Sasse to ascertain all characteristics relevant to the property's value using sources he believed to be reasonably reliable. This included, but was not limited to, the property's zoning and its status under other regulations that could affect its use or development.

c. Sasse knew, based on his own efforts to market the LCS property, that a sale of the land held by LCS was likely to yield significantly more than the amount required to pay off the Prosperity loan, which would have left significant value that would have been distributed on a priority basis to Sparlin and other Class B investors.

118. Sparlin relied on these misrepresentations or omissions by Sasse in at least the following respects:

a. Had Sparlin known that the Terra Rancho Grande tract could not be subdivided in order to generate the $6.3 million fully developed value that Sasse claimed in his appraisal, and that it faced additional obstacles that reduced its value, he would have understood that the project could not possibly produce the returns that he was promised and thus would not have made his TRG investment.

b. Had Sparlin known that the LCS Holding settlement deprived him of the opportunity for a larger return from the investment he was surrendering, he would not have accepted that settlement.

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Misrepresentations Regarding Property Characteristics That Materially Affected the Likelihood of Successful Development.

119. Sasse engaged in multiple misrepresentations or omissions of material facts that were essential to informed judgments about the likelihood of success for the development projects in which Sparlin invested:

a. Sasse never told Sparlin that the entire tract of land where Terra Rancho Grande purportedly would be built was in a Zone AE flood plain subject to restrictions imposed by the Federal Emergency Management Agency and the Pima County Regional Flood Control District. This meant that portions of the land situated directly in the floodway could not be built upon at all and that development approval for the remaining area would require special clearances that may or may not be possible to obtain.

b. Sasse never told Sparlin that the entire Terra Rancho Grande tract also was classified as an "important riparian area" subject to additional restrictions that either would preclude development of the land or, at best, would require the implementation of expensive mitigation measures that would drain capital and adversely affect any returns for TRG investors.

c. While producing an appraisal placing a value on the TRG tract based on subdivision under the CR-1 classification, Sasse failed to reveal to Sparlin, and other investors whom he knew to be relying on his opinion, that the property could not be rezoned from its current SR category to the less restrictive CR-1 classification due to its protected status under the Pima County Comprehensive Lands System.

d. Sasse never told Sparlin that the prior owners of the tract had sold out after failing to obtain approval for their own plans to develop the property into an equestrian center, which triggered organized objections from neighboring property owners based on various factors including the land's sensitive riparian characteristics.

120. Sasse knew that these statements were false or misleading for at least the following reasons:

a. As a member of senior management, Sasse would have ascertained the current zoning of the property as part of the process by which the initial proposed design for the project was developed. Sasse also had a duty, in appraising the value of the land, to ascertain zoning and other regulatory requirements affecting the actual and potential use of this parcel.

b. The Preliminary Lot Layout, which Sasse's appraisal opinion shows that he examined, contains handwritten notations from which the TRG tract's AE flood zone and important riparian area classifications can be ascertained.

MISREPRESENTATIONS AND OMISSIONS/DEFENDANT ROBERT BARNITT:

Defendants Barnitt's and Prosperity's Involvement in TRG and LCS.

121. Sparlin first met the Defendant Robert Barnitt, along with the Defendants Jeffrey Utsch and Gregg Sasse, in 2003 through introductions by Defendant Michael Figueroa and Sparlin's now deceased wife, Elaine.

122. Specifically, Sparlin's first encounter with Barnitt occurred shortly after his first significant investment with Figueroa, which involved "New Tucson," a large-scale residential development project in the Corona de Tucson area southeast of Tucson.

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123. After Sparlin made his New Tucson investment in early 2003, Figueroa invited Sparlin to a series of weekly meetings in the living room of Figueroa's house located at 428 South 3rd Street in Tucson. These meetings were described to Sparlin by Figueroa as information sessions for investors in Western Recovery Services, L.L.C., a company created by Figueroa that managed the New Tucson project. Barnitt regularly attended these meetings, sometimes in person and sometimes by telephone.

124. To the best of Sparlin's recollection, each meeting typically was attended by six to eight individuals. In addition to Barnitt, the following individuals were regularly present:

a. Defendant Utsch, who led each session;

b. Figueroa, who told Plaintiff that he was training Utsch to take primary responsibility but who interjected from time to time to add information or to correct or clarify things that Utsch said;

c. Two other individuals who were in charge of the day-to-day development work at New Tucson such as arranging for the grading and building of roads, the placement of utilities, and similar tasks;

d. Jeffrey Neff, an attorney providing legal advice for these projects; and

e. Jennifer Roden, Figueroa's personal assistant, who took notes.

125. At one of these meetings, Sparlin was provided with a large, bound document consisting of the complete "Management" section (except for page 37 which was the beginning of a 16-page gap in the bound document) which identified Figueroa on page 27 as "President," Utsch on page 28 as "Executive Vice President," and Barnitt on page 32 as one of several "advisors" to WRS.

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126. A second document Sparlin received at one of Figueroa's meetings identifies Figueroa as "Chairman of the Board" on page 1, and Utsch is identified on page 2 as "President" of Western Associates Development Co., L.L.C., an affiliated company that Barnitt identifies in paragraph 11 of his declaration as "WRS's successor in interest." Page 5 of this document identifies Barnitt as a member of the WRS "Board of Advisors."

127. Although several other "advisors" to WRS were listed in the document, to the best of Sparlin's recollection Barnitt and Neff were the only two who regularly attended the WRS information meetings at Figueroa's 428 South 3rd Street residence. During these meetings, Barnitt, Figueroa, and Utsch explained that they were working to acquire as many lots as they could from Units 2, 5, 6, 7, 8, 9, and 10 of the New Tucson development, which had been platted in the 1960s but never completed.

128. Once Barnitt, Figueroa, and Utsch acquired these lots from private owners, foreclosure sales, and similar sources, they said that they planned to consolidate ownership of the lots under an entity owned by WRS called Corona Acres, L.L.C., through which they would seek to complete the development.

129. Barnitt personally acquired hundreds of New Tucson lots and subsequently transferred them to Corona Acres, L.L.C. pursuant to this plan. In addition to his active participation in the lot acquisition process, Barnitt represented at these meetings that he was working with Figueroa and Utsch to identify and pursue sources of capital sufficient to fund WRS' activities.

130. On October 11, 2003, Sparlin attended a meeting at the Westin La Paloma in Tucson, which was described to him as a "Board of Advisors Meeting" for WRS. Barnitt, Figueroa, and Utsch also attended this meeting, along with several other members of

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management and a much larger number of investors than had attended the sessions at Figueroa's house. Figueroa ran the meeting, referring to himself as the "facilitator." He told the investors who attended this meeting, including Sparlin, that WRS planned to focus exclusively on the New Tucson project.

131. It was at this meeting that Figueroa first informed investors, including Sparlin, that the same management group would be creating a new company, WAD, whose purpose would be "to execute the actual development and sale of the property." Barnitt was introduced by Figueroa as one of several "experienced residential real estate professionals" who would be "members of the management team" for WRS and WAD.

132. Throughout 2004, Figueroa continued to hold informational meetings at his house regarding WRS and WAD, although the sessions by this time were being held approximately once per month rather than weekly. Barnitt still was attending the meetings regularly in person or by telephone.

Defendant Barnitt's Involvement in TRG

133. Contrary to the promise made in October 2003 that WRS' management would focus exclusively on New Tucson, Sparlin and the other investors were told in approximately July 2004 that WRS' management intended to take on another project called Terra Rancho Grande ("TRG").

134. Utsch, who was still running the informational meetings at Figueroa's house, continued to assure Sparlin and the other investors, in Barnitt's presence (in person or by telephone), that Barnitt would continue to work with WRS to identify and obtain adequate sources of financing for TRG, as he had been doing for New Tucson.

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135. Before Sparlin first invested in TRG in August 2004, Utsch took him to the 72-acre parcel where the TRG development was to be built to describe some of the work they would have to complete, such as clearing and excavation. At that time, Utsch told Sparlin that the main hurdle they would have to overcome would be to get enough money to complete the work but, once that was accomplished, everyone who invested would make a great deal of money. Utsch also told Sparlin in this first meeting at the TRG property that Sparlin's money, combined with contributions from other investors and the financing that they were working to obtain, would provide sufficient funding for the work that was needed.

136. These statements were later reaffirmed by Utsch, Figueroa, and Barnitt at subsequent meetings that took place at Figueroa's house on 428 South 3rd Street in Tucson. Sparlin subsequently invested $500,000.00 in TRG primarily due to the assurances he received from Utsch, Figueroa, and Barnitt.

137. Utsch's representation that Barnitt was actively assisting the managers of TRG in obtaining financing, which Utsch made in Barnitt's presence, as described above in paragraph 24, was also an important factor in Sparlin's decision to invest. Utsch and Barnitt both told Sparlin at their meetings that Barnitt had invested a large sum of his own money in TRG, which added to Sparlin's confidence and belief that the project was adequately funded.

138. In August 2005, Sparlin received a copy of a memorandum signed by Barnitt which described the approach that management was taking to the division of corporate assets between New Tucson and other projects managed by WRS and WAD, including TRG.

139. Barnitt's memorandum outlined a proposal to alter the allocation of operating assets between WAD and WRS, which was designed to ensure the adequacy of funding both for TRG and for New Tucson. Barnitt's proposal to alter the allocation of operating assets

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further added to Sparlin's confidence that TRG would have sufficient funding, because it showed that Barnitt was taking appropriate action to control and adjust the distribution of available capital. By March 2007, Barnitt had been voted in as a "partner" of WRS.

140. To the best of Sparlin's recollection, neither Barnitt, nor Figueroa, nor Utsch, ever told Sparlin at any of the meetings, or at any other time, that Barnitt's investment was different in any way from the investments Sparlin had made.

141. To the best of Sparlin's recollection, neither Barnitt, nor Figueroa or Utsch, ever told Sparlin at these meetings, or at any other time, that Barnitt's investment was "short term" or that he was expected to be paid back before Sparlin or any other investor.

142. To the best of Sparlin's recollection, neither Barnitt, nor Figueroa nor Utsch, ever said that any of the additional financing they were attempting to obtain in 2005 or 2006 would be used to pay Barnitt back for any loan he had made to TRG.

143. Had Sparlin known that the money he contributed would be used to pay off Barnitt rather than to provide additional funding to do the essential preparatory work as Utsch had led him to believe, Sparlin would not have invested money in TRG.

144. Had Sparlin known that TRG and Barnitt had a secret side agreement, which was never disclosed to Sparlin, and which required TRG to pay back $1.3 million to Barnitt on a short term basis, Sparlin would have been concerned that the project would not have enough money to complete the work that Utsch had advised was required before the development could succeed and Sparlin's own investment would pay off.

145. From the beginning of the TRG project, Barnitt was identified not only as an "advisor" to management, but also as an expert in the field who would be taking an active role in assuring that the project would be adequately funded.

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146. As evidenced by Barnitt's own words in his August 18, 2005 memorandum, Barnitt's interest in and control over the efforts of WRS and WAD to obtain funding for TRG not only was active, but continued even after his supposed "short term" loan for that project was allegedly repaid.

147. Barnitt was voted in as a "partner" of WRS no later than March 2007, which would have formalized his management authority over the TRG project.

148. As a partner in WRS, Barnitt would have had access to inside information never shared with Sparlin about serious problems with TRG, including objections from Pima County flood control and riparian habitat regulators.

149. If, in fact, Barnitt was solely a "short term" lender with no interest in or control over TRG, there would have been no reason why Barnitt was participating in all of the regular informational meetings that Sparlin attended.

150. Those meetings were a primary source of information for initial decisions regarding Sparlin's TRG investment, and Barnitt's representations during those meetings were an important part of the information given out at those meetings, on which Sparlin relied upon.

Defendant Barnitt's Misrepresentations and Omissions Regarding TRG.

151. During the meetings at Figueroa's house, and in Barnitt's subsequent communications regarding TRG, Barnitt engaged in the following misrepresentations and omissions of material facts:

a. Barnitt directly asserted, or supported assertions that Utsch and Figueroa made in his presence, that WRS and WAD had adequate sources of capital to complete the work that was essential to TRG's success.

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b. While holding himself out as an expert advisor, who would ensure that adequate capital could be obtained for TRG, Barnitt misled Sparlin and the other investors into thinking that his $1.3 million contribution was an important part of the available funding base.

c. Barnitt failed to disclose any arrangement he may have had with WRS or WAD (as WRS' "successor in interest") to receive any short term repayment for any portion of the $1.3 million investment he made in August 2004.

d. Barnitt failed to disclose that TRG investments made in 2005, including a $150,000 contribution Sparlin made on September 7, 2005, would not be used to add to TRG's capital resources as Sparlin was told, but rather would be turned over to Barnitt personally or to his personal family trust.

e. Barnitt failed to disclose that he or his family trust in fact received $1.3 million from the assets intended for the use of TRG.

f. Barnitt prepared and distributed a memorandum to Sparlin and the other TRG investors, representing, at approximately the same time that $1.3 million in assets meant for TRG had been diverted to Barnitt's personal family trust, that "the WAD team would be able to take on other projects that would generate fee revenue for WAD." This was false because, at the time this statement was made, WAD lacked sufficient capital to handle funding needs both for New Tucson and for TRG and had no means of generating positive revenue.

g. As a partner in WRS, when management was in direct communications with Pima County regulators regarding flood control and riparian habitat objections that would have prevented the planned TRG development from being built,

Barnitt would have had access to information that would have made it clear to Sparlin and the other investors that the project could not succeed, which Barnitt failed to disclose to Sparlin.

Defendants Barnitt's and Prosperity's Involvement in LCS.

152. Sparlin made his initial $200,000.00 investment in the Las Colinas Sagradas ("LCS") project on August 22, 2005.

153. Sparlin agreed to convert his LCS investment from a loan to a Class B equity interest in LCS Land Holding Co., L.L.C. ("LCS Holding") on December 13, 2006.

154. Sparlin was told of Barnitt's role as a lender to LCS Holding, shortly after the December 2006 equity conversion was completed, by means of a status report from Sasse for the first quarter of 2007, which included the following reference to a financing arrangement with Barnitt's company:

> Management had secured short term financing with Prosperity Investments L.L.C. (Robert Barnitt) under the following terms and conditions:
> The loan commitment is $1,800,000.00 at 12% *per annum* with [an] additional two percent (2%) paid as a consulting fee. The principal, accrued interest and consulting fee are all due and payable on February 15, 2008. The loan commitment allows for a twelve month extension (February 15, 2009) if the Phase 1 (264 lots) final plat and improvement plans have been approved by Santa Cruz County. If the extension is exercised, the interest rate increases to 14% and an additional 2% consulting fee will be paid. Management is actively seeking longer term financing solutions at a lower interest rate for this project.

155. At the time Sparlin agreed to convert his investment to a Class B equity interest in LCS Holding, Sparlin received a copy of the LCS Holding Operating Agreement listing

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Prosperity Investments, L.L.C. ("Prosperity"), a company managed by Barnitt, as one of LCS Holding's Class A Members.

156. Through his active involvement in the managerial affairs of WAD, which was the manager of Western Management Services, L.L.C. which, in turn, managed LCS Holding, Barnitt possessed managerial authority over the LCS project at the same time that his company, Prosperity, was loaning money to LCS Holding.

157. Because of Barnitt's managerial relationship with LCS Holding, because Barnitt's company was a member of LCS Holding as of December 2006, and because Barnitt received a 2% ($36,000.00) consulting fee on top of the interest paid on the Prosperity Loan, Sparlin believed that Barnitt was still working cooperatively with LCS Holding's managers in the same way he had for TRG and for the other projects in which Barnitt and Figueroa were jointly involved.

158. Sparlin also believed, based on the roles of Barnitt and Prosperity described above, that Barnitt would not use his status as a lender to the detriment of other investors in LCS Holding, including Sparlin.

159. The notice of the Prosperity Loan that Sparlin received in April 2007 said nothing about any lien that had been granted to secure the debt.

160. Later communications that Sparlin received in 2007, including a July 13, 2007 LCS quarterly report, on which Barnitt was copied, also discussed financing matters but did not refer to any lien that LCS Holding had granted to secure the Prosperity Loan.

161. In April 2008, however, Sparlin received a memorandum dated April 30, 2008 from Sasse, stating that Prosperity had declared a default on the Prosperity Loan. The April 30, 2008 memorandum referred to the possibility of "foreclosure" and stated that there was a

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"dispute" about Barnitt's right to foreclose, but it provided no details regarding Barnitt's alleged security interest or the nature of the dispute.

162. Sparlin was told in the April 30, 2008 memorandum from Sasse that there was "a disagreement between the borrower and the lender as to the validity of the loan extension," but details about the nature of the dispute were never shared with Sparlin.

LCS Settlement with Defendants Barnitt and Prosperity

163. Subsequent to this memorandum, Sparlin received several additional communications from Sasse and Figueroa telling him that they were negotiating a possible settlement with Barnitt and Prosperity and asking Sparlin to contribute additional money to avoid a foreclosure. These communications provided no details regarding the nature of the dispute with Prosperity.

164. Neither Sparlin nor, to the best of Sparlin's knowledge, any of the other Class B members of LCS Holding were present at, or privy to, the negotiations with Barnitt or had knowledge regarding the nature of the dispute between Prosperity and LCS Holding.

165. In November 2009, Sparlin received a package of materials dated November 9, 2009 from Utsch, which included a draft of the settlement terms proposed by Prosperity. The terms of the Prosperity Proposal were set forth in paragraph E of the draft settlement.

166. Sparlin interpreted the "Prosperity Proposal" as a proposal from Barnitt's company, Prosperity, which Barnitt was asking LCS members to accept. The primary consideration offered to Sparlin in the Prosperity Proposal, described in subparagraph (4) of paragraph E of the draft settlement, was a promise by Prosperity to transfer a 7.22115% equity interest then held by Prosperity in Pollux Properties, L.L.C. ("Pollux") on a pro rata basis to Sparlin and the other LCS investors.

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167. In November 2009, Utsch also delivered a package of materials, including the "Information Memorandum" regarding Pollux, to Sparlin on behalf of Pollux which provided "more detailed information about Pollux" in connection with Sparlin's acceptance of the Pollux interests offered by Prosperity.

168. Although Utsch provided the package of materials in his capacity as a manager of Pollux, and subparagraph E (4) of the draft settlement stated that Prosperity would assign its Pollux interests to LCS Holding, which in turn would "immediately" convey them to Sparlin, in both cases Sparlin understood Pollux (through Utsch) and LCS Holding to be acting on behalf of Prosperity. In the first case, it was to provide Sparlin with information pertinent to his decision whether to accept the Prosperity Proposal, and in the second case it was to implement the transfer from Prosperity to Sparlin, if he accepted.

Defendants Barnitt's and Prosperity's Misrepresentations and Omissions: The Pollux Interest

169. The materials provided to Sparlin regarding the Pollux shares offered in the Prosperity Proposal contained numerous misrepresentations and omissions of material facts, including at least the following:

a) The Pollux "Information Memorandum" falsely represented that access to the subdivision land had already been obtained.

i) Page 1 of the Information Memorandum noted that the property is surrounded by "mostly ... either State Trust Lands or federally owned property," but added that the contiguous property holdings also include "a limited amount of privately owned land."

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ii) Later, on Page 4, the memorandum represented that "[a]greements have been entered into with contiguous parcel owners for access."

iii) According to the "Existing Roadways and Circulation Patterns" section on pages 1-2, however, access would be achieved by "turn[ing] right onto West Hawk Way and go[ing] east (approximately 2 miles) to the entrance of the subject property."

iv) In actuality, these directions lead to a dead end on West Hawk Way, where a barbed wire fence and a sign marked "State Trust Land, No Trespassing" prevent the remaining half mile of travel that would be necessary to achieve entry onto the land owned by Pollux.

b) The section of the Information Memorandum addressing "Water" omits important information about the status of requests for regulatory approval, which have a serious undisclosed negative impact on the value of the Pollux equity investments.

i) The "Water" discussion on page 2 acknowledges the need to obtain a Certification of Assured Water Supply, but it omits any mention of the additional requirement to obtain a Certificate of Convenience and Necessity from the Arizona Corporation Commission ("Commission").

ii) Before Sparlin received the Information Memorandum, the managers of Pollux already had applied for a Certificate of Convenience and Necessity to provide water service. This Certificate had been granted but was subject to a condition that the Commission imposed over the managers' strong objections, which will require substantial additional infusions of cash from investors.

iii) The Commission's final decision requires on page 29 that Pollux alter the Water Company's capital structure to 70% equity and 30% "advances/contributions in aid of construction capitalization."

iv) This condition will force the Water Company to attain a total of $2.8 million in equity value.

v) When the Commission issued this decision, Utsch represented to the Commission that he would achieve the required additional level of equity funding by using his "extensive experience in raising funds."

vi) Even if Utsch can fulfill this promise, it will dilute the value of the existing Pollux equity interests that were offered to Sparlin through the Prosperity Proposal.

c) The section regarding "Environmental Factors" (pages 3 and 4 of the Information Memorandum) represented that there were "no indications [of] any environmental concerns." This was false, because the Pima County Bond Advisory Committee had previously identified the entire Pollux tract as a priority acquisition target for its conservation program for environmental reasons.

i) The final 2004 Conservation Bond Program Proposal, approved by the voters of Pima County states on page 10 that one of the Program's habitat protection priorities is to "[m]aintain the scientific integrity of the Santa Rita Experimental Range by protecting it and surrounding lands from development."

ii) The property owned by Pollux is situated, at its closest point, approximately one mile from the southwest boundary of the Santa Rita Experimental Range.

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Most of the land that separates the Pollux property from the Santa Rita Experimental Range is Trust Land owned by the State of Arizona.

iii) A prominent environmental concern in this area is the habitat of the endangered Pima Pineapple Cactus. This concern is summarized in the February 2011 Pima County report, "Protecting Our Land, Water, and Heritage: Pima County's Voter-Supported Conservation Efforts."

iv) Pima County already has used funds from the 2004 bond program to acquire several tracts of land directly adjacent to the Pollux property for its Pima Pineapple Cactus Mitigation Bank.

v) Property held by Pollux runs along the entire western boundary of the "South Wilmot, L.L.C." and "Easley" portions of the Pima County Cactus Mitigation Bank. State Trust Land surrounds all of the remaining boundaries of South Wilmot, L.L.C. and Easley tracts on the north, east, and south sides.

vi) The other portion of the Pima County Cactus Mitigation Bank is bounded by Pollux land holdings to the east and the south.

vii) Land held by Pollux thus bisects the two existing portions of the Pima Pineapple Cactus Mitigation Bank.

viii) Pollux is one of the few private landholders in the Madera Canyon/Elephant Head area of Pima County that is pursuing large-scale development plans.

ix) On July 25, 2006 Pima Pineapple Cactus Mitigation Bank purchased 36 acres from South Wilmot, L.L.C. on July 25, 2006 for $112,690.00.

x) If the Pollux property were acquired under the same program as the adjoining Pima Pineapple Cactus Mitigation Bank tracts, attracting a price similar to the $3,130 per acre paid for the South Wilmot, L.L.C. land, it would create a sizeable loss for Pollux investors, including Sparlin.

xi) On the map of "Habitat Protection Priorities" in the Santa Cruz River Drainage area for the 2004 Conservation Bond Program, the Pollux tract appears in dark green, identifying it as a "secondary priority" acquisition target.

xii) "Secondary priority" is the same classification that was assigned to the TRG parcel under the same 2004 bond program. This culminated in Pima County's acquisition of that parcel for conservation open space in November 2009, resulting in a very large investment loss for Sparlin and the other TRG investors.

xiii) The sale of the TRG tract to Pima County was negotiated by the same owners and managers who run Pollux. It also was completed in the exact same month that Pollux supplied Sparlin with the "Information Memorandum."

xiv) Given the virtually simultaneous timing of the TRG conservation acquisition and the Pollux disclosures, the individuals who prepared and distributed these materials must have had actual knowledge, which they concealed from Sparlin, of the likelihood that the Pollux project could culminate in a conservation acquisition similar to the fate of TRG.

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d) The "Environmental Factors" section also failed to disclose that the entire Pollux tract is classified in Lighting Area E1a under the Pima County Lighting Code, the most restrictive possible classification, due to its proximity to the Whipple Observatory.

i) Friends of the Whipple Observatory have a history of using light pollution concerns to mount successful challenges to proposed developments in this area. A communication from the Division of Planetary Sciences of the American Astronomy Society relates one example of such a challenge. The document describes a 1999 petition effort against a nearby proposed development that attracted "214 signatures from the local astronomers" and "signatures from 2,240 members of the astronomical community in 44 states and 29 countries in less than 6 days." In the wake of this protest, the Pima County Board of Supervisors voted 4-1 to reject the project "after a 7 hour (raucous) public hearing."

ii) Even if it is possible at all to obtain approval for a development over the likely objections of neighboring interest groups, the developers will face the burden of complying with restrictive lighting requirements.

Misrepresentations and Omissions as to LCS Value.

170. In addition, paragraphs F, G, and H of the draft settlement requested that Sparlin "acknowledge" various representations of fact that were obviously intended to induce his acceptance of the Prosperity Proposal, including:

a) That the market value of the LCS Property had been "substantially reduced;"

b) That Sparlin's membership interest in LCS Holding had "insubstantial value;"

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c) That the Prosperity Proposal was "the best method of maximizing the value of the membership interests and investments" in LCS Holding; and

d) That it was in Sparlin's "best interest to accept and agree to the Prosperity Proposal."

171. The representations that Sparlin was asked to acknowledge were misleading and false, or omitted disclosure of facts material to Sparlin's consideration of the Prosperity Proposal, in at least the following respects:

a) Although it is true that the real estate market had weakened significantly by the end of 2009, it is not true that these conditions had reduced the land value as "substantially" as was claimed. To the contrary, the full 447-acre LCS tract still was worth $12,500.00 per acre in an arms-length sale and a minimum of $7,500.00 per acre in a distress sale conducted in connection with a forced liquidation.

b) Any reduction in the market price for this land was not great enough to cause investments in LCS Holding to have "insubstantial value," as was claimed. Even at $7,500 per acre, and certainly at $12,500 per acre if the time spent negotiating had instead been used to market the land aggressively, LCS Holding could have sold off the entire tract, paid off the full $1.744 million Prosperity Loan debt, and retained a significant amount of residual cash that could have been distributed to LCS investors.

c) The Prosperity Proposal was not the "best method of maximizing the value of membership interests and investments" held by Class B equity holders such as Sparlin. The Settlement Agreement gave Class B members only about a 7%

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share of Pollux plus a small amount of accrued interest. Even if Pollux shares had the value claimed in the Settlement Agreement, which they do not for the reasons discussed in paragraph 169 above, all of the cash left over from a liquidation sale of LCS Holding's land would have been distributed on a priority basis to Class B equity holders pursuant to Section 5.1.1 of the Operating Agreement. This would have provided far greater cash returns to Sparlin and the other Class B investors than the Prosperity Proposal.

d) Acceptance of the Prosperity Proposal was not in the "best interest" of Sparlin or the other Class B investors because it substantially reduced the value of their investments. The Prosperity Proposal was crafted not to serve Sparlin's best interests, but rather to serve the best interests of Prosperity, which received real estate worth far more than the value of its loan debt in exchange for interests in Pollux that had negligible value, and to serve the best interests of the Class A LCS investors, who received title to a separate two-acre commercial tract in addition to a portion of the Pollux shares when they would have received nothing in a liquidation scenario because of their subordinate status under the Operating Agreement. The added value received by these two parties, who negotiated the arrangement, was achieved at the expense of Class B investors such as Sparlin, who were not represented at the negotiating table.

LEGAL ENTITIES/CONTROL GROUPS

172. The misrepresentations and omissions previously alleged were made by the Defendants, Figueroa, Utsch, Sasse, and Barnitt, as alleged, both individually and in their

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capacities as managers, or officers and directors, of the entities controlling the Defendants TRG, LCS, Prosperity, Pollux, Antares, and Hermes.

173. The entity controlling the Defendant TRG was, at all relevant times, its manager, the Defendant, Western Associates Development Company, L.L.C. ("WAD") which, in turn, was managed by the Defendants Old Pueblo Investments, Inc. ("Old Pueblo") (whose president and director was the Defendant, Figueroa), Tucson Acquisition and Development Corporation ("Tucson Acquisition") (whose president, CEO, and director was the Defendant Utsch), and Defendant Western Recovery Services, L.L.C. ("Western Recovery") (whose manager, Equity Lenders & Consultants, L.L.C., was controlled by its managers, the Defendants Figueroa and Utsch).

174. The entity controlling the Defendant LCS was, at all relevant times, its manager, the Defendant Western Management which, in turn, was managed by the Defendants WAD, Old Pueblo, and Tucson Acquisition.

175. The Defendant Prosperity was, at all relevant times, controlled by the Defendant Barnitt.

176. The entities controlling the Defendant Pollux were, at all relevant times, its managers, the Defendant WAD (until May 1, 2006), the Defendant Western Management (from May 1, 2006 until January 24, 2011), and the Defendant Utsch (at all times since January 24, 2011).

177. The entities controlling the Defendant Hermes were, at all relevant times, its managers, the Defendant WAD (until May 1, 2008) and the Defendant LCS (from May 1, 2008 to December 31, 2009), and currently LCS Property, L.L.C., which is managed by the Defendant Prosperity, which in turn is managed by the Defendant Barnitt.

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178. The entity controlling the Defendant Antares was, at all relevant times, its manager, the Defendant WAD.

179. As controlling members of the entities to which the individual Defendants' misrepresentations and omissions are attributed, these controlling group entities are jointly and severally liable for the acts of the individual Defendants, as alleged herein and hereinafter (specifically pursuant to Counts Two and Three, as well as Counts Six and Seven).

COUNT ONE
(Primary Statutory Liability under A.R.S. §44-2003(A))

Paragraphs 1 through 179 of the Complaint are hereby incorporated by reference into this, Count One, as if fully set forth herein.

180. The various investments sold by the Defendants were securities under Arizona and federal law.

181. The Defendants jointly engaged in an unlawful sale of securities to the Plaintiff in violation of A.R.S. §44-1991(A)(1) and (3).

182. The Defendants individually and/or jointly made misleading representations and omissions in connection with the sale of securities in violation of A.R.S. §44-1991(A)(2).

183. The Defendants participated in, or induced, the unlawful security sales to the Plaintiff Sparlin, within the meaning of A.R.S. §44-2003(A).

184. Pursuant to A.R.S. §44-2001(A), the Defendants are liable for rescission or damages, plus costs, attorney's fees, and pre- and post-Judgment interest.

COUNT TWO
(Statutory Control Liability under A.R.S. §44-1999(B))

Paragraphs 1 through 184 of the Complaint are hereby incorporated by reference into this, Count Two, as if fully set forth herein.

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185. The Defendants violated A.R.S. §44-1991(A).

186. Individually and/or as a group, the Defendants controlled the Defendants TRG and/or LCS within the meaning of A.R.S. §44-1991(B) when the Defendants' violations of A.R.S. §44-1991(A) occurred. As statutory controlling persons of the Defendants TRG and/or LCS, the Defendants are jointly and severally liable under A.R.S. §44-1999(B) for Defendants' TRG's and LCS' unlawful sales and violations of A.R.S. §44-1991(A).

187. As a result, the Defendants are liable as statutory controlling persons, for rescission and/or damages, plus costs, attorney's fees, and pre-Judgment and post-Judgment interest.

COUNT THREE
(Aiding and Abetting Statutory Securities Fraud)

Paragraphs 1 through 187 of the Complaint are hereby incorporated by reference into this, Count Three, as if fully set forth herein.

188. Defendants knowingly and substantially assisted the securities law violations by the Defendants TRG and/or LCS, despite knowing or willfully disregarding, among other things, that:

A. Defendants TRG and LCS were violating the registration and/or disclosure provisions of Arizona and federal securities laws; and

B. Defendants' TRG's and LCS' violations were not being disclosed to their investors, including the Plaintiff, Sparlin; and

C. Defendants, TRG and LCS, were misrepresenting material facts, and/or were failing to disclose and were omitting material facts, with regard to the securities they were selling.

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189. As a result, the Defendants are liable to the Plaintiff for rescission or damages, plus costs, attorney's fees, and pre-Judgment and post-Judgment interest.

COUNT FOUR
(Breach of Fiduciary Duties)

Paragraphs 1 through 189 of the Complaint are hereby incorporated by reference into this, Count Five, as if fully set forth herein.

190. The Defendant, Figueroa, exploited his relationship with the Plaintiff, Sparlin, as the holder of his Power of Attorney, by soliciting, persuading, advising, and convincing the Plaintiff, based upon his relationship with him, to trust him to invest his funds, purportedly on the Plaintiff's behalf and to the Plaintiff's beneficial interest.

191. By virtue of his relationship with the Plaintiff, the Defendant, Figueroa, was placed in a position of trust and confidence, and assumed, and was charged with, fiduciary duties and obligations which accompanied said relationship and position of trust.

192. Among the fiduciary duties and obligations undertaken by, charged to, and assumed by, the Defendant Figueroa, both express and implied, were the duties of good faith, disclosure, loyalty, candor and fairness.

193. By his actions and conduct, as previously alleged, the Defendant, Figueroa, breached his fiduciary duties and obligations owed to the Plaintiff.

194. As a direct and proximate result of Defendant Figueroa's breaches, as hereinbefore alleged, the Plaintiff has sustained significant economic and monetary damages and losses, all in an amount to be determined at the time of trial.

. . .

. . .

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COUNT FIVE
(Aiding and Abetting Breach of Fiduciary Duties)

Paragraphs 1 through 194 of the Complaint are hereby incorporated by reference into this, Count Four, as if fully set forth herein.

195. The Defendants, Western Associates Development Co., L.L.C., Western Management, Figueroa, Sasse, Utsch, and Kerslake were managers or agents of the Defendants, TRG and/or LCS, and had fiduciary discretion to act on behalf of their investors, including the Plaintiff, Sparlin. The Defendants' investors were dependent upon the Defendants for the managerial skill needed to run the Defendant companies.

196. As managers or agents of the Defendants companies, the Defendants owed their investors, including the Plaintiff, Sparlin, fiduciary duties of full disclosure, loyalty, good faith, and fairness.

197. Individually and/or jointly, the Defendants breached their fiduciary duties of disclosure, loyalty, good faith, and fairness by misrepresenting material facts, and omitting or otherwise failing to disclose material adverse facts, as previously alleged, to their investors, including the Plaintiff, Sparlin.

198. The Defendants each knowingly aided and abetted and participated in the fiduciary breaches by the Defendants TRG and/or LCS.

199. As a direct and proximate result of the Defendants' aiding and abetting and participation in the fiduciary misrepresentations, omissions, and non-disclosures of material facts, the Plaintiff, Sparlin, was induced to purchase, invest in, and/or retain, his various securities, investments, and membership interests, and was damaged thereby.

200. As a direct result of the Defendants' illegal conduct, the Plaintiff, Sparlin, is entitled to compensatory and punitive damages.

COUNT SIX
(Common Law Fraud)

Paragraphs 1 through 200 of the Complaint are hereby incorporated by reference into this, Count Six, as if fully set forth herein.

201. Based upon the Defendants material misrepresentations, omissions, and non-disclosures of material fact, as previously alleged, the Plaintiff, Sparlin, was persuaded, convinced, and induced to purchase, invest in, and/or retain his interest in his various securities, investments, and membership interests, and to otherwise change his financial position to his detriment.

202. The Plaintiff, Sparlin, reasonably relied upon the Defendants' statements and representations, as previously alleged.

203. The Defendants' statements and representations, as previously alleged, were made by the Defendants intending that the Plaintiff would act and rely upon them, and in order to induce him to do so.

204. The Defendants' statements and representations, as previously alleged, were false and untrue at the time that they were made to the Plaintiff, and the Defendants knew, or should have known, of the falsity of their statements and representations at the time that they made them.

205. The Plaintiff did not learn of the falsity of the Defendants' statements and representations until long after the losses represented by his purchases and investments were realized.

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206. As a direct and proximate result of Defendants' false and fraudulent statements and representations, and omissions and non-disclosures of material facts, as previously alleged, the Plaintiff has suffered significant economic and monetary damages and losses, all in an amount to be determined at the time of trial.

COUNT SEVEN
(Negligent Misrepresentation and Non-Disclosure)

Paragraphs 1 through 205 of the Complaint are hereby incorporated by reference into this, Count Seven, as if fully set forth herein.

207. In connection with the solicitation, investment, reinvestment, and maintenance of the Plaintiff's funds and interests in the securities and investments, as previously alleged, the Defendants were under a duty to exercise reasonable care to disclose all material facts, and not to misrepresent them, or otherwise omit from disclosure any material facts.

208. The Defendants failed to exercise reasonable care, and breached their duty owed to the Plaintiff in this regard, by misrepresenting material facts to the Plaintiff, and by otherwise omitting and failing to disclose material facts to the Plaintiff, as previously alleged.

209. As a direct and proximate result of the Defendants' false and fraudulent statements and representations, and omissions and non-disclosure of material facts, as previously alleged, the Plaintiff has suffered significant economic and monetary damages and losses, all in an amount to be determined at the time of trial.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiff, Derry Dean Sparlin, Sr., requests that this Court enter Judgment in his favor, and against the Defendants, jointly and severally, as follows:

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A. For rescissionary or compensatory damages in an amount to be determined at the time of trial;

B. For punitive damages in an amount to be determined at the time of trial, based upon the Defendants intentional, fraudulent, and wrongful conduct;

C. For Plaintiff's reasonable attorney's fees, pursuant to statute as provided herein, and/or pursuant to A.R.S. §§12-341.01 or 12-348;

D. For Plaintiff's costs incurred herein;

E. For pre-Judgment and post-Judgment interest, at the highest legal rate; and

F. For such other and further relief as to this Court may seem just and proper in the premises in order to provide the Plaintiff with a complete remedy.

DATED this 30th day of March, 2012.

KENNETH E. CHASE, P.C.

By_____
Kenneth E. Chase, Esq.
Attorney for Plaintiff

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VERIFICATION

STATE OF VIRGINIA)
)
County of Fairfax)

DERRY DEAN SPARLIN, Sr., being duly sworn, on his oath deposes and says:

I am the Plaintiff in the above-entitled action; that I have read the foregoing Amended Complaint and know the contents thereof, and that the same are true both in substance and in fact, except those matters and things alleged therein upon information and belief, and as to those matters, I believe them to be true.

Derry Dean Sparlin

Derry Dean Sparlin

SUBSCRIBED AND SWORN to before me this 29th day of March, 2012, by Derry Dean Sparlin.

Notary Public

126690

My Commission Expires:

7-31-2012

C20117971

ORIGINAL of the foregoing **FILED** this 30th day of March, 2012, with:

Clerk of the Court
PIMA COUNTY SUPERIOR COURT
110 W. Congress Street
Tucson, AZ 85701

COPY of the foregoing **HAND-DELIVERED** this 30th day of March, 2012, to:

The Honorable Kyle Bryson
PIMA COUNTY SUPERIOR COURT
110 W. Congress Street (Division 5)
Tucson, AZ 85701

COPIES of the foregoing **MAILED** this 30th day of March, 2012, to:

Jeffrey M. Neff, Esq.
Debra C. Griffith, Esq.
NEFF & GRIFFITH, P.C.
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