

2010

Leslie D. Mower v. David R. Simpson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LESLIE D. MOWER, an individual, et. al,

Plaintiffs and Appellants;

vs.

DAVID R. SIMPSON, an individual, et. al,

Defendants and Appellees.

Utah Court of Appeals No. 20100532

District Court Civil No. 090403844

ADDENDUM TO APPELLANTS' OPENING BRIEF ON APPEAL

Appeal from the Order of the Fourth District Court,
Utah County, Provo Division, The Honorable Samuel D. McVey

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**FILED
UTAH APPELLATE COURTS
FEB 22 2011**

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Tab A

STATUTES, RULES AND REGULATIONS APPLICABLE TO APPEAL

Rule 9(b) Utah Rules of Civil Procedure

(b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 15 of Utah Rules of Civil Procedure: Amended and supplemental pleadings

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to conform to the evidence. When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails

to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

(c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 19 Utah Rules of Civil Procedure: Joinder of persons needed for just adjudication

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper

case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. If a person as described in Subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. This rule is subject to the provisions of Rule 23.

Tab B

CLERK OF DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
2008 MAR -5 P 4:08

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**IN THE FOURTH DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

LESLIE D. MOWER, an individual; LD SQ, LLC, a Utah limited liability company; LD III, LLC, a Utah limited liability company; LD PURPOSE, LLC, a Utah limited liability company; and, NAVONA, LC, a Utah limited liability company;

Plaintiffs;

vs.

DAVID R. SIMPSON, an individual; NATHAN R. SIMPSON, an individual; MICHAEL K. THOMPSON, an individual; TODD DORNY, an individual; BRANDON DENTE, an individual; DAVID N. NEMELKA, an individual; DALLAS M. HAKES, an individual; CHAD D. CARLSON, an individual; MICHAEL A. MARX, an individual; ALLEN R. HAKES, an individual; MICHAEL W. AVIANO, an individual; ALS PROPERTIES, LLC, a Hawaii limited liability company; MAI KE KULA, LLC, a Hawaii limited liability company; HANAIEI KAI HOLDINGS, LLC, a Hawaii limited liability company; KA MAHINA, LLC, a Hawaii limited liability company; HE KIAKOLU, LLC, a Hawaii limited liability company; KOAMALU PLANTATION, LLC, a Hawaii limited liability company; LANDMARK REAL ESTATE, INC., a Utah corporation; WOOD SPRINGS, LLC, a Utah limited liability company; Oak Leaf, LLC, a Utah limited liability company; DENTE, LLC, a Utah limited liability company; SUNNY RIDGE, LLC, a Utah limited liability company; KNDJ DEVELOPMENT, LLC, a Utah limited liability company; DN SIMPSON HOLDINGS, LLC, a Utah limited liability company;

**SECOND AMENDED
COMPLAINT**

Case No. 090403844

Judge: McVey

SOS MAPLETON DEVELOPMENT, LLC, a Utah limited liability company; DN SIMPSON MAPLETON HOLDINGS, LLC, a Utah limited liability company; THE PRESERVE AT MAPLETON DEVELOPMENT COMPANY, LLC, a Utah limited liability company; PHEASANT MEADOWS, LLC, a Utah limited liability company; CARNESECCA ORCHARD ESTATES, LLC, a Utah limited liability company; SPANISH VISTA PLAT I, LLC, a Utah limited liability company; LANDMARK HOMES OF UTAH, LLC, a Utah limited liability company; MAPLE MOUNTAIN WATER TANK, LLC, a Utah limited liability company; LONESTAR GUTTERS, LLC, a Utah limited liability company; 2 BROTHERS COMMUNICATIONS, a sole proprietorship; LONESTAR BUILDERS, INC., a fictitious entity; and, DOES 1-100;

Defendants;

and

KOAMALU PLANTATION INVESTMENT, LLC, a Utah limited liability company; BANK OF AMERICAN FORK, a Utah Corporation; and, KATHYA. TEMPLEMAN, an individual;

Rule 19 Defendants.

INTRODUCTION

1. Plaintiffs hereby seek remedies of, and damages against, all Defendants, including Does 1 through 100, individually and jointly, pursuant to statutory and common law claims of breach of fiduciary duties, conspiracy, fraud and intentional misrepresentation, negligent misrepresentation, conversion, unjust enrichment, pattern of unlawful activity, breach of contract, detrimental reliance, promissory estoppel, quasi contract, constructive trust, equitable lien and specific performance.

2. Plaintiffs also seek injunctive relief from Defendants David R. Simpson,

Nathan R. Simpson, David N. Nemelka, Michael W. Aviano, Koamalu Plantation, LLC, Wood Springs, LLC, Sunny Ridge, LLC, The Preserve at Mapleton Development Company, LLC, Carnesecca Orchard Estates, LLC, and, Spanish Vista Plat I, LLC, to prevent the alienation, transfer or waste of assets.

THE PARTIES

3. Plaintiff Leslie D. Mower ("Leslie") is an individual residing in Utah County, State of Utah.

4. Plaintiff LD SQ, LLC ("LD SQ") is a Utah limited liability company. Its registered office address is 584 South State Street, Orem, Utah 84058. At all times relevant herein, Leslie was the sole member of LD SQ.

5. Plaintiff LD III, LLC ("LD III") is a Utah limited liability company. Its registered office address is 584 South State Street, Orem, Utah 84058. At all times relevant herein, Leslie was the sole member of LD III.

6. Plaintiff LD Purpose, LLC ("LD Purpose") is a Utah limited liability company. Its registered office address is 584 South State Street, Orem, Utah 84058. At all times relevant herein, Leslie was the sole member of LD Purpose.

7. Plaintiff Navona, LC ("Navona") is a Utah limited liability company. Its registered office address is 86 North University Avenue, Suite 400, Provo, Utah 84601. At all times relevant herein, Leslie was the sole member of Navona. At all times relevant herein, Navona was and is a successor-in-interest of MagnetBank.

8. Defendant David R. Simpson ("David Simpson") is an individual residing in

Utah County, State of Utah.

9. At all times relevant herein, David Simpson was licensed by the State of Utah as an Associate Real Estate Broker, license number 5462077-AB00.

10. Defendant Nathan R. Simpson ("Nathan Simpson") is an individual residing in Utah County, State of Utah.

11. Nathan Simpson is licensed by the State of Utah as a Real Estate Sales Agent, license number 5569103-SA00 since at least January 27, 2004. His license is currently inactive.

12. Defendant Michael K. Thompson ("Michael Thompson") is an individual residing in Davis County, State of Utah.

13. At all times relevant herein, Michael Thompson claimed to have at least seven years experience developing and constructing condominiums in Hawaii.

14. Defendant Todd Dorny is an individual residing in Kauai County, State of Hawaii.

15. On information and belief, at all times relevant herein, Todd Dorny was a real estate developer and mortgage solicitor with several years experience developing real property.

16. Defendant Brandon Dente is an individual residing in Utah County, State of Utah.

17. On information and belief, at all times relevant herein, Brandon Dente was a mortgage broker with several years experience financing real property.

18. Defendant David N. Nemelka ("David Nemelka") is an individual residing in Utah County, State of Utah.

19. Defendant Dallas M. Hakes ("Dallas Hakes") is an individual residing in Utah County, State of Utah.

20. Defendant Chad D. Carlson ("Chad Carlson") is an individual residing in Iron County, State of Utah.

21. Defendant Michael A. Marx ("Michael Marx") is an individual residing in Utah County, State of Utah.

22. Defendant Allen R. Hakes ("Allen Hakes") is an individual residing in Utah County, State of Utah.

23. Defendant Michael W. Aviano ("Michael Aviano") is an individual residing in Utah County, State of Utah.

24. Defendant ALS Properties, LLC ("ALS") is a Hawaii limited liability company formed November 30, 1999. Its registered mailing address is P.O. Box 477, Koloa, Hawaii 96756. Its registered agent is Todd Dorny at the same address. It is currently not in good standing with Hawaii's Department of Commerce because it failed to make its annual filings with the Department of Commerce beginning in 2006.

25. Defendant Mai Ke Kula, LLC ("Mai Ke Kula") is a Hawaii limited liability company formed July 3, 2001. Its registered mailing address is 1358 East Elk Hollow Road, North Salt Lake, Utah 84054. Its registered agent is Todd Dorny at P.O. Box 1840, 2330 Hoohu Road, Apt. 1, Koloa, Hawaii 95756.

26. Defendant Hanalei Kai Holdings, LLC ("Hanalei Kai") is a Hawaii limited liability company formed July 3, 2001. Its registered mailing address is P.O. Box 477, Koloa, Hawaii 96756. Its registered agent is Todd Dorny at P.O. Box 1840, Koloa, Hawaii 96756. It is currently not in good standing with Hawaii's Department of Commerce because it failed to make its annual filing with the Department of Commerce in 2008.

27. Defendant Ka Mahina, LLC ("Ka Mahina") is a Hawaii limited liability company formed March 10, 2005. Its registered mailing address is P.O. Box 1840, Koloa, Hawaii 96756. Its registered agent is Todd Dorny at the same address. It is currently not in good standing with Hawaii's Department of Commerce because it failed to make its annual filing with the Department of Commerce in 2008.

28. Defendant He Kiakolu, LLC ("He Kiakolu") is a Hawaii limited liability company formed March 10, 2005. Its registered mailing address is P.O. Box 1840, Koloa, Hawaii 96756. Its registered agent is Todd Dorny at the same address. It is currently not in good standing with Hawaii's Department of Commerce because it failed to make its annual filing with the Department of Commerce in 2008.

29. Defendant Koamalu Plantation, LLC ("Koamalu") is a Hawaii limited liability company formed March 10, 2005. Its registered mailing address is P.O. Box 1840, Koloa, Hawaii 96756. Its registered agent is Todd Dorny at the same address. It is currently not in good standing with Hawaii's Department of Commerce because it failed to make its annual filing with the Department of Commerce in 2008. At all times relevant herein, Koamalu was owned equally by LD SQ and He Kiakolu.

30. Defendant Landmark Real Estate, Inc. ("Landmark") is a Utah corporation formed January 23, 1998. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is David Simpson at the same address.

31. Defendant Wood Springs, LLC ("Wood Springs"), (also known as "Woodsprings, LLC"), is a Utah limited liability company formed March 3, 1999. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is David Simpson at the same address.

32. Defendant Oak Leaf, LLC ("Oak Leaf") is a Utah limited liability company formed December 18, 1998. Its registered office address is 1490 West 800 North, Mapleton, Utah 84664. Its registered agent is R. Lynn Bjarnson at the same address.

33. Defendant Dente, LLC ("Dente LC") is a Utah limited liability company formed July 23, 2002. Its registered office address is 9501 North Canyon Heights Drive, Cedar Hills, Utah 84062. Its registered agent is Brandon Dente at the same address.

34. Defendant Sunny Ridge, LLC ("Sunny Ridge") is a Utah limited liability company formed March 31, 2005. Its registered office address is 2395 East 850 South, Springville, Utah 84663. Its registered agent is Craig Pickering at the same address.

35. Defendant KNDJ Development, LLC ("KNDJ") is a Utah limited liability company formed June 8, 2005. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is David Simpson at the same address.

36. Defendant DN Simpson Holdings, LLC ("DN Simpson Holdings") is a Utah limited liability company formed November 1, 2005. Its registered office address is 407

North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

37. Defendant SOS Mapleton Development, LLC ("SOS") is a Utah limited liability company formed December 6, 2005. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

38. Defendant DN Simpson Mapleton Holdings, LLC ("DN Simpson Mapleton") is a Utah limited liability company formed December 6, 2005. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

39. Defendant The Preserve at Mapleton Development Company, LLC ("The Preserve") is a Utah limited liability company formed December 12, 2005. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

40. Defendant Pheasant Meadows, L.C. ("Pheasant Meadows") is a Utah limited liability company formed March 28, 2006. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is David Simpson at the same address.

41. Defendant Carnesecca Orchard Estates, LLC ("Carnesecca") is a Utah limited liability company formed June 6, 2006. Its registered office address is 560 South 100 West, Suite 1, Provo, Utah 84601. Its registered agent is Christopher Shurian at the

same address. It is currently not in good standing with Utah's Department of Commerce because it failed to make its annual filing with the Department of Commerce in 2009.

42. Defendant Spanish Vista Plat I, LLC ("Spanish Vista") is a Utah limited liability company formed January 19, 2007. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

43. Defendant Landmark Homes of Utah, LLC ("Landmark Homes") is a Utah limited liability company formed October 2, 2007. On information and belief, its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is David Simpson at the same address.

44. Defendant Maple Mountain Water Tank, LLC ("Maple Mountain Water"), is a Utah limited liability company formed October 29, 2007. Its registered office address is 407 North Main Street, Springville, Utah 84663. Its registered agent is Nathan Simpson at the same address.

45. Defendant Lonestar Builders, Inc. ("Lonestar Builders"), on information and belief, is a fictitious entity and alter ego of Defendant Dallas M. Hakes. But may also be the alter ego of Utah limited liability companies: Lonestar Properties, LLC; Lonestar Timbers, LLC; and/or Lonestar Springville Commercial, LLC.

46. On information and belief, Defendant 2 Brothers Communications ("2 Brothers") is a sole proprietorship of Defendant Chad Carlson, or, a partnership of which Chad Carlson is a partner. On information and belief, its office address is 198 North Main

Street, Cedar City, Utah 84720-2637.

47. Defendant Lonestar Gutters, LLC ("Lonestar Gutters") is a Utah limited liability company formed October 24, 2004. On information and belief, its registered office address is 5604 South Redwood Road, Taylorsville, Utah 84123. Its registered agent is Utah Contractor License Center at the same address.

48. David Simpson was a manger of: LD SQ from March 29, 2005 until March 12, 2008; and, LD III from January 18, 2006 until March 12, 2008.

49. At all times relevant herein, David Simpson was an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of He Kiakolu, Koamalu, Landmark, Wood Springs, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes, and Maple Mountain Water.

50. At all times relevant herein, Nathan Simpson was an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of He Kiakolu, Koamalu, Landmark, Wood Springs, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes, and Maple Mountain Water.

51. On information and belief, at all times relevant herein, Michael Thompson was an owner, member, manager, control person, partner, principal and/or agent of ALS, Mai Ke Kula, Hanalei Kai, He Kiakolu and Koamalu.

52. On information and belief, at all times relevant herein, Todd Dorny was an

owner, member, manager, control person, partner, principal and/or agent of ALS, Mai Ke Kula, Hanalei Kai, Ka Mahina, He Kiakolu and Koamalu.

53. On information and belief, at all times relevant herein, Brandon Dente was an owner, member, manager, control person, partner, principal and/or agent of Dente LC, He Kiakolu and Koamalu.

54. On information and belief, at all times relevant herein, Dallas Hakes was an owner, member, manager, control person, partner, principal and/or agent of Lonestar Properties, LLC, Lonestar Timbers, LLC, and Lonestar Springville Commercial, LLC. On information and belief, at all relevant times herein, either Dallas Hakes and/or his entities was/were doing business as Lonestar Builders.

55. On information and belief, at all times relevant herein, 2 Brothers was the sole proprietorship of Chad Carlson, or, a partnership of which Carlson is a partner.

56. On information and belief, at all times relevant herein, Allen Hakes was an owner, member, manager, control person, partner, principal and/or agent of Lonestar Gutters.

57. Does 1 through 100 are individuals or entities who are also liable to Plaintiffs for their actions relating to the facts alleged herein, but whose identities are presently uncertain or unknown to Plaintiffs. Such defendants' identities shall be specified by amendment hereafter, when Plaintiffs or their attorneys can identify such defendants and determine their liability to Plaintiffs.

58. Rule 19 Defendant Koamalu Plantation Investment, LLC ("Plantation

Investment") is a Utah limited liability company formed June 13, 2007. Its registered office address is 62 North 1020 West, American Fork, Utah 84003. Its registered agent is Vance Barret at the same address. On information and belief, Plantation Investment acquired Michael Thompson's (or Mai Ke Kula's or Hanalei Kai's) forty-six percent (46%) interest in He Kiakolu on or about June 13, 2007.

59. Rule 19 Defendant Bank of American Fork, is a Utah corporation formed February 5, 1913. Its registered office address is 195 East 6100 South, Murray, Utah 84107. Its registered agent is Randall D. Benson at the same address.

60. Rule 19 Defendant Kathy A. Templeman ("Kathy Templeman") is an individual residing in Utah County at 3059 East River Bottom Road, Spanish Fork, Utah 84660-9357.

61. Plantation Investment, Bank of American Fork and Kathy Templeman are named as Rule 19 Defendants in this action pursuant to Utah Code Annotated §78B-6-403, as persons who have an interest which would be affected by a declaratory judgment, and, Rule 19, Utah Rules of Civil Procedure, as parties claiming "an interest relating to the subject of the action and [are] so situated that the disposition of the action in [their] absence may ... as a practical matter impair or impede [their] ability to protect that interest." Plaintiffs make no allegations or claims for either damages or other relief against these defendants.

JURISDICTION AND VENUE

62. Utah's District Court has jurisdiction over the subject matter and Defendants

herein pursuant to Utah Code Annotated §78A-5-102 and §78B-3-205.

63. Venue is proper in Utah's Fourth District Court pursuant to Utah Code Annotated §78B-3-304, §78B-3-305, §78B-3-306 and §78B-3-307.

FACTS: HAWAII CONDOMINIUM DEVELOPMENT SCAM

64. Plaintiffs' claims herein regarding the Hawaii condominium development scam arise in part from six consecutive real estate transactions involving two contiguous properties located in Lihue, Kauai County, Hawaii, which for convenience of explanation are identified or distinguished hereinafter as:

SELLER/BUYER	ESCROW NO.	PROPERTIES	RECORDED
Kaumialii/Balogs	A24010227	Units 2 and 3	Apr 30, 2002
Balogs/Nokaoi	A54020022	Units 2 and 3	Mar 21, 2005
Nokaoi/ALS	A54020187	Unit 2	Apr 25, 2005
ALS/Koamalu	A54020188	Unit 2	Apr 25, 2005
Nokaoi/ALS	A54030171	Unit 3	Jul 08, 2005
ALS/Koamalu	A54030171	Unit 3	Nov 07, 2005

65. Title Guaranty Escrow Services, Inc. ("Title Guaranty") was the escrow agent for all six transactions. It assigned the escrow numbers to the various transactions, received and disbursed funds, closed the transactions, and recorded the necessary documents with Hawaii's Bureau of Conveyances.¹

66. On or about April 24, 2002 [Wednesday], Yvette Chastity Balogs and Mari-Chris Asuncion Balogs ("Balogs") acquired from Kaumialii Investment Company and

¹ Hawaii uses one centralized "Bureau of Conveyances" for recording real estate transactions.

Koamalu Associates (together "Kaumialii") approximately 11.183 acres of land located in Lihue, Kauai County, Hawaii.

67. The 11.183 acres of land consists of two contiguous parcels – Units 2 and 3. Unit 2 is approximately 6.532 acres and is identified by Kauai County as TMK number 4-3-8-5-22-2. Unit 3 is approximately 4.651 acres and is identified by Kauai County as TMK number 4-3-8-5-22-3. See Exhibit 1, copy of Plat Map.

68. Balgos acquired Units 2 and 3 via an *Apartment Deed*, dated April 24, 2002 and recorded by Title Guaranty with Hawaii's Bureau of Conveyances on April 30, 2002 as entry 2002-073860. See Exhibit 2, copy of *Apartment Deed*.

69. Part of the consideration Balgos tendered to Kaumialii for Units 2 and 3 was a \$980,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on both Unit 2 and Unit 3. The Kaumialii/Balgos *Purchase Money Mortgage* was dated April 24, 2002 and recorded by Title Guaranty with Hawaii's Bureau of Conveyances on April 30, 2002 as entry 2002-073861. See Exhibit 3, copy of *Purchase Money Mortgage*.

70. On or about December 9, 2004 [Thursday], Balgos listed Units 2 and 3 for sale with Hawaii's Multiple Listing Service – MLS #147469. The listed price was \$4,300,000.00. The listing stated: "Seller will carry with 2 Million down." See Exhibit 4, copy of *MLS DATA*.

71. On or about January 7, 2005 [Friday], Balgos accepted the "Archer Group of Companies and/or assigns" offer to buy Units 2 and 3. See Exhibit 5, copy of *Defendants ALS Properties LLC and Koamalu Plantation LLC's Counterclaim Against Plaintiffs -*

attached partial copy of *Deposit Receipt Offer and Acceptance*.

72. The terms of the Balgos/Archer (hereafter "Balgos/Nokaoi") transaction included a purchase price of \$3,800,000.00 comprised of: a \$50,000.00 initial deposit; a \$1,450,000.00 balance of down payment paid into escrow before closing; and, a \$2,300,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on both Unit 2 and Unit 3. The "Scheduled Closing Date" was set for "on or before 90 days from acceptance" [April 7, 2005]. See Exhibit 5.

73. On information and belief, in January or February 2005, Michael Thompson, being aware of the Balgos/Nokaoi transaction (described in paragraph 72 herein), designed and set in motion a "confidence scheme"² whereby under the guise of being an experienced Hawaii real estate condominium developer he intended:

- a. To win the confidence of confederate associates [Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson] to collaborate with him in his confidence scheme;
- b. Together with his confederate associates, to win the confidence of a wealthy investor [Leslie];
- c. To profit at the investor's expense from multiple transactions involving Unit 2 and Unit 3;
- d. To collectively acquire a significant portion of a shared 50%/50%

² A scheme by which swindlers (con artists, con men) win the confidence of their victims and then cheat them of their money by taking advantage of the confidence reposed in the swindlers.

equity interest in Units 2 and 3 through the artifice and pretext that the inconsiderable task list (described in paragraph 104 herein) of the confederate associates was equal in value to the investor's real money investment;

e. To profit by taking "management fees" and "consulting fees" in addition to claiming "sweat equity"; and,

f. To profit from the sale of Thompson's "equity interest" to another wealthy victim [Plantation Investment].

74. About February 2005, Michael Thompson invited Todd Dorny to participate in a condominium project in Lihue, Hawaii. On information and belief, Michael Thompson promised Todd Dorny a lucrative equity and income interest if Dorny would find funding sufficient to purchase Units 2 and 3. Todd Dorny contacted a friend who put him in contact with Brandon Dente. Brandon Dente contacted David Simpson and arranged for Simpson to communicate with Michael Thompson.

75. On information and belief, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, in association together, formed a confederate confidence scheme and a business enterprise scheme – the Koamalu Plantation development project – for their mutual benefit and gain, risking only Leslie's funds. [Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, and/or their controlled business entities (identified in paragraphs 49 through 53 herein), shall, in any collective association together, hereinafter be referred to as the "Confederate Business Enterprise Associates."]

76. A major artifice of the Confederate Business Enterprise Associates' schemes consisted of a three-stage illegal flip³ of real property disguised to look like lawful, successive, step-stage transactions. The Confederate Business Enterprise Associates' breach of escrow with Leslie's \$1,200,000.00, (as described in paragraph 118 herein), was an essential element of this artifice.

77. On or about February 9, 2005 [Wednesday], Mari-Chris Asuncion Balgos quit-claimed her interest in Units 2 and 3 to Yvette Chastity Balgos via a *Quit-Claim Deed*, which was recorded by Title Guaranty with Hawaii's Bureau of Conveyances on February 23, 2005 as entry 2005-036126. See Exhibit 6, copy of *Quit-Claim Deed*.

78. On or about February 22, 2005 [Tuesday], the terms of the Balgos/Nokaoi transaction were amended by a *Purchase Money Mortgage Addendum* which changed the requirement for one \$2,300,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* to two *Promissory Notes* – a \$1,900,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on Unit 2, and, a \$400,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on Unit 3. Payment terms for the *Purchase Money Mortgages* were: "Monthly interest only" and "Loans must be paid in full by 60 months from closing." See Exhibit 5 - attached *Purchase Money Mortgage Addendum* (dated January 31, 2005).

79. On or about February 22, 2005, Kaumialii executed and placed into Escrow

³ A "flip" is the purchase and immediate resale of real property to a third party. A flip may take place legally when each sale is treated as an individual transaction and the first half of the flip is completed before the next sale takes place. A flip becomes illegal when both segments of the transaction are treated as a single event, and when the first half of the flip is not complete when the second half occurs.

A5402022 a *Release of Purchase Money Mortgage* in anticipation of receiving payment for the \$980,000.00 Kaumialii/Balgos *Purchase Money Mortgage*. See Exhibit 7, copy of *Release of Purchase Money Mortgage*.

80. On or about February 25, 2005 [Friday], the "Archer Group of Companies and/or assigns," – namely, Phil Archer and Dennis Blain – formed Nokaoi Development, LLC ("Nokaoi"), by registering it with Hawaii's Department of Commerce. See Exhibit 8, copy of *Articles of Organization for Limited Liability Company – Nokaoi Development, LLC*.

81. On or about March 1, 2005 [Tuesday], Todd Dorny forwarded to David Simpson a copy of a Michael Thompson-to-Brandon Dente e-mail dated February 28, 2005, which listed Thompson's "project points" for the development of Unit 2. See Exhibit 9, copy of Michael Thompson e-mail dated February 28, 2005.

82. On or about March 1, 2005, David Simpson approached Leslie's husband, Kenneth G. Dolezsar ("Ken Dolezsar"), seeking Leslie's investment in the Koamalu Plantation development project.

83. On information and belief, David Simpson knowingly, intentionally and deceitfully made the following promises and representations to Ken Dolezsar on behalf of himself and the Confederate Business Enterprise Associates:

- a. That the Koamalu Plantation development project was a very unique and tremendously profitable real estate investment opportunity that required an immediate investment or the opportunity would be offered to another investor;
- b. That the Koamalu Plantation development project involved 11 acres,

near the beach, on the Island of Kauai in Hawaii;

c. That the project was zoned to allow construction of 20 condominium units per acre – or approximately 220 condominium units plus common area club houses, swimming pools, etc.;

d. That only \$5,000,000.00 was needed to acquire the land and do the preliminary development work, because all construction costs would be totally funded with proceeds from condominium pre-sales;

e. That condominium pre-sales would start in four to six months;

f. That there was a huge demand for vacation housing in Kauai so the condominium units would sell quickly;

g. That the project would be completed and sold out in less than three years – probably in less than two years;

h. That the Koamalu Plantation development project included a seasoned contractor and developer [Michael Thompson] and his partner/associate [Todd Dorny] who had built and sold hundreds of condominiums in Kauai;

i. That Leslie would get all of her \$5,000,000.00 back, plus, a profit of \$10,000,000.00 (200%) on her investment if she was willing to invest immediately; and,

j. That Leslie's investment would be secure because she would own the real property until the condominium units were built and sold.

84. On information and belief, David Simpson, on behalf of himself and his

Confederate Business Enterprise Associates, knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Ken Dolezsar, and Leslie, the following relevant material facts:

- a. That the Confederate Business Enterprise Associates intended to use Leslie's money to acquire the property through a disguised illegal flip;
- b. That the Confederate Business Enterprise Associates intended to leverage this project through seller carry-backs of \$2,300,000.00 with purchase money mortgages;
- c. That the Confederate Business Enterprise Associates intended to profit personally at Leslie's expense from multiple transactions of Units 2 and 3;
- d. That the Confederate Business Enterprise Associates intended to dilute Leslie's investment by taking for themselves a 50% equity and profits interest, without making any meaningful or material capital contribution;
- e. That the Confederate Business Enterprise Associates intended to assume no personal liability whatsoever for any costs associated with the Koamalu Plantation development project;
- f. That the Confederate Business Enterprise Associates intended to obligate Leslie for all construction costs associated with the Koamalu Plantation development project;
- g. That Hawaii's Department of Transportation intended to take at least 3 of the 11 acres to widen the Kaumualii Highway and therefore 3 of the 11 acres

would not be available for construction of condominiums [reducing the number of units from 220 to 160];

h. That Kauai County ordinances dictate that any development of the property is subject to a 30% affordable rental housing requirement in perpetuity – meaning that 30% of the condominium units never can be sold (even as commercial income housing), but can only be rented to low-income Kauai residents;

i. That Kauai County ordinances require the 30% affordable rental housing to be integrated with the remaining 70% of the condominium units, thereby adversely affecting value and marketability of the project;

j. That the Koamalu Plantation development project has to bear the cost of building the 30% affordable rental housing but the rental housing cannot be pre-sold or sold to cover any construction costs;

k. That it would take from 24 to 36 months, if ever, to receive requisite approvals from Kauai County; and,

l. That obtaining the requisite approvals from Kauai County was "very much in doubt."

85. On information and belief, Ken Dolezsar believed the promises and representations (described in paragraph 83 herein) made by David Simpson and his Confederate Business Enterprise Associates to be reasonable and true. In reliance on their promises and representations, and not being aware of the relevant material facts (described in paragraph 84 herein) that were knowingly, intentionally and deceitfully

omitted, Ken Dolezsar was persuaded that the Koamalu Plantation development project was a "blue chip" investment opportunity for his wife Leslie.

86. On or about March 1, 2005, Ken Dolezsar repeated to Leslie the promises and representations (described in paragraph 83 herein) of David Simpson and his Confederate Business Enterprise Associates regarding the Koamalu Plantation Development Project, and encouraged Leslie to invest.

87. Leslie believed the promises and representations (described in paragraph 83 herein) of David Simpson and his Confederate Business Enterprise Associates to be reasonable and true. In reliance on their promises and representations, and not being aware of the relevant material facts (described in paragraph 84 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, Leslie agreed to invest \$5,000,000.00 for the Koamalu Plantation development project, to acquire the land and do the preliminary development work.

88. On or about March 2, 2005 [Wednesday], David Simpson received a copy of the MLS listing described in paragraph 70 herein. See Exhibit 4.

89. On or about March 3, 2005 [Thursday], David Simpson received a \$1,200,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to Landmark Realty. See Exhibit 10, copy of Check No. 1454.

90. On information and belief, on or about March 8 or 9, 2005, Koamalu (as Buyer) and ALS (as Seller) executed and placed into Escrow A54020188 a *Deposit Receipt Offer and Acceptance* or its equivalent regarding Unit 2 (identified hereafter as the

"ALS/ Koamalu-Unit 2" transaction).

91. On information and belief, on or about March 8 or 9, 2005, ALS (as Buyer) and Nokaoi (as Seller) executed and placed into Escrow A54020187 a *Deposit Receipt Offer and Acceptance* or its equivalent regarding Unit 2 (identified hereafter as the "Nokaoi/ALS-Unit 2" transaction).

92. On or about March 8 and 9, 2005, Balgos and Nokaoi (by its manager, Dennis Blain) executed and placed into Escrow A54020022 a *Condominium Deed*, a \$1,900,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on Unit 2, and, a \$400,000.00 *Promissory Note* secured by a *Purchase Money Mortgage* on Unit 3, (as required by the *Purchase Money Mortgage Addendum* described in paragraph 78 herein), in anticipation of closing on Units 2 and 3. See Exhibits 11, 12, and 13, copies of *Condominium Deed* and *Purchase Money Mortgages*.

93. On or about March 10, 2005 [Thursday], David Simpson and Todd Dorny formed He Kiakolu, LLC ("He Kiakolu"), by registering it with Hawaii's Department of Commerce. See Exhibit 14, copy of *Articles of Organization for Limited Liability Company – He Kiakolu, LLC*.

94. He Kiakolu's *Articles of Organization* list its members as Woodspring [sic], LLC, Dante [sic], LLC, Mai Ke Kula, LLC and Ka Mahina, LLC. (A correction was later filed to change Dante, LLC to Dente, LLC.) See Exhibit 14.

95. According to He Kiakolu's *Operating Agreement*, dated "effective as of the 10th day of March, 2005", its members were: Woodsprings [sic], LLC; Dente, LLC; Hanalei

Kai Holdings, LLC; and, Ka Mahina, LLC. See Exhibit 15, copy of *Operating Agreement of He Kiakolu, LLC*.

96. Plaintiffs are unsure whether Mai Ke Kula or Hanalei Kai Holdings was a member of He Kiakolu. Plaintiffs allege on information and belief that both entities were owned and controlled by Michael Thompson.

97. According to He Kiakolu's *Operating Agreement*, the allocated ownership interests of its four members were: Wood Springs - 20%; Dente LC - 14%; Hanalei Kai - 46%; and, Ka Mahina - 20%. See Exhibit 15.

98. For structuring the transaction and providing the source of acquisition funds Michael Thompson [Mai Ke Kula or Hanalei Kai] took for himself a 46% ownership in He Kiakolu and David Simpson [Wood Springs] took 20%.

99. For their efforts helping find sources of funds for the Lihue condominium development opportunity, Todd Dorny [Ka Mahina] took 20% ownership in He Kiakolu, and Brandon Dente [Dente LC] took 14%.

100. Also, on or about March 10, 2005, Todd Dorny formed Koamalu Plantation, LLC ("Koamalu"), by registering it with Hawaii's Department of Commerce. See Exhibit 16, copy of *Articles of Organization for Limited Liability Company – Koamalu Plantation, LLC*.

101. According to Koamalu's *Operating Agreement*, dated "effective as of the 10th day of March, 2005", the members and allocated ownership interests of Koamalu are: LD SQ - 50%; and, He Kiakolu - 50%. See Exhibit 17, copy of *Operating Agreement of Koamalu Plantation, LLC*.

102. Koamalu's *Operating Agreement* was executed by its members, to wit:

LD SQ by David R. Simpson, Manager

He Kiakolu by its Members:

Woodsprings [sic] by David R. Simpson, Manager

Dente LC by Brandon Dente, Manager

Hanalei Kai by Michael Thompson, Member

Ka Mahina by Todd Dorny, Member

See Exhibit 17.

103. Koamalu's *Operating Agreement* was executed by David Simpson claiming to be a manager of LD SQ nineteen (19) days before LD SQ was actually formed and registered as a Utah limited liability company. See Exhibit 18, copy of *Articles of Organization of LD SQ, LLC*.

104. According to Koamalu's *Operating Agreement*, He Kiakolu's initial contribution (or consideration for its 50% interest) was:

... [to] complete all of the activities necessary to complete all entitlements, design and construction plans and agreements, government reviews and approvals, and sales and marketing planning activities in connection with the Koamalu Plantation project. These activities shall include but no [sic] limited to the following:

1. Writing design programs;
2. Entitlements;
3. Approval of conceptual design;
4. Design of final working drawings;
5. Plan review with County of Kauai;
6. Value engineering of working drawings;
7. Preparation of bid package for site and vertical construction;
8. Final approval of package for site and vertical construction;
9. Landscape and architectural review;
10. Selection of landscape contractor;
11. Participation in sales and marketing plan;
12. Selection of Kauai real estate broker;
13. Design of sales model; and

14. Review and acceptance of State of Hawaii Real Estate Public Report.

See Exhibit 17.

105. According to Koamalu's *Operating Agreement*, LD SQ's initial contribution (consideration for its 50% interest) was to: "... find and secure **all financing for acquisition and construction costs** associated with the Koamalu Plantation project" [Emphasis added.] See Exhibit 17.

106. Leslie never agreed to be responsible for all of the land acquisition costs **plus all construction costs** associated with the Koamalu Plantation development project. She agreed only to fund \$5,000,000.00 to purchase the land and do the preliminary development work.

107. Leslie never authorized David Simpson, or any of his Confederate Business Enterprise Associates, to obligate her or LD SQ to be responsible for all construction costs associated with the Koamalu Plantation development project.

108. On information and belief, David Simpson, Nathan Simpson and Brandon Dente may have deceived their confederate associates [Michael Thompson and Todd Dorny and/or their business entities] into believing Leslie and/or LD SQ could be responsible for all construction costs associated with the Koamalu Plantation development project.

109. On information and belief, Michael Thompson and Todd Dorny may have deceived their confederate associates [David Simpson, Nathan Simpson, Brandon Dente and/or their business entities] into believing that the Koamalu Plantation development

project was a true and viable investment opportunity.

110. On or about March 11, 2005 [Friday], Todd Dorny signed and provided Title Guaranty with a "Waiver and Confirmation" referencing the ALS/ Koamalu-Unit 2 *Deposit Receipt Offer and Acceptance* identified in paragraph 90 herein. The "Waiver and Confirmation" states:

1. Buyer [Koamalu] does hereby waive all deadlines, conditions and contingencies in the above-referenced DROA with the exception of marketable title.

2. Buyer [Koamalu] confirms that he will deposit \$1,200,000.00 into escrow no later than 4:00 pm March 11, 2005 and if the same is not so deposited prior to said time, then the DROA shall be cancelled forthwith and Seller need not perform thereunder.

See Exhibit 19, copy of untitled facsimile transmittal dated 03/11/2005 and time stamped 14:17 – Title Guaranty - Princeville.

111. On or about March 11, 2005, David Simpson and/or Nathan Simpson exchanged the \$1,200,000.00 personal check identified in paragraph 89 herein, for an "Official Check" and deposited the same into Landmark's Trust Account, Central Bank account number 41123431. See Exhibit 20, copy of Official Check.

112. On or about March 11, 2005, David Simpson and Nathan Simpson received a \$600,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to Landmark Realty. See Exhibit 21, copy of Check No. 1127.

113. Also, on or about March 11, 2005, David Simpson received a \$100,000.00 check from Ken Dolezsar payable to David Simpson for a "management fee" for his involvement with LD SQ and/or Koamalu Plantation. Leslie was never informed about and

did not authorize David Simpson or any of his Confederate Business Enterprise Associates to be paid management fees. See Exhibit 22, copy of Check No. 1139.

114. On information and belief, the \$600,000.00 and \$100,000.00 described in paragraphs 112 and 113 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson, Nathan Simpson and/or their Confederate Business Enterprise Associates, ostensibly for the Koamalu Plantation development project, to at least \$1,900,000.00.

115. On or about March 11, 2005, Nathan Simpson executed a Central Bank *Standard Wire Transfer Request Form* to transfer Leslie's \$1,200,000.00 to Bank of Hawaii Lihue Branch for the benefit of Title Guaranty – Escrow A54020187 [Nokaoi/ALS-Unit 2]. See Exhibit 23, copy of *Standard Wire Transfer Request Form* dated 03/11/05.

116. On or about March 11, 2005, Nathan Simpson sent an e-mail to Lisa Wilson of Title Guaranty regarding the \$1,200,000.00 he had wired for Escrow A54020187 (Nokaoi/ALS-Unit 2). Nathan Simpson instructed Ms. Wilson to not release any funds without his or David Simpson's approval. See Exhibit 24, copy of Nathan Simpson e-mail chain - beginning March 11, 2005.

117. On or about March 14, 2005 [Monday], Lisa Wilson of Title Guaranty responded by e-mail to Nathan Simpson:

... This transaction was more complex then [sic] I originally thought. Since there are two contracts [Nokaoi/ALS-Unit 2 and ALS/Koamalu-Unit-2] I had to open two transactions. A54020187 is for ALS [as Buyer] and A54020188 is for the Koamalu [as Buyer] Plantation purchase. Attached is the contract for the purchase [by] Koamalu Plantation for your review. Once

accepted please execute and fax the early disbursement letter to my office at 808-826-5310.

In other words, Title Guaranty acknowledged that the \$1,200,000.00 wired by Nathan Simpson for the benefit of Escrow A54020187 really belonged to Escrow A54020188. See Exhibit 24.

118. On or about March 15, 2005 [Tuesday], David Simpson signed and delivered to Lisa Wilson at Title Guaranty *Disbursement Instructions Prior to Recording*. The Instructions say in part:

Escrow No.: A54020188
Seller: ALS PROPERTIES, LLC
Buyer: KOAMALU PLANTATION, LLC
Property: 4534 UAH RD UNIT 2

The undersigned hereby agree and instruct Title Guaranty Escrow Services, Inc. to Transfer the sum of \$1,000,000.00 to escrow A5402022 [sic] [should be A54020022 – Balgos/Nokaoi transaction] / Nokaoi Development prior to closing (recordation).

By authorizing this release of Leslie's funds to payoff Balgos' *Promissory Note*, David Simpson and his Confederate Business Enterprise Associates breached escrow and breached their fiduciary duties to Leslie. See Exhibit 25, copy of *Disbursement Instructions Prior to Recording* -dated 3-15-05.

119. On information and belief, David Simpson, without Leslie's knowledge or permission, instructed Title Guaranty to use Leslie's \$1,000,000.00 – prior to any closing in Leslie's name, for her benefit, or enforceable by her – to enable Nokaoi to satisfy Balgos' \$980,000.00 *Promissory Note* (described in paragraph 69 herein) due Kaumialii and

thereby obtain Kaumialii's *Release of Purchase Money Mortgage* (described in paragraph 79 herein). The use of Leslie's \$1,000,000.00 to payoff Balgos' \$980,000.00 *Promissory Note* released both Unit 2 and Unit 3 to Balgos.

120. On or about March 21, 2005 [Monday], Title Guaranty recorded the following documents with Hawaii's Bureau of Conveyances:

- a. The Kaumualii/Balgos *Release of Purchase Money Mortgage* releasing Units 2 and 3 to Balgos – as entry 2005-055514;
- b. The Balgos/Nokaoi *Condominium Deed* conveying Units 2 and 3 from Balgos to Nokaoi – as entry 2005-055515;
- c. The \$1,900,000.00 Balgos/Nokaoi-Unit 2 *Purchase Money Mortgage* – as entry 2005-055516; and,
- d. The \$400,000.00 Balgos/Nokaoi-Unit 3 *Purchase Money Mortgage* – as entry 2005-055517.

See Exhibits 7, 11, 12, and 13.

121. On or about March 29, 2005 [Tuesday], David Simpson and Ken Dolezsar formed Plaintiff LD SQ by registering it with Utah's Department of Commerce nineteen days after LD SQ purportedly became a fifty percent owner of Koamalu. LD SQ's *Articles of Organization* identified David Simpson and Ken Dolezsar as the initial managers, and, David Simpson as the registered agent. LD SQ's *Articles of Organization* also designated its registered office and the office of its registered agent as "407 North Main Street, Springville, Utah 84663" – the common address used by David Simpson's businesses.

See Exhibit 18.

122. The fact that Ken Dolezsar allowed David Simpson to be an organizer, manager and registered agent of LD SQ, as well as the fact that Dolezsar allowed Simpson's business office to be LD SQ's registered office, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson. See Exhibit 18.

123. On or about April 8 and 20, 2005, Nokaoi (by its managers, Philip David Archer and Dennis Thomas Blain) and ALS (by its manager, Todd Dorny) executed and placed into Escrow A54020187: an *Apartment Deed* conveying Unit 2 from Nokaoi to ALS; an *Assignment and Assumption of Purchase Money Mortgage* whereby Nokaoi assigned and ALS assumed the \$1,900,000.00 Balgos/Nokaoi-Unit 2 Promissory Note; and, the \$1,900,000.00 Balgos/Nokaoi-Unit 2 *Purchase Money Mortgage*. See Exhibits 26 and 27, copies of *Apartment Deed* and *Assignment and Assumption of Purchase Money Mortgage*.

124. According to Public Record Data, ALS paid Nokaoi \$2,900,000.00 for Unit 2. On information and belief, the \$2,900,000.00 purchase price consisted of \$1,000,000.00 of Leslie's \$1,200,000.00 plus the assumption of Nokaoi's \$1,900,000.00 *Promissory Note* to Balgos.

125. On or about April 20, 2005 [Wednesday], ALS (by its manager, Todd Dorny) and Koamalu (by its manager, also Todd Dorny) executed and placed into Escrow A54020188 an *Apartment Deed* conveying Unit 2 from ALS to Koamalu, together with, a *Second Assignment and Assumption of Purchase Money Mortgage* secured by Unit 2.

See Exhibits 28 and 29, copies of *Apartment Deed* and *Second Assignment and Assumption of Purchase Money Mortgage*.

126. Plaintiffs are not yet aware of the details of the transaction that conveyed Unit 2 from ALS to Koamalu. But, according to Public Record Data, Koamalu paid ALS \$3,100,000.00 for Unit 2. On information and belief, the \$3,100,000.00 purchase price consisted of Leslie's \$1,200,000.00, (including the \$1,000,000.00 described in paragraphs 115 and 116 herein – released in breach of escrow as described in paragraph 118 herein), plus Koamalu's assumption of the \$1,900,000.00 Balgos/Nokaioi-Unit 2 *Promissory Note*.

127. The \$200,000.00 difference between the \$2,900,000.00 sales/purchase price of the Nokaioi/ALS-Unit 2 transaction, and the \$3,100,000.00 sales/purchase price of the ALS/Koamalu-Unit 2 transaction, was \$200,000.00 of Leslie's money skimmed by Michael Thompson and/or his Confederate Business Enterprise Associates in the two-step transaction.

128. On or about April 25, 2005 [Monday], the Nokaioi/ALS-Unit 2 *Apartment Deed* and the *Assignment and Assumption of [Balgos/Nokaioi-Unit 2] Purchase Money Mortgage*, were recorded by Title Guaranty, with Hawaii's Bureau of Conveyances as entries 2005-081010 and 2005-081011. See Exhibits 26 and 27.

129. Also, on or about April 25, 2005, the ALS/Koamalu-Unit 2 *Apartment Deed* and the *Second Assignment and Assumption of [Balgos/Nokaioi-Unit 2] Purchase Money Mortgage*, were recorded by Title Guaranty, with Hawaii's Bureau of Conveyances as entries 2005-081012 and 2005-081013. See Exhibits 28 and 29.

130. On or about May 26, 2005 [Tuesday], Balgos filed a civil law suit against Nokaoi and ALS – Civil No. 05-1-0073, Hawaii Fifth Circuit Court.

131. The Balgos Complaint alleged, *inter alia*, that:

4. On or about March 21, 2005, for value received, Defendant Nokaoi, as maker, made, executed and delivered to Plaintiff [Balgos] a promissory note ("Note") dated March 9, 2005, for the principal sum of One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00). ...

5. As security for repayment of the Note and the observance of the obligations of Nokaoi under the Note, Nokaoi granted, executed and delivered to Plaintiff a mortgage ("Mortgage") dated March 9, 2005, covering and granting Plaintiff a mortgage lien and security interest in and to the property described therein, namely, TMK: 4/3-8-005-222, CPR No. 2, Apt. No. 2, Koamalu Plantation, District of Puna, Lihue, Island and County of Kauai, State of Hawaii ("subject property"). ...

6. Defendant Nokaoi defaulted in the observance and performance of the terms, covenants and conditions set forth in the Note and Mortgage in that Defendant Nokaoi failed and neglected to make the payment due under the Note at the times and in the manner provided.

7. On information and belief, Defendant Nokaoi sold, conveyed, or transferred an interest in the subject property to Defendant ALS. The Mortgage provided that all indebtedness secured by the Mortgage shall at once become due and payable at the option of Balgos if the property is sold, conveyed or transferred without the written consent of Balgos.

9[sic]. Due to the default of Nokaoi to make payments as called for in the Note and Mortgage and due to its transfer of interest without written consent of Balgos, the entire indebtedness under the Note and Mortgage has been accelerated and is immediately due and payable. ...

See Exhibit 30, copy of *Complaint*.

132. Neither Michael Thompson, Todd Dorny, Brandon Dente, David Simpson nor Nathan Simpson ever informed Leslie of the Balgos law suit.

133. On or about May 31, 2005 [Tuesday], Balgos assigned her interest in the \$1,900,000.00 Balgos/Nokaoi-Unit 2 *Promissory Note and Purchase Money Mortgage* to POPS Investment Co., LLC ("POPS"), a Utah limited liability company. See Exhibit 31, copy of *Assignment of Purchase Money Mortgage*.

134. Also, on or about May 31, 2005, Balgos assigned her interest in the \$400,000.00 Balgos/Nokaoi-Unit 3 *Promissory Note and Purchase Money Mortgage* (described in paragraph 92 herein) to POPS. See Exhibit 13; see also Exhibit 32, copy of *Assignment of Purchase Money Mortgage*.

135. On or about June 2, 2005 [Thursday], David and Nathan Simpson requested and received a \$3,100,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to LD SQ. The check memo stated "Hawaii parcel." See Exhibit 33, copy of Check No. 1273.

136. On information and belief, the \$3,100,000.00 described in paragraph 135 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson, Nathan Simpson and/or their Confederate Business Enterprise Associates, ostensibly for the Koamalu Plantation development project, to at least \$5,000,000.00.

137. On or about June 6, 2005 [Monday], \$3,000,000.00 was deposited into LD SQ's savings account at Central Bank. On information and belief the \$3,000,000.00 deposit came from the \$3,100,000.00 check.

138. On or about June 28 and July 1, 2005, Nokaoi (by its managers, Dennis Thomas Blain and Philip David Archer) and ALS (by its manager, Todd Dorny) executed

and placed into Escrow A54030171 an *Apartment Deed* conveying Unit 3 from Nokaoi to ALS, together with, a "Second" \$400,000.00 *Purchase Money Mortgage* from ALS to Nokaoi secured by Unit 3. Plaintiffs are unsure why ALS gave Nokaoi a "Second" \$400,000.00 *Purchase Money Mortgage* rather than assume the \$400,000.00 *Purchase Money Mortgage* Balgos assigned to POPS. See Exhibits 34 and 35, copies of *Apartment Deed* and *Purchase Money Mortgage*.

139. According to public records, ALS paid \$2,800,000.00 for Unit 3. The Nokaoi/ALS-Unit 3 settlement documents credit ALS with payment of \$823,612.14 – an initial deposit of \$200,000.00, plus "exchange funds from [Escrow No.] A54030172" of \$623,612.14. The Nokaoi/ALS-Unit 3 settlement documents also show the remainder due from ALS at the closing was \$1,983,243.93. Therefore, on information and belief, the total paid by ALS to Nokaoi for Unit 3, including closing costs, was \$2,806,856.07. See Exhibit 36, copy of Settlement Documents.

140. On or about July 5, 2005 [Tuesday], Michael Thompson sent an e-mail to Nathan Simpson as part of an e-mail chain from Winona Garcia of Title Guaranty regarding Escrow A54030171, which says in part:

The amount to be transferred to Title Guaranty of Hawaii is \$1,983,243.93. You can find the wiring instructions on Page 3 of the closing statement. The balance of funds, \$823,612.14 can be wired/deposited into the following account:

Washington Mutual Bank
West Jordan Financial Center
1820 West 900 South
West Jordan, UT 84088
ABA Number: 123271978

Account Name: Resourese Holding Trust
PO Box 477
Koloa, HI 96756
Account Number: 4683019082

On information and belief, Resourese [sic] Holding Trust is controlled by, for the benefit of, and/or is the alter ego of Michael Thompson. See Exhibit 37, copy of Garcia e-mail chain.

141. On or about July 7, 2005 [Thursday], \$822,692.99 was paid on behalf of Koamalu from the LD SQ savings account for "Work in Process - Land Koamalu." On information and belief the transaction was initiated and carried out by David Simpson and/or Nathan Simpson.

142. On information and belief, one or more of the Confederate Business Enterprise Associates skimmed for themselves, at least \$822,692.99 of Leslie's money in the ALS/Koamalu-Unit 3 transaction.

143. Also, on or about July 7, 2005, \$1,984,193.08 was paid on behalf of Koamalu from the LD SQ savings account for "Work in Process - Land Koamalu." On information and belief the transaction was initiated and carried out by David Simpson and/or Nathan Simpson.

144. The amounts paid from LD SQ's savings account on July 7, 2005 for land totaled \$2,806,886.07. The amount paid by ALS on July 8, 2005 at the closing for Unit 3 was only \$30.00 less than the amount paid out of LD SQ by David Simpson and/or Nathan Simpson on July 7, 2005 for "Work in Process."

145. On or about July 8, 2005 [Friday], the Nokaoi/ALS-Unit 3 *Apartment Deed*

and the \$400,000.00 Nokaoi/ALS-Unit 3 *Purchase Money Mortgage*, were recorded by Title Guaranty, with Hawaii's Bureau of Conveyances as entries 2005-135452 and 2005-135453. See Exhibits 34 and 35.

146. On or about July 8, 2005, Koamalu issued a \$1,800,000.00 *Promissory Note* to LD SQ. The *Promissory Note* was executed by Koamalu's managers David Simpson and Todd Dorny, bears no interest, and, is due only on the sale of the property. The *Promissory Note* purports to be secured by a *Mortgage* on Unit 2 – however no *Mortgage* was issued until October 19, 2005, (more than 3½ months after the issuance of the *Promissory Note*), and then it was not recorded until November 7, 2005. See Exhibits 38 and 39, copies of *Promissory Note* and *Mortgage*.

147. Also, on or about July 8, 2005, Koamalu issued a \$2,800,000.00 *Promissory Note* to LD SQ. The *Promissory Note* was executed by Koamalu's managers David Simpson and Todd Dorny; bears no interest; and, is due only on the sale of the property. The *Promissory Note* purports to be secured by a *Mortgage* on Unit 3 – however no *Mortgage* was issued until October 19, 2005, (more than 3½ months after the issuance of the *Promissory Note*), and then it was not recorded until November 7, 2005. See Exhibits 40 and 41, copies of *Promissory Note* and *Mortgage*.

148. On or about July 18, 2005 [Monday], Balgos/POPS filed an Amended Complaint and joined Koamalu as a defendant in that action, together with Nokaoi and ALS.

149. On or about August 29, 2005 [Monday], POPS released the \$400,000.00

Purchase Money Mortgage (described in paragraphs 92 and 134 herein) which encumbered Unit 3. See Exhibit 42, copy of *Release of Mortgage*; see also Exhibits 13 and 32.

150. On or about September 8, 2005 [Thursday], David and/or Nathan Simpson, acting on behalf of ALS, sent POPS a \$54,809.75 check, drawn on LD SQ's checking account, in an attempt to bring current the payments due on the Balgos/Nokaoi-Unit 2 \$1,900,000.00 *Promissory Note*, to settle the Balgos-POPS litigation. POPS rejected and returned the check, insisting on full payment of the *Promissory Note*. See Exhibit 43, copy of Check No. 1004.

151. On or about September 19, 2005 [Monday], ALS (by its manager, Todd Dorny) executed and placed into escrow a *Quit-Claim Deed* (rather than a condominium or warranty deed), quit-claiming ALS's interest in Unit 3 to Koamalu. According to Public Record Data, Koamalu paid ALS just \$950,000.00 for Unit 3. See Exhibit 44, copy of *Quit-Claim Deed*.

152. On or about October 10, 2005 [Monday], the \$400,000.00 Nokaoi/ALS-Unit 3 *Purchase Money Mortgage* (described in paragraph 138 herein) was assigned by Nokaoi to Philip Archer, by instrument dated October 10, 2005, recorded October 26, 2005 as entry 2005-217992. See Exhibit 45, copy of *Release of Mortgage*; see also Exhibit 35.

153. On or about October 19, 2005 [Wednesday], Koamalu (as Mortgagor) issued to LD SQ (as Mortgagee) a \$1,800,000.00 *Mortgage* and a \$2,800,000.00 *Mortgage* to secure the *Promissory Notes* (described in paragraphs 146 and 147 herein) issued July

8, 2005. The *Mortgages* were executed by Koamalu's managers David Simpson and Todd Dorny and are secured by Units 2 and 3 respectively. See Exhibits 39 and 41.

154. On or about November 7, 2005 [Monday], the ALS/Koamalu-Unit 3 *Quitclaim Deed*, quit-claiming ALS's interest in Unit 3 to Koamalu, was recorded by Title Guaranty, with Hawaii's Bureau of Conveyances as entry 2005-226604. See Exhibit 44.

155. Also, on or about November 7, 2005, the *Mortgage* on Unit 2 securing Koamalu's \$1,800,000.00 *Promissory Note* to LD SQ, together with the *Mortgage* on Unit 3 securing Koamalu's \$2,800,000.00 *Promissory Note* to LD SQ, were recorded by Title Guaranty, with Hawaii's Bureau of Conveyances as entries 2005-226605 and 2005-226606. See Exhibits 39 and 41.

156. On or about November 10, 2005 [Thursday], David Simpson transferred \$1,574,418.79 from the LD SQ checking account to POPS. On information and belief, David Simpson arranged the transfer of the funds as part payment to POPS to settle the litigation regarding the non-payment of the Balgos/Nokaoui-Unit 2 \$1,900,000.00 *Promissory Note* to Balgos, which was later assigned to POPS.

157. Also, on or about November 10, 2005, a loan from Larry Nelson in the amount of \$400,000.00 appeared on the books of LD SQ. Plaintiffs are unable to find any record showing a deposit of \$400,000.00 into any account owned by LD SQ at the time of the loan from Larry Nelson.

158. On information and belief, David Simpson and Nathan Simpson, without authorization from Leslie, caused LD SQ to borrow \$400,000.00 from Larry Nelson, then

added that \$400,000.00 to the \$1,574,418.79 (described in paragraph 156 herein) and used the \$1,974,418.79 to settle the Balgos-POPS [Balgos/Nokaoi-Unit 2 \$1,900,000.00 *Promissory Note*] litigation.

159. On information and belief, on or about January 18, 2007 [Thursday], David Simpson and/or Nathan Simpson caused The Preserve to issue two cashier's checks to LD SQ in the amount of \$200,000.00 each. Ostensibly this was to repay the \$400,000.00 LD SQ borrowed from Larry Nelson. There is no record of either of the two \$200,000.00 cashier's checks being deposited into LD SQ's accounts. On information and belief, issuance and taking of the two \$200,000.00 checks constitutes a wrongful taking by David Simpson and/or Nathan Simpson.

160. On information and belief, the \$1,574,418.79 described in paragraph 156 herein, plus the \$400,000.00 described in paragraph 159 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson, Nathan Simpson and/or their Confederate Business Enterprise Associates, ostensibly for the Koamalu Plantation development project, to at least \$6,974,418.79.

161. On or about November 15, 2005 [Tuesday], Koamalu (as Maker) issued to David Simpson (as Holder) a \$1,900,000.00 *Promissory Note*. The *Promissory Note* was executed by Koamalu's managers, David Simpson and Todd Dorny, it bears no interest, and it is due only on the sale of the property. The *Promissory Note* is secured by a *Mortgage* on Unit 2 which was also executed by Koamalu's managers, David Simpson and Todd Dorny. The *Mortgage* was recorded with Hawaii's Bureau of Conveyances on

November 30, 2005 as entry 2005-242930. See Exhibits 46 and 47, copies of *Promissory Note and Mortgage*.

162. On information and belief, issuance of the \$1,900,000.00 *Promissory Note and Mortgage* to David Simpson constitutes a wrongful taking. On information and belief, David Simpson did not invest \$1,900,000.00 of his own funds for the benefit of Koamalu.

163. On or about December 23, 2005 [Friday], on information and belief, Karey L. Thompson filed a *Complaint for Divorce* against Michael K. Thompson in Hawaii's Fifth Circuit Family Court – Case No. 05-1-0744.

164. On or about March 20, 2006 [Monday], the \$400,000.00 Nokaoi/ALS-Unit 3 *Purchase Money Mortgage* (described in paragraphs 138 and 152 herein) was subsequently assigned by Philip Archer to Gary Cia and David Medina, by *Assignment of Note and Mortgage* dated March 20, 2006, and recorded March 30, 2006 as entry 2006-060164. See Exhibit 45.

165. On or about July 12, 2006 [Wednesday] – sixteen months after Leslie was first deceived and defrauded into investing her funds into Michael Thompson's Koamalu Plantation development scheme – Thompson executed and caused to be filed in Hawaii's Fifth Circuit Family Court a document entitled *Asset and Debt Statement of Michael Thompson* in which he declared, under penalty of perjury, "to the best of [his] knowledge and belief [to be] true, correct and complete," the following statement, *inter alia*:

Koamalu Plantation, LLC
Land Value \$6,300,000.00

This project is currently preparing for submittal to the County of Kauai for a

Class IV zoning application. There are two other applications that need to be made to the County Council amending the zoning ordinance for the land. At this point the land is not entitled to the original R-10 [sic] zoning without an amended report from the County Council and the Planning department of the County of Kauai. There is also a 30% affordable housing requirement for the project. Total number of planned units is at 220. With 66 of units being in an affordable rental market. The project will not make any money on those 66 units. There is currently about \$1,500,000 that has been spent on interest, architectural, traffic, and site development fees. Mai Ke Kula, LLC has no formal agreement with this project. There is a lien on the property for \$6,300,000. There is an understanding that Mai Ke Kula, LLC will receive 23% of the project development profits. To date, the term "profits" has not been defined. There is no operating agreement for Koamalu Plantation, LLC or He Kiakolu, LLC. It is believed that the project is not worth more than the current capital costs (\$7,800,000) without receiving the a [sic] Class IV building permit, a project development use permit, an approved amended zoning classification from the Kauai County Council, and an amended agreement for the affordable housing for the Kauai Housing Authority. Koamalu Plantation, LLC has not yet applied for such permits. It is estimated that the formal application will be submitted to the County of Kauai within the next 60 days. It will take from 8 to 18 months to receive approvals from the County of Kauai. There are no guarantees that the project will be approved for development by the County of Kauai. An appraisal has been ordered. [Emphasis added.]

See Exhibit 48, copy of *Asset and Debt Statement of Michael Thompson* - Summary of Assets, June 19, 2006 - Koamalu Plantation, LLC.

166. In his *Asset and Debt Statement*, dated June 19, 2006, Michael Thompson made false claims including:

a. "There is no operating agreement for Koamalu Plantation, LLC or He Kiakolu, LLC." – In truth, Michael Thompson signed the *Operating Agreements* for both He Kiakolu and Koamalu on March 10, 2005.

b. "To date, the term "profits" has not been defined." – In truth, "Profits"

is defined in paragraph 1.2.14 of both *Operating Agreements*.

See Exhibits 48, 15 and 17.

167. In his *Asset and Debt Statement*, Michael Thompson admitted several relevant material facts that were never disclosed to Leslie either before or after her initial investment into Thompson's Koamalu Plantation development scheme, to wit:

a. "This project is currently preparing for submittal to the County of Kauai for a Class IV zoning application. There are two other applications that need to be made to the County Council amending the zoning ordinance for the land. At this point the land is not entitled to the original R-10 [*sic*] zoning without an amended report from the County Council and the Planning Department of the County of Kauai."

b. "There is also a 30% affordable housing requirement for the project. Total number of planned units is at 220. With 66 of units being in an affordable rental market. The project will not make any money on those 66 units."

c. "It is believed that the project is not worth more than the current capital costs (\$7,800,000) without receiving the a [*sic*] Class IV building permit, a project development use permit, an approved amended zoning classification from the Kauai County Council, and an amended agreement for the affordable housing for the Kauai Housing Authority."

d. "It is estimated that the formal application will be submitted to the County of Kauai within the next 60 days. It will take from 8 to 18 months to receive

approvals from the County of Kauai. There are no guarantees that the project will be approved for development by the County of Kauai."

See Exhibit 48.

168. On or about October 11, 2006 [Wednesday], nineteen months after Leslie was first deceived and defrauded into investing her funds into Michael Thompson's Koamalu Plantation development scheme, attorney Grant M. Sumsion, serving as legal counsel for Koamalu, sent a letter to Thompson's wife Re: Michael Thompson's Interest in Koamalu Plantation:

Dear Ms. Thompson:

I am the attorney for Koamalu Plantation. I have been asked to address a letter to you outlining the current value of Michael Thompson's interest in the Koamalu Plantation project. As you may be aware, that project is presently in the process of obtaining zoning approvals necessary to develop to its fullest potential. Obtaining that zoning is still very much in doubt.

Presently, there are notes payable on the project for \$7.3 million. If the project were sold today in its present condition it is doubtful that it could be sold for enough to cover that debt. When the project is ultimately completed, Mr. Thompson's [sic] will be entitled to 23% of the total profit, if any. If the project is sold for less than the current debt, plus ongoing operating expenses, Mr. Thompson will not receive any payment for his interest in the Koamalu Plantation.

To date, Mr. Thompson has been paid \$75,000 as a management fee for his services in connection with the Koamalu Project. He is not being paid, and is not entitled to be paid, any additional salary or other compensation for his services. Mr. Thompson has also received a personal loan in the amount of \$100,000.00 from David Simpson, another of the partners in the Koamalu Plantation project.

See Exhibit 49, copy of Grant M. Sumsion Letter - dated October 11, 2006.

169. In his letter, attorney Grant Sumsion admitted that "[o]btaining that zoning is

still very much in doubt." Doubt that the requisite zoning might not be obtained was never discussed with nor disclosed to Leslie, by any member of the Confederate Business Enterprise Associates, or, even by Mr. Sumsion, whose legal fees were being paid by Leslie.

170. On or about December 11, 2006 [Monday], the \$400,000.00 Nokaoi/ALS-Unit 3 *Purchase Money Mortgage* (described in paragraphs 138, 152 and 164 herein) was released by Gary Cia and David Medina by *Release of Mortgage* dated December 11, 2006, recorded January 24, 2007 as entry 2007-013314. See Exhibit 45.

171. On or about January 30, 2007 [Tuesday], Koamalu (as Mortgagor) issued to David Simpson (as Mortgagee) a \$600,000.00 *Mortgage* on both Units 2 and 3, purportedly to secure a \$600,000.00 *Promissory Note* of the same date. The *Mortgage* was executed by David Simpson as manager of Koamalu. The *Mortgage* was recorded with Hawaii's Bureau of Conveyances on February 8, 2007 as entry 2007-024349. See Exhibit 50, copy of *Mortgage*.

172. On information and belief, issuance of the \$600,000.00 *Promissory Note* and *Mortgage* to David Simpson constitutes a wrongful taking. On information and belief, David Simpson did not invest \$600,000.00 of his own funds for the benefit of Koamalu.

173. Between April 4, 2005 and March 6, 2008, David Simpson and/or Nathan Simpson, without Leslie's approval and in breach of their duties to LD SQ and Leslie, paid approximately \$2,515,964.71 from LD SQ's checking account ostensibly to or for the benefit of Koamalu.

174. Between April 21, 2005 and April 26, 2005, David Simpson and/or Nathan Simpson, without Leslie's approval and in breach of their duties to LD SQ and Leslie, paid approximately \$172,182.00 from LD SQ's savings account to Wood Springs.

175. Between May 5, 2005 and July 15, 2005, David Simpson and/or Nathan Simpson, without Leslie's approval and in breach of their fiduciary duties to LD SQ and Leslie, paid approximately \$733,779.51 from LD SQ's savings account to Sunny Ridge.

176. On or about June 14, 2005 [Wednesday], David Simpson, without the Leslie's approval and in breach of his duties to LD SQ and Leslie, paid himself \$15,000.00 from LD SQ's savings account.

177. Between August 24, 2005 and October 14, 2005, David Simpson and/or Nathan Simpson, without Leslie's approval and in breach of their duties to LD SQ and Leslie, paid approximately \$735,000.00 from LD SQ's checking account to Sunny Ridge.

178. Between August 30, 2005 and November 22, 2005, David Simpson and/or Nathan Simpson, without Leslie's approval and in breach of his duties to LD SQ and Leslie, paid approximately \$2,000,894.65 from LD SQ's checking account to Wood Springs.

179. David Simpson and Nathan Simpson repeatedly breached their fiduciary duties to LD SQ and to Leslie by treating LD SQ's bank accounts as their personal fun, spending accounts. They helped themselves to Leslie's funds by charging personal travel for themselves, their family and friends, and other personal expenses on their credit cards, and then paid the charges from Leslie's funds in the LD SQ accounts. Leslie never authorized David Simpson and Nathan Simpson to incur such expenses nor the payment

of such expenses. The facts stated in paragraphs 180 through 198 herein are indicative but certainly not exhaustive of Simpsons' spending abuses as fiduciaries of Leslie's invested funds.

180. On or about August 9, 2005 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1001 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$5,007.80. The check stub notes "American Express; 8/9/05; \$5,007.80; Acct # 3712-739377-01005." The check notes: "8/9/05; American Express; \$5007.80; [signed] David R. Simpson." The credit card statement shows the following charges on a card issued to David R. Simpson:

6/29/05	\$1,753.41	United Airlines; Passenger Name: <i>Nathan Ray Simpson</i> ; Salt Lake City, UT to San Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 07/06
6/29/05	\$1,753.41	United Airlines; Passenger Name: <i>David R. Simpson</i> ; Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 07/06
6/29/05	\$10.00	Expedia SVC/DLVRY
7/6/05	\$75.00	Keoki's Paradise; Koloa, HI
7/7/05	\$50.00	Brenneckes Beach Brokoloa
7/8/05	\$50.00	Dukes Canoe Club
7/8/05	\$219.46	Avis Rent-A-Car; Renter name: <i>David R. Simpson</i> ; 05/06/07 to 05/08/07
7/9/05	\$24.00	Ampco System Parking; Salt Lake Cit, UT
7/16/05	\$918.00	Hotwire; Hotwire online travel

The credit card statement shows the following charges on a card issued to Nathan R.

Simpson:

6/23/05	\$40.36	Charlies C Store; Springville, UT
6/24/05	\$1.57	Chevron; Orem, UT
6/24/05	\$4.23	Chevron; Orem, UT
6/30/05	\$92.42	Sportsman's Warehouse; Provo, UT

See Exhibit 51, copies of Check, Check Stub and Credit Card Statement.

181. On or about August 28, 2005 [Sunday], David Simpson, as manager, caused LD SQ to issue check number 1002 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$799.90. The check stub notes: "American Express; 8/28/2005; Travel to Kauaii AMEX; Accnt # 3712-739377-01055." The check notes: "8/28/2005; American Express; \$799.90; Accnt # 3712-739377-01005; [signed] Nathan R. Simpson." The credit card statement shows the following charges for the card held by David R. Simpson:

8/18/05	\$55.14	Periodic Finance Charge
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The credit card statement shows the following charges for the card held by Nathan R. Simpson:

8/1/05	\$37.79	Kaumualii Hwy; Lihue, HI
8/3/05	\$15.49	Kaumualii Hwy; Lihue, HI
8/4/05	\$579.48	Dollar Rent A Car; Kauai Airport, HI
8/4/05	\$42.00	Ampco System Parking; Salt Lake City, UT
8/10/05	\$70.00	Utah Lake State Park

See Exhibit 52, copies of Check, Check Stub and Credit Card Statement.

182. On or about November 1, 2005 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1015 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005 in the amount of \$1,222.40. The check stub notes: "American Express; 11/1/2005; Travel back and forth to Kauaii; Acct # 3712-739377-01055." The check notes: "11/1/2005; American Express; \$1,222.40; Acct # 3712-739377-01005; [signed] Nathan R. Simpson." The credit card statement shows the following charges for the card held by David R. Simpson:

10/5/05	\$606.20	United Airlines; Passenger name: <i>David R. Simpson</i> ; Salt Lake City, UT to Los Angeles, CA to Kahului, HI to Honolulu, HI to Lihue, HI; date of departure: 10/16
10/5/05	\$606.20	United Airlines; Passenger name: <i>Brandon Dente</i> ; Salt Lake City, UT to Los Angeles, CA to Kahului, HI to Honolulu, HI to Lihue, HI; date of departure: 10/16
10/5/05	\$10.00	Expedia SVC/Delivery

See Exhibit 53, copies of Check, Check Stub and Credit Card Statement.

183. On or about November 29, 2005 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1012 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$2,130.33. The check register notes: "11/29/2005; 1012; \$2,130.33; American Express; Travel; travel 10/19/05." The check notes: "11/29/2005; American Express; \$2,130.33; travel 10/19/05; [signed] David R. Simpson." The credit card statement shows the following charges for the card held by David R. Simpson:

10/19/05	\$283.41	Avis Rent-A-Car; Lihue, HI; 10/16/05 to 10/19/05; renter name: <i>David R. Simpson</i>
11/3/05	\$733.80	United Airlines; Passenger name: <i>Barbara Peterson</i> ; Salt Lake City, UT to San Francisco, Ca to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 11/13
11/3/05	\$733.80	United Airlines; Passenger name: <i>David R. Simpson</i> ; Salt Lake City, UT to San Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 11/13
11/3/05	\$10.00	Expedia SVC/DLVRY
11/16/05	\$369.32	Avis Rent-A-Car; Lihue, HI; 11/13/05 to 11/16/05; renter name: <i>David R. Simpson</i>

See Exhibit 54, copies of Check and Credit Card Statement.

184. On or about March 13, 2006 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1039 to Sears Credit Cards to pay a Sears Gold MasterCard account, account number 5121-0718-7141-2460, in the amount of \$3,547.87. On information and belief the Sears Gold MasterCard account was in the name of David Simpson and/or Nathan Simpson. The check stub notes: "Travel/Paying Sears Credit Card; 3/13/2006; Acct # 5121-0718-7141-2460." The check notes: "3/13/2006; Sears Credit Cards; \$3,547.87; Acct # 5121-0718-7141-2460; [signed] David R. Simpson." The credit card statement shows the following charges:

01-25	\$42.10	Walkers
01-26	\$60.00	Loco Lizard Cantina; Park City, UT
01-30	\$30.00	Art City Trolley; Springville, UT
01-30	\$26.55	Tricked Out Accessories; Orem UT

02-01	\$50.00	Art City Trolley; Springville, UT
02-01	\$17.45	Allen Drive In Cleaner; Springville, UT
02-02	\$13.95	Stagecoach Depot; Glendale, NV
02-02	\$70.49	Applebee's; Yuma, AZ
02-02	\$50.96	ExxonMobile; Blythe, CA
02-02	\$69.16	Glendale Sinclair; Glendale, NV
02-04	\$61.92	Exxonmobile; Quarts, AZ
02-04	\$187.22	London Bridge Resort; Lake Havasu, AZ
02-05	\$70.34	Walker; Springville, UT
02-05	\$67.07	Glendale Sinclair; Glendale, AZ
02-09	\$63.74	Zumiez; Orem, UT
02-11	\$70.72	Flying J; Payson, UT
02-13	\$17.45	Allen Drive In Cleaner; Springville, UT
02-16	\$5.00	Expedia Service Fees
02-15	\$1,817.91	United Airlines
02-17	\$64.01	Texaco; Beaver, UT
02-18	\$71.17	Texaco; Salina, UT
02-20	\$65.98	Chevron; Fairview, UT
02-22	\$100.00	The Beach House Restr; Koloa, HI
02-23	\$129.10	Hawaiian Airlines
02-23	\$104.80	Hawaiian Airlines
02-23	\$25.00	Hawaiian Airlines
02-24	\$28.18	Shell Oil, Lihue; HI
02-23	\$83.80	Aloha Airlines
02-23	\$83.80	Aloha Airlines

See Exhibit 55, copies of Check, Check Stub and Credit Card Statement.

185. On or about March 21, 2006 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1042 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3715-317310-92008, in the amount of \$40.00. The check stub notes: "American Express; 3/21/2006; American Express Membership rewards Annual Prog; Acct # 3715-317310-92008." The check notes: "3/21/2006; American Express; \$40.00; Acct # 3715-317310-92008; [signed] David R. Simpson." The credit card statement shows the following charges:

03/02/06 \$40.00 Mem Rwds Annual Program Fee

See Exhibit 56, copies of Check, Check Stub and Credit Card Statement.

186. On or about April 24, 2006 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1045 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3715-317310-92008, in the amount of \$75.00. The check stub notes: "American Express; 4/24/2006; Renewal Fee for American Express Card; Acct # 37[...]; Acct # 3715-317310-92008." The check notes: "4/24/2006; American Express; \$75.00; Acct # 3715-317310-92008 renewal fee; [signed] David R. Simpson." The credit card statement shows the following charges:

04/14/06 \$75.00 Membership Renewal Fee

See Exhibit 57, copies of Check, Check Stub and Credit Card Statement.

187. On or about May 23, 2006 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1049 to Todd Dorny in the amount of \$1,896.19. The check

stub notes: "*Todd Dorny*, 5/23/2006; Hertz Car Rental - \$62.60, *Fred* Inter Flight Costs - \$144.20, *Todd & John's* Inter Flight Costs - \$316.40, *John's* Hawaii Flight - \$697.29, *Fred's* Hawaii Flight - \$351.70, Rental Car - *Girls* - \$324.00." The check notes: "5/23/2006; *Todd Dorny*, \$1,896.19; Hawaii Trip; [signed] David R. Simpson." See Exhibit 58, copies of Check, Check Stub and Reimbursement Statements.

188. On August 28, 2006 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1059 to Chase Card Services to pay the Sony Visa Card account in the name of David R. Simpson and Nathan R. Simpson, account number 4266-9210-1906-6263, in the amount of \$1,110.06. The check stub notes: "Chase Card Services; 8/28/2006; Travel for work in Hawaii; Acct # 4266-9210-1906-6263." The check notes: "8/28/2006; Chase Card Services; \$1,110.06; Acct # 4266-9210-1906-6263; [signed] David R. Simpson." The credit card statement shows the following charges:

07/13	\$1.05	iTunes Music Store
07/17	\$35.29	Save a Dollar; Santaquin, UT
07/17	\$33.58	Texaco; Fairview, UT
07/19	\$292.17	Carpenter Seed, Inc.; Provo, UT
07/21	\$72.17	Chevron; Midway, UT
07/24	\$22.95	Infogenix
08/01	\$5.00	Expedia Service Fee
07/31	\$641.71	Delta Air Lines; Lihue, HI to Honolulu, HI to Los Angeles, CA to Salt Lake City, UT

See Exhibit 59, copies of Check, Check Stub and Credit Card Statement.

189. On or about September 18, 2006 [Monday], David Simpson, as manager,

caused LD SQ to issue check number 1065 to Sears Credit Cards to pay the Sears Gold MasterCard account in the name of David R. Simpson, account number 5121-0718-7141-2460, in the amount of \$4,981.92. The check stub notes: "Sears Credit Cards; 9/18/2006; Travel to Hawaii for work on Koamalu Plantation; Travel to Koamalu Plantation (Hawaii)." The check notes: "8/18/2006; Sears Credit Cards; \$4,981.92; Travel to Koamalu Plantation (Hawaii); [signed] David R. Simpson." The credit card statement shows the following charges:

07/27/06	\$185.94	Reeds Built Ins Inc.; Provo, UT
07/28/06	\$75.00	Exxonmobile; Orem, UT
07/28/06	\$216.52	White Knuckle Mtrspt; Springville, UT
07/29/06	\$148.86	Circuit City; Orem, UT
07/30/06	\$40.00	HMS Host - Hnl Airpt #3; Honolulu, HI
07/30/06	\$120.00	Marriott Waiohai Bch; Koloa, HI
07/31/06	\$1,878.60	Regency Resorts
07/31/06	\$50.00	Joe's on the Green; Poipu, HI
07/31/06	\$59.40	Poipu Beach Broiler; Koloa, HI
08/01/06	\$357.21	Deja Vu; Lihue, HI
08/02/06	\$35.02	Maverick Ctry Stre; Springville, UT
08/03/06	\$231.18	Alamo Rent-A-Car; Lihue, HI
08/05/06	\$63.64	Walker; Springville, UT
08/05/06	\$78.12	Flying J; Draper, UT
08/07/06	\$120.00	MXI Corp; Reno, NV
08/08/06	\$37.94	Walker; Springville, UT
08/08/06	\$75.00	La Casita; Springville, UT

08/09/06	\$87.77	Maverick Cntry Stre; Provo, UT
08/10/06	\$344.09	Mad Dog Cycles; Provo, UT
08/12/06	\$200.47	The Home Depot; Provo, UT
08/15/06	\$223.62	M&M Water Sports; Springville, UT
08/19/06	\$30.00	Wingers of Spanish Fork; Spanish Fork, UT
08/21/06	\$75.00	Walkers; Heber City, UT
08/23/06	\$98.54	Walkers; Nephi, UT
08/25/06	\$75.00	Union 76; Mesquite, NV
08/25,06	\$75.00	Conoco; American Fork, UT

See Exhibit 60, copies of Check, Check Stub and Credit Card Statement.

190. On or about September 26, 2006 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1068 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$1,797.90. The check stub notes: "American Express; 9/26/2006; Travel to Hawaii Koamalu Plantation; AcCnt # 3712-739377-01055." The check notes: "9/26/2006; American Express; \$1,797.90; AcCnt # 3712-739377-01005; [signed] David R. Simpson." The credit card statement shows the following charges for the card held by David R. Simpson:

08/31/06	\$411.70	United Airlines; Passenger name: <i>David Simpson</i> ; Los Angeles, CA to Lihue, HI to Los Angeles, CA; date of departure: 09/10
08/31/06	\$158.60	Southwest Airlines; Passenger name: <i>David Simpson</i> ; Salt Lake City, UT to Los Angeles, CA: Los Angeles, CA to Salt Lake City, UT; date of departure: 09/10

09/01/06	\$606.30	United Airlines; Passenger Name: <i>Ray Clawson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 09/12
09/01/06	\$606.30	United Airlines; Passenger Name: <i>Dean Bradshaw</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 09/12
09/01/06	\$10.00	Expedia SVC/DLVRY

See Exhibit 61, copies of Check, Check Stub and Credit Card Statement.

191. On or about October 16, 2006 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1070 to Sears Credit Cards to pay the Sears Gold MasterCard account in the name of David R. Simpson, account number 5121-0718-7141-2480, in the amount of \$2,705.39. The check stub notes: "Sears Credit Cards; 10/16/2006; Credit Card Payment for Travel to Hawaii for work on [...]; Acct # 5121-0718-7141-2480." The check notes: "10/16/2006; Sears Credit Cards; \$2,705.39; Acct # 5121-0718-7141-2480; [signed] David R. Simpson." The credit card statement shows the following charges:

08/29/06	\$109.52	Brookside Serv; Springville, UT
08/29/06	\$28.69	Brookside Serv; Springville, UT
08/29/06	\$14.32	Brookside Serv; Springville, UT
08/30/06	\$93.44	Chevron; Lehi, UT
08/30/06	\$8.46	7-Eleven; Springville, UT
09/02/06	\$75.00	Walker; Springville, UT
09/02/06	\$15.51	Walker; Springville, UT
09/04/06	\$120.00	MXI Corp; Reno, NV
09/05/06	\$59.94	Texaco; Spanish Fork, UT

09/09/06	\$130.00	Sportsmans Warehouse; Salt Lake City, UT
09/10/06	\$162.31	Delta
09/10/06	\$15.00	Delta
09/11/06	\$21.95	BWI Boingo Wireless
09/11/06	\$28.11	Kukui Grv Wireless Shr; Lihue, HI
09/11/06	\$40.00	Joe's on the Green; Poipu, HI
09/13/06	\$176.70	Aloha AI; Honolulu, HI
09/13/06	\$176.70	Aloha AI; Honolulu, HI
09/13/06	\$176.70	Aloha AI; Honolulu, HI
09/13/06	\$176.70	Aloha AI; Honolulu, HI
09/13/06	\$80.00	Hyatt Hotels Kauai F&B; Koloa, HI
09/14/06	\$20.00	Expedia Service Fees
09/14/06	\$25.00	Aloha AI; Honolulu, HI
09/14/06	\$25.00	Aloha AI; Honolulu, HI
09/14/06	\$25.00	Aloha AI; Honolulu, HI
09/14/06	\$96.60	Aloha AI; Honolulu, HI
09/14/06	\$96.60	Aloha AI; Honolulu, HI
09/14/06	\$96.60	Aloha AI; Honolulu, HI
09/15/06	\$15.00	Expedia Service Fees
09/15/06	\$28.32	Shell Oil; Lihue, HI
09/15/06	\$65.20	Shell Oil; Lihue, HI
09/15/06	\$324.25	Avis Rent-A-Car; Lihue, HI
09/15/06	\$4.95	Shaka Net; Honolulu, HI
09/16/06	\$133.82	PS&D; Lihue, HI
09/16/06	\$40.00	Ampco Salt Lake Air; Salt Lake City, UT

See Exhibit 62, copies of Check, Check Stub and Credit Card Statement.

192. On or about January 8, 2007 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1084 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$943.76. The check stub notes: "American Express; 1/8/2007; Pay off Credit card for Travel for work on Koamalu Pl; Acct # 3712-739377-01055." The check notes: "1/8/2007; American Express; \$943.76; Acct # 3712-739377-01005; [signed] David R. Simpson." The credit card statement shows the following charges for the card held by David R. Simpson:

11/29/06	\$539.11	United Airlines; Passenger name: <i>David R. Simpson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 12/12
11/29/06	\$5.00	Expedia Svc/Dlvry
12/08/06	\$222.10	Jet Blue; Passenger name: <i>Jordan Peterson</i> ; Salt Lake City, UT to Long Beach, CA and Long Beach, CA to Salt Lake City, UT; date of departure: 12/26

The credit cards statement show the following charges for the card held by Nathan R. Simpson:

12/13/06	\$184.21	The Venetian, Las Vegas, NV
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See Exhibit 63, copies of Check, Check Stub and Credit Card Statement.

193. On or about February 1, 2007 [Thursday], David Simpson, as manager, caused LD SQ to issue check number 1088 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$7,670.18. The check stub notes: "American Express; 2/1/2007;

Travel to Hawaii - For David and Assistant - For Hearin[g]; Acct # 3712-739377-01055."

The check register notes: "2/16/2007, 1088, \$7,670.18, American Express, Travel, Acct # 3712-739377-01005." The credit card statement shows the following charges for the card held by David R. Simpson:

01/02/07	\$681.10	United Airlines; Passenger name: <i>Nesha Simpson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Isaiah Simpson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Parker Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Jordan Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Presleigh Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Taylor Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Cameron Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24

01/02/07	\$681.10	United Airlines; Passenger name: <i>Nikolas Peterson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Barbara Peterson Simpson</i> ; from Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT, date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>David R. Simpson</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$681.10	United Airlines; Passenger name: <i>Courtney A. Bardsley</i> ; Salt Lake City, UT to Los Angeles, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/24
01/02/07	\$15.00	Expedia Svc/Dlvry Fee
01/02/07	\$15.00	Expedia Svc/Dlvry Fee
01/02/07	\$30.00	Expedia Svc/Dlvry Fee
01/18/06	\$76.08	Periodic Finance Charge

See Exhibit 64, copies of Check Stub and Credit Card Statement.

194. On or about February 16, 2007 [Friday], David Simpson, as manager, caused LD SQ to issue check number 1089 to Sears Credit Cards to pay the Sears Gold MasterCard account in the name of David R. Simpson, account number 5121-0718-7141-2480, in the amount of \$12,197.35. The check stub notes: "Sears Credit Cards; 2/16/2007; Travel on the Kauai development Acct # 5121 0718 7[...]; 5121-0718-7141-2480." The check register notes: "2/16/2007; 1089, \$12,197.35; Sears Credit Cards; Travel, 5121-0718-7141-2480." The credit card statement shows the following charges:

12/29/06	\$75.00	Gas N Go; Mapleton, UT
12/30/06	\$63.65	Walker; Springville, UT
01/01/07	\$44.80	Walker; Springville, UT
01/05/07	\$312.27	Sportsmans Warehouse; Provo, UT
01/05/07	\$21.41	Storrs; Springville, UT
01/05/07	\$52.31	Sizzler; Provo, UT
01/06/07	\$28.91	Mike's Combo Shop; Spanish Fork, UT
01/07/07	\$41.08	Mike's Combo Shop; Spanish Fork, UT
01/08/07	\$46.68	Pit Stop; Spanish Fork, UT
01/08/07	\$99.77	Cutlers; Orem, UT
01/08/07	\$50.00	Art City Trolley; Springville, UT
01/09/07	\$60.40	Crest; Provo, UT
01/09/07	\$8,745.11	Kauai Central Reservat; Logan, UT
01/10/06	\$21.95	BWI Boingo Wireless
01/11/07	\$813.29	Kauai Central Reservat; Logan, UT
01/12/07	\$263.84	Build-A-Bear Workshop; Salt Lake City, UT
01/15/07	\$34.29	Mike's Combo Shop; Spanish Fork, UT
01/15/07	\$63.70	Chevron; Faireview, UT
01/15/07	\$29.62	Chevron; Fairview, UT
01/15/07	\$7.00	Diamond Parking; Salt Lake City, UT
01/16/07	\$350.00	THR*RMSB
01/19/07	\$41.33	Chevron; Orem, UT
01/19/07	\$1.58	Mike's Combo Shop; Spanish Fork, UT
01/19/07	\$26.53	Supersonic Car Wash; Orem, UT
01/22/07	\$200.00	The Roof Restaurant
01/23/07	\$512.26	Tri City Polaris; Springville, UT

See Exhibit 65, copies of Check Stub and Credit Card Statement.

195. On or about March 6, 2007 [Tuesday], David Simpson, as manager, caused LD SQ to issue check number 1093 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$256.88. The check stub notes: "American Express; 3/6/2007; Travel to Hawaii for work at Koamalu Plantation; Acct # 3712-739377-01055." The check register notes: "3/6/2007; 1093, \$256.88; American Express; Travel, Acct# 3712-739377-01005." The credit card statement shows the following charges for the card held by David R. Simpson:

01/12/07	\$176.51	United Airlines; Passenger name: <i>Nesha Simpson</i> ; Salt Lake City, UT to San Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/21
02/19/06	\$80.37	Periodic Finance Charge

See Exhibit 66, copies of Check, Check Stub and Credit Card Statement.

196. On or about March 30, 2007 [Friday], David Simpson, as manager, caused LD SQ to issue check number 1096 to American Express to pay the account in the name of David R. Simpson and Landmark Real Estate, account number 3712-739377-01005, in the amount of \$7,244.21. The check stub notes: "American Express; 3/30/2007; Travel to Hawaii for Work on Koamalu Plantation; Acct # 3712-739377-01055." The check register notes: "3/30/2007; 1096; \$7,244.21; American Express; Travel, Acct # 3712-739377-01005." The credit card statement shows the following charges for the card held by David R. Simpson:

02/19/07	\$769.11	United Airlines; Passenger name: <i>Ann Marie Nokes</i> ; Salt Lake City, UT to San Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/27
02/19/07	\$181.01	United Airlines; Passenger name: <i>Cameron Peterson</i> ; Salt Lake City, UT to San Francisco, CA to Lihue, HI to Los Angeles, CA to Salt Lake City, UT; date of departure: 02/27
02/19/07	\$30.00	Expedia SVC/Dlvry
03/19/07	\$5.00	Expedia SVC/Dlvry
03/03/07	\$560.82	Avis Rent-A-Car; Lihue, HI; Renter Name: <i>David R. Simpson</i> ; 02/24/07 to 03/03/07
03/14/07	\$125.40	Southwest Airlines; Passenger name: <i>David Simpson</i> ; Salt Lake City, UT to Los Angeles, CA; date of departure: 03/26
03/14/07	\$125.40	Southwest Airlines; Passenger name: <i>Barbara Simpson</i> ; Salt Lake City, UT to Los Angeles, CA; date of departure: 03/26
03/14/07	\$1,079.53	United Airlines; Passenger name: <i>Barbara Peterson Simpson</i> ; Los Angeles, CA to Honolulu, HI to Lihue, HI to Honolulu, HI to Los Angeles, CA; date of departure: 03/26
03/14/07	\$1,079.53	United Airlines; Passenger name: <i>David R. Simpson</i> ; Los Angeles, CA to Honolulu, HI to Lihue, HI to Honolulu, HI to Los Angeles, CA; date of departure: 03/26
03/14/07	\$720.82	American Trans Air; Passenger name: <i>Mark Washburn</i> ; Los Angeles, CA to Honolulu, HI to Lihue, HI to Honolulu, HI to Los Angeles, CA; date of departure: 03/26
03/14/07	\$720.82	American Trans Air; Passenger name: <i>Jodi Washburn</i> ; Los Angeles, CA to Honolulu, HI to Lihue, HI to Los Angeles, CA; date of departure: 03/26
03/14/07	\$1,735.18	Kauai Central Reservation, Logan, UT
03/14/07	\$10.00	Expedia Svc/Dlvry Fee

03/14/07	\$10.00	Expedia Svc/Dlvry Fee
03/19/07	\$14.09	Periodic Finance Charge
03/19/06	\$80.08	Membership Renewal Fee

See Exhibit 67, copies of Check, Check Stub and Credit Card Statement.

197. On May 14, 2007 [Monday], David Simpson, as manager, caused LD SQ to issue check number 1100 to Sears Credit Cards to pay the Sears Gold MasterCard account in the name of David R. Simpson, account number 5121-0718-7141-2480, in the amount of \$4,743.81. The check stub notes: "Sears Credit Cards; 5/14/2007; Travel Costs for Work at Koamalu Plantation; Accnt # 5121-0718-7141-2480." The check notes: Sears Credit Cards; 1100; 5/14/2007; Accnt # 5121-0718-7141-2480; [signed] David R. Simpson.

The credit card statement shows the following charges:

03/27/07	\$74.90	Hawaiian 17321055148951; Honolulu, HI
03/27/07	\$74.90	Hawaiian 17321055148940; Honolulu, HI
03/29/07	\$6.23	Kayak Kuai; Hanalei, HI
03/30/07	\$46.38	Walker; Springville, UT
03/30/07	\$30.00	Ampco Salt Lake Air; Salt Lake City, UT
03/30/07	\$35.69	Bajio; Spanish Fork, UT
03/30/07	\$3.00	Smarte Carte; Los Angeles, CA
03/30/07	\$85.26	RC Willey; Salt Lake City, UT
04/04/07	\$54.56	Chevron; Provo, UT
04/05/07	\$100.00	La Casita; Springville, UT
04/05/07	\$391.31	The Signature @ MGM GR; Las Vegas, NV
04/07/07	\$92.52	Chevron; Fillmore, UT

04/07/07	\$49.42	Mike's Combo Shop; Spanish Fork, UT
04/07/07	\$129.24	MGM Grand Buffet; Las Vegas, NV
04/08/07	\$75.00	Chevron; Mesquite, NV
04/08/07	\$75.00	Storrs; Payson, UT
04/08/07	\$26.47	The Signature Front De; Las Vegas, NV
04/10/07	\$51.77	Charlies C-Store; Springville, UT
04/10/07	\$21.95	BWI*Boingo Wireless
04/12/07	\$25.00	MXI Corp
04/13/07	\$52.34	Mikes Combo Shop; Spanish Fork, UT
04/14/07	\$25.02	Macey's; Spanish Fork, UT
04/14/07	\$44.56	MVP Sports; Spanish Fork, UT
04/14/07	\$80.00	Nebo Animal Clinic; Spanish Fork, UT
04/15/07	\$77.80	IFA; Spanish Fork, UT
04/17/07	\$59.51	Mike's Combo Shop; Spanish Fork, UT
04/18/07	\$41.69	Walkers; Payson, UT
04/18/07	\$75.00	Walkers; Payson, UT
04/18/07	\$23.81	Chevron; Nephi, UT
04/19/07	\$45.00	USA Motortoys, LLC; Lindon, UT
04/23/07	\$57.81	Mike's Combo Shop; Spanish Fork, UT
04/16/07	\$39.00	Late Payment Fee

See Exhibit 68, copies of Check, Check Stub and Credit Card Statement.

198. On July 12, 2007 [Thursday], David Simpson, as manager, caused LD SQ to issue check number 1102 to Sears Credit Cards to pay the Sears Gold MasterCard account in the name of David R. Simpson, account number 5121-0718-7141-2480, in the amount of \$757.55. The check stub notes: "Sears Credit Cards; 7/12/2007; Travel to

Hawaii for Meetings on Koamalu Plantation; Accnt # 5121-0718-7141-2480." The check notes: Sears Credit Cards; 7/12/2007; 1102; Accnt # 5121-0718-7141-2480; [signed] David R. Simpson. The credit card statement shows the following charges:

05/29/07	\$774.60	Kauai Central Reservat; Logan, UT
06/10/07	\$21.95	BWI*Boingo Wireless

See Exhibit 69, copies of Check, Check Stub and Credit Card Statement.

199. On or about June 13, 2007 [Wednesday], on information and belief, Michael Thompson deceived and defrauded Plantation Investment (and its members Scott Petersen and Vance Barrett) into buying Thompson's twenty-three percent (23%) "equity" interest in the Koamalu Plantation development project/scheme for approximately \$2,500,000.00.

200. On information and belief, the sale of Michael Thompson's twenty-three percent (23%) interest to Plantation Investment brought his personal bounty derived from his confidence scheme (described in paragraph 73 herein) to at least \$3,597,630.00.

201. At all times relevant herein, Defendants David Simpson, Michael Thompson, Todd Dorny, Brandon Dente and Nathan Simpson, individually and in their capacities as owners, shareholders, members, directors, officers, managers, control persons, partners, principals and/or agents of their respective business entities, in association together, and as a confederate business enterprise scheme called the Koamalu Plantation development project – collectively the "Confederate Business Enterprise Associates" – have wrongfully taken at least \$7,186,139.41 of Leslie's money for their mutual benefit and gain. Leslie has

not been repaid any amounts of her investment or any return on her investment, and, ground has never been broken on the project.

202. At all times relevant herein, the Confederate Business Enterprise Associates knew or should have known – and should have disclosed to Leslie – that Unit 2 and Unit 3 (together 11.183 acres) were subject to a 3.1165 acre eminent domain taking by the State of Hawaii to widen the Kaumualii highway.

203. At all times relevant herein, the Confederate Business Enterprise Associates knew or should have known – and should have disclosed to Leslie – that both Unit 2 and Unit 3 were subject to Kauai County Ordinances which require that thirty percent (30%) of any multifamily residential housing condominium units to be built on Units 2 and 3 would have to be administered under the County's Public Housing Agency's *Affordable Rental Housing Program* for low, low-moderate, and moderate income Hawaii residents. And, that this low-income rental housing condition runs with the land in perpetuity.

204. At all times relevant herein, the Confederate Business Enterprise Associates knew or should have known – and should have disclosed to Leslie – that from the inception of the Koamalu Plantation development project it was both a fiscal and physical impossibility to build and sell enough condominium units to be able to pay Leslie all of her \$5,000,000.00 back, plus, a profit of \$10,000,000.00 (200%) on her investment.

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FACTS: THE PRESERVE AT MAPLETON DEVELOPMENT SCAM

205. Plaintiffs' claims herein regarding The Preserve at Mapleton development scam arise in part from a series of transactions involving three contiguous parcels of real property located in Mapleton, Utah County, Utah, which for convenience of explanation are identified or distinguished hereinafter as:

PROPERTIES	TRANSACTIONS
Approximately 171.0 acres ⁴	Suburban Land Reserve, Inc. <u>to</u> Craig Thueson <u>to</u> The Preserve at Mapleton Development Company, LLC <u>to</u> LD III, LLC
Approximately 30.7 acres ⁵	Whiting Family Limited Partnership <u>to</u> SOS Mapleton Development, LLC <u>to</u> The Preserve at Mapleton Development Company, LLC <u>to</u> LD III, LLC
Approximately 3.85 acres ⁶	Utah State Department of Natural Resources <u>to</u> ????

⁴ Several documents referenced in this Second Amended Complaint describe different acreage amounts for this property. The property descriptions in the *Special Warranty Deeds* in Exhibits 78 and 79 herein describe a large parcel of "245.60 acres more or less" then except from that description "64.10 acres more or less" and "10.914 acres more or less," leaving approximately 170.586 acres. Utah County identified essentially the same property with Tax Serial Nos. 27:034:0057 w/59.47 acres and 27:034:0064 w/114.10 acres, totaling approximately 173.57 acres. A December 28, 2006 ALTA/ASCM Land Title Survey prepared by Barry Andreason of M. W. Engineering calculates the acreage for the *Boundary Description Parcel 7* "adjusted for boundary agreement lines and the Mapleton Lateral Canal right of way ..." as 170.991 acres. For purposes of distinguishing this property in this Complaint, Plaintiffs will describe it as the "171.0 acres."

⁵ Several documents referenced in this Second Amended Complaint describe different acreage amounts for this property. The property descriptions for the six parcels described in the *Warranty Deed* in Exhibit 88 herein do not include acreage calculations. Utah County identified essentially the same property with Tax Serial Nos. 27:034:0008 w/4.44 acres, 27:034:0010 w/1.68 acres, 27:034:0012 w/10.50 acres, 27:034:0044 w/3.20 acres, 27:034:0045 w/10.45 acres and 27:034:0048 w/0.42 acres, totaling approximately 30.69 acres. A December 28, 2006 ALTA/ASCM Land Title Survey prepared by Barry Andreason of M. W. Engineering calculates the acreage for the *Combined Boundary Description Parcels 1-6* "adjusted for the Mapleton Lateral Canal right of way ..." as Plat D w/17.576 acres and Plat E w/13.077 acres, totaling 30.653 acres. For purposes of distinguishing this property in this Complaint, Plaintiffs describe it as the "30.7 acres."

⁶ Plaintiffs do not have specific detail concerning this property, but believe it to be approximately 3.85 acres in the very Northeast corner of a 120 acre parcel of real property identified by Utah County with Tax Serial No. 27:034:0028. This property was acquired by the Utah State Department of Natural Resources via a *Special Warranty Deed* dated January 24, 1942, and recorded January 30, 1942 by the Utah County Recorder as entry 000728:1942.

206. On information and belief, on or about June 1, 2005, Free and Associates, Inc., ("Free and Associates") of American Fork, Utah, a real estate appraisal firm, appraised 245.6 acres of real property owned by Suburban Land Reserve, Inc. ("Suburban Land Reserve"). The location of the 245.6 acres was the East Bench of Mapleton, Utah County, Utah. See Exhibit 70, copy of Plat Map.

207. The 245.6 acres of real property consisted of two contiguous parcels – approximately 132.23 acres identified by Utah County as Tax Serial No. 270340001, and, approximately 116.283 acres identified by Utah County as Tax Serial No. 270340047. See Exhibit 70.

208. On information and belief, Free and Associates determined the value of Suburban Land Reserve's 245.6 acres at or near \$6,705,000.00 – a value of approximately \$27,300.00 per acre – "as is"⁷ and subject to several contingencies, including especially, contaminated water concerns.

209. As described in paragraph 135 herein: On or about June 2, 2005 [Thursday], David Simpson and Nathan Simpson requested and received, from Leslie's husband, Ken Dolezsar, a \$3,100,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to LD SQ.

210. On information and belief, at or near the same time David Simpson and

⁷ Market Value "as is" on appraisal date means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications, as of the date the appraisal is prepared. – Appraisal Policies and Practices of Insured Institutions and Service Corporations, Federal Home Loan Bank Board, *Final Rule*, 12 CFR Parts 563 and 571, December 21, 1987.

Nathan Simpson received the \$3,100,000.00 check from Ken Dolezsar, they also requested a \$330,000.00 loan to help with their prospective acquisition of certain undeveloped land located on the East Mapleton Bench in Mapleton, Utah.

211. On or about June 3, 2005 [Friday], in response to their request for a loan, David Simpson and Nathan Simpson received from Ken Dolezsar a \$330,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account. The check register notes: check number "1513;" amount "\$330,000.00;" payable to "Landmark," for "The Preserve at Mapleton."

212. Leslie was not asked, informed or otherwise aware that Ken Dolezsar used her funds to make the \$330,000.00 unsecured loan to David Simpson and Nathan Simpson. The fact that David Simpson and Nathan Simpson persuaded Ken Dolezsar to lend them \$330,000.00 of Leslie's funds, without her knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

213. On or about June 6, 2005 [Monday], Ken Dolezsar received a \$330,000.00 *Promissory Note* from David Simpson and Nathan Simpson. The *Promissory Note*: was payable to Kenneth Dolezsar; was signed by David R. Simpson; bore interest at the rate of eight percent (8%) per annum; had no due date; and, on its face purported to be secured by a *Trust Deed*. However, no *Trust Deed* securing the *Promissory Note* was ever recorded, and, on information and belief, neither David Simpson nor Nathan Simpson intended to secure the \$330,000.00 *Promissory Note*. See Exhibit 71, copy of *Promissory*

Note.

214. On or about June 6, 2005, Suburban Land Reserve quit-claimed to Mapleton City, via a *Quit-Claim Deed*, approximately 75 acres of its 245.6 acre parcel to be used for open space, in exchange for certain Mapleton City Transferable Development Rights ("TDRs") and other valuable consideration. The *Quit-Claim Deed* was recorded at the Utah County Recorder's Office on June 13, 2005 as entry 62653:2005. See Exhibit 72, copy of *Quit-Claim Deed*.

215. On information and belief, Suburban Land Reserve thereafter offered the remaining 171.0 acres of real property for sale pursuant to a sealed bid process. On information and belief, Craig Thueson was the highest bidder, offering \$10,000,000.00 for the real property and associated water rights.

216. Between March 1, 2005 (the approximate date that David Simpson and Nathan Simpson gained Ken Dolezsar's confidence sufficiently to persuade him that the Koamalu Plantation development project was a "blue chip" investment opportunity for Leslie) and November 30, 2005, David Simpson and Nathan Simpson continued and furthered their confidence scheme and business enterprise scheme by misrepresenting facts to Dolezsar, withholding relevant material information from Dolezsar and his wife, Leslie, and enticing Dolezsar with opportunities to participate – personally – in Simpsons' schemes – risking only Leslie's funds.

217. On or about November 30, 2005 [Wednesday], Ken Dolezsar formed Plaintiff LD III by registering it with Utah's Department of Commerce. LD III's *Articles of*

Organization identified Ken Dolezsar and Leslie as the initial managers, and, Dolezsar as the registered agent. See Exhibit 73, copy of *Articles of Organization of LD III, LLC*.

218. In LD III's *Articles of Organization*, Ken Dolezsar also designated its registered office and the office of its registered agent as "407 N Main St, Springville, UT 84663" – the common address used by David Simpson's businesses. Further, in LD III's *Articles of Organization*, Ken Dolezsar stated that "407 N Main St, Springville, UT 84663" was the "business address" for "Kenneth G Dolezsar" and "Leslie D Mower." See Exhibit 73.

219. The fact that Ken Dolezsar allowed David Simpson's business office to be LD III's registered office, as well as the business address of Dolezsar and Leslie, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

220. On or about November 30, 2005, Ken Dolezsar opened a checking account for LD III, with \$500,000.00 of Leslie's funds, at Central Bank in Springville, Utah. On the same date, LD III's check register notes: [a counter check] check number "1;" amount "\$300,000.00;" payable to "Central Bank," for "The Preserve." On information and belief, Ken Dolezsar used this \$300,000.00 to make another loan to David Simpson and Nathan Simpson to further help with their acquisition of the 171.0 acres in Mapleton. On information and belief, the \$300,000.00 was intended to be a short-term loan to be repaid by the end of December, 2005.

221. Leslie was not asked, informed or otherwise aware that Ken Dolezsar used

her funds to make the \$300,000.00 unsecured loan to David Simpson and Nathan Simpson. The fact that David Simpson and Nathan Simpson persuaded Ken Dolezsar to lend them \$300,000.00 of Leslie's funds, without her knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

222. On information and belief, the \$300,000.00 described in paragraph 220 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$630,000.00.

223. On or about December 9, 2005 [Friday], Nathan Simpson formed SOS Mapleton Development, LLC ("SOS") by registering it with Utah's Department of Commerce. On information and belief, SOS's initial members and managers were David Simpson, Joe Ortiz and Nathan Simpson. See Exhibit 74, copy of *Articles of Organization of SOS Mapleton Development, LLC*.

224. On or about December 12, 2005 [Monday], Craig Thueson formed Red Creek Ranch, LLC ("Red Creek") by registering it with Utah's Department of Commerce. On information and belief, Craig Thueson was the sole member and manager of Red Creek. See Exhibit 75, copy of *Articles of Organization of Red Creek Ranch, LLC*.

225. As described in paragraph 39 herein, Defendant The Preserve was formed as a Utah limited liability company December 12, 2005. The initial managers of The Preserve were David Simpson, Nathan Simpson and Craig Thueson. See Exhibit 76, copy

of *Articles of Organization of The Preserve at Mapleton Development Company, LLC*.

226. According to The Preserve's *Operating Agreement*, dated December 12, 2005, the initial members and allocated ownership interests of The Preserve were: SOS - 120/170ths interest; and, Red Creek - 50/170ths interest. See Exhibit 77, copy of *Operating Agreement of The Preserve at Mapleton Development Company, LLC*.

227. On or about December 14, 2005 [Wednesday], Craig Thueson acquired the 171.0 acre Mapleton property, together with water rights, and TDRs, from Suburban Land Reserve. A *Special Warranty Deed* conveying the 171.0 acres was recorded at the Utah County Recorder's Office on December 16, 2005 as entry 145801:2005. See Exhibit 78, copy of *Special Warranty Deed*.

228. Also, on or about December 14, 2005, The Preserve acquired the same 171.0 acres, together with water rights and TDRs, from Thueson. A *Special Warranty Deed* conveying the 171.0 acres was recorded at the Utah County Recorder's Office on December 16, 2005 as entry 145802:2005. See Exhibit 79, copy of *Special Warranty Deed*.

229. On information and belief, Craig Thueson and The Preserve purchased the 171.0 acres, together with water rights and TDRs, for consideration of \$10,000,000.00 – a cost of approximately \$58,480.00 per acre – more than twice (214%) the June 1, 2005 appraised value of approximately \$27,300.00 per acre.

230. On information and belief, the \$10,000,000.00 purchase price was one hundred percent (100%) financed by Clark Real Estate Company, of Pocatello, Idaho with

a six-month \$10,890,000.00 "hard-money loan" which required interest payments of \$163,350.00 per month [18% per annum] to service the loan.

231. On or about December 14, 2005, The Preserve executed and delivered a *Deed of Trust* on the 171.0 acres to Clark Real Estate Company or its attorneys to secure the \$10,890,000.00 loan. The *Deed of Trust* was executed by David Simpson, Nathan Simpson and Craig Thueson as managers of The Preserve. The *Deed of Trust* was recorded at the Utah County Recorder's Office on December 16, 2005 as entry 145803:2005. See Exhibit 80, copy of *Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing*.

232. The Preserve also pledged to Clark Real Estate Company, as additional collateral for the \$10,890,000.00 loan: all personal property; all leases and lease rights; 111.73 acre feet of Mapleton City Water Credits; 19.50 shares of stock in the Mapleton Irrigation Company; and, 27 Mapleton City TDRs. See Exhibit 80.

233. The 171.0 acres were assigned, transferred and acquired: subject to a *Development Agreement* between Mapleton City and Suburban Land Reserve dated May 7, 2003; subject to Mapleton City's approval of the assignment; and further, subject to certain additional conditions imposed by Mapleton City. See Exhibit 81, copy of *Development Agreement*.

234. Paragraph 19 of the *Development Agreement* makes "[t]his Agreement ... binding on the successors and assigns [The Preserve] of Owner [Suburban Land Reserve]. See paragraph 19 of Exhibit 81.

235. Paragraph 9.4 of the *Development Agreement* required The Preserve, as successor-in-interest to Suburban Land Reserve, to construct a "debris collection basin" to collect and channel mountain snow melt, storm runoff and related debris so as to prevent flooding, injury and damage to people and/or property in Mapleton, to wit:

Debris Flow Mitigation. Owner shall, at its sole expense, construct a debris collection basin at the two locations designed on the Master Plan. Plans and specifications for the Debris Basins shall be subject to the review and approval of the City. The southern debris basin is to be located upon real property not owned or controlled by the City or Owner and the City shall work with Owner to gain permission for the construction and maintenance. [Emphasis added.]

See paragraph 9.4 of Exhibit 81.

236. On or about December 20, 2005 [Tuesday], on information and belief, Ken Dolezsar used \$44,000.00 of Leslie's funds to purchase for himself a portion of Nathan Simpson's interest in SOS. LD III's check register notes: check number "4;" amount "\$44,000.00;" payable to "Nathan Simpson," for "The Preserve."

237. Leslie was not asked, informed or otherwise aware that Ken Dolezsar used her \$44,000.00 to purchase for himself an interest in SOS from Nathan Simpson. The fact that David Simpson and Nathan Simpson persuaded Ken Dolezsar to use \$44,000.00 of Leslie's funds to purchase for himself an interest in SOS, without Leslie's knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

238. On information and belief, the \$44,000.00 described in paragraph 236 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David

Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$674,000.00.

239. On or about December 21, 2005 [Wednesday], the assignments and transfers of the 171.0 acres from Suburban Land Reserve to Craig Thueson, and from Thueson to The Preserve, came before the Mapleton City Council for its approval as required by the *Development Agreement*. A particularly onerous additional condition was imposed by Mapleton City Council to obtain its approval of the assignment, to wit:

A legal undertaking by The Preserve at Mapleton Development Company, LLC, to dedicate within 1 year after final plan approval of phase 1 of the development a 10 acre parcel of land [to be used for Mapleton City's Cemetery] on a location to be mutually agreed between the City and The Preserve at Mapleton Development Company, LLC.

See Exhibit 82, copy of Minutes - Mapleton City Council Meeting - December 21, 2005.

240. On information and belief, The Preserve (by its managers, David Simpson, Nathan Simpson and Craig Thueson), understood, accepted and agreed to the legal undertaking to acquire and dedicate 10 acres in Mapleton City to be used by the City for a cemetery. See Exhibit 82.

241. On or about December 22, 2005 [Thursday], Craig Thueson issued a \$450,000.00 *Promissory Note* to Wood Springs which was due and payable no later than March 31, 2006. At the same time, Red Creek guaranteed payment of the *Promissory Note* and pledged all of Red Creek's right, title and interest (50/170ths) in and to The Preserve as collateral to secure payment of the *Promissory Note*. See Exhibit 83, copy of *Guaranty and Pledge Agreement*.

242. On or about December 27, 2005 [Tuesday], David Simpson and Nathan Simpson caused The Preserve to open a checking account at Central Bank in Springville, Utah. The Preserve's accounting register notes: deposit "\$37,288.49;" for "note payable to Wood Springs."

243. On or about January 18, 2006 [Wednesday], Ken Dolezsar, as LD III's manager and registered agent, executed *Amended and Restated Articles of Organization of LD III, LLC*, which purportedly added Ken Dolezsar's brother, Rob Dolezsar, and David Simpson as managers. The *Amended and Restated Articles of Organization* was filed with Utah's Department of Commerce on January 18, 2006. See Exhibit 84, copy of *Amended and Restated Articles of Organization of LD III, LLC*.

244. Leslie was not asked, informed or otherwise aware that Ken Dolezsar amended LD III's *Articles of Organization* to include David Simpson as a manager. The fact that Ken Dolezsar amended LD III's *Articles of Organization* to include David Simpson as a manager without Leslie's knowledge or permission, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

245. Also, on or about January 18, 2006, David Simpson, as LD SQ's manager and registered agent, executed *Amended and Restated Articles of Organization of LD SQ, LLC*, which purportedly added David Simpson's confederate associate, Todd Dorny, and Leslie as managers. The *Amended and Restated Articles of Organization* were filed with Utah's Department of Commerce on January 18, 2006. See Exhibit 85, copy of *Amended*

and Restated Articles of Organization of LD SQ, LLC.

246. Leslie was not asked, informed or otherwise aware that David Simpson amended LD SQ's *Articles of Organization* to include Todd Dorny as a manager. The fact that Ken Dolezsar allowed David Simpson to amend LD SQ's *Articles of Organization* to include Todd Dorny, as a manager, without Leslie's knowledge or permission, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

247. On or about January 27, 2006 [Friday], David Simpson and Nathan Simpson caused The Preserve to pay \$5,000.00 earnest money to the Whiting Family Limited Partnership toward purchase of approximately 30.7 acres of real property immediately contiguous in part to The Preserve's 171.0 acres. The Preserve's check register notes: check number "0005;" amount "\$5,000.00;" payable to "Whiting Family Limited Partnership," for "Land - The Preserve," "Earnest Money on Whiting Property."

248. On or about March 3, 2006 [Friday], David Simpson, Nathan Simpson and Ken Dolezsar memorialized an Agreement with SOS, which reads in part as follows:

SOS Development agrees to give 15% of their [*sic*] net profits in The Preserve at Mapleton to Kenneth Dolezsar for the exchange of the following:

- The agreement entered into the end of November between SOS and Dolezsar shall be changed as follows: The \$300,000 that was to be paid back by the end of December shall now be counted as an investment and will not be paid back, but exchanged for ownership in SOS. \$44,000 of the agreed \$150,000 was paid to Nathan Simpson. The remaining \$106,000 shall be paid at the signing of this agreement. The above monies are exchanged for 4.5% as stated in the November agreement and modified by this agreement.
- David Simpson has a debt to Kenneth Dolezsar in the amount of

\$230,000. Kenneth Dolezsar is to forgive this debt in exchange for 5.5% interest in SOS.

– Kenneth Dolezsar is to pay an additional \$200,000 to SOS Development for an additional 5% interest in SOS.

This makes up a total investment of \$880,000 for 15% interest in SOS Development for Kenneth Dolezsar.

See Exhibit 86, copy of *The Preserve at Mapleton Agreement*.

249. Leslie was not asked, informed or otherwise aware that Ken Dolezsar had used her funds to make loans to or for the benefit of David Simpson and Nathan Simpson, and to purchase for himself an interest in Simpsons' business entities, or that Dolezsar had forgiven loans of Leslie's funds in exchange for ownership and profits interests in SOS (as stated paragraph 248 herein). The fact that Ken Dolezsar did so, without Leslie's knowledge or permission, is an indication of David Simpson's and Nathan Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

250. On or about March 3, 2006, David Simpson, as manager, caused LD III to issue a \$506,000.00 check to Wood Springs. LD III's check register notes: "\$200,000.00 Riding Closing for 900 North Property; \$200,000.00 to The Preserve; \$106,000.00 to Nathan Simpson to buy into The Preserve." On information and belief, the \$200,000.00 was taken by David Simpson and Nathan Simpson, ostensibly for The Preserve, but never deposited into The Preserve's bank accounts. Leslie was not asked, informed or otherwise aware that David Simpson distributed \$506,000.00 of her funds to The Preserve, Nathan Simpson, and to acquire the "900 North Property."

251. On information and belief, following issuance of the \$506,000.00 check to Wood Springs, Ken Dolezsar received from David Simpson and Nathan Simpson a 15% interest in SOS (according to the agreement described in paragraph 248 herein), or The Preserve (according to LD III's check register as described in paragraph 250 herein).

252. On information and belief, the \$200,000.00 "to The Preserve," plus the \$106,000.00 "to Nathan Simpson to buy into The Preserve," of the \$506,000.00 described in paragraph 250 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$980,000.00.

253. On information and belief, execution of the March 3, 2006 *Agreement* and issuance of the \$506,000.00 check to Wood Springs constituted at least two wrongful takings:

- a. Use of at least \$980,000.00 of Leslie's funds by Ken Dolezsar to acquire a 15% interest in SOS without Leslie's knowledge or authorization.
- b. Use of \$200,000.00 of Leslie's funds by David Simpson to acquire an interest the "900 North Property" without Leslie's knowledge or authorization.

254. On or about March 10, 2006 [Friday], Joe Ortiz entered into a *Settlement Agreement* with David Simpson, Nathan Simpson and SOS, LLC. (On information and belief, SOS, LLC is really the same business entity as SOS identified in paragraph 223 herein.) By terms of the *Settlement Agreement*, Joe Ortiz assigned all of his interest in SOS, together with any interest he held in The Preserve, to David Simpson and Nathan

Simpson; and in exchange, Joe Ortiz received \$250,000.00 plus the right to choose and purchase at cost any lot in The Preserve at Mapleton development project. See Exhibit 87, copy of *Settlement Agreement*.

255. On or about March 31, 2006 [Friday], on information and belief, Wood Springs succeeded to Red Creek's 50/170ths interest in The Preserve by virtue of the *Guaranty and Pledge Agreement* and Craig Thueson's failure to pay his *Promissory Note*. See Exhibit 83.

256. At or near the end of March or the beginning of April, 2006, David Simpson and Nathan Simpson met with Ken Dolezsar, seeking Leslie's investment of \$4,300,000.00 to acquire and develop the 30.7 acre Whiting Property. On information and belief, David Simpson and Nathan Simpson knowingly, intentionally and deceitfully made the following promises and representations to Ken Dolezsar. Plaintiffs are uncertain whether or not, and if so to what extent, Ken Dolezsar was aware of the truth or falsity of the following promises and representations which Dolezsar repeated to Leslie on behalf of David Simpson and Nathan Simpson, because Dolezsar may have been misled or he may have been acting in complicity with Simpsons to mislead Leslie at the time:

- a. That David Simpson and Nathan Simpson owned the 171.0 acres of undeveloped land on the East Mapleton Bench in Mapleton, Utah;
- b. That the 171.0 acres were worth at least \$17,000,000.00 undeveloped but three or four times more if developed and sold as residential building lots;
- c. That David Simpson and Nathan Simpson had an opportunity to

acquire from the Whiting Family approximately 30.7 acres of real property contiguous to Simpsons' 171.0 acres;

d. That only \$3,300,000.00 was needed to acquire the Whiting property;

e. That only \$1,000,000.00 more was needed to develop the Whiting property into sellable residential building lots;

f. That if the 30.7 acres were developed for sale as residential building lots, the property would be worth three or four times more than the \$4,300,000.00 David Simpson and Nathan Simpson wanted Leslie to invest;

g. That since the properties were contiguous, David Simpson and Nathan Simpson could develop and sell both the 171.0 acres and the 30.7 acres at the same time and Leslie could share in the profits;

h. That the 30.7 acre property could be developed and sold in less than two years;

i. That Leslie would get all of her \$4,300,000.00 investment back, plus, a profit of 200% return on her investment if she was willing to invest immediately; and,

j. That Leslie's investment would be secure because she (or her entity) would own the land (30.7 acres) until it was sold.

257. On information and belief, David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Ken Dolezsar, and Leslie, the following relevant material facts. Plaintiffs are uncertain whether or not,

and if so to what extent, Ken Dolezsar was aware of the following relevant material facts, because Dolezsar may have been misled or he may have been acting in complicity with Simpsons to mislead Leslie at the time. In either case, Ken Dolezsar did not disclose to Leslie, and David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Leslie, the following relevant material facts:

- a. That the 171.0 acres were owned by The Preserve subject to a \$10,890,000.00 six-month hard-money loan from Clark Real Estate Company secured by a first position *Deed of Trust* (as described in paragraphs 230 and 231 herein);
- b. That the \$10,890,000.00 loan required debt service of \$163,350.00 per month;
- c. That the \$10,890,000.00 loan would be due and payable June 11, 2006 [approximately ten weeks later];
- d. That without a substantial payment to reduce the principal, or substantial additional collateral, the \$10,890,000.00 loan would not be extended and the 171.0 acres would then be forfeit (through foreclosure) to Clark Real Estate Company;
- e. That David Simpson and Nathan Simpson intended to use Leslie's funds to address interest payments and/or extension payments, and further intended to use the 30.7 acres as additional collateral to extend the \$10,890,000.00 loan; and,

f. That David Simpson and Nathan Simpson intended to use Leslie's funds to acquire the 30.7 acres in the name of SOS (rather than Leslie or an entity owned by her).

258. On information and belief, Ken Dolezsar believed the promises and representations (described in paragraph 256 herein) of David Simpson and Nathan Simpson to be reasonable and true. In reliance on their promises and representations, and not being aware of the relevant material facts (described in paragraph 257 herein) that were knowingly, intentionally and deceitfully omitted, Ken Dolezsar was persuaded that acquiring and developing the 30.7 acres of real property was a great investment opportunity for Leslie.

259. On or about March 1, 2006 [Wednesday], Ken Dolezsar repeated to Leslie the promises and representations (described in paragraph 256 herein) of David Simpson and Nathan Simpson regarding acquisition and development of the 30.7 acres, and encouraged Leslie to invest \$4,300,000.00.

260. Leslie believed the promises and representations (described in paragraph 256 herein) of David Simpson and Nathan Simpson to be reasonable and true, and in good faith reliance on the promises and representations, and not being aware of the relevant material facts (described in paragraph 257 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, agreed to purchase the 30.7 acre Whiting property for \$3,300,000.00 and to fund an additional \$1,000,000.00 for development work on the 30.7 acres.

261. On or about April 4, 2006 [Tuesday], in response to their request, David Simpson and Nathan Simpson received a \$4,300,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account. The check register notes: check number "1423;" amount "\$4,300,000.00;" payable to "Wood Springs," for "Investments: LD III, LLC: The Preserve at Mapleton."

262. On information and belief, the \$4,300,000.00 described in paragraph 261 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$5,280,000.00.

263. On or about May 2, 2006 [Tuesday], David Simpson and Nathan Simpson used Leslie's funds to acquire the 30.7 acre Whiting property, but they acquired it in the name of SOS (not Leslie or one of her entities), via a *Warranty Deed*. The *Warranty Deed* was recorded at the Utah County Recorder's Office on May 3, 2006 as entry 54397:2006. See Exhibit 88, copy of *Warranty Deed*.

264. On information and belief, David Simpson and Nathan Simpson purchased the 30.7 acres from the Whiting Family Limited Partnership with at least \$3,089,000.00 of the \$4,300,000.00 which they had obtained from Leslie – a cost of approximately \$100,620.00 per acre.

265. Also, on or about May 2, 2006, The Preserve (not SOS) paid additional funds to close on the Whiting property. The Preserve's check register notes only: amount "\$78,616.54;" for "balance to close Whiting Property - Cashiers Check." On information

and belief, the \$78,616.54 was also part of Leslie's money.

266. On or about May 10, 2006 [Wednesday], David Simpson and/or Nathan Simpson caused LD III to issue: check number "1045;" amount "\$200,000.00;" payable to "David Simpson;" for "ownership in The Preserve." On information and belief, issuance of the \$200,000.00 check to David Simpson constitutes a wrongful taking.

267. Leslie was not asked, informed or otherwise aware that David Simpson and/or Nathan Simpson took \$200,000.00 of her funds for "an ownership interest in The Preserve." The fact that Ken Dolezsar allowed David Simpson and Nathan Simpson to take \$200,000.00 of Leslie's funds, without her knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

268. On information and belief, the \$200,000.00 described in paragraph 266 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$5,480,000.00.

269. On information and belief, between May 2, 2006 (the date David Simpson and Nathan Simpson caused SOS to purchase the 30.7 acres from the Whiting Family Limited Partnership) and June 11, 2006 (the date the \$10,890,000.00 loan was due and payable to Clark Real Estate Company), David Simpson and Nathan Simpson actively sought a bank or real estate finance company that would refinance the \$10,890,000.00 hard money loan with a less onerous loan.

270. On information and belief, Central Bank in Springville, Utah was one of the banks David Simpson and Nathan Simpson approached about refinancing the \$10,890,000.00 hard money loan with a less onerous loan. They claimed that in as much as they had purchased the 30.7 acres at a cost of \$100,620.00 per acre, that the "market value" of the immediately contiguous 171.0 acres should also be \$100,620.00 per acre. On information and belief, David Simpson, Nathan Simpson and/or Central Bank quickly sought a re-valuation appraisal of the property by Free and Associates.

271. On information and belief, on or about June 7, 2006 [Wednesday], Free and Associates delivered a valuation appraisal to Central Bank in Springville, Utah which valued the combined 201.7 acres at or near \$13,600,000.00 – an approximate value of only \$67,430.00 per acre.

272. On information and belief, the \$13,600,000.00 valuation was subject to several contingencies identified by Free and Associates, including contaminated water concerns, however:

- a. The appraisers failed to recognize the separate existence and ownership of the 3.85 acres required for the debris collection basin (as described in paragraph 291 herein);
- b. The appraisers failed to recognize the absolute necessity and purpose of the 3.85 acres required for the debris collection basin (ibid.);
- c. The appraisers failed to recognize the uncertain availability of the 3.85 acres (as described in paragraphs 294 and 295 herein); and,

d. The appraisers may not have included consideration of The Preserve's new legal undertaking to acquire and dedicate 10 acres for a cemetery in Mapleton City (as described in paragraph 239 herein).

273. On information and belief, the 10-acre-cemetery legal undertaking required by Mapleton City increased the cost of developing The Preserve's 171.0 acres by at least \$1,000,000.00 – or approximately \$5,848.00 per acre.

274. On information and belief, after receiving and reviewing the re-valuation appraisal of the property by Free and Associates, Central Bank decided to not refinance The Preserve's \$10,890,000.00 loan from Clark Real Estate Company.

275. On information and belief, David Simpson and Nathan Simpson, of necessity, entreated Ken Dolezsar with a forty percent (40%) ownership offer and entered into a new agreement with Dolezsar for one or more of the following reasons:

a. The due date for repayment of the \$10,890,000.00 loan secured by a *Deed of Trust* (see Exhibit 80) on The Preserve's 171.0 acres was immediate;

b. David Simpson, Nathan Simpson and The Preserve lacked resources to payoff or substantially reduce the loan;

c. David Simpson and Nathan Simpson had failed in their efforts to get the \$10,890,000.00 loan refinanced with a less onerous loan;

d. David Simpson and Nathan Simpson believed Clark Real Estate Company would extend the \$10,890,000.00 loan if the 30.7 acres was offered as additional collateral because Free and Associates had recently appraised the

combined 201.7 acres at or near \$13,600,000.00; and,

e. The \$5,480,000.00 of Leslie's funds invested to date was approximately equal to 40% of the \$13,600,000.00 total appraised value of the 201.7 acres (disregarding the existing \$10,890,000.00 loan secured by the 171.0 acre parcel).

276. Leslie was not asked, informed or otherwise aware of Ken Dolezsar's new agreement with David Simpson and Nathan Simpson. The fact that David Simpson and Nathan Simpson could persuade Ken Dolezsar to compromise "Leslie's 100% ownership" of the 30.7 acres into a 40% minority interest in The Preserve's 201.7 acres – all subject to at least \$10,890,000.00 pre-existing debt – without Leslie's knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

277. On or about June 11, 2006 [Sunday], the six-month \$10,890,000.00 loan (described in paragraph 230 herein) from Clark Real Estate Company came due. On information and belief, Clark Real Estate Company agreed to extend and revise the loan, but only for six additional months, and only on very expensive terms and conditions, including:

a. "[The Preserve] agrees to pay an extension fee to [Clark Real Estate Company] in the amount of \$575,000.00 (the "Extension Fee");

b. "The Extension Fee shall be added to the principal balance of the Note as of June 11, 2006, for a new principal balance of \$11,465,000.00;

c. "[The Preserve] shall make monthly payments of [18% per annum] interest only in the amount of \$171,975.00 each, with the first payment due on July 11, 2006, and subsequent payments due on the 11th day of each month thereafter.

d. "Dolezsar [Ken] agrees to guaranty the Loan ... [o]n or before July 27, 2006, ...

e. "[The Preserve] agrees to grant to [Clark Real Estate Company] a first priority trust deed lien on additional real property [the 30.7 acres] located in Utah County, Utah ... the ("Additional Property")."

See Exhibits 89 and 90, copies of *Extension Agreement* and *Amendment to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing*.

278. On or about June 13, 2006 [Tuesday], unknown to Leslie, David Simpson and/or Nathan Simpson caused LD III to issue a \$250,000.00 check. LD III's check register notes: check number "1063;" amount "\$250,000.00;" payable to "The Preserve at Mapleton;" for "Note Payable - The Preserve, Capital Contribution to The Preserve." Also, on or about June 13, 2006, there was a deposit into The Preserve's checking account in the amount of \$250,000.00. On information and belief, issuance of the \$250,000.00 check to The Preserve constitutes a wrongful taking.

279. Leslie was not asked, informed or otherwise aware that David Simpson and/or Nathan Simpson took \$250,000.00 of her funds for a "Capital" investment in The Preserve. The fact that Ken Dolezsar allowed David Simpson and Nathan Simpson to take \$250,000.00 of Leslie's funds, without her knowledge or permission, is an indication of

Simpsons' dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in the Simpsons.

280. On information and belief, the \$250,000.00 described in paragraph 278 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$5,730,000.00.

281. Immediately after the \$250,000.00 described in paragraph 278 herein was deposited into The Preserve's account, David Simpson and/or Nathan Simpson caused The Preserve to issue: check number "128;" amount "\$200,000.00;" payable to "David Simpson;" for "Note Payable - David Simpson Capital Investment Loan Re-payment." On information and belief, issuance of the \$200,000.00 check to David Simpson constitutes a wrongful taking. On information and belief, David Simpson did not lend \$200,000.00 of his own funds to or for the benefit of The Preserve.

282. Also, on or about June 13, 2006, Central Bank debited The Preserve's account \$5,000.00 to pay Free and Associates's fee for the updated valuation appraisal (described in paragraphs 271 and 272 herein).

283. On or about July 26, 2006 [Wednesday], SOS assigned a 102/170ths interest in The Preserve to Defendant DN Simpson Mapleton. The *Assignment* was executed by Nathan Simpson on behalf of SOS. See Exhibit 91, copies of *Assignment of Member Interest*.

284. On or about July 26, 2006, SOS assigned an 18/170ths interest in The

Preserve to Plaintiff LD III. The *Assignment* was signed by Nathan Simpson on behalf of SOS. See Exhibit 91.

285. On or about July 26, 2006, Wood Springs assigned a 50/170ths interest in The Preserve to Plaintiff LD III. The *Assignment* was executed by Nathan Simpson on behalf of Wood Springs. See Exhibit 91.

286. After the assignments described in paragraphs 283, 284 and 285 herein, The Preserve was ostensibly owned 60% by DN Simpson Mapleton and 40% by LD III.

287. On or about July 27, 2006 [Thursday], on information and belief, all but one of the loan and loan-guaranty documents, requisite for the loan extension (described in paragraph 277 herein), were executed by David Simpson, Nathan Simpson and Ken Dolezsar, as managers of The Preserve, and David Simpson, Nathan Simpson, Merideth V. Simpson, and Ken Dolezsar, as loan guarantors. The final document, an \$11,465,000.00 *Deed of Trust* in favor of Clark Real Estate Company encumbering the 30.7 acres, was executed by Nathan Simpson, as manager of SOS, on or about September 21, 2006. The *Deed of Trust* was recorded at the Utah County Recorder's Office on September 22, 2006 as entry 125433. See Exhibit 92, copy of *Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing*.

288. Leslie was not asked, informed or otherwise aware that David Simpson, Nathan Simpson and Ken Dolezsar had executed an \$11,465,000.00 loan in behalf of The Preserve at Mapleton development project, personally guarantied the loan, and used the 30.7 acres as well as the 171.0 acres to secure the loan. The fact that Ken Dolezsar did

so, without Leslie's knowledge or permission, is an indication of David Simpson's and Nathan Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with the Simpsons.

289. As described in paragraph 235 herein, the *Development Agreement* anticipated two separate debris collection basins would be needed to collect, contain and channel mountain snow melt, storm runoff and related debris: "The southern debris basin is to be located upon real property not owned or controlled by the City or Owner and the City shall work with Owner to gain permission for the construction and maintenance."

290. On information and belief, M. W. Brown Engineering, Inc. ("Brown Engineering") considered all important and relevant factors and determined that one larger, extended debris collection basin, following the natural contour of the mountain, would better collect, contain and channel mountain snow melt and storm runoff and related debris from the mountain's existing natural drainages, as opposed to the two smaller collection basins anticipated by the *Development Agreement*. On information and belief, Mapleton City Planning Commission concurred and modified the Master Plan accordingly.

291. The single debris collection basin, as surveyed, designed and engineered by Brown Engineering to follow the natural contour of the mountain, would necessarily encroach upon approximately 3.85 acres of real property owned by Utah's Department of Natural Resources - Division of Wildlife Resources ("DNR"). See Exhibit 93, copy of Plat "A" Amended, with Attachments; see *also*, footnote 5 of paragraph 205, herein.

292. On information and belief, at or near the same time Brown Engineering

delivered copies of their surveys, designs and engineering reports, regarding Plat A, Plat B and the related debris collection basin to David Simpson and Nathan Simpson, it also delivered copies of the same surveys, designs and engineering reports to Mapleton City and the DNR for their consideration.

293. On information and belief, DNR personnel carefully reviewed all of the surveys, designed plat maps and engineering reports submitted and had several communications with Brown Engineering and Mapleton City regarding the same.

294. On information and belief, DNR personnel fully advised David Simpson and Nathan Simpson that the 3.85 acres needed by The Preserve to construct the debris collection basin was part of a 120 acre parcel of real property purchased by the DNR in 1942 with federal funds, subject to a provision that no portion of the property could ever be sold or exchanged by the DNR without prior federal approval.

295. On information and belief, DNR personnel expressly cautioned David Simpson and Nathan Simpson that the process of seeking federal approval was slow (meaning the federal government might take years to consider a proposed sale or exchange) and uncertain (meaning the federal government might not approve the proposed sale or exchange).

296. On information and belief, between July 27, 2006 (the date the \$10,890,000.00 loan was extended and revised as a \$11,465,000.00 loan) and December 11, 2006 (the date the \$11,465,000.00 loan would next be due and payable to Clark Real Estate Company), David Simpson and Nathan Simpson actively sought a bank or real

estate finance company that would refinance the \$11,465,000.00 hard money loan with a less onerous loan.

297. David Simpson and Nathan Simpson each knew and understood that a "high value" real estate appraisal was both expedient and requisite to obtain replacement financing. On information and belief, sometime during August or September, 2006, David Simpson and Nathan Simpson, in furtherance of their business enterprise and confidence schemes, conspired and devised a scheme or artifice consisting of a series of sham real estate transactions, each depicting highly inflated property values, designed to deceive prospective investors, real estate appraisers, banks, real estate lenders and others.

298. On or about September 6, 2006 [Wednesday], David Simpson and Nathan Simpson purportedly sold Lot 73 (consisting of 3.887 acres) of The Preserve to David Nemelka via a *Purchase and Sale Agreement*. David Nemelka purportedly purchased Lot 73 for \$800,000.00 by tendering \$50,000.00 earnest money and agreeing to pay the \$750,000.00 remaining balance at closing. See Exhibit 94, copy of *Purchase and Sale Agreement*.

299. Eight and a half months later, on or about May 31, 2007, The Preserve/ Nemelka \$800,000.00 *Purchase and Sale Agreement* (described in paragraph 298 herein) was rescinded by mutual agreement of the parties and then, on the same day, Lot 73 was purchased again by David Nemelka – but this time for \$1,200,000.00. On information and belief, and for reasons explained in paragraphs 382 through 395 herein, both the \$800,000.00 sale and the \$1,200,000.00 sale were sham transactions. See Exhibits 95

and 96, copies of *Rescission Agreement* and *Second Purchase and Sale Agreement*.

300. On information and belief, on or about October 1, 2006 [Sunday], Nathan Simpson solicited Dallas Hakes' participation in the sham-real-estate-transaction scheme described in paragraph 297 herein. On information and belief, Dallas Hakes agreed to collaborate with David Simpson and Nathan Simpson and executed five separate *Real Estate Purchase Contracts*, dated October 1, 2006, offering to purchase Lots 33, 37, 38, 39 and 40, together with a \$12,500.00 check dated October 4, 2006 from Lonestar Builders, Inc. payable to Pro Title and Escrow. Dallas Hakes' sham-transaction *Real Estate Purchase Contracts* purported to offer the following amounts for the designated lots:

LOT	ACREAGE	PURCHASE OFFER	EARNEST \$
33	0.970	\$325,000.00	\$2,500.00
37	1.185	\$340,000.00	\$2,500.00
38	1.168	\$340,000.00	\$2,500.00
39	1.272	\$340,000.00	\$2,500.00
40	1.299	\$340,000.00	\$2,500.00

See Exhibit 97, copies of first pages of five *Real Estate Purchase Contracts* and Check No. 09330.

301. On information and belief, on or about October 2, 2006 [Monday], Nathan Simpson solicited Chad Carlson's participation in the sham-real-estate-transaction scheme described in paragraph 297 herein. On information and belief, Chad Carlson agreed to collaborate with David Simpson and Nathan Simpson and executed five separate *Real Estate Purchase Contracts*, dated October 2, 2006, offering to purchase Lots 51, 52, 53,

54 and 55, together with a \$12,500.00 check dated October 2, 2006 from 2 Brothers Communications payable to Pro Title and Escrow. Chad Carlson's sham-transaction *Real Estate Purchase Contracts* purported to offer the following amounts for the designated lots:

LOT	ACREAGE	PURCHASE OFFER	EARNEST \$
51	1.010	\$325,000.00	\$2,500.00
52	0.970	\$325,000.00	\$2,500.00
53	0.960	\$350,000.00	\$2,500.00
54	0.740	\$325,000.00	\$2,500.00
55	0.850	\$325,000.00	\$2,500.00

See Exhibit 98, copies of first pages of five *Real Estate Purchase Contracts* and Check No. 2646.

302. On information and belief, on or about October 4, 2006 [Wednesday], Nathan Simpson solicited Michael Marx's participation in the sham-real-estate-transaction scheme described in paragraph 297 herein. On information and belief, Michael Marx agreed to collaborate with David Simpson and Nathan Simpson and executed two separate *Real Estate Purchase Contracts*, dated October 4, 2006, offering to purchase Lots 34 and 35, together with a \$5,000.00 check dated October 6, 2006 from Michael A. Marx payable to Pro Title and Escrow. Michael Marx's sham-transaction *Real Estate Purchase Contracts* purported to offer the following amounts for the designated lots:

LOT	ACREAGE	PURCHASE OFFER	EARNEST \$
34	1.117	\$340,000.00	\$2,500.00
35	1.180	\$340,000.00	\$2,500.00

See Exhibit 99, copies of first pages of two *Real Estate Purchase Contracts* and Check No. 0273.

303. On information and belief, on or about October 6, 2006 [Friday], Nathan Simpson solicited Allen Hakes' participation in the sham-real-estate-transaction scheme described in paragraph 297 herein. On information and belief, Allen Hakes agreed to collaborate with David Simpson and Nathan Simpson and executed two separate *Real Estate Purchase Contracts*, dated October 6, 2006, offering to purchase Lots 49 and 50, together with a \$5,000.00 check dated October 6, 2006 from Lonestar Gutters payable to Pro Title and Escrow. Allen Hakes' sham-transaction *Real Estate Purchase Contracts* purported to offer the following amounts for the designated lots:

LOT	ACREAGE	PURCHASE OFFER	EARNEST \$
49	1.020	\$325,000.00	\$2,500.00
50	0.990	\$325,000.00	\$2,500.00

See Exhibit 100, copies of first pages of two *Real Estate Purchase Contracts* and Check No. 2816.

304. On information and belief, the \$800,000.00 and \$1,200,000.00 "sales," and the \$4,665,000.00 of "pre-sales," identified in paragraphs 298 through 303 herein, were all contrived sham transactions devised and executed to deceive prospective investors, real estate appraisers, banks and/or real estate lenders, and others.

305. On or about October 17, 2006 [Tuesday], David Simpson and Nathan Simpson came before the Mapleton City Council seeking plat approvals. The City Council

granted Preliminary Plat approval for The Preserve at Mapleton, and Final Plat Approval for Plats A, D, F and G⁸ Subdivisions of The Preserve at Mapleton subject to a list of thirteen conditions. See Exhibits 101 and 102. *Minutes - Mapleton City Council Meeting - October 17, 2006*, and, *Resolution No. 2006-49 - October 17, 2006*.

306. Condition 7 on the list of thirteen, evidences that Mapleton City's Planning Commission, City Council and/or Mayor were not aware that neither The Preserve, nor David Simpson or Nathan Simpson, had ownership of, easement rights or permission to move onto the 3.85 acres and begin construction of the debris collection basin, to wit:

Whereas, the applicant has made a valid application Final Plat approval in accordance with the Mapleton City Code, and;

Whereas, the Planning Commission has made a formal recommendation of approval for Final Plat, and;

Whereas, the applicant has demonstrated that he meets all of the applicable code requirements.

Now Therefore, Be It Resolved that the City Council Approve the Preserve at Mapleton Plats "A, D, F & G", and authorizes the Mayor to sign the plat to execute the same, with the following conditions: ...

7. That the developers agree that the debris basin will be maintained by the HOA. [Emphasis added.]

See Exhibits 101 and 102.

307. It is *a fortiori* that the developers [David Simpson and Nathan Simpson] cannot honestly "agree that the debris basin will be maintained" if they do not have – and

⁸ Plats F and G of The Preserve at Mapleton development project are not part of the 171.0 acres, the 30.7 acres or the 3.85 acres which are subject matter of this Second Amended Complaint. Plats F and G are contiguous to Plat B (part of the 171.0 acres) and Plat E (part of the 30.7 acres) which are subject matter of this Complaint, but were owned and developed separately by Jack and Suzanna Perry. Plat F contains Lots 11-16 and 23-32, and was recorded by the Utah County Recorder on January 21, 2007 as: entry 025881:2007; arm 134; map book 49; page 664. Plat G contains Lots 1-10 and 17-22, and was recorded by the Utah County Recorder on January 21, 2007 as: entry 025882:2007; arm 134; map book 49; page 665.

might never have – ownership, easement rights or permission to move onto the 3.85 acres to construct the required debris collection basin. See Exhibits 101 and 102.

308. On or about October 18, 2006 [Wednesday], Mapleton City issued input fee statements for Plats A and D of The Preserve at Mapleton. See Exhibit 103, copies of Statements.

309. Sometime in the fall of 2006, David Simpson and Nathan Simpson approached MagnetBank⁹ in Salt Lake City, Utah seeking a lender to refinance the \$11,465,000.00 loan from Clark Real Estate Company. On information and belief, MagnetBank expressed interest subject to its receiving, reviewing and consideration of certain essential loan criteria, including *inter alia*:

- a. A current title report for all of the property involved in The Preserve at Mapleton development project;
- b. A current valuation appraisal for all of the property involved in The Preserve at Mapleton development project;
- c. Evidence that The Preserve had construction bonds and letters of credit issued in amounts sufficient to meet Mapleton City's requirements for development of Plats A and D;
- d. Evidence that The Preserve had additional working capital sufficient to complete development of Plats A and D;
- e. Evidence that Plats A and D were recorded with the Utah County

⁹ MagnetBank – a two word name correctly spelled as one word.

recorder's office and ready for development;

- f. Personal financial statements of David Simpson and Nathan Simpson;
- g. Personal guaranties of David Simpson and Nathan Simpson; and,
- h. MagnetBank's ability to share part of the loan with a participating bank.

310. On information and belief, David Simpson and Nathan Simpson each knew and understood that the loan criteria (identified in paragraph 309 herein) were necessary and highly-determinative factors relied on by MagnetBank and its participating bank when deciding whether or not to fund the refinance of The Preserve's \$11,465,000.00 loan from Clark Real Estate Company.

311. On information and belief, David Simpson and Nathan Simpson, in furtherance of their confidence and business enterprise schemes, conspired, devised and executed a plan to deceive MagnetBank and its participating bank into refinancing the \$11,465,000.00 loan.

312. On information and belief, on or about October 27, 2006 [Friday], David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, caused MagnetBank to request a *Preliminary Title Insurance Report* from Pro-Title & Escrow, Inc. ("Pro-Title").

313. The *Preliminary Report* prepared by Pro-Title was defective and incomplete because it referenced only the 30.7 acres (by property descriptions and by tax serial numbers) and the 171.0 acres (also by property descriptions and tax serial numbers). It did not recognize, reference or consider the DNR's 3.85 acres. On information and belief,

the actual Title Insurance issued on or about January 26, 2007, was incomplete for the same reasons. See Exhibit 104, copy of *Schedule A - Preliminary Title Insurance Report*; see also paragraph 205 herein and its footnotes.

314. On information and belief, at or near the end of November or the beginning of December, 2006, David Simpson and Nathan Simpson, desperately seeking an immediate \$6,800,000.00 loan from Leslie to save The Preserve at Mapleton development project, furthered their conspired confidence and business enterprise schemes by knowingly, intentionally and deceitfully entreating Ken Dolezsar with various gilded promises and representations. Plaintiffs are uncertain whether or not, and if so to what extent, Ken Dolezsar was duped into believing David Simpson's and Nathan Simpson's promises and representations, or was complicitous with their deceit while repeating the following promises and representations to Leslie on behalf of The Preserve, the Simpsons and himself:

- a. That The Preserve at Mapleton development project was "the premier" real estate development and "best" real estate investment opportunity in the State of Utah;
- b. That the project consisted of approximately 60 proposed residential lots when the 171.0 and 30.7 acres were combined;
- c. That he [Ken Dolezsar] had shrewdly renegotiated Leslie's \$4,300,000.00 investment with David Simpson and Nathan Simpson so that Leslie's entity, LD III, now owned a forty percent (40%) interest in The Preserve and its

201.7 acres rather than sole ownership of just the 30.7 acre property¹⁰;

d. That the project was so successful that one of the large (5 acre) lots and fourteen of the small (1 acre) lots had already been pre-sold under contracts for more than \$5,000,000.00;

e. That the entire project could be developed and sold out in less than three years; and,

f. That a \$6,800,000.00 one-year loan was all that was needed to finish development of the project.

315. Ken Dolezsar, on behalf of The Preserve, the Simpsons and himself, also promised and represented to Leslie, that if she would lend The Preserve the requisite \$6,800,000.00:

a. That LD III's ownership and profits interest in The Preserve would be increased from forty percent (40%) to forty-five percent (45%)¹¹;

b. That Leslie's (or LD III's) \$6,800,000.00 loan would be paid back, together with twelve percent (12%) interest, in just twelve (12) months;

c. That The Preserve would issue, to Leslie (or LD III), a one-year \$6,800,000.00 *Promissory Note* secured by a first position *Trust Deed* on the real

¹⁰ The intended intrigue of Ken Dolezsar's "shrewd re-negotiation" ruse was that 40% of 201.7 acres is 80.68 acres, and 80.68 acres is significantly greater than 30.7 acres – therefore Leslie seemingly owned more. But the truth was that the 80.68 acres were encumbered by \$11,465,000.00 of debt and therefore worth substantially less than the unencumbered 30.7 acres.

¹¹ The obvious intended intrigue of this purported offer was that 45% of 201.07 acres equals 90.765 acres, and as 45% is greater than 40%, so 90.765 acres is greater than 80.68 acres. See footnote 10.

property; and,

d. That Leslie (or LD III) would receive \$250,000.00 first receipts from the sale of each lot to insure the return of her \$6,800,000.00 in just twelve (12) months.

316. On information and belief, in order to induce and ensure immediacy of Leslie's \$6,800,000.00 loan, David Simpson and Nathan Simpson knowingly, intentionally and deceitfully made the following promises, representations and offers of contractual consideration to Ken Dolezsar and caused Dolezsar to repeat the promises, representations and offers of contractual consideration to Leslie in behalf of the Simpsons:

a. That in addition to Leslie's receiving a return of her \$6,800,000.00 loan with interest, and in addition to Leslie's 45% profits interest in The Preserve, David Simpson and Nathan Simpson would personally guaranty that Leslie would also receive a hundred percent (100%) return on her \$6,800,000.00 investment in the same twelve (12) months, and, that David Simpson and Nathan Simpson would personally execute a second \$6,800,000.00 *Promissory Note* payable to Leslie as prepaid consideration for their guaranty, if she would invest immediately;

b. That in addition to Leslie's receiving a return of her \$6,800,000.00 loan with interest, and in addition to Leslie's 45% profits interest in The Preserve, plus the hundred percent (100%) return on her \$6,800,000.00 investment in the same twelve (12) months, David Simpson and Nathan Simpson would personally guaranty that Leslie would also receive an additional \$3,300,000.00 within eighteen (18) months, and, that David Simpson and Nathan Simpson would personally execute

a \$3,300,000.00 *Promissory Note* payable to Leslie as prepaid consideration for their guaranty, if she would invest immediately; and,

c. That in addition to the other inducements and considerations, David Simpson and Nathan Simpson would sell Leslie (or LD III) approximately thirty-one (31) acres¹² of prime, light-industrial commercial, ready-to-build-on real property in Springville, Utah, valued at \$3,300,000.00, for only \$1,500,000.00, if she would invest immediately.

317. David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Leslie, and also Ken Dolezsar, whether duped by or complicitous with the Simpsons, did not disclose to Leslie the following relevant material facts:

a. That David Simpson and Nathan Simpson intended to deceive and defraud Leslie, MagnetBank and its participating bank;

b. That the 201.7 acres (171.0 acres plus 30.7 acres) were encumbered by \$11,465,000.00 first position trust deeds in favor of Clark Real Estate Company;

c. That the \$11,465,000.00 debt was due and payable December 11, 2006, and that, neither David Simpson, Nathan Simpson nor The Preserve had resources sufficient to payoff, or substantially reduce the debt, or even pay current the accrued interest;

¹² Utah County identified the same property with Tax Serial No. 23:001:0141 w/30.76 acres. For purposes of distinguishing this property in this Second Amended Complaint, Plaintiffs will describe it as the "30.76 acres in North Springville" or the "30.76 acres."

d. That repayment of the \$11,465,000.00 debt to Clark Real Estate Company was personally guarantied by David Simpson, Nathan Simpson and Ken Dolezsar;

e. That David Simpson, Nathan Simpson and Ken Dolezsar intended to use part of Leslie's \$6,800,000.00 to address interest payments due Clark Real Estate Company;

f. That David Simpson and Nathan Simpson intended to use part of Leslie's \$6,800,000.00 to pay back \$400,000.00 (described in paragraph 158 herein) they had borrowed from Larry Nelson to settle the Balgos law suit (described in paragraphs 130 and 131 herein);

g. That the sale to David Nemelka and the pre-sales to Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes were sham transactions designed to deceive Leslie, real estate appraisers, banks, real estate lenders and others;

h. That David Simpson and Nathan Simpson intended to use part of Leslie's \$6,800,000.00 to fund construction bonds, irrevocable letters of credit, and otherwise "prove equity" so The Preserve could borrow \$12,700,000.00 from MagnetBank and its participating bank;

i. That David Simpson and Nathan Simpson did not intend to record the \$6,800,000.00 *Trust Deed* (described in sub-paragraph 315c herein), because if they did they would not be able to borrow \$12,700,000.00 from MagnetBank and its participating bank;

j. That neither David Simpson nor Nathan Simpson intended to acknowledge or pay the \$6,800,000.00 and \$3,300,000.00 *Promissory Notes* (described in sub-paragraphs 316a and 316b herein);

k. That The Preserve at Mapleton development project was subject to a *Development Agreement* (as described in paragraphs 233 and 234 herein);

l. That the *Development Agreement* required The Preserve to construct a debris collection basin to protect people and property (as described in paragraph 235 herein);

m. That Brown Engineering had surveyed, designed and engineered a debris collection basin to encroach upon approximately 3.85 acres of property owned by the DNR;

n. That the DNR could not sell or exchange the 3.85 acres without first obtaining federal approval;

o. That regardless of the fact that the federal approval process would not be quick or certain, David Simpson and Nathan Simpson intended proceed anyway and to risk a very substantial portion of Leslie's \$6,800,000.00 loan to construct the requisite debris collection basin on the DNR's 3.85 acres without any right or title to the property, without permission of the DNR to proceed, and/or without approval from the federal government for a sale or exchange of the 3.85 acres;

p. That Mapleton City required The Preserve to accept a legal undertaking to acquire and dedicate 10 acres for a cemetery in Mapleton City (as

described in paragraph 239 herein) – increasing the cost of developing The Preserve's 171.0 acres by at least \$1,000,000.00 – or approximately \$5,848.00 per acre; and,

q. That the 30.76 acres in North Springville (described in sub-paragraph 316c herein) was saturated with wetlands issues and contained serious violations of regulations enforced by the United States Army Corp. of Engineers.

318. Leslie believed the promises, representations and offers of contractual consideration (as described in paragraphs 314, 315 and 316 herein) to be reasonable, true and acceptable, and in good faith reliance on these promises, representations and offers of contractual consideration, and not being aware of the relevant material facts (described in paragraph 317 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, agreed to immediately fund a \$6,800,000.00 loan to The Preserve to finish development of The Preserve at Mapleton project.

319. On or about December 1, 2006 [Friday], on information and belief, Ken Dolezsar prepared a document which summarized some of the transfers of Leslie's funds, ostensibly for The Preserve at Mapleton development project, that involved David Simpson or Nathan Simpson. The document was executed by Leslie, Ken Dolezsar, David Simpson and Nathan Simpson. On its face, the document "accounts" for two prior transfers of Leslie's funds, specifically \$330,000.00 and \$306,000.00 (described in paragraphs 211 and 250 herein) totaling \$636,000.00, but omits at least four prior transfers of Leslie's funds, specifically \$300,000.00, \$44,000.00, \$200,000.00, and \$250,000.00 (described in

paragraphs 220, 236, 266 and 278 herein) totaling \$794,000.00. See Exhibit 105, copy of *Leslie DeeAnn Mower Investments LD III*.

320. Plaintiffs do not know if the \$794,000.00 of relevant material omissions, described in paragraph 319 herein, were inadvertent or intentional. Leslie was not asked, informed or otherwise aware at the time she signed the document, that an additional \$794,000.00 of her funds had already been borrowed, taken, used or spent by David Simpson and/or Nathan Simpson ostensibly for The Preserve at Mapleton development project.

321. On or about December 1, 2006, David Simpson and Nathan Simpson received a \$6,800,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to The Preserve. The check memo stated "Preserve Phase 2." See Exhibit 106, copy of Check No. 1058.

322. On information and belief, the \$6,800,000.00 described in paragraph 321 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson, ostensibly for The Preserve at Mapleton development project, to at least \$12,530,000.00.

323. On or about December 1, 2006, The Preserve (by its managers, David Simpson and Nathan Simpson) executed a \$6,800,000.00 *Trust Deed Note* payable to LD III and also at the same time executed a *Trust Deed* in favor of LD III on both the 171.0 acres and the 30.7 acres owned by The Preserve, pretending to secure the \$6,800,000.00 *Trust Deed Note* (as described in sub-paragraph 315c herein). The *Trust Deed Note* bears

interest at the rate of twelve percent (12%) per year, plus penalty interest of one percent (1%) per month if in default, and was due and payable December 1, 2007. See Exhibits 107 and 108, copies of *Trust Deed Note* and *Trust Deed*.

324. Under pretext of courtesy, David Simpson and Nathan Simpson took possession of the \$6,800,000.00 *Deed of Trust* offering to record it for Leslie and LD III, but intentionally never recorded it, in order to deceive and defraud Leslie, MagnetBank and its participating bank.

325. On or about December 1, 2006, David Simpson and Nathan Simpson personally executed a \$6,800,000.00 *Promissory Note* payable to Leslie (as described in sub-paragraph 316a herein) and caused Ken Dolezsar to encourage Leslie to accept it as prepaid consideration. The *Trust Deed Note* bears interest at the rate of twelve percent (12%) per year, plus penalty interest of one percent (1%) per month if in default, and was due and payable December 1, 2007. See Exhibit 109, copy of *Promissory Note*.

326. On or about December 1, 2006, David Simpson and Nathan Simpson personally executed a \$3,300,000.00 *Promissory Note* payable to Leslie (as described in sub-paragraph 316b herein) and caused Ken Dolezsar to encourage Leslie to accept it as prepaid consideration. The *Promissory Note* bears no interest, but has penalty interest of one percent (1%) per month if in default, and was due and payable June 1, 2008. See Exhibit 110, copy of *Promissory Note*.

327. In December 2006, a *Second Amended and Restated Operating Agreement* for The Preserve was executed by Nathan Simpson and Ken Dolezsar, as managers. It

states that DN Simpson Mapleton owns 55% of The Preserve and that LD III owns 45% of The Preserve. See Exhibit 111, copy of *Second Amended and Restated Operating Agreement of The Preserve at Mapleton Development Company, LLC*.

328. On or about December 5, 2006 [Tuesday], David Simpson and/or Nathan Simpson deposited the \$6,800,000.00 check (described in paragraph 321 herein) into The Preserve's checking account at Central Bank.

329. On or about December 5, 2006, David Simpson and Nathan Simpson used \$759,579.50 of Leslie's \$6,800,000.00 loan to acquire a Construction Bond for Plat D of The Preserve at Mapleton development project. See Exhibit 112, copy of Vicky Curtis letter [1] to Mapleton City - dated December 5, 2006.

330. On or about December 5, 2006, David Simpson and Nathan Simpson used \$1,493,784.55 of Leslie's \$6,800,000.00 loan to acquire a Construction Bond for Plat A of The Preserve at Mapleton development project. See Exhibit 112, copy of Vicky Curtis letter [2] to Mapleton City - dated December 5, 2006.

331. On or about December 5, 2006, David Simpson and Nathan Simpson used \$450,672.80 of Leslie's \$6,800,000.00 loan to acquire two Irrevocable Letters of Credit – \$151,915.90 to insure work performed on Plat D, and, \$298,756.91 to insure work performed on Plat A:

... in favor of Mapleton City for the account of Nathan Simpson ... available to Mapleton City when accompanied by a statement from Mapleton City acknowledging that the improvements covering The Preserve at Mapleton located at approximately 1250 E 1600 S, Mapleton, UT, have not been completed or that [any] defects which may have developed therein have not

been repaired. [Emphasis added.]

See Exhibit 112, copy of Vicky Curtis letters [3 and 4] to Mapleton City - dated December 5, 2006.

332. On or about December 11, 2006 [Monday], the \$11,465,000.00 loan from Clark Real Estate Company came due; David Simpson and Nathan Simpson used \$330,250.00 of Leslie's \$6,800,000.00 loan to pay current the interest accrued and to extend the \$11,465,000.00 loan for one additional month:

For the extension to January 11, 2007, [The Preserve] shall pay (a) an extension fee to [Clark Real Estate Company] in the amount of \$114,650.00 [1% of the outstanding principal balance]; (b) one month's accrued interest in the amount of \$171,975.00 [annual rate of 18%]; (c) additional accrued and unpaid interest of \$43,125.00; and (d) attorneys' fees incurred by [Clark Real Estate Company] in the amount of \$500.00, for a total payment of \$330,250.00.

See Exhibit 113, copy of *Second Extension Agreement*.

333. Clark Real Estate Company further agreed to continue extending the loan on a month-by-month basis for up to five more consecutive months on receiving consideration of the interest accrued for the previous month plus a monthly loan extension fee of one percent (1%) of the outstanding principal balance of the loan. See Exhibit 113.

334. On or about December 15, 2006 [Friday], David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, caused Vicky Curtis, vice president and manager of Central Bank in Springville, Utah to send a letter to Jenny Baer, vice president of MagnetBank, certifying the December 15th status balances of The Preserve's: construction bonds (described in paragraphs 329 and 330

herein); irrevocable letters of credit (described in paragraph 331 herein); and, bank account:

David and Nathan Simpson have a money market account which secures a Durability Bond in favor of Mapleton City in the amount of \$2,253,364.05, and a certificate of deposit which secures an Irrevocable Letter of Credit in favor of Mapleton City in the amount of \$450,672.80. They also have an account in the name of The Preserve at Mapleton in the amount of \$3,751,215.42.

See Exhibit 114, copy of Vicky Curtis Letter to MagnetBank - dated December 15, 2006.

335. On or about December 19, 2006 [Tuesday], David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, caused MagnetBank to use the services of Free and Associates for an updated or re-valuation appraisal of the property. On or about that same date, David Simpson and Nathan Simpson used \$5,000.00 of Leslie's \$6,800,000.00 loan to pay Free and Associates' fee for the updated valuation appraisal.

336. On or about January 3, 2007 [Tuesday], Free and Associates delivered to MagnetBank its *Summary Appraisal Report on The Preserve at Mapleton*. The *Summary Appraisal Report* contains four dates of valuation:

- December 27, 2006 – the Date of Inspection
- April 30, 2007 – the Projected Date of Completion of Phase 1 (Plats A & D)
- August 30, 2007 – the Projected Date of Completion of Phase 2 (Plats B & E)
- September 30, 2008 – the Projected Date of Completion of Phase 3 (Plat C)

The *Summary Appraisal Report* also contains several different valuations depending on criteria and assumptions described in the Report. See Exhibit 115, copy of *Summary Appraisal Report on The Preserve at Mapleton*.

337. The *Summary Appraisal Report* is materially defective because the appraisers failed to recognize the separate existence and ownership of the 3.85 acres. The *Report* incorrectly states, "The subject property consists of 208.05 acres of land situated on seven tax parcels." The *Report* identifies and describes the two parcels which constitute the 171.0 acres, namely: Parcel # 27-034-0057 and Parcel # 27-034-0064. The *Report* identifies and describes only five of the six parcels which constitute the 30.7 acres, namely Parcel # 27-034-0008, Parcel # 27-034-0010, Parcel # 27-034-0044, Parcel # 27-034-0045 and Parcel # 27-034-0048, but misses Parcel # 27-034-0012 (10.5 acres). There is nothing in the *Report* indicating the appraisers recognized the separate existence of, and DNR ownership of, the 3.85 acres. See Exhibit 115.

338. The *Summary Appraisal Report* is materially defective because the appraisers failed to recognize the absolute necessity and purpose of the 3.85 acres. There is nothing in the *Report* to suggest that the appraisers considered or were even aware of the governing *Development Agreement* which mandates a debris collection basin (described in paragraph 235 herein) for lawful development of the 171.0 acres – that the 171.0 acres cannot be developed without the requisite collection basin located on the 3.85 acres. See Exhibit 115.

339. The *Summary Appraisal Report* is materially defective because the appraisers failed to recognize the uncertain availability of the 3.85 acres (described in paragraphs 272 and 295 herein). There is absolutely nothing in the *Report* to suggest that the appraisers considered or were even aware:

a. That no portion the 3.85 acres could ever be sold or exchanged by the DNR without prior federal approval;

b. That the process of seeking federal approval was slow (meaning the federal government might take years to consider a proposed sale or exchange); and,

c. That the process of seeking federal approval was uncertain (meaning the federal government might not approve a proposed sale or exchange).

See Exhibit 115.

340. The *Summary Appraisal Report* is materially defective because the appraisers failed to recognize that the sales to David Nemelka and the pre-sales to Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes (described in paragraphs 298 through 303 herein) were sham transactions, and, relied on this false and fraudulent mis-information when determining part of the valuations. See Exhibit 115.

341. The *Summary Appraisal Report* is materially defective because the appraisers failed to recognize and consider The Preserve's new legal undertaking to acquire and dedicate 10 acres for a cemetery in Mapleton City (as described in paragraph 239 herein).

342. On or about January 5, 2007 [Thursday], David Simpson and Nathan Simpson used \$210,000.00 of Leslie's \$6,800,000.00 loan to The Preserve, purportedly to make a loan to North Park, LLC. This use of \$210,000.00 of Leslie's invested funds is outside the scope of The Preserve's business purpose, constitutes a wrongful taking, and

a breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve, to LD III and to LD III's only member, Leslie.

343. On or about January 10, 2007 [Wednesday], The Preserve (by its manager, Nathan Simpson) entered into a *Memorandum of Understanding* with Mapleton City. The *Memorandum*, signed by Mayor M. James Brady, for the City, and Nathan Simpson, as manager for The Preserve, states in part:

This Memorandum sets forth the understanding of The Preserve at Mapleton Development Company, LLC (hereinafter "Developer") and Mapleton City with regard to the final approval of Plats "A", "D", "F", "G", of the subdivision known as The Preserve at Mapleton located in Mapleton City, Utah County, Utah. Everything in the Memorandum shall be in harmony with the development agreement. ...

6. Plat Recording, Clearing and Grubbing. Upon execution of this agreement, Developer may record the final plat for Plats "A" and "D". Developer shall be allowed to begin Clearing and Grubbing as of December 11, 2006. Developer shall not be allowed to install any infrastructure until the final plat has been recorded at the Utah County Recorder's Office.

See Exhibit 116, copy of *Memorandum of Understanding*.

344. On information and belief, David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Mayor Brady, and Mapleton City, the following relevant material facts:

a. That David Simpson and Nathan Simpson intended to deceive and defraud Leslie, MagnetBank and its participating bank, as set forth herein;

b. That the 201.7 acres (171.0 acres plus 30.7 acres) were encumbered by \$11,465,000.00 first position trust deeds in favor of Clark Real Estate Company;

c. That the \$11,465,000.00 debt was due and payable December 11, 2006, and that, neither David Simpson, Nathan Simpson nor The Preserve had resources sufficient to payoff or even substantially reduce the debt without deceiving Leslie into lending The Preserve \$6,800,000.00;

d. That the sale to David Nemelka and the pre-sales to Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes were sham transactions designed to deceive Leslie, real estate appraisers and lenders;

e. That David Simpson and Nathan Simpson intended to use Leslie's \$6,800,000.00 to fund construction bonds, irrevocable letters of credit, and otherwise "prove equity" so The Preserve could borrow \$12,700,000.00 from MagnetBank and its participating bank;

f. That David Simpson and Nathan Simpson did not intend to record the \$6,800,000.00 *Trust Deed* (described in paragraphs 323 and 324 herein) in favor of LD III, because if they did they would not be able to borrow \$12,700,000.00 from MagnetBank and its participating bank;

g. That the DNR could not sell or exchange the 3.85 acres without first obtaining federal approval; and,

h. That regardless of the fact that the federal approval process would not be quick or certain, David Simpson and Nathan Simpson intended proceed anyway and to risk Leslie's funds by constructing the requisite debris collection basin on the DNR's 3.85 acres without any right or title to the property, without permission of the

DNR to proceed, and/or without approval from the federal government for a sale or exchange of the 3.85 acres.

345. On information and belief, Mayor Brady and Mapleton City would never have allowed The Preserve, David Simpson or Nathan Simpson to proceed with development of The Preserve at Mapleton project if the Mayor or the City had been aware of any of the relevant material facts described in paragraph 344 herein.

346. On or about January 12, 2007 [Thursday], David Simpson and Nathan Simpson wrongfully took and converted \$1,148,811.18 of Leslie's \$6,800,000.00 loan, and purchased for themselves certain real property located in Spanish Fork, Utah, and titled it in the name of Defendant Spanish Vista. This use of \$1,148,811.18 of Leslie's invested funds is completely outside the scope of The Preserve's business purpose, constitutes a wrongful taking, and another breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve, to LD III and to LD III's only member, Leslie.

347. As described in part in paragraphs 158 and 159 herein, on or about January 18, 2007, David Simpson and Nathan Simpson, in furtherance of their confidence and business enterprise schemes, took \$400,000.00 of Leslie's \$6,800,000.00 loan, and purchased two cashier's checks payable to LD SQ in the amount of \$200,000.00 each. Purportedly this was to repay the \$400,000.00 that LD SQ had supposedly borrowed from Larry Nelson. There is no record of these cashiers checks ever being deposited into LD SQ's accounts. This taking of \$400,000.00 of Leslie's invested funds by David Simpson and Nathan Simpson is outside the scope of The Preserve's business purpose, constitutes

a wrongful taking, and another breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve, to LD III and to LD III's only member, Leslie.

348. On or about January 18, 2007 [Thursday], David Simpson and Nathan Simpson used \$286,625.00 of Leslie's \$6,800,000.00 loan to The Preserve, to pay current the interest accrued on the \$11,465,000.00 loan from Clark Real Estate Company, and to extend that loan for one additional month.

349. On or about January 19, 2007 [Friday], David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, caused *Plat D* of The Preserve at Mapleton to be recorded at the Utah County Recorder's Office. *Plat D* was recorded as entry 009821:2007, map filing 12070, arm 133, map book 49, and map page 657. See Exhibit 117, copy of *Plat D*.

350. On or about January 24, 2007 [Wednesday], David Simpson and Nathan Simpson, as part of their plan to deceive MagnetBank and its participating bank, caused *Plat A* of The Preserve at Mapleton to be recorded at the Utah County Recorder's Office. *Plat A* was recorded as entry 011973:2007, map filing 12074, arm 133, map book 49, and map page 659. See Exhibit 118, copy of *Plat A*.

351. On information and belief, on or about January 26, 2007 [Friday], MagnetBank received, reviewed and considered:

- a. A copy of Nathan R. Simpson's *Financial Statement* (dated August 31,

2006) with *Accountant's Compilation Report*¹³ (dated September 13, 2006) prepared by Liddle, Waite & Associates, P.C. ("Liddle-Waite"), certified public accountants; and,

b. A copy of David R. Simpson's *Financial Statement* (dated December 15, 2006) with *Accountant's Compilation Report* (dated December 19, 2006) prepared by Liddle-Waite.

See Exhibits 119 and 120, copy of *Nathan R. Simpson Financial Statement with Accountants' Compilation Report* and copy of *David R. Simpson Financial Statement with Accountants' Compilation Report*.

352. Nathan R. Simpson's *Financial Statement with Accountant's Compilation Report*, dated August 31, 2006, is false and misleading because it overstates Nathan Simpson's assets by at least \$1,000,000.00 and understates his liabilities by at least \$11,000,000.00. Nathan Simpson knowingly, intentionally and deceitfully provided inaccurate and incomplete information to Liddle-Waite in furtherance of his conspired confidence and business enterprise schemes, and to deceive MagnetBank, its participating bank, and others. See Exhibit 119.

353. David R. Simpson's *Financial Statement with Accountant's Compilation Report*, dated December 15, 2006, is false and misleading because it overstates David

¹³ Compilation Financial Statements are prepared by accountants based solely upon information provided by the accountant's client. The accountant compiles the client's information into appropriate financial presentation form, but does not investigate, audit or otherwise verify the client's information, nor express an opinion as to the verity of the financial statements or give any other form of assurance. If the client omits needed disclosures, the accountant should state so in the report.

Simpson's assets by at least \$5,000,000.00 and understates his liabilities by at least \$28,000,000.00. David Simpson knowingly, intentionally and deceitfully provided inaccurate and incomplete information to Liddle-Waite in furtherance of his conspired confidence and business enterprise schemes, and to deceive MagnetBank, its participating bank, and others. See Exhibit 120.

354. On or about February 2, 2007 [Friday], MagnetBank received, reviewed and considered an updated copy of Nathan R. Simpson's *Financial Statement* (dated January 31, 2007) with *Accountant's Compilation Report* (dated February 2, 2007) prepared by Liddle-Waite. See Exhibit 121, *Nathan R. Simpson Financial Statement with Accountants' Compilation Report*.

355. Nathan R. Simpson's *Financial Statement with Accountant's Compilation Report*, dated January 31, 2007, is false and misleading because it overstates Nathan Simpson's assets by at least \$2,000,000.00 and understates his liabilities by at least \$28,000,000.00. Nathan Simpson knowingly, intentionally and deceitfully provided inaccurate and incomplete information to Liddle-Waite in furtherance of his conspired confidence and business enterprise schemes, and to deceive MagnetBank, its participating bank, and others. See Exhibit 121.

356. On information and belief, on or about January 26, 2007, David Simpson and Nathan Simpson, in furtherance of their conspired confidence and business enterprise schemes knowingly, intentionally and deceitfully affirmed to MagnetBank, and its participating bank, that the following documents were complete, correct and true:

- a. The *Preliminary Title Insurance Report* issued by Pro-Title;
- b. The *Summary Appraisal Report on The Preserve at Mapleton* by Free and Associates;
- c. Central Bank's December 15, 2006 letter to MagnetBank certifying the status balances of The Preserve's construction bonds (\$2,253,364.05), irrevocable letters of credit (\$450,672.80), and, bank account (\$3,751,215.42);
- d. *Nathan R. Simpson's Financial Statement* (dated August 31, 2006) with *Accountant's Compilation Report* prepared by Liddle-Waite;
- e. *David R. Simpson's Financial Statement* (dated December 15, 2006) with *Accountant's Compilation Report* prepared by Liddle-Waite; and,
- f. *Nathan R. Simpson's Financial Statement* (dated January 31, 2007) with *Accountant's Compilation Report* prepared by Liddle-Waite.

357. On information and belief, on or about January 26, 2007, David Simpson and Nathan Simpson, in furtherance of their conspired confidence and business enterprise schemes knowingly, intentionally and deceitfully made the following representations to MagnetBank and its participating bank:

- a. That The Preserve at Mapleton project was "the premier" real estate development and "best" real estate investment opportunity in the State of Utah;
- b. That the project consisted of approximately 60 residential lots located on approximately 208 acres of real property;
- c. That the project was so successful that one of the large (5 acre) lots

and fourteen of the small (1 acre) lots had already been pre-sold under contracts for more than \$5,000,000.00;

d. That the entire project could be developed and sold out in less than three years;

e. That The Preserve had sufficient working capital to be able to finish development of the project.

358. David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from MagnetBank and its participating bank, the following relevant material facts:

a. That David Simpson and Nathan Simpson had already deceived and defrauded Leslie, and they now intended to deceive and defraud MagnetBank and its participating bank;

b. That the sale to David Nemelka and the pre-sales to Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes were sham transactions designed to deceive Leslie, real estate appraisers, banks, real estate lenders and others;

c. That David Simpson and Nathan Simpson had intentionally mis-led Little-Waite in their preparations of Simpsons' personal financial statements, by not disclosing the existence of:

(i) The Preserve's \$6,800,000.00 *Trust Deed Note* payable to LD III (described in paragraph 323 herein);

(ii) David Simpson's and Nathan Simpson's personal

\$6,800,000.00 *Promissory Note* payable to Leslie (described in paragraph 325 herein); and,

(iii) David Simpson's and Nathan Simpson's personal \$3,300,000.00 *Promissory Note* payable to Leslie (described in paragraph 326 herein);

d. That David Simpson and Nathan Simpson did not record The Preserve's \$6,800,000.00 *Trust Deed* to LD III (as described in paragraph 324 herein), in order to deceive MagnetBank and its participating bank;

e. That The Preserve at Mapleton development project was subject to a *Development Agreement* (as described in paragraphs 233 and 234 herein);

f. That the *Development Agreement* required The Preserve to construct a debris collection basin to protect people and property (as described in paragraph 235 herein);

g. That Brown Engineering had surveyed, designed and engineered a debris collection basin to encroach upon approximately 3.85 acres of property owned by the DNR;

h. That the DNR could not sell or exchange the 3.85 acres without first obtaining federal approval;

i. That regardless of the fact that the federal approval process would not be quick or certain, David Simpson and Nathan Simpson intended to proceed anyway and risk a very substantial portion of Leslie's \$6,800,000.00 loan to

construct the requisite debris collection basin on the DNR's 3.85 acres without any right or title to the property, without permission of the DNR to proceed, and/or without approval from the federal government for a sale or exchange of the 3.85 acres; and,

j. That Mapleton City required The Preserve to accept a legal undertaking to acquire and dedicate 10 acres for a cemetery in Mapleton City (as described in paragraph 239 herein) – increasing the cost of developing The Preserve's 171.0 acres by at least \$1,000,000.00 – or approximately \$5,848.00 per acre.

359. On information and belief, MagnetBank and its participating bank reasonably: believed the documents (described in paragraph 356 herein) were complete, correct and true; believed the representations (described in paragraph 357 herein) to be reasonable and true, and in good faith reliance on the documents and representations, and not being aware of the relevant material facts (described in paragraph 358 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, agreed to fund a \$12,713,200.00 loan to The Preserve to refinance the \$11,465,000.00 loan from Clark Real Estate Company.

360. On or about January 26, 2007, the following MagnetBank loan documents were executed by David Simpson, Nathan Simpson and Ken Dolezsar, as managers of The Preserve, without the knowledge, approval or consent of Leslie:

a. *Loan Agreement Between The Preserve at Mapleton Development*

Company, LLC as Borrower and MagnetBank as Lender,

- b. *Promissory Note Secured by Deed of Trust,*
- c. *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing;*
- d. *Pledge and Security Agreement;*
- e. *Assignment of Construction, Architectural, and Engineering Agreements; and,*
- f. *Assignment of Development Agreements.*

See Exhibits 122 through 127, copies of the afore-described documents.

361. On or about January 26, 2007, Ken Dolezsar, as manager of LD III, and Nathan Simpson, as manager of DN Simpson Mapleton, executed a *Limited Liability Company Borrowing Certificate* certifying to MagnetBank that LD III and DN Simpson Mapleton were the only members of The Preserve, and that, David Simpson, Nathan Simpson and Ken Dolezsar were The Preserve's managers. See Exhibit 128, copy of *Limited Liability Company Borrowing Certificate*.

362. On or about January 26, 2007, MagnetBank required David Simpson, HKG Solutions, Inc. and Craig C. Garrick, Jr. to subordinate their respective interests as a pre-condition of MagnetBank lending \$12,713,200.00 to the Preserve. See Exhibits 129 and 130, copies of *Subordination Agreements*.

363. On or about January 26, 2007, the following MagnetBank loan documents were executed by David Simpson and Nathan Simpson, individually so as to make them

personally liable to MagnetBank and its participating bank:

- a. *Repayment Guaranty*; and,
- b. *Hazardous Materials Indemnity Agreement*.

See Exhibits 131 and 132, copies of *Repayment Guaranty* and *Hazardous Materials Indemnity Agreement*.

364. In the *Repayment Guaranty*, David Simpson and Nathan Simpson (individually and collectively "Guarantor") deceitfully warranted and acknowledged, *inter alia*, that:

(d) the most recent financial statements of Guarantor previously delivered to [MagnetBank as "Lender"] are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to Lender) and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; ...

See section 3 of Exhibit 131.

365. Pursuant to sub-paragraph 11.1 (b) of the *Loan Agreement*, MagnetBank's \$12,713,200.00 loan to The Preserve was in default from its inception because almost all of the documents The Preserve, David Simpson and Nathan Simpson furnished, or caused to be furnished, to MagnetBank were "incorrect, false or misleading in any material respect when furnished or made." See Exhibit 122.

366. Pursuant to section 3 of the *Promissory Note Secured by Deed of Trust*, The Preserve (as "Borrower") was in default to MagnetBank (as "Lender") from the inception of the \$12,713,200.00 loan because The Preserve was also in default under terms of the

Loan Agreement, to wit:

If: ... (b) a Default (as defined in the Loan Agreement) occurs under the Loan Agreement or the Deed of Trust or any obligation secured thereby; ... then Lender may, at its sole option, declare all sums owing under this Note immediately due and payable;...

See Exhibit 123.

367. Pursuant to sub-paragraph 6.1 (b) of the *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing*, The Preserve (as "Trustor") was in default to Pro-Title (as "Trustee") and MagnetBank (as "Beneficiary") from the inception of the \$12,713,200.00 loan if "any representation or warranty of [The Preserve was] incorrect, false or misleading in any material respect when made." See Exhibit 124.

368. On or about January 26, 2007, MagnetBank and its participating bank, Marshall & Ilsley Bank ("M&I Bank") of Milwaukee, Wisconsin, jointly entered into a *Participation Agreement* whereby MagnetBank sold to M&I Bank a 52.80496% interest [\$6,713,200.00] in the \$12,713,200.00 loan to The Preserve. MagnetBank retained a 47.19504% interest [\$6,000,000.00] in the loan. See Exhibit 133, copy of *Participation Agreement*.

369. On information and belief, M&I Bank received, reviewed and carefully considered all of the documents and information David Simpson and Nathan Simpson provided, (or caused to be provided), to MagnetBank, as well as the executed loan documents, and in good faith reliance on the documents, information and representations contained therein, and not being aware of the relevant material facts (described in

paragraph 358 herein) that David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose, but omitted and withheld, agreed to purchase a 52.80496% interest in the \$12,713,200.00 loan.

370. On information and belief, on or about February 1, 2007 [Thursday], MagnetBank wired to Pro-Title \$11,611,797.00 of the proceeds of its \$12,713,200.00 loan to pay off the \$11,465,000.00 loan from Clark Real Estate Company. On that same date, The Preserve's \$12,713,200.00 *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing*, granted to Pro-Title for the benefit of MagnetBank, was recorded with the Utah County Recorder's Office as entry 17012:2007. See Exhibit 124.

371. On or about February 12, 2007 [Monday], David Simpson and Nathan Simpson used \$187,484.83 of Leslie's \$6,800,000.00 loan to The Preserve, purportedly to make a loan to Carnesecca. This use of \$187,484.83 of Leslie's invested funds is outside the scope of The Preserve's business purpose, constitutes a wrongful taking, and a breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve, to LD III and to LD III's only member, Leslie.

372. On or about February 15, 2007 [Thursday], Pro-Title as trustee of The Preserve's *Deed of Trust* (described in paragraph 231 herein) to Clark Real Estate Company, and also as trustee of SOS's *Deed of Trust* (described in paragraph 287 herein) executed and recorded *Deeds of Reconveyance* reconveying the 171.0 acres and 30.7 acres respectively. The *Deeds of Reconveyance* were recorded at the Utah County

Recorder's Office on February 15, 2007 as entries 23835:2007 and 23855:2007. See Exhibits 134 and 135, copies of *Deeds of Reconveyance*.

373. On information and belief, in January or February, 2007, David Simpson and Nathan Simpson caused The Preserve's contractor, Condie Construction, to begin construction of the debris collection basin on the DNR's 3.85 acres without any right or title to the property, without permission of the DNR to proceed, and/or without approval from the federal government for a sale or exchange of the 3.85 acres.

374. On information and belief, after more than \$1,500,000.00 of construction costs had been incurred toward construction of the debris collection basin, the DNR learned that David Simpson and Nathan Simpson had deliberately caused The Preserve and its contractor to illegally trespass on its property. The DNR ordered David Simpson, Nathan Simpson, The Preserve and its contractor, to immediately cease and desist their construction activity.

375. On information and belief, on or about April 20, 2007 [Friday], David Simpson and Nathan Simpson, caused The Preserve to make an offer to purchase the DNR's 3.85 acres, and included with the offer a \$10,000.00 check, drawn from The Preserve's account, as earnest money.

376. On or about May 30, 2007 [Wednesday], James Karpowitz, Director of the DNR's Division of Wildlife Resources, returned The Preserve's \$10,000.00 check to David Simpson with a letter stating:

I am returning your check for \$10,000 that you mailed as part of your offer

to buy Division of Wildlife Resources property in Section 23, Township 8 South, Range 3 East that you have previously cleared and re-contoured as a debris catch basin for your Mapleton subdivision. The Division respectfully declines your April 20, 2007 offer to purchase the subject property. Further attempts at resolution of this matter will need to wait until the investigation of this incident is concluded.

See Exhibit 136, copy of DNR Letter to David Simpson - dated May 30, 2007.

377. On information and belief, between May 30, 2007 and approximately February 20, 2008, the DNR and Utah Attorney General's Office conducted an investigation of the illegal trespass incident.

378. On information and belief, at the conclusion of the investigation, Assistant Attorney General Martin Bushman obtained from David Simpson a "confession" wherein Simpson admitted criminal trespass, and further, admitted damaging the DNR's 3.85 acres beyond any feasible means of recovery so as to render the property no longer useful for wildlife purposes.

379. On information and belief, in February 2008, David Simpson entered into some kind of "2-for-1 plea arrangement" with the Utah Attorney General and the DNR whereby:

- a. The Utah Attorney General agreed to forbear criminal prosecution against David Simpson;
- b. The DNR agreed to convey the 3.85 acres of DNR property which Simpson caused to be no longer useful for wildlife purposes; and
- c. David Simpson agreed to convey to the DNR 7.7 acres of June

sucker¹⁴ habitat, located on Hobble Creek at or near its point of confluence with Utah Lake.

380. On information and belief, David Simpson's agreement to exchange 7.7 acres of June sucker habitat for the DNR's 3.85 acres encroached upon by The Preserve's debris collection basin, is subject to prior federal approval (as described in paragraph 294 herein), and the process of seeking federal approval is both slow and uncertain (as described in paragraph 295 herein).

381. As of the filing date of this Second Amended Complaint, the DNR has still not received federal approval for the proposed 7.7-acre-for-3.85-acre exchange with David Simpson. Consequently, the debris collection basin remains unfinished, and The Preserve at Mapleton development cannot be completed.

382. As stated in paragraph 297 herein, on information and belief, sometime during August or September, 2006, David Simpson and Nathan Simpson, in furtherance of their business enterprise and confidence schemes, conspired and devised a scheme or artifice consisting of a series of sham real estate transactions, each depicting highly inflated property values, designed to deceive prospective investors, real estate appraisers, banks, real estate lenders and others.

383. On or about September 6, 2006 [Wednesday], The Preserve (by its manager,

¹⁴ The June sucker, *Chasmistes liorus*, occurs naturally in Utah Lake and the Provo River, and nowhere else in the world. Although the species was once abundant in Utah Lake, it is now extremely rare. The June sucker is Federally listed as endangered.

David Simpson) purportedly sold Lot [73]¹⁵ (consisting of 4.371 acres) of Plat A to David Nemelka via a *Purchase and Sale Agreement* (the "*2006 Agreement*"). David Nemelka purportedly purchased Lot 73 for \$800,000.00 (approximately \$183,024.48 per acre) by tendering \$50,000.00 earnest money and agreeing to pay the \$750,000.00 remaining balance at a closing scheduled for September 30, 2006. See Exhibit 94.

384. The *2006 Agreement* also granted David Nemelka, *inter alia*, a first right of refusal to purchase Lot [74]¹⁶ by matching any "bona fide written offer." The *2006 Agreement* further granted Nemelka an option to purchase a portion of the "'Contiguous Property' ... the Fish and Game Property." On information and belief, this references the same 3.85 acres The Preserve needed for a debris collection basin (as described in paragraphs 290 and 291 herein). In the *2006 Agreement*, David Nemelka's agreed purchase price for "a portion" of the DNR's 3.85 acres was: The Preserve's actual cost of purchasing the property, plus ten percent (10%), but not to exceed \$40,000.00 more than The Preserve paid to purchase the property. See Exhibit 94.

385. On or about May 31, 2007 [Thursday], the *2006 Agreement* (described in paragraphs 298 and 383 herein) was rescinded pursuant to a *Rescission Agreement* executed by The Preserve (by its manager, Nathan Simpson) and David Nemelka. With

¹⁵ The subject of this transaction, originally identified as Lot 8, was subsequently renumbered to be Lot 73. For purposes of distinguishing this property in this Second Amended Complaint, Plaintiffs will describe it as "Lot 73."

¹⁶ The subject of this first-right-of-refusal option, originally identified as Lot 1, was subsequently renumbered to be Lot 74. For purposes of distinguishing this property in this Second Amended Complaint, Plaintiffs will describe it as "Lot 74."

the rescission, The Preserve returned to David Nemelka the \$50,000.00 earnest money deposited by Nemelka pursuant to the *2006 Agreement*. See Exhibit 95; see also Exhibit 137, copy of Check No. 1634.

386. Also, on or about May 31, 2007, The Preserve (by its manager, Nathan Simpson) again purportedly sold Lot 73 of Plat A to David Nemelka via a new *Purchase and Sale Agreement* (the "*2007 Agreement*"). Pursuant to the *2007 Agreement*, David Nemelka purportedly purchased Lot 73 for \$1,200,000.00 (approximately \$274,536.72 per acre) by tendering \$400,000.00 cash and executing an \$800,000.00 *Promissory Note* payable to The Preserve. David Nemelka's \$1,200,000.00 purchase price in the new *2007 Agreement* was \$91,512.24 per acre more than the \$800,000.00 purchase price in the rescinded *2006 Agreement*. See Exhibits 94 and 96.

387. Like the *2006 Agreement*, the *2007 Agreement* also granted David Nemelka a first right of refusal to purchase Lot 74 by matching any "bona fide written offer." The *2007 Agreement* also granted Nemelka an option to acquire additional real property "which is presently owned by the Utah Division of Wildlife Resources." In the *2007 Agreement*, David Nemelka's agreed purchase price for a portion of the DNR's 3.85 acres was changed to read: "[T]he price paid by [The Preserve] to acquire the parcel from the Utah Division of Wildlife resources minus Four Hundred Thousand Dollars (\$400,000.00)." See Exhibit 96.

388. On information and belief, David Nemelka financed his \$400,000.00 cash payment to The Preserve with a \$405,553.00 loan from Central Bank secured by a *Deed of Trust* on Lot 73. David Nemelka's \$800,000.00 *Promissory Note* to The Preserve, bears

no interest, was due May 31, 2009, and, is secured by an \$800,000.00 *Trust Deed* on Lot 73. The \$800,000.00 *Trust Deed* in favor of The Preserve is second in priority to the \$405,553.00 *Deed of Trust* in favor of Central Bank. See Exhibits 138, 139 and 140, copies of *Promissory Note Secured by Deed of Trust*, *Trust Deed with Assignment of Lease and Rents* and *Deed of Trust*.

389. On information and belief, David Nemelka's *2006 Agreement* was reported to MagnetBank as an \$800,000.00 contract sale and was setup on MagnetBank's "Lot Release Prices Schedule" to require a payment of \$600,000.00 (75% percent of the sales price) to MagnetBank to obtain its release of Lot 73 from under The Preserve's \$12,713,200.00 *Deed of Trust* granted to Pro-Title for the benefit of MagnetBank. See Exhibit 141, copy of Lot Release Prices Schedule for The Preserve; see *also* Exhibit 94.

390. On information and belief, neither David Simpson nor Nathan Simpson informed MagnetBank of the rescission of David Nemelka's *2006 Agreement* to purchase Lot 73 for \$800,000.00, or, of the formation of Nemelka's *2007 Agreement* to purchase the same Lot 73 for \$1,200,000.00. Instead, in furtherance of their business enterprise and confidence schemes, David Simpson and Nathan Simpson caused The Preserve to pay the \$200,000.00 cash short fall – the difference between David Nemelka's \$400,000.00 payment and the \$600,000.00 payment necessary to obtain MagnetBank's release of Lot 73.

391. On or about June 6, 2007 [Wednesday], The Preserve (by its manager, Nathan Simpson) executed a *Warranty Deed* conveying Lot 73 of Plat A, to David N.

Nemelka. The *Warranty Deed* was recorded with the Utah County Recorder's Office as entry 84664:2007. See Exhibit 142, copy of *Warranty Deed*.

392. On or about June 8, 2007 [Friday], Central Bank recorded the *Deed of Trust* executed by David Nemelka to secure his \$405,553.00 loan from Central Bank. The *Deed of Trust* was recorded with the Utah County Recorder's Office as entry 84697:2007. See Exhibit 140.

393. On or about June 8, 2007 [Friday], The Preserve recorded the *Trust Deed* executed by David Nemelka to secure his \$800,000.00 *Promissory Note* to The Preserve. The *Trust Deed* was recorded with the Utah County Recorder's Office as entry 84729:2007. See Exhibit 139.

394. By its terms, David Nemelka's *2007 Agreement* is hollow and illusory – purposefully designed and executed to deceive prospective buyers, real estate appraisers, banks, real estate lenders and others – because, *inter alia*:

a. Nemelka was allowed to rescind the *2007 Agreement*, at Nemelka's election, any time after the one year anniversary of the closing and before the twenty-third month anniversary of the closing;

b. Nemelka was allowed to reform the *2007 Agreement* at any time before he elected to rescind it;

c. Nemelka could reform the *2007 Agreement* to reduce the principal amount of his \$800,000.00 *Promissory Note* to The Preserve to be only \$400,000.00;

d. Nemelka's \$800,000.00 *Promissory Note* also permitted him to reduce the principal amount to \$400,000.00;

e. According to the *2007 Agreement*, Nemelka's \$800,000.00 *Promissory Note* is a non-recourse note;

f. The Preserve (as Seller) gave David Nemelka (the Purchaser) a security interest in Lot 73 to secure repayment of Nemelka's \$400,000.00; and,

g. David Simpson and Nathan Simpson caused The Preserve to pay \$200,000.00 of the requisite \$600,000.00 payment to MagnetBank in order to make Nemelka's \$1,200,000.00 purchase price appear real.

395. Following the sale of Lot 73 to David Nemelka, The Preserve failed to pay LD III and/or Leslie \$250,000.00 as part of its minimum payback requirement for the \$6,800,000.00 loan (as described in sub-paragraph 315d herein) for all of The Preserve's lot sales and pre-sales after December 1, 2006.

396. On information and belief, David Nemelka has exercised his option to rescind the *2007 Agreement*.

397. On information and belief, by November 2007, The Preserve was insolvent – meaning its liabilities exceeded the value of its assets and it was not able to pay its bills as they came due. The Preserve was insolvent because David Simpson and Nathan Simpson had caused The Preserve to borrow excessively and become indebted far beyond the value of its assets. The Preserve was also insolvent because the Simpsons had breached their fiduciary duties and wrongfully converted at least \$1,500,000.00 of The

Preserve's funds for their own uses.

398. On information and belief, David Simpson and Nathan Simpson were each experiencing financial difficulties, personally, and in their other business interests.

399. On information and belief, David Simpson and Nathan Simpson solicited financial assistance from Ken Dolezsar for The Preserve at Mapleton development project, for the Koamalu Plantation development project, and to solve Simpsons' other financial difficulties.

400. On November 15, 2007 [Thursday], Ken Dolezsar was murdered in Sandy City, Utah, and David Simpson became the only functioning manager of Leslie's entities LD SQ, LD III, and LD HT Reynolds, LLC.

401. On or about November 20, 2007 [Tuesday], David Simpson, without any authorization whatsoever, took \$100,000.00 from Leslie's LD HT Reynolds, LLC account to cover Simpson's legal fees and other expenses with The Preserve. This use of \$100,000.00 of Leslie's funds constitutes a wrongful taking, and a breach of David Simpson's fiduciary duties to Leslie.

402. On or about December 6, 2007 [Thursday], David Simpson, without any authorization whatsoever, took \$15,000.00 from Leslie's LD III account and deposited the same into The Preserve's account. This use of \$15,000.00 of Leslie's funds constitutes a wrongful taking, and a breach of David Simpson's fiduciary duties to, to LD III and to LD III's only member, Leslie.

403. On information and belief, the \$100,000.00 and \$15,000.00 described in

paragraphs 401 and 402 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson ostensibly for The Preserve at Mapleton development project, to at least \$12,645,000.00.

404. On or about December 6, 2007, on information and belief, in order to solve some of his financial problems, David Simpson solicited a \$2,000,000.00 loan from Defendant Michael Aviano. In order to induce and ensure the immediacy of Michael Aviano's \$2,000,000.00 loan, David Simpson, knowingly, intentionally and deceitfully in breach of his fiduciary duties to The Preserve, to LD III and to Leslie, offered to sell to Aviano any lot at The Preserve at Mapleton at a very substantially discounted price.

405. On information and belief, Michael Aviano agreed to lend David Simpson \$2,000,000.00 for a period of one year, on condition:

a. That David Simpson would cause The Preserve to sell to Aviano Lot 67 of Plat A of The Preserve at Mapleton subdivision (approximately 5.26 acres) at a very substantially discounted price of \$575,000.00 (approximately \$109,315.60 per acre); and,

b. That Michael Aviano be secured by a \$2,000,000.00 *Deed of Trust* on Simpson's personal residence.

406. On information and belief, David Simpson falsely represented to Michael Aviano that Simpson's personal residence was worth at least \$2,000,000.00.

407. According to MagnetBank's Lot Release Prices Schedule, the intended sales price for Lot 67 was \$1,360,000.00, and the minimum amount required to obtain

MagnetBank's release of its security interest was \$1,020,000.00. See Exhibit 141.

408. On information and belief, David Simpson caused Pro-Title to prepare documents showing that Michael Aviano had purchased Lot 67 for consideration of \$900,000.00 (not \$575,000.00).

409. On information and belief, Michael Aviano was fully aware that the closing documents showed he was purchasing Lot 67 for consideration of \$900,000.00 (not \$575,000.00) when he knowingly and intentionally executed the same. See Exhibit 143, copy of *Settlement Statement*.

410. On information and belief, MagnetBank received payment of \$900,000.00 toward the purchase of Lot 67, but did not release its security interest.

411. Michael Aviano's loan to David Simpson is evidenced by a \$2,000,000.00 *Deed of Trust* on Simpson's personal residence. The *Deed of Trust* was executed by David R. Simpson and Barbara P. Simpson (as Borrowers) in favor of Mike Aviano (as Lender and Beneficiary), and recorded with the Utah County Recorder's Office on December 6, 2007 as entry 169622:2007. See Exhibit 144, copy of *Deed of Trust*.

412. Michael Aviano's purported purchase of Lot 67 is evidenced by a *Warranty Deed* executed by The Preserve (by its manager, David Simpson) on December 6, 2007, and recorded on the same date with the Utah County Recorder's Office as entry 169775:2007. See Exhibit 145, copy of *Warranty Deed*.

413. On information and belief, a deputy assessor from the Utah County Assessor's office in order to confirm property values, called Michael Aviano to confirm the

actual purchase price he paid for Lot 67 when he purchased it. On information and belief, Michael Aviano intentionally deceived the deputy assessor by reporting that he had actually paid \$900,000.00 and did not honestly report that he had actually paid only \$575,000.00.

414. On or about January 18, 2008 [Friday], MagnetBank sent The Preserve a letter stating:

As you are aware, The Preserve at Mapleton, loan #101047, matures July 26, 2008. This letter serves to notify you that MagnetBank does not intend to renew the referenced loan. Instead, MagnetBank expects full payment of loan #101047 on or before the maturity date of July 26, 2008.

See Exhibit 146, copy of MagnetBank letter - dated January 18, 2008.

415. On or about February 22, 2008 [Friday], Plaintiff Navona was formed as a Utah limited liability company by registration with Utah's Department of Commerce. The initial manager of Navona was Stephen O. Taylor. As stated in paragraph 7 herein, "At all times relevant herein, Leslie was the sole member of Navona." See Exhibit 147, copy of *Articles of Organization of Navona, LC*.

416. On or about February 26, 2008 [Tuesday], Navona (by its manager, Stephen O. Taylor) purchased from MagnetBank (and its participating bank, M&I Bank), The Preserve's \$12,713,200.00 loan, and all of the related loan documents, for consideration of \$11,221,198.80 (the outstanding loan balance). At the same time, MagnetBank (by its senior vice-president, Russell Miller) executed an *Assignment Agreement* whereby MagnetBank assigned to Navona the entirety of the loan. MagnetBank also delivered an *Assignment of Beneficiary's Interest in Trust Deed*, whereby MagnetBank assigned

specifically to Navona its beneficial interest in the \$12,713,200.00 *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing*, previously granted to Pro-Title for the benefit of MagnetBank. The *Assignment of Beneficiary's Interest in Trust Deed* was recorded with the Utah County Recorder's Office on October 14, 2008 as entry 112020:2008. See Exhibits 148 and 149, copies of *Assignment Agreement*, and *Assignment of Beneficiary's Interest in Trust Deed*.

417. On information and belief, the \$11,221,198.80 described in paragraph 416 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson ostensibly for The Preserve at Mapleton development project, or of necessity spent by Leslie to protect her investment in the project, to at least \$23,866,198.80.

418. On or about February 28, 2008 [Thursday], in response to David Simpson's and Nathan Simpson's insistence that some of The Preserve's unpaid bills had to be paid immediately in order to protect Leslie's investment in The Preserve at Mapleton development project, Leslie advanced \$281,693.59 to The Preserve. Leslie learned later that David Simpson and Nathan Simpson used \$137,814.78 of the \$281,693.59 to pay themselves (through their entities) instead of paying the unpaid bills.

419. On information and belief, the \$281,693.59 described in paragraph 418 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson ostensibly for The Preserve at Mapleton development project, or of necessity spent by Leslie to protect her investment in the project, to at least

\$24,147,892.39.

420. On or about April 1, 2008, Leslie's attorneys took possession of The Preserve's \$6,800,000.00 *Trust Deed* (described in paragraph 323 herein) executed in favor of LD III but intentionally not recorded by David Simpson or Nathan Simpson in order to deceive and defraud Leslie, MagnetBank and its participating bank (as described in paragraph 324 herein). Leslie's attorneys then caused the \$6,800,000.00 *Trust Deed* to be recorded with the Utah County Recorder's Office on April 1, 2008 as entry 38186:2008. See Exhibit 108.

421. In response to David Simpson's and Nathan Simpson's insistence that some of The Preserve's unpaid bills had to be paid immediately in order to protect Leslie's investment in The Preserve at Mapleton development project, Leslie advanced to The Preserve: \$300,000.00 on April 3, 2008; \$120,000.00 on April 15, 2008; and, \$260,000.00 on April 23, 2008. Leslie learned later that David Simpson and Nathan Simpson had fraudulently misdirected the use of these funds.

422. On information and belief, the \$300,000.00, \$120,000.00 and \$260,000.00 described in paragraph 421 herein, brought the total amount of Leslie's funds borrowed, taken, used or spent by David Simpson and/or Nathan Simpson ostensibly for The Preserve at Mapleton development project, or of necessity spent by Leslie to protect her investment in the project, to at least \$24,827,892.39.

423. On or about May 1, 2008, LD III (by its manager, Barry Steed), executed a *Substitution of Trustee* appointing Bart J. Bailey successor trustee of The Preserve's

\$6,800,000.00 *Trust Deed* (described in paragraph 323 herein). The *Substitution of Trustee* was recorded May 12, 2008 with the Utah County Recorder's Office as entry 55739:2008. See Exhibit 150, copy of *Substitution of Trustee*.

424. On or about May 12, 2008, Bart J. Bailey, as successor trustee to The Preserve's \$6,800,000.00 *Trust Deed*, executed a *Notice of Default* in behalf of LD III, the beneficiary of the *Trust Deed*, and caused the *Notice of Default* to be recorded with the Utah County Recorder's Office as entry 55740:2008. Mr. Bailey also caused a copy of the *Notice of Default* to be served on The Preserve at its registered office. See Exhibit 151, copy of *Notice of Default*.

425. On or about November 7, 2008, Bart J. Bailey, as successor trustee to The Preserve's \$12,713,200.00 *Deed of Trust*, executed a *Notice of Default* in behalf of Navona, MagnetBank's successor-in-interest, and caused the *Notice of Default* to be recorded with the Utah County Recorder's Office on November 10, 2008 as entry 120571:2008. Mr. Bailey also caused a copy of the *Notice of Default* to be served on The Preserve at its registered office. See Exhibit 152, copy of *Notice of Default*.

426. On or about December 19, 2008, Bart J. Bailey, as successor trustee to The Preserve's \$6,800,000.00 *Trust Deed*, conducted a trustee's sale in front of the Fourth Judicial District Court Building, in Provo, Utah and sold the 201.7 acres (171.0 acres plus 30.7 acres) of real property to LD III, the beneficiary of the *Trust Deed*, subject to the \$12,713,200.00 *Deed of Trust* (described in paragraph 360 herein) acquired by Navona. After the sale, Mr. Bailey prepared and executed a *Trustee's Deed* conveying the 201.7

acres to LD III. The *Trustee's Deed* was recorded with the Utah County Recorder's Office on December 23, 2008 as entry 133308:2008. See Exhibit 153, copy of *Trustee's Deed*.

FACTS: THE PRIME COMMERCIAL PROPERTY SCAM

427. On or about March 29, 2006 [Wednesday], Pheasant Meadows acquired from the City of Springville, via a *Corporate Warranty Deed*, 30.76 acres (described in subparagraph 316c and footnote 12 herein) located in the northern part of Springville, Utah. See Exhibit 154, copy of *Corporate Warranty Deed*.

428. On information and belief, Pheasant Meadows purchased the 30.76 acres and tendered a \$1,400,500.00 *Promissory Note* to the City of Springville, Utah, as part of the consideration for the transaction.

429. On or about March 30, 2006 [Thursday], Pheasant Meadows (by its manager, David Simpson) executed a \$1,400,500.00 *Trust Deed* on the 30.76 acres in favor of the City of Springville. See Exhibit 155, copy of *Trust Deed*.

430. Springville City's *Corporate Warranty Deed* and Pheasant Meadows' \$1,400,500.00 *Trust Deed* were sequentially recorded with the Utah County Recorder's Office on April 4, 2006 as entries 40276:2006 and 40277:2006. See Exhibits 154 and 155.

431. On or about September 27, 2006 [Wednesday], Pheasant Meadows (by its manager, David Simpson) quit-claimed the 30.76 acres in North Springville to Wood Springs. The *Quit Claim Deed* was recorded with the Utah County Recorder's Office on September 29, 2006 as entry 128936:2006. See Exhibit 156, copy of *Quit Claim Deed*.

432. On or about October 2, 2006 [Monday], Wood Springs (by its manager, David

Simpson) executed a \$2,800,000.00 *Trust Deed* on the 30.76 acres in favor of Oak Leaf. The \$2,800,000.00 *Trust Deed* was recorded with the Utah County Recorder's Office on September 29, 2006 as entry 128937:2006.¹⁷ See Exhibit 157, copy of *Trust Deed*.

433. On information and belief, at or near the end of November or the beginning of December, 2006, David Simpson and Nathan Simpson, desperately seeking an immediate \$6,800,000.00 loan from Leslie to save The Preserve at Mapleton development project, learned that Leslie was interested in acquiring approximately ten (10) acres of vacant commercial real property in Springville, Utah for construction of an office building and warehouse facility for her new humanitarian-based business.

434. On information and belief, in furtherance of their confidence and business enterprise schemes, and in order to induce and ensure immediacy of Leslie's \$6,800,000.00 loan to The Preserve, David Simpson and Nathan Simpson knowingly, intentionally and deceitfully made the following representations and offer of contractual consideration to Ken Dolezsar and caused Dolezsar to repeat the same to Leslie in behalf of the Simpsons:

- a. Simpsons represented that they owned 30.76 acres of vacant real property located on the northeast corner of the intersection of Mountain Springs Parkway and Raymond Klauck Way in the Northern part of Springville, Utah;
- b. Simpsons represented that the 30.76 acres were prime commercial

¹⁷ Curiously, this *Trust Deed* was "made this 1st day of October, 2006," but the Notary Jurat indicates it was executed "on this 2nd day of October, 2006." Even more curiously, the Utah County Recorder's date stamp indicates this *Trust Deed* was recorded on September 29, 2006 – three days before it was executed.

real estate, zoned light-industrial and ready-to-build-on;

c. Simpsons represented that the 30.76 acre parcel was located within one mile of Interstate 15 for easy business and shipping access;

d. Simpsons represented that the value of the 30.76 acres was \$3,300,000.00;

e. Simpsons offered to sell the 30.76 acres to Leslie for only \$1,500,000.00 if she would lend \$6,800,000.00 to The Preserve; and,

f. Simpsons represented that Leslie could use approximately ten (10) acres of the 30.76 acres for construction of an office building and warehouse facility for her new humanitarian-based business, and could, in addition, earn back her \$1,500,000.00 purchase price by subdividing and selling or leasing the rest of the property.

435. David Simpson and Nathan Simpson knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Leslie, and also Ken Dolezsar, whether duped by or complicitous with the Simpsons, did not disclose to Leslie the following relevant material facts:

a. That David Simpson and Nathan Simpson intended to deceive and defraud Leslie, MagnetBank and its participating bank;

b. That the 30.76 acres were encumbered by a \$1,400,500.00 *Trust Deed* in favor of the City of Springville, and a \$2,800,000.00 *Trust Deed* in favor of Oak Leaf – totaling \$4,200,500.00;

c. That David Simpson and Nathan Simpson did not intend to convey title to Leslie immediately after she purchased the 30.76 acres, but rather intended to deceive accountants, bankers and creditors with false Financial Statements showing Wood Springs as a valuable asset which owned valuable property;

d. That the 30.76 acres contained approximately eight (8) to fifteen (15) acres of protected wetlands totally unsuitable for any building or commercial use;

e. That David Simpson and Nathan Simpson had tried unsuccessfully to conceal the wetlands problem by illegally filling in and covering over the wetlands located on the 30.76 acres;

f. That because of David Simpson's and Nathan Simpson's actions the 30.76 acres were saturated with wetlands criminal issues, as well as environmental issues, and contained serious violations of regulations enforceable by the United States Army Corp. of Engineers and the United States Attorney's Office; and,

g. That if Leslie (or her entity) purchased the 30.76 acres, she would automatically be liable for costs of wetlands mitigation and restoration under Section 404 of the Clean Water Act.

436. Leslie believed the representations and the offer of contractual consideration (as described in paragraph 434 herein) to be reasonable, true and acceptable, and in good faith reliance on these representations and the offer of contractual consideration, and not being aware of the relevant material facts (described in paragraph 435 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, agreed to

fund a \$6,800,000.00 loan to The Preserve as herein set forth, and, agreed to purchase the 30.76 acres in North Springville for \$1,500,000.00.

437. On or about December 1, 2006, David Simpson and Nathan Simpson received a \$1,500,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account payable to Wood Springs as full payment for the 30.76 acres in North Springville. The check memo stated "31 acres Industrial." See Exhibit 158, copy of Check No. 1057.

438. On information and belief, David Simpson and Nathan Simpson immediately deposited Leslie's \$1,500,000.00 check into Wood Springs' checking account and then used the proceeds to payoff Pheasant Meadows' \$1,400,500.00 *Promissory Note* to the City of Springville. However, David Simpson and Nathan Simpson wrongfully did not immediately convey the real property to Leslie (or one of her entities) after she purchased it, but instead kept the property titled to Wood Springs.

439. On or about January 3, 2007, Pro-Title as trustee of Pheasant Meadows' \$1,400,500.00 *Trust Deed* (described in paragraph 429 herein), executed and recorded a *Deed of Reconveyance* reconveying the 30.76 acres to Pheasant Meadows. The *Deed of Reconveyance* was recorded with the Utah County Recorder's Office on January 3, 2007 as entry 1122:2007. However, David Simpson and Nathan Simpson wrongfully did not convey the real property to Leslie (or one of her entities) after the property was reconveyed to Pheasant Meadows, but instead kept the property titled to Wood Springs. See Exhibit 159, copy of *Deed of Reconveyance*.

440. On or about May 16, 2007, Ken Dolezsar, acting as manager of LD Purpose,

one of Leslie's entities, executed a false *Real Estate Purchase Contract* ("REPC") purportedly to purchase 31 acres [the 30.76 acres] from David R. Simpson for consideration of \$1,856,000.00 [not \$1,500,000.00]. See Exhibit 160, copy of *Real Estate Purchase Contract for Land*.

441. The May 16, 2007 false REPC states the settlement date for purchase of the 30.76 acres in North Springville was December 28, 2006 – a date twenty (20) weeks previous to the execution of the false REPC, and, four (4) weeks after David Simpson and Nathan Simpson had received, deposited and already spent the \$1,500,000.00 purchase money paid by Leslie. The false REPC also states that a balance of \$356,000.00 was due in 2007. See Exhibits 158 and 160.

442. On or about May 31, 2007 [Thursday], David Simpson and Nathan Simpson received from Ken Dolezsar a \$356,000.00 check drawn from Leslie's LD Purpose account. The check register notes: check number "1007;" amount "\$356,000.00;" payable to "David Simpson," for "Final Payment 31 acres - Springville." However, David Simpson and Nathan Simpson wrongfully still did not convey the real property to Leslie (or one of her entities) after taking from her an additional \$356,000.00, but instead kept the property titled to Wood Springs.

443. Leslie was not asked, informed or otherwise aware that David Simpson and Ken Dolezsar had nefariously created a false REPC to retroactively "legitimize" increasing the \$1,500,000.00 purchase price by \$356,000.00. The fact that David Simpson persuaded Ken Dolezsar to falsify a REPC and pay David Simpson \$356,000.00 more of

Leslie's funds, without her knowledge or permission, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

444. On or about October 9, 2007 [Tuesday], Utah's State Engineer received an application filed by David Simpson on behalf of LD Purpose to alter the stream channel that flowed through the 30.76 acres by clearing debris and installing two storm water outfall structures. Utah's State Engineer conditionally approved the application, stating:

The applicant was contacted regarding concerns over impacts to wetlands on the proposed building site. The applicant has hired a consultant to conduct wetland delineation of the site and is working with the Army Corps of Engineers to ensure compliance with Section 404 of the Clean Water Act.

See Exhibit 161, copy of *Order of the State Engineer*.

445. On or about October 22, 2007 [Monday], nearly eleven (11) months after Leslie purchased the 30.76 acres for \$1,500,000.00, Pro-Title as trustee of Wood Springs' \$2,800,000.00 *Trust Deed* (described in paragraph 432 herein), executed and recorded a *Deed of Reconveyance* reconveying the 30.76 acres to Wood Springs. The *Deed of Reconveyance* was recorded with the Utah County Recorder's Office on October 22, 2007 as entry 151251:2007. However, David Simpson and Nathan Simpson wrongfully still did not convey the real property to Leslie (or one of her entities) after the property was reconveyed to Wood Springs, but instead kept the property titled to Wood Springs. See Exhibit 162, copy of *Deed of Reconveyance*.

446. On November 2, 2007 [Friday], in response to a submittal by David Simpson

seeking permission to develop the 30.76 acres, the City of Springville's Development Review Committee sent Simpson a letter in which it noted:

There is evidence that wetlands may be present on you [sic] site. Before any work (filling, stripping and grubbing, etc) can commence the City [sic] we need to see wetlands clearance certification approved and accepted by the Army Corps of Engineers.

See Exhibit 163, copy of *Development Review Committee Feedback Sheet*.

447. On or about March 27, 2008 [Thursday], sixteen (16) months after Leslie purchased the 30.76 acres for \$1,500,000.00, ten (10) months after David Simpson conned, deceived or coerced Ken Dolezsar into paying Simpson an additional \$356,000.00 of Leslie's funds, and, more than four (4) months after Dolezsar was murdered, David Simpson and Nathan Simpson finally caused Wood Springs to convey the 30.76 acres to Leslie's entity, LD III via a *Warranty Deed*. The *Warranty Deed* was recorded with the Utah County Recorder's Office on March 27, 2008 as entry 35765:2008. See Exhibit 164, copy of *Warranty Deed*.

448. At all times relevant herein, David Simpson and Nathan Simpson were aware, or should have been aware, of the wetlands issues – both criminal and environmental – concerning the 30.76 acres in North Springville.

449. At all times relevant herein, David Simpson and Nathan Simpson were aware, or should have been aware, they had committed criminal acts by filling in and covering over the wetlands located on the 30.76 acres.

450. At all times relevant herein, David Simpson and Nathan Simpson were aware,

or should have been aware, that the costs of wetlands mitigation and restoration for the 30.76 acre parcel exceeded the real value of the property.

451. At all times relevant herein, David Simpson and Nathan Simpson were aware, or should have been aware, that Leslie or any subsequent purchaser of the 30.76 acres would be automatically liable for the costs of the requisite wetlands mitigation and restoration.

FACTS: THE PRESIDIO LAND AND WATER SCAMS

452. As described in paragraphs 233 and 234 herein, The Preserve acquired 171.0 acres of real property subject to, *inter alia*, a *Development Agreement* between Mapleton City and Suburban Land Reserve dated May 7, 2003. See Exhibit 81.

453. Pursuant to the May 7, 2003 *Development Agreement*, The Preserve (as the successor developer) conveyed 140.72 acre feet of water to Mapleton City in exchange for a Water Right Credit within Mapleton City's water system. See Exhibit 81.

454. The May 7, 2003 *Development Agreement* also stated that culinary water for The Preserve at Mapleton development project would be provided by Mapleton City's municipal water sources. The *Development Agreement* required The Preserve (as the successor developer) to construct a culinary water system within The Preserve at Mapleton development. However, The Preserve (as the successor developer) was not required to make any improvement of, or incur any obligation to improve, Mapleton City's water infrastructure. See Exhibit 81.

455. On or about January 10, 2007 [Wednesday], The Preserve entered into a

Memorandum of Understanding with Mapleton City, by which The Preserve agreed that in addition to paying the costs of the construction of the culinary water system within the development, it would also pay a pro-rata share of the construction costs of off-site improvements necessary to deliver culinary water to the development. See Exhibit 116.

456. According to the January 10, 2007 *Memorandum of Understanding*, The Preserve was "already engaged" in the process of engineering and designing the new municipal water tank that would provide water to The Preserve at Mapleton development, and service other culinary water needs within Mapleton City. On information and belief, all of the initial engineering and design costs for the municipal water tank project were paid by Nathan Simpson and David Simpson with funds from The Preserve's account. See Exhibit 116.

457. On or about February 15, 2007 [Thursday], the Larry Myler Consulting 401k Plan ("Myler 401k"), (by its trustee, Larry Myler), executed an *Option to Purchase* from Mesquite Presidio, LLC ("Mesquite Presidio") approximately 700 acres of real property, known as The Presidio, located directly south of The Preserve at Mapleton development project. See Exhibit 165, copy of *Option to Purchase*.

458. Myler 401k paid Mesquite Presidio \$29,000.00 for the *Option to Purchase*. The *Option to Purchase* set the purchase price for The Presidio at \$40,000,000.00 cash or \$46,000,000.00 to be paid over time. See Exhibit 165.

459. On or about March 9, 2007 [Friday], Myler 401k assigned the *Option to Purchase* to Wood Springs via an *Assignment of Option*. On the same day, Wood Springs

and Mesquite Presidio entered into a new *Option and Purchase and Sale Agreement* ("Option and Sale Agreement"). See Exhibits 166 and 167, copies of *Assignment of Option* and *Option and Purchase and Sale Agreement*.

460. The *Option and Sale Agreement* granted Wood Springs one year – March 9, 2007 to March 9, 2008 – to purchase The Presidio. The option could be exercised in four phases. See Exhibit 167.

461. The Phase One Option provided that Wood Springs would pay Mesquite Presidio: \$29,000.00 by March 12, 2007; \$500,000.00 by March 22, 2007; \$500,000.00 by April 11, 2007; and, \$1,000,000.00 within 40 days of the signing of the *Option and Sale Agreement*. See Exhibit 167.

462. On information and belief, the *Option and Sale Agreement* was later modified so that Wood Springs could get a \$500,000.00 credit toward its \$2,000,000.00 down payment to Mesquite Presidio, by paying \$500,000.00 of The Presidio's pro-rata portion (as described in paragraph 469 herein) of the cost of the municipal water tank project.

463. On or about March 10, 2007 [Saturday], David Simpson received from Ken Dolezsar a \$250,000.00 check drawn from Leslie's [JP Morgan Chase Bank] account, payable to Wood Springs. The check notes: "LD III Mapleton Mtn Village Investment." See Exhibit 168, copy of Checks No. 1478 and 1664.

464. Also, on or about March 10, 2007, Ken Dolezsar gave David Simpson a \$250,000.00 check drawn from an account of Dolezsar's company, HIT, LLC. The check notes: "Mapleton Mtn Village Investment." The \$250,000.00 from HIT was proceeds from

a personal loan given to HIT by Leslie to be used for other purposes. See Exhibit 168.

465. Leslie was not asked, informed or otherwise aware that Ken Dolezsar used her funds to invest \$500,000.00 with David Simpson and Wood Springs. The fact that David Simpson persuaded Ken Dolezsar to invest \$500,000.00 of Leslie's funds, without her knowledge or permission, is an indication of Simpson's dominant influence over Dolezsar and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

466. On or about August 7, 2007 [Tuesday], a *Water Tank Cost Sharing Agreement* ("*Water Tank Agreement*") was entered into and executed by the following parties:

- Mapleton City by its Mayor, James Brady
- Mesquite Presidio by its manager, Jack Evans
- Twin Hollow, LLC ("Twin Hollow") by Heather A. McDonald
- The Preserve by its manager, Nathan Simpson
- Maple Mountain Water Tank Development Company, LLC ("Maple Mountain Water") by its manager, Nathan Simpson

At the time, Maple Mountain Water had not yet been registered with Utah's Department of Commerce. See Exhibit 169, copy of *Water Tank Cost Sharing Agreement*.

467. The *Water Tank Agreement* stated that Maple Mountain Water would be responsible for making all payments and disbursements for costs and expenses of construction of the municipal water tank. However, it then indicated that The Preserve, not Maple Mountain Water, would actually be the entity responsible for paying all invoices related to the water tank and then send statements to the other participants, including Mapleton City, and receive reimbursement payments from them. See Exhibit 169.

468. The Maple Mountain Water's *Operating Agreement* estimated the cost of engineering and constructing the municipal water tank to be \$2,550,000.00. See Exhibit 170, copy of *Operating Agreement of Maple Mountain Water Tank, LLC*.

469. The *Water Tank Agreement* allocated the participants' estimated shared costs for engineering and construction of the water tank as follows:

PARTY	PERCENT SHARE	DOLLAR SHARE
The Preserve	7.55%	\$192,525.00
The Presidio	25.48%	\$649,740.00
Twin Hollow	3.11%	\$79,305.00
Mapleton City	63.86%	\$1,628,430.00
TOTALS	100.00%	\$2,550,000.00

See Exhibit 169.

470. On or about August 29, 2007 [Monday], Maple Mountain Water's *Articles of Organization* were executed by its members, manager and registered agent, to wit:

Members: The Preserve by its manager, Nathan Simpson
 The Presidio by its manager, Jack Evans
 Twin Hollow by its manager, Larry Myler

Manager: Nathan Simpson

Registered Agent Nathan Simpson
and Address: 407 North Main Street
 Springville, Utah 84663

See Exhibit 171, copy of *Articles of Organization of Maple Mountain Water Tank, LLC*.

471. Maple Mountain Water's *Articles of Organization* were executed on August

29, 2007, but not filed for registration with Utah's Department of Commerce until October 29, 2007. See Exhibit 171.

472. On or about October 29, 2007, Maple Mountain Water's *Operating Agreement* was adopted and executed by its members and manager, to wit:

Members: The Preserve by its manager, Nathan Simpson
The Presidio by its manager, Jack Evans
Twin Hollow by its manager, Larry Myler
Manager: Nathan Simpson

See Exhibit 170.

473. According to Maple Mountain Water's *Operating Agreement*, the allocated ownership interests of Maple Mountain Water were: Mesquite Presidio - 70.508%; The Preserve - 20.887%; and, Twin Hollow - 8.605%. See Exhibit 170.

474. On information and belief, from the inception of the water tank project until November 2007, all invoices related to the water tank project were paid from checking accounts and funds owned by The Preserve.

475. On or about November 29, 2007, Maple Mountain Water opened a checking account at Bank of American Fork. After that time, invoices for the municipal water tank project were processed through Maple Mountain Water instead of The Preserve.

476. On information and belief, Nathan Simpson and David Simpson knowingly, intentionally and deceitfully used funds provided to The Preserve by Leslie to satisfy Wood Springs' obligation to pay \$500,000.00 of Mesquite Presidio's pro-rata cost of the municipal water tank as part of Wood Springs' down payment to purchase The Presidio.

477. From the beginning of the municipal water tank project to the time that invoices began going to Maple Mountain Water, The Preserve paid at least \$140,111.00 for municipal water tank related costs. The Preserve was never reimbursed by Mesquite Presidio for any of The Presidio's pro-rata share of the water tank costs.

478. On or about January 4, 2008 [Friday], The Preserve paid \$45,000.00 to Maple Mountain Water. However, Nathan Simpson (as manager of both The Preserve and Maple Mountain Water), directed the bookkeeper for Maple Mountain Water to apply the \$45,000.00 payment to both The Preserve's and Mesquite Presidio's shares of the cost of the municipal water tank project. See Exhibit 172, copy of Spreadsheet.

479. On or about February 20, 2008 [Wednesday], Leslie provided \$281,693.59 to The Preserve to pay due and past due bills. Leslie believed her \$281,693.59 would be largely used to satisfy The Preserve's commitment to pay its pro-rata share of the water tank costs. However, none of these funds were used to pay for the water tank. Instead, on information and belief, Nathan Simpson paid himself, through his entity, \$72,814.78 and David Simpson paid himself, through his entity, \$65,000.00.

480. On or about April 3, 2008 [Thursday], Leslie provided \$300,000.00 to The Preserve, again with the understanding that it would be used to fully satisfy The Preserve's commitment on the water tank. On the same date, Nathan Simpson caused The Preserve to make a \$200,384.20 check drawn from The Preserve's account payable to Maple Mountain Water. However, Nathan Simpson (as the self-serving manager of both The Preserve and Maple Mountain Water), directed the bookkeeper for Maple Mountain Water

to allocate The Preserve's \$200,384.20 payment as: \$49,346.92 from The Preserve; and, \$151,037.28 from Mesquite Presidio. See Exhibit 172.

481. On information and belief, as of the date of the filing of this Second Amended Complaint, The Preserve, using Leslie's funds, has paid at least \$438,495.20 for construction of the municipal water tank, even though its projected pro-rata cost share was only \$192,525.00.

482. Despite the over payment by The Preserve, on or about September 18, 2008, in furtherance of David Simpson's and Nathan Simpson's business enterprise and confidence schemes, Nathan Simpson tried to further scam Leslie, by falsely reporting to Mapleton City that The Preserve still owed \$331,620.00 for its share of the municipal water tank project. See Exhibit 173, copy of Nathan Simpson e-mail.

483. The Preserve, using Leslie's funds, has paid approximately \$227,775.56 for Mesquite Presidio's pro-rata share of the water tank costs. The Preserve has received no reimbursement from Mesquite Presidio for those funds.

484. On information and belief, the reason there has been no reimbursement is that David Simpson and Nathan Simpson were surreptitiously using Leslie's funds to pay Mesquite Presidio's pro-rata share of the cost of the municipal water tank as part of Wood Springs' obligation to Mesquite Presidio pursuant to the March 9, 2007 *Option and Sale Agreement* (as described in paragraphs 461 and 462 herein). See Exhibit 167.

485. Between about November 15, 2007 and April 23, 2008, David Simpson and Nathan Simpson repeatedly solicited Leslie and her representatives claiming Simpsons

needed funds to pay due and past due bills of The Preserve. At the same time, David Simpson and Nathan Simpson were desperately seeking to cover \$500,000.00 of Mesquite Presidio's pro-rata water tank cost obligation to save their Mapleton Mountain Village (at The Presidio) project. See paragraphs 460 through 462, herein.

486. At all times relevant herein, David Simpson and Nathan Simpson, in furtherance of their conspired confidence and business enterprise schemes knowingly, intentionally and deceitfully did not disclose to, omitted and withheld from Leslie and her representatives, the following relevant material facts:

- a. That Wood Springs had entered into a contract to purchase approximately 700 acres of real property directly south of The Preserve for \$40,000,000.00;
- b. That Ken Dolezsar had invested \$500,000.00 of Leslie's funds as part of Wood Spring's \$2,000,000.00 down payment to Mesquite Presidio;
- c. That David Simpson had negotiated and agreed to pay \$500,000.00 of Mesquite Presidio's pro-rata cost of the municipal water tank as part of Wood Spring's \$2,000,000.00 down payment to Mesquite Presidio;
- d. That funds currently solicited by David Simpson and Nathan Simpson purportedly for The Preserve were being fraudulently diverted and used to satisfy Wood Springs' obligation to pay \$500,000.00 of Mesquite Presidio's pro-rata portion of the municipal water tank costs; and,
- e. That Nathan Simpson, acting as the self-serving manager of both The

Preserve and Maple Mountain Water, had deceitfully and fraudulently directed, and intended to further direct, Maple Mountain Water's bookkeeper to allocate payments received from The Preserve to cover Mesquite Presidio's portion of the cost of the municipal water tank.

487. Leslie never would have permitted any additional funds to be paid to The Preserve if she had been aware of any of the relevant material facts described in paragraph 486 herein.

488. This wrongful taking of Leslie's funds by David Simpson and Nathan Simpson was outside the scope of The Preserve's business purpose, constitutes theft by deception, and another breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve, to LD III and to LD III's only member, Leslie.

FACTS: DOUBLE T RANCH WATER PURCHASE

489. On or about February 23, 2007 [Friday], David Simpson caused LD III to issue: check number "1166;" amount "\$214,375.00;" payable to "Double T Ranch;" for "Double T Water Rights." On information and belief, issuance of the \$214,375.00 check to Double T Ranch constitutes a wrongful taking. See Exhibit 174, copy of Checks No. 1166 and 155.

490. Leslie was not asked, informed or otherwise aware that David Simpson took \$214,375.00 of her funds to purchase water rights for himself and his friends. The fact that Ken Dolezsar allowed David Simpson to take \$214,375.00 of Leslie's funds, without her knowledge or permission, is an indication of Simpsons' dominant influence over Dolezsar

and/or Dolezsar's misplaced confidence and trust in, or complicity with Simpson.

491. Also, on or about February 23, 2007, Blaine Evans issued a \$135,625.00 check payable to the Double T Ranch. Evan's check notes "155 shares of water Indianola." See Exhibit 174.

492. On or about March 9, 2007 [Friday], Wood Springs and David Simpson entered into an *Agreement For Purchase and Sale of Water Rights and Shares of Stock* ("Water Purchase Agreement") to purchase up to 940 acre feet of water from the Double T Ranch, L.L.C. ("Double T Ranch") at a price of \$2,500.00 per acre foot. See Exhibit 175, copy of *Agreement For Purchase and Sale of Water Rights and Shares of Stock*.

493. The *Water Purchase Agreement* required Wood Springs and David Simpson to make an initial \$350,000.00 non-refundable payment on or before February 23, 2007. However, no water rights were released in exchange for the initial payment. The *Water Purchase Agreement* recites that the \$350,000.00 non-refundable payment was acknowledged by an e-mail dated February 23, 2007 from Kari Larsen to David Simpson. See Exhibit 175.

494. On information and belief, LD III's \$214,375.00 check and Blaine Evans' \$135,625.00 check, both payable to Double T Ranch (and described in paragraphs 489 and 491 herein), together comprised the \$350,000.00 used by Wood Springs and David Simpson for the non-refundable initial payment.

495. On or about March 9, 2007 [Friday], an "Initial Closing" was held whereupon Wood Springs and David Simpson paid an additional \$1,000,000.00 to Double T Ranch,

and, Double T Ranch conveyed 540 acre feet of water to Wood Springs and David Simpson as follows:

- a. On March 9, 2007, Double T Ranch conveyed 186.75 acre feet of water, water right number 51-8057, to Wood Springs;
- b. On March 19, 2007, Double T Ranch conveyed 299 shares in the Indianola Irrigation Company stock, representing 299 acre feet of water, to Wood Springs; and,
- c. On information and belief, Double T Ranch conveyed an additional 54.25 acre feet of water rights to Wood Springs and David Simpson.

See Exhibits 176 and 177, copies of *Water Right Deed* and Indianola Irrigation Company Stock Certificate No. 00510.

496. The *Water Purchase Agreement* also provided for a "Final Closing" on or before May 31, 2007, when Wood Springs and David Simpson would pay an additional \$1,000,000.00 to Double T Ranch, and, Double T Ranch would convey an additional 400 acre feet of water to Wood Springs and David Simpson. On information and belief, the Final Closing contemplated by the *Water Purchase Agreement* never occurred. See Exhibit 175.

497. On information and belief, the points of diversion and place of use of all the water rights and all the water shares purchased from Double T Ranch were located in Sanpete County, Utah.

498. On or about April 5, 2007 [Thursday], Wood Springs (by its manager, David

Simpson) and David Simpson personally [as Sellers], and, Ford Real Estate 401k Dan Ford, Ford Real Estate 401k Wendy Ford, Scot Hazard, PC and Prolifica, LLC (the "Water Purchasers"), entered into a *Water Rights Purchase Agreement* to exchange 564 acre feet of water for \$1,974,000.00 – a price of \$3,500.00 per acre foot. See Exhibit 178, copy of *Water Rights Purchase Agreement*.

499. The *Water Rights Purchase Agreement* provided that the Water Purchasers' obligation to purchase the water was subject to and conditioned upon approval of the Utah Division of Water Rights to transfer the water for use within the City of Eagle Mountain. See Exhibit 178.

500. The *Water Rights Purchase Agreement* also provided for a closing of the sale to occur within 30 days from the approval of the Utah Division of Water Rights of the application to change the place of diversion and use of the water to Eagle Mountain. See Exhibit 178.

501. On or about November 9, 2007 [Friday], the Water Purchasers filed a lawsuit against David Simpson and Wood Springs claiming that Simpson and Wood Springs failed and refused to transfer water rights to them. See Exhibit 179, copy of *Complaint*.

502. On information and belief, the parties to the law suit reached a settlement whereby David Simpson and Wood Springs would transfer 485.75 acre feet of water to the Water Purchasers (rather than 564 acre feet). At a price of \$3,500.00 per acre foot, the purchase price for 485.75 acre feet would be \$1,700,125.00.

503. According to the settlement, The Water Purchasers will make payment to

Simpson only if and when the Utah State Engineer approves a transfer of the place of diversion and the place of use of the water from Sanpete County to Eagle Mountain. On information and belief, the transfer of the place of diversion and place of use of the water rights to Eagle Mountain has not been approved by the Utah State Engineer.

504. On information and belief, David Simpson told the Water Purchasers that he could not deliver the full 564 acre feet of water because he was unable to procure them. However, on information and belief, David Simpson retained water rights which were purchased from Double T Ranch and titled in the name of Wood Springs. Contrary to his representations to the Water Purchasers, he was able to procure 540 acre feet of water, but did not convey all of them to the Water Purchasers.

505. On information and belief, David Simpson and/or Wood Springs have received partial payment for the water, but have failed and refused to reimburse LD III its \$214,375.00, neither have they shared with LD III any profits from the sales of the water shares. Instead David Simpson has attempted to deed to LD III some of the water shares that Wood Springs and David Simpson acquired from Double T Ranch but which are the subject of the Water Purchaser's law suit against and settlement with Wood Springs and David Simpson.

ADDITIONAL FACTS

506. On or about November 2006, David Simpson and Nathan Simpson began making monthly "interest" payments to Kathy Templeman from The Preserve's checking account. There is no record of any loan proceeds from Kathy Templeman being deposited

into The Preserve's account or being used by or for the benefit of The Preserve.

DATE	PAYMENT	CHECK REGISTER NOTES
November 28, 2006	\$4,000.00	Interest Payment
December 27, 2006	\$4,000.00	Interest Payment
January 26, 2007	\$15,000.00	New Principle Balance as of Feb. 1 st is \$557,989
February 8, 2007	\$3,720.00	Interest Payment
February 28, 2007	\$3,720.00	Interest Payment
March 30, 2007	\$3,720.00	Interest Payment
April 26, 2007	\$3,720.00	Interest Payment
May 30, 2007	\$3,720.00	Interest Payment
July 2, 2007	\$3,720.00	Interest Payment
July 31, 2007	\$3,720.00	Interest Payment
September 4, 2007	\$3,720.00	Interest Payment
October 3, 2007	\$3,720.00	Interest Payment
November 7, 2007	\$3,720.00	Interest Payment
December 5, 2007	\$3,720.00	Interest Payment
January 2, 2008	\$3,720.00	Interest Payment
February 8, 2008	\$3,720.00	Interest Payment
February 29, 2008	\$3,720.00	Interest Payment
	\$75,080.00	

507. On information and belief, issuance of the monthly interest checks to Kathy Templeman constitutes a wrongful taking and breach of David Simpson's and Nathan Simpson's fiduciary duties to The Preserve and LD III, because Templeman did not lend funds to or for the benefit of The Preserve.

508. On or about February 26, 2008 [Tuesday], Navona and MagnetBank executed an *Assignment Agreement* whereby MagnetBank assigned and Navona purchased, *inter alia*:

- a. The *Loan Agreement* between The Preserve and MagnetBank;
- b. The *Promissory Note Secured by a Deed of Trust*;
- c. The *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing*;
- d. The *Pledge and Security Agreement*; and,
- e. The *Repayment Guaranty* executed by David Simpson and Nathan Simpson.

See Exhibit 148; see also Exhibits 122, 123, 124, 125, and 131.

509. Navona is the successor beneficiary of The *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing* that:

[I]rrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, Trustor's interest in (a) all real property located in Utah County, Utah and described on Exhibit A attached hereto; ... (c) all tenements, hereditaments and appurtenances thereof and thereto; ... (f) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, such real property; ... (h) all mineral rights, oil and gas rights, air rights, water or water rights, including without limitation, all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with such real property, whether decreed or un-decreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in any water, canal, ditch or reservoir company and all well permits, water service contracts, drainage rights and other evidences of any such rights....

See Exhibit 124.

510. As part of The Preserve's pledge of all its personal property as collateral for the \$12,713,200.00 loan, MagnetBank perfected its security interest with a UCC filing. The *Acknowledgment of Filing* indicates that the filing covered: "All personal property of debtor used on or in connection with, or relating to or arising out of that certain real property located in Utah County, Utah." The *Acknowledgment of Filing* then continues with the legal description of The Preserve real property. See Exhibit 180, copy of *Acknowledgment Filing*.

511. On or about December 15, 2008 [Monday], Navona, through its attorneys, demanded that Nathan Simpson and David Simpson assemble the personal property owned by The Preserve, including all "TDRs, funds, tools, machines, water rights certificates or other evidences of water rights or stock in any water or irrigation company and all other personal property" for pick up by Navona. See Exhibit 181, copy of William T. Jennings letter to The Preserve - dated December 15, 2008.

512. On or about December 18, 2008 [Thursday], David Simpson's personal attorney replied that he had not had the opportunity to assemble the applicable personal property but planned to do so the next week and would deliver the property that is subject to the security agreement. See Exhibit 182, copy of Craig Carlile's letter to William T. Jennings - dated December 18, 2008.

513. No personal property was ever delivered to Navona nor did David Simpson and/or Nathan Simpson, through counsel or otherwise, communicate what steps they were

taking to gather and deliver the personal property.

514. In or around May 2009, one of Leslie's employees was informed that David Simpson was, in lieu of payment, giving persons and entities who were owed money by The Preserve TDRS and/or water shares owned by The Preserve and pledged as collateral for the MagnetBank loan.

515. On or about May 29, 2009 [Friday], David Simpson met with Leslie. When asked by Leslie if he had been giving water shares and TDRs to parties owed money by The Preserve he admitted to such conduct.

516. On or about June 1, 2009 [Monday], Navona again, through its attorneys, demanded David Simpson and Nathan Simpson turn over all personal property owned by The Preserve, including all TDRs, water shares and other personal property owned by The Preserve and those items of personal property that had been alienated by the Simpsons. See Exhibit 183, copy of William T. Jennings letter to Craig Carlile - dated June 1, 2009.

517. To the date of the filing of this Second Amended Complaint, David Simpson, Nathan Simpson and The Preserve have failed and refused to turn over to Navona any TDRs, water shares or other personal property owned by The Preserve.

518. Plaintiffs believe that David Simpson and Nathan Simpson continue to attempt to convert and/or alienate personal property owned by The Preserve.

519. On information and belief, Plaintiffs are victims of other fraudulent transactions committed by defendant individuals and defendant entities that are named in this Second Amended Complaint. Plaintiffs will amend this Complaint to include any such

additional claims based upon discovery.

520. On information and belief, Plaintiffs may be victims of acts committed by individuals and entities that are not named in this Second Amended Complaint. Plaintiffs will amend this Complaint to include any such additional claims based upon discovery.

521. At all relevant times herein, Michael Thompson exercised complete and total dominion and control over Mai Ke Kula, Hanalei Kai, ALS Properties, He Kiakolu and Koamalu Plantation as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. Each of Thompson's entities referred to herein has been operated and has conducted business as an alter ego of Thompson. Thompson has so intermingled his personal and financial affairs with those of his entities and has so intermingled the assets liabilities, business and financial affairs of his entities with his own that the respective entities are Thompson's alter egos.

522. Therefore, Michael Thompson, ALS, Mai Ke Kula, Hanalei Kai, He Kiakolu and Koamalu Plantation are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

523. At all relevant times herein, Todd Dorny exercised complete and total dominion and control over Ka Mahina, He Kiakolu and Koamalu Plantation as an owner,

shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. Each of Dorny's entities referred to herein has been operated and has conducted business as an alter ego of Dorny. Dorny has so intermingled his personal and financial affairs with those of his entities and has so intermingled the assets liabilities, business and financial affairs of his entities with his own that the respective entities are Dorny's alter egos.

524. Therefore, Todd Dorny, Ka Mahina, He Kiakolu and Koamalu Plantation are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

525. At all relevant times herein, Brandon Dente exercised complete and total dominion and control over Dente LC, He Kiakolu and Koamalu Plantation as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. Each of Dente's entities referred to herein has been operated and has conducted business as an alter ego of Dente. Dente has so intermingled his personal and financial affairs with those of his entities and has so intermingled the assets liabilities, business and financial affairs of his entities with his own that the respective entities are Dente's alter egos.

526. Therefore, Brandon Dente, Dente LC, He Kiakolu and Koamalu Plantation are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

527. At all relevant times herein, Chad Carlson exercised complete and total dominion and control over 2 Brothers as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. 2 Brothers has been operated and has conducted business as an alter ego of Carlson. Carlson has so intermingled his personal and financial affairs with those of 2 Brothers and has so intermingled the assets liabilities, business and financial affairs of 2 Brothers with his own that 2 Brothers is Carlson's alter ego.

528. Therefore, Chad Carlson and 2 Brothers are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

529. At all relevant times herein, Allen Hakes exercised complete and total

dominion and control over Lonestar Gutters as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of Lonestar Gutters. Lonestar Gutters has been operated and has conducted business as an alter ego of Hakes. Hakes has so intermingled his personal and financial affairs with those of Lonestar Gutters and has so intermingled the assets liabilities, business and financial affairs of Lonestar Gutters with his own that Lonestar Gutters is Hake's alter ego.

530. Therefore, Allen Hakes and Lonestar Gutters are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

531. At all relevant times herein, Dallas Hakes exercised complete and total dominion and control over Lonestar Builders as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent Lonestar Builders. Lonestar Builders has been operated and has conducted business as an alter ego of Hakes. Hakes has so intermingled his personal and financial affairs with those of Lonestar Builders and has so intermingled the assets liabilities, business and financial affairs of Lonestar Builders with his own that Lonestar Builders is Hake's alter ego.

532. Therefore, Dallas Hakes and Lonestar Builders are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code

Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

533. At all relevant times herein, David Simpson exercised complete and total dominion and control over He Kiakolu, Koamalu Plantations, Wood Springs, Landmark, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes and Maple Mountain Water as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. Each of David Simpson's entities referred to herein has been operated and has conducted business as an alter ego of David Simpson. David Simpson has so intermingled his personal and financial affairs with those of his entities and has so intermingled the assets liabilities, business and financial affairs of his entities with his own that the respective entities are David Simpson's alter egos.

534. Therefore, David Simpson, He Kiakolu, Koamalu Plantations, Wood Springs, Landmark, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes and Maple Mountain Water are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code

Annotated; and/or, as a result of their "assuming to act as a limited liability company" as provided in §48-2c-602(1), Utah Code Annotated.

535. At all relevant times herein, Nathan Simpson exercised complete and total dominion and control over He Kiakolu, Koamalu Plantations, Wood Springs, Landmark, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes and Maple Mountain Water as an owner, shareholder, member, director, officer, manager, control person, partner, principal and/or agent of them. Each of Nathan Simpson's entities referred to herein has been operated and has conducted business as an alter ego of Nathan Simpson. Nathan Simpson has so intermingled his personal and financial affairs with those of his entities and has so intermingled the assets liabilities, business and financial affairs of his entities with his own that the respective entities are Nathan Simpson's alter egos.

536. Therefore, Nathan Simpson, He Kiakolu, Koamalu Plantations, Wood Springs, Landmark, Oak Leaf, Sunny Ridge, KNDJ, DN Simpson Holdings, SOS, DN Simpson Mapleton, The Preserve, Pheasant Meadows, Carnesecca, Spanish Vista, Landmark Homes and Maple Mountain Water are jointly and severally liable to Leslie and LD SQ as partners by estoppel, as provided in §48-1-13, Utah Code Annotated; and/or are jointly and severally liable to Plaintiffs for all liabilities incurred by Plaintiffs in consequence of their "purporting to act as or on behalf of a corporation" as provided in §16-10a-204, Utah Code Annotated; and/or, as a result of their "assuming to act as a limited liability

company" as provided in §48-2c-602(1), Utah Code Annotated.

FIRST CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Fraud and Intentional Misrepresentation Claim Against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

537. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 536 as if fully set forth herein.

538. As described in paragraph 73 herein, Michael Thompson devised a real property development scheme in Lihue, Hawaii, through which he would profit at the expense of a wealthy investor. He planned on skimming the investor's funds from multiple conveyances of the real property and taking management and consulting fees. He additionally planned on selling his "equity interest" to another victim.

539. As described in paragraph 74 herein, Michael Thompson told Todd Dorny about the scheme and recruited Dorny to participate, on the condition that Dorny would find a wealthy investor to fund the multiple conveyances of the real property,

540. As described in paragraph 74 herein, Todd Dorny contacted Brandon Dente, who in turn contacted David Simpson.

541. Michael Thompson, either directly or through Todd Dorny and Brandon Dente, communicated with David Simpson and Nathan Simpson, authorizing and instructing them to make the representations to Ken Dolezsar which are described in paragraph 83 herein.

542. Michael Thompson, David Simpson and Nathan Simpson, knowing that Ken Dolezsar was acting as Leslie's agent, that Dolezsar was managing Leslie's business affairs and that he was Leslie's husband, made the representations to Dolezsar described in paragraphs 83 herein.

543. As described in paragraphs 85 and 86 herein, Ken Dolezsar, in ignorance of the falsity of the representations or as part of a conspiracy with Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny, Brandon Dente and their entities, and on the authorization, direction and instructions of David Simpson and Nathan Simpson, repeated the representations to Leslie.

544. The representations described in paragraphs 83 were statements of presently existing facts and intent.

545. The representations described in paragraph 83 were false as follows:

a. The Koamalu Plantation development project was not unique and as designed could never be profitable;

b. The Koamalu Plantation development project was not near the beach and would only have approximately 8 acres of real property left after the State of Hawaii took approximately 3 acres to widen the highway;

c. The construction costs could not be paid from pre-sales of condominium units because of the thirty percent (30%) affordable housing requirement imposed by Kauaii County;

d. More than \$5,000,000.00 was needed to acquire the land and do the

preliminary development work;

e. They could not get the needed permits and work performed to pre-sell condominiums within four to six months;

f. Any demand for vacation housing was not related to the condominiums because they were not designed, nor could they be sold, as vacation homes. Rather, they were homes for permanent residents of Kauai;

g. The project could not be completed and sold out in less than three years;

h. Michael Thompson and Todd Dorny had not built and sold hundreds of condominiums in Kauai;

i. It was impossible for Leslie to get her \$5,000,000.00 back plus a profit of \$10,000,000.00 on her investment; and

j. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente never intended for Leslie to own the real property.

546. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente failed to disclose the relevant material facts described in paragraph 84 herein.

547. Further, Michael Thompson sent an e-mail to Brandon Dente, which he copied to Todd Dorny, outlining the "project points." Thompson authorized and instructed Dorny to forward the e-mail to David Simpson so David Simpson could convey the information contained in it to Leslie, through Ken Dolezsar.

548. In the e-mail Michael Thompson falsely stated:

- a. All of the condominium units could be pre-sold before construction began;
- b. Thompson was experienced in local development and construction and had worked in Kauai for at least seven years;
- c. The profit would be from \$10,000,000.00 to \$14,000,000.00;
- d. Pre-sales could begin September 2005.

549. When Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente made their misrepresentations, including the false representations and material omissions, described in paragraphs 83 and 84 herein and in the e-mail, they knew they were false or they made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

550. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente made their misrepresentations, including the false representations and material omissions, described in paragraphs 83 and 84 herein and in the e-mail for the purpose of inducing Leslie to invest her funds in the Koamalu Plantation development project.

551. Leslie had no reason to know the representations were not true and reasonably agreed to furnish funds in reliance on the representations.

552. Leslie in fact did furnish funds to the Koamalu Plantation development project, without knowing the true facts.

553. Leslie's funds were in fact used to fund multiple conveyances of the real property. The multiple conveyances of the real property are described in paragraphs 90, 91, 110, 116 through 120, 123 through 129, 138 through 141 and 145, herein.

554. Michael Thompson skimmed funds from multiple conveyances of the real property and took Leslie's funds for "management" and "consulting" fees.

555. Leslie was induced to provide the funds by Michael Thompson's, David Simpson's, Nathan Simpson's, Todd Dorny's and Brandon Dente's representations.

556. As a direct and proximate result of the misrepresentations, Leslie was damaged in the amount of at least \$7,186,139.41.

557. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

558. Additionally, because Michael Thompson's, David Simpson's, Nathan Simpson's, Todd Dorny's and Brandon Dente's misrepresentations were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

559. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan

Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; Dente, LLC; He Kiakolu, LLC; and Koamalu Plantation, LLC as described in paragraph 1 of the Prayer for Relief.

SECOND CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Breach of Fiduciary Duties Claim Against Defendants David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ken Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC, Koamalu Plantation Development, LLC and Dente, LLC - Hawaii)

560. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 559 as if fully set forth herein.

561. At all relevant times, David Simpson was a manager of LD SQ and Koamalu and therefore there was a principal-agent relationship between David Simpson and LD SQ and between David Simpson and Leslie.

562. As such, David Simpson owed fiduciary duties to Leslie and LD SQ.

563. As such, David Simpson was obligated to put Leslie's and LD SQ's interests above his own or others, and to act loyally for Leslie's and LD SQ's benefit.

564. At all relevant times, Todd Dorny was a manager of Koamalu, and on January 18, 2006, was added as a manager of LD SQ. Therefore, Dorny also owed Leslie and LD SQ fiduciary duties.

565. David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente, by participating in the Koamalu Plantation development project and

pursuant to Utah Code Annotated § 22-1-1, were at all relevant times acting as fiduciaries and therefore owed fiduciary duties to Leslie and LD SQ.

566. By making the following misrepresentations, taking the following actions and by failing to disclose the following relevant material facts, David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente breached their fiduciary duties to Leslie and LD SQ, acted in their own self interests and failed to act in Leslie's and LD SQ's best interests:

- a. Making the misrepresentations described in paragraph 83 herein;
- b. Failing to disclose the relevant material facts described in paragraph 84 herein;
- c. Allowing Michael Thompson to have the largest share of ownership of Koamalu;
- d. Allowing and arranging for LD SQ to own only 50% of the ownership interest in Koamalu, when LD SQ was the only member required to contribute funding;
- e. Giving David Simpson a 10% ownership interest in Koamalu;
- f. Giving Todd Dorny a 10% ownership interest in Koamalu;
- g. Executing an operating agreement for Koamalu that obligated LD SQ, in return for only 50% ownership, to find and secure all financing for acquisition and construction costs associated with the Koamalu project;
- h. Allowing the other members of Koamalu to own the other 50% in

return for token or non-existent contributions;

i. David Simpson took a check from LD SQ's bank account in the amount of \$100,000.00 for a management fee when he had told Leslie that he would not take any such management fees;

j. Allowing ALS to purchase the real property for the Koamalu Plantation development project from Nokaoi and then sell it to Koamalu, when ALS was owned by a principal of Koamalu and ALS profited on the transaction;

k. Todd Dorny in fact signed documents on behalf of both ALS, the selling entity, and Koamalu, the purchasing entity.

l. Authorizing Title Guaranty Escrow Services to transfer \$1,000,000.00 of the funds provided by Leslie and LD SQ for the purchase of Unit 2 by Koamalu to fund the purchase of Units 2 and 3 by Nokaoi Development from Balgos, described in paragraphs 118 and 199 herein;

m. Failing to inform Leslie that there was a lawsuit filed by Balgos, described in paragraphs 130 through 133 herein;

n. Allowing Leslie's and LD SQ's funds to be used to fund Nokaoi's and ALS's purchases of the real property, before it was purchased by Koamalu;

o. Allowing and arranging to wire \$823,612.14 of LD SQ's funds to an account controlled by Michael Thompson in relation to the purchase of Unit 3 by Koamalu from ALS, described in paragraphs 140 through 142 above and by making a profit at Leslie's, LD SQ's and Koamalu's expense;

p. Taking \$1,984,193.08 from LD SQ's savings account to pay for the purchase of Unit 3 by Koamalu;

q. Sending a check to POPS on behalf of ALS in the amount of \$54,809.75 from an account owned by LD SQ, in an attempt to bring the Balgos promissory note current and to settle the litigation, described in paragraph 150 above;

r. Issuing promissory notes and mortgages to LD SQ in the amount of \$1,800,000.00 and \$2,800,000.00. The promissory notes bear no interest and are only due upon sale of the property;

s. Transferring \$1,574,418.79 from LD SQ's checking account to settle the litigation regarding the nonpayment of the Balgos/Nokaoi promissory note, as described in paragraph 156 herein;

t. Borrowing \$400,000.00 from Larry Nelson on behalf of LD SQ, without permission or the knowledge of Leslie;

u. David Simpson issued himself a promissory note from Koamalu in the amount of \$1,900,000.00 and a mortgage securing the promissory note when he had not actually lent or invested his own funds, as described in paragraphs 161 through 162 herein. Todd Dorny also signed the promissory note and the mortgage as a manager of Koamalu;

v. David Simpson issued himself a promissory note from Koamalu in the amount of \$600,000.00 when he did not invest or loan Koamalu any of his own

funds, as described in paragraphs 171 through 172 herein;

w. Failing to title the real property in either Leslie's name or LD SQ's name; and

x. David Simpson and Nathan Simpson took Leslie's and LD SQ's funds for their own uses and purposes, as described in paragraphs 174 through 198 herein.

567. As a direct and proximate result of David Simpson's; Nathan Simpson's; Michael Thompson's; Todd Dorny's; Brandon Dente's; Wood Springs, LLC's; ALS Properties, LLC's; Mai Ke Kula, LLC's; Hanalei Kai Holdings, LLC's; Ka Mahina, LLC's; Dente, LLC's; He Kiakolu, LLC's and Koamalu Plantation, LLC's breaches of their fiduciary duties to Leslie and LD SQ, Leslie and LD SQ were damaged in the amount of \$7,186,139.41.

568. Additionally, because of David Simpson's; Nathan Simpson's; Michael Thompson's; Todd Dorny's; Brandon Dente's; Wood Springs, LLC's; ALS Properties, LLC's; Mai Ke Kula, LLC's; Hanalei Kai Holdings, LLC's; Ka Mahina, LLC's; Dente, LLC's; He Kiakolu, LLC's and Koamalu Plantation, LLC's breaches of their fiduciary duties were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

569. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and

Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

570. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantations as set forth in paragraph 2 of the Prayer for Relief.

THIRD CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Aiding and Abetting Breach of Fiduciary Claim Against Defendants Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ken Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC, Koamalu Plantation Development, LLC and Dente, LLC - Hawaii)

571. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 570 as if fully set forth herein.

572. Plaintiffs allege that Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente aided and abetted each other in breaching their fiduciary duties to Leslie and LD SQ.

573. Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente each individually owed Leslie and LD SQ fiduciary duties and breached those duties as described in Plaintiffs' Second Cause of Action.

574. Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente knowingly participated and aided each other in breaching their fiduciary duties to Leslie and LD SQ.

575. As a direct and proximate result of David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente aiding and participating in each other's breach of their fiduciary duties to Leslie and LD SQ, Leslie and LD SQ were damaged in the amount of \$7,186,139.41.

576. Additionally, because David Simpson's; Nathan Simpson's; Michael Thompson's; Todd Dorny's; Brandon Dente's; Wood Springs, LLC's; ALS Properties, LLC's; Mai Ke Kula, LLC's; Hanalei Kai Holdings, LLC's; Ka Mahina, LLC's; Dente, LLC's; He Kiakolu, LLC's and Koamalu Plantation, LLC's aiding and abetting breaches of their fiduciary duties was willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

577. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 53 through 536 herein.

578. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan

Simpson; Michael Thompson; Todd Dorny; Brandon Dente' Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; Dente, LLC; He Kiakolu, LLC's and Koamalu Plantation, LLC as set forth in paragraph 3 of the Prayer for Relief.

FOURTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Fraudulent Non-Disclosure Claim Against Defendants Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ken Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC, Koamalu Plantation Development, LLC and Dente, LLC - Hawaii)

579 Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 578 as if fully set forth herein.

580. As described in paragraph 84 herein, David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente intentionally withheld and failed to disclose to Leslie and LD SQ the true facts in relation to the Koamalu Plantation development project,

581. David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente intentionally withheld and failed to disclose to Leslie and LD SQ the relevant material facts and information described in paragraph 84 herein, which would have directly impacted Leslie's decision to furnish funds or not.

582. David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente were well aware of the facts and information described in paragraph 84 herein and intentionally withheld and intentionally withheld and failed to disclose such facts

and information to Leslie.

583. Because David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente were at all relevant times acting in a fiduciary capacity regarding Leslie and LD SQ, they had a duty to disclose the true facts to Leslie and LD SQ.

584. As a direct and proximate result of David Simpson's, Nathan Simpson's, Michael Thompson's, Todd Dorny's and Brandon Dente's intentional withholding and failure to disclose the relevant and material facts of which they had knowledge, Leslie and LD SQ were damaged in the amount of \$7,186,139.41.

585. Additionally, because Michael Thompson's, David Simpson's, Nathan Simpson's, Todd Dorny's and Brandon Dente's failures to disclose the relevant material facts and information were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

586. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

587. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS

Properties, LLC; Mai Ken Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC, Koamalu Plantation Development, LLC and Dente, LLC as set forth in paragraph 4 of the Prayer for Relief.

FIFTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Aiding and Abetting Fraudulent Non-Disclosure Claim Against Defendants Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ken Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC, Koamalu Plantation Development, LLC and Dente, LLC - Hawaii)

588. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 587 as if fully set forth herein.

589. Plaintiffs allege that Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente aided and abetted each other in fraudulent non-disclosure.

590. Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente each individually had a duty to disclose the true and material facts to Leslie and LD SQ regarding the Koamalu Plantation development project, described in Plaintiffs's Fourth Cause of Action.

591. Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente knowingly participated and aided each other in fraudulently, intentionally withholding relevant material facts regarding the Koamalu Plantation development project, knowing each of the other defendants had a duty to disclose all the relevant material facts to Leslie and LD SQ.

592. As a direct and proximate result of David Simpson, Nathan Simpson, Thompson, Dorny and Dente aiding and participating in each other's breach of their duty to disclose to Leslie and LD SQ all the relevant material facts regarding the Koamalu Plantation development project, Leslie and LD SQ were damaged in the amount of \$7,186,139.41.

593. Additionally, because Michael Thompson's, David Simpson's, Nathan Simpson's, Todd Dorny's and Brandon Dente's actions in aiding and abetting fraudulent non-disclosures was willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

594. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

595. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente as set forth in paragraph 5 of the Prayer for Relief.

SIXTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Negligent Misrepresentation Claim Against

Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

596. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 595 as if fully set forth herein

597. As described in paragraph 73 herein, Michael Thompson devised a real property development scheme in Lihue, Hawaii, through which he would profit at the expense of a wealthy investor. He planned on skimming the investor's funds from multiple conveyances of the real property and taking management and consulting fees. He additionally planned on selling his "equity interest" to another victim.

598. As described in paragraph 74 herein, Michael Thompson told Todd Dorny about the scheme and recruited Dorny to participate, on the condition that Dorny would find a wealthy investor to fund the multiple conveyances of the real property,

599. As described in paragraph 74 herein, Todd Dorny contacted Brandon Dente, who in turn contacted David Simpson.

600. Michael Thompson, either directly or through Todd Dorny and Brandon Dente, communicated with David Simpson and Nathan Simpson, authorizing and instructing them to make the representations to Ken Dolezsar which are described in paragraph 83 herein.

601. Michael Thompson, David Simpson and Nathan Simpson, knowing that Ken Dolezsar was acting as Leslie's agent, that Dolezsar was managing Leslie's business affairs and that he was Leslie's husband, made the representations to Dolezsar described

in paragraphs 83 herein.

602. As described in paragraphs 85 and 86 herein, Ken Dolezsar, in ignorance of the falsity of the representations or as part of a conspiracy with Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny, Brandon Dente and their entities, and on the authorization, direction and instructions of David Simpson and Nathan Simpson, repeated the representations to Leslie.

603. The representations described in paragraphs 83 were statements of presently existing facts and intent.

604. The representations described in paragraph 83 were false as follows:

- a. The Koamalu Plantation development project was not unique and as designed could never be profitable;
- b. The Koamalu Plantation development project was not near the beach and would only have approximately 8 acres of real property left after the State of Hawaii took approximately 3 acres to widen the highway;
- c. The construction costs could not be paid from pre-sales of condominium units because of the thirty percent (30%) affordable housing requirement imposed by Kauaii County;
- d. More than \$5,000,000.00 was needed to acquire the land and do the preliminary development work;
- e. They could not get the needed permits and work performed to pre-sell condominiums within four to six months;

f. Any demand for vacation housing was not related to the condominiums because they were not designed, nor could they be sold, as vacation homes. Rather, they were homes for permanent residents of Kauai;

g. The project could not be completed and sold out in less than three years;

h. Michael Thompson and Todd Dorny had not built and sold hundreds of condominiums in Kauai;

i. It was impossible for Leslie to get her \$5,000,000.00 back plus a profit of \$10,000,000.00 on her investment; and

j. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente never intended for Leslie to own the real property.

605. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente failed to disclose the relevant material facts described in paragraph 84 herein.

606. Further, Michael Thompson sent an e-mail to Brandon Dente, which he copied to Todd Dorny, outlining the "project points." Thompson authorized and instructed Dorny to forward the e-mail to David Simpson so David Simpson could convey the information contained in it to Leslie, through Ken Dolezsar.

607. In the e-mail Michael Thompson falsely stated:

a. All of the condominium units could be pre-sold before construction began;

b. Thompson was experienced in local development and construction and had worked in Kauai for at least seven years;

c. The profit would be from \$10,000,000.00 to \$14,000,000.00;

d. Pre-sales could begin September 2005.

608. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente made their misrepresentations, including the false representations and material omissions, described in paragraphs 83 and 84 herein and in the e-mail, carelessly and negligently.

609. Michael Thompson, David Simpson, Nathan Simpson, Todd Dorny and Brandon Dente made their misrepresentations, including the false representations and material omissions, described in paragraphs 83 and 84 herein and in the e-mail for the purpose of inducing Leslie to invest her funds in the Koamalu Plantation development project.

610. Leslie had no reason to know the representations were not true and reasonably agreed to furnish funds in reliance on the representations.

611. Leslie in fact did furnish funds to the Koamalu Plantation development project, without knowing the true facts.

612. Leslie's funds were in fact used to fund multiple conveyances of the real property. The multiple conveyances of the real property are described in paragraphs 90, 91, 110, 116 through 120, 123 through 129, 138 through 141 and 145, herein.

613. Michael Thompson skimmed funds from multiple conveyances of the real

property and took Leslie's funds for "management" and "consulting" fees.

614. Leslie was induced to provide the funds by Michael Thompson's, David Simpson's, Nathan Simpson's, Todd Dorny's and Brandon Dente's representations.

615. As a direct and proximate result of the misrepresentations, Leslie was damaged in the amount of at least \$7,186,139.41.

616. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

617. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; Dente, LLC; He Kiakolu, LLC; and Koamalu Plantation, LLC as set forth in paragraph 6 of the Prayer for Relief.

SEVENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Conversion Claim Against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

618. Plaintiffs hereby incorporate by this reference the allegations set forth above

in paragraphs 1 through 617 as if fully set forth herein.

619. David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny and Brandon Dente intentionally exercised control over Leslie's and LD SQ's funds and used them for their own purposes, without Leslie's permission, and in contravention of Leslie's rights.

620. David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente used Leslie's funds for their own purposes as described in paragraphs 98, 99, 101, 119, 140, 141, 150, 156, 174, 175, 176, 177, 178 and 180 through 198 herein.

621. They deprived Leslie and LD SQ of the possession and use of their funds and therefore Leslie and LD SQ were damaged in the amount of at least \$7,186,139.41.

622. Additionally, because David Simpson's, Nathan Simpson's, Michael Thompson's, Todd Dorny's, and Brandon Dente's actions were willful, malicious and intentional, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD SQ's rights, Leslie and LD SQ. LLC are entitled to an award of punitive damages.

623. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

624. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC, as set forth in paragraph 7 of the Prayer for Relief.

EIGHTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Unjust Enrichment Claim Against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

625. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 624 as if fully set forth herein.

626. By taking the funds, described in paragraphs 98, 99, 101, 119, 140, 141, 150, 156, 174, 175, 176, 177, 178 and 180 through 198 herein, David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente were unjustly enriched at Leslie's and/or LD SQ's expense.

627. Further, by taking a 50% ownership interest in Koamalu Plantation, when Leslie and LD SQ were the only ones who contributed funds to the entity, David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente were unjustly enriched at Leslie's and/or LD SQ's expense.

628. It would be inequitable for David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, and Brandon Dente to retain the benefit conferred upon them by

Leslie and/or LD SQ.

629. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs 521 through 526 and 533 through 536 herein.

630. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC as set forth in paragraph 8 of the Prayer for Relief.

NINTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Conspiracy Claim Against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

631. Plaintiffs incorporate by this reference the allegations set forth above in paragraphs 1 through 630 as if fully set forth herein.

632. As described in paragraph 73 herein, Michael Thompson devised a real property development scheme in Lihue, Hawaii, through which he would profit at the expense of a wealthy investor. Thompson planned on skimming the investor's funds from

multiple conveyances of the real property and taking management and consulting fees. He additionally planned on selling his "equity interest" to another victim.

633. As described in paragraph 74 herein, Michael Thompson, told Todd Dorny about the scheme and recruited Dorny to participate, on the condition that Dorny would find a wealthy investor to fund the multiple conveyances of the real property.

634. Todd Dorny agreed to participate in the scheme and to find an investor.

635. Todd Dorny contacted Brandon Dente, who, in return for an ownership interest, contacted David Simpson.

636. As described in paragraph 75 herein, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson formed a conspiracy for their mutual benefit and gain, risking only Leslie's funds.

637. David Simpson and Nathan Simpson, agreed to contact Ken Dolezsar regarding funding the Koamalu Plantation development project. In return, they insisted on an ownership interest for themselves, to which Michael Thompson, Todd Dorny and Brandon Dente agreed.

638. Michael Thompson, Todd Dorny, Brandon Dente and David Simpson agreed that they would each, either individually or through an entity, take at least a 50% percent ownership in the entity which would be created for the Koamalu Plantation development project, although none of them would actually contribute any funds.

639. They also agreed to accomplish the objectives described in paragraph 73 herein.

640. To accomplish those objectives and as part of the conspiracy, Michael Thompson authorized David Simpson to make the representations described in paragraph 83 herein. Thompson also instructed David Simpson to withhold from Leslie the relevant information described in paragraph 84 herein.

641. David Simpson and Nathan Simpson did in fact make the representations described in paragraph 83 herein and withheld from Leslie the relevant information described in paragraph 84 herein.

642. Further, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson agreed to set in motion a scheme whereby the real property would go through multiple conveyances, disguised to look like lawful, successive, step-stage transactions.

643. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson in fact made multiple conveyances of the real property, skimming a profit for themselves on each conveyance.

644. As described in paragraph 81 herein, Todd Dorny forwarded a copy of Michael Thompson's e-mail to David Simpson. In the e-mail, Thompson listed the "project points" for the development of Unit 2, with the expectation and instruction that David Simpson and Nathan Simpson would arrange for Leslie to be informed of the e-mail's contents.

645. David Simpson and Nathan Simpson arranged for Leslie to be informed of the e-mail's contents. Further, Michael Thompson, Todd Dorny, Brandon Dente, David

Simpson and Nathan Simpson arranged for the information described in paragraph 83 herein to be related to Leslie.

646. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson agreed to, and did, withhold the information described in paragraph 84 herein from Leslie.

647. In furtherance of the conspiracy, Michael Thompson arranged for Nokaoi to purchase the real property from Balgos, using Leslie's funds.

648. Michael Thompson's entity, ALS, purchased the real property from Nokaoi. Todd Dorny signed closing documents on behalf of ALS.

649. Finally, Koamalu purchased the real property from ALS. In the ALS to Koamalu transaction, Todd Dorny signed closing documents on behalf of ALS, and on behalf of Koamalu.

650. However, it was only after Leslie's \$1,200,000.00 investment was received that any of the transactions occurred.

651. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson arranged for Leslie's funds to be used for the purchase by Nokaoi from Balgos, rather than using Leslie's funds to purchase the real property in her name.

652. At each conveyance, the price of the real property increased and Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson skimmed the profits.

653. In furtherance of the conspiracy, Brandon Dente formed Dente, LC and Todd

Dorny formed Ka Mahina. Also in furtherance of the conspiracy, Todd Dorny and David Simpson formed He Kiakolu. Through either Mai Ke Kula or Hanalei Kai, Michael Thompson owned 46% of He Kiakolu. Through Ka Mahina, Todd Dorny owned 20% of He Kiakolu. Through Dente LC, Brandon Dente owned 14% of He Kiakolu. Through, Wood Springs, David Simpson owned 20% of He Kiakolu.

654. Todd Dorny then formed Koamalu. He Kiakolu owns 50% of Koamalu and LD SQ owns 50% of Koamalu, yet Leslie was the only one who invested funds, or made any material contribution to Koamalu.

655. On or about March 11, 2005, Todd Dorny signed a "Waiver and Confirmation" in which on behalf of Koamalu he waived all deadlines, conditions and contingencies for the DROA regarding Koamalu purchase of Unit 2.

656. As described in paragraphs 118 and 119 herein, instead of using Leslie's funds to purchase the real property in Leslie's name, David Simpson, in a breach of escrow, instructed the title company to transfer \$1,000,000.00 of Leslie's funds for the Balgos/Nokaoi Unit 2 transaction.

657. As described in paragraph 140 herein, Michael Thompson sent an e-mail to David Simpson, Nathan Simpson and Todd Dorny in which Thompson explained the scheme to skim funds from Koamalu's purchase of Unit 3.

658. Michael Thompson's e-mail explained that \$1,983,243.93 of Leslie's funds would be transferred to the title company for the purchase of Unit 3. Thompson further explained that \$823,612.14 of Leslie's funds would be transferred to an account controlled

by him.

659. David Simpson arranged for, and executed, the transfer of \$822,692.99 from LD SQ's savings account to Michael Thompson. Simpson also arranged for, and executed, the transfer of \$1,984,193.08 to the title company from LD SQ's savings account.

660. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson skimmed for themselves at least \$822,692.99 of Leslie's funds.

661. As described in paragraph 150 herein, on or about September 8, 2005, David Simpson and Nathan Simpson, acting on behalf of ALS, in breach of their fiduciary duties to Leslie and in an attempt to bring current the payments due on the Balgos promissory note, sent POPS a check in the amount of \$54,809.75, drawn on LD SQ's checking account.

662. As described in paragraph 161 herein, on or about November 15, 2005, David Simpson and Todd Dorny, acting as managers of Koamalu, executed a promissory note from Koamalu payable to David Simpson in the amount of \$1,900,000.00. The promissory note is secured by a mortgage on Unit 2.

663. As described in paragraph 162 herein, David Simpson never contributed \$1,900,000.00 of his own funds to Koamalu. Rather, Simpson and Todd Dorny, in breach of their fiduciary duties, gave Simpson the promissory note and mortgage in a further attempt to skim funds from the project.

664. Despite the representations made to Leslie regarding the viability of the

Koamalu Plantation development project, Michael Thompson later stated that there were no guarantees that the project would be approved or completed, despite the fact that at that time he had already skimmed for himself and his co-conspirators at least \$1,097,630.00 from Leslie's funds.

665. As part of the conspiracy, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson converted Leslie's funds, described in Plaintiffs' Seventh Cause of Action and herein; they caused fraudulent misrepresentations to be made to Leslie to induce her to invest her funds in the project, described in Plaintiffs' First and Sixth Causes of Action and herein; they withheld relevant material facts and information from Leslie, described in Plaintiffs' Fourth and Fifth Causes of Action and herein; and they breached their fiduciary duties, described in Plaintiffs' Second and Third Causes of Action and herein.

666. As a direct and proximate result of Michael Thompson's, Todd Dorny's, Brandon Dente's, David Simpson's and Nathan Simpson's unlawful acts taken pursuant to their conspiracy, Plaintiffs were damaged as described in their First through Seventh Causes of Action.

667. As described in paragraphs 521 through 526 and 533 through 536 herein, at all relevant times Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that Thompson, Dorny, Dente and the Simpson's are jointly and severally liable with their entities described in paragraphs

521 through 526 and 533 through 536 herein.

669. Therefore, Plaintiffs are entitled to judgment against David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC as set forth in paragraph 9 of the Prayer for Relief.

TENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD SQ, LLC's Utah Pattern of Unlawful Activity Claim Against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC - Hawaii)

670. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 669 as if fully set forth herein.

671. As described in paragraph 73 herein, Michael Thompson devised a real property development scheme in Lihue, Hawaii, through which he would profit at the expense of a wealthy investor. Thompson planned on skimming the investor's funds from multiple conveyances of the real property and taking management and consulting fees. He additionally planned on selling his "equity interest" to another victim.

672. As described in paragraph 74 herein, Michael Thompson, told Todd Dorny about the scheme and recruited Dorny to participate, on the condition that Dorny would find a wealthy investor to fund the multiple conveyances of the real property.

673. Todd Dorny agreed to participate in the scheme and to find an investor. He

contacted Brandon Dente, who, in return for an ownership interest, contacted David Simpson.

674. David Simpson and Nathan Simpson agreed to work with each other and through their various entities to participate in the scheme and thereby formed and enterprise as defined in Utah Code Annotated §76-10-1602(1).

675. David Simpson and Nathan Simpson agreed to contact Ken Dolezsar in return for an interest in the scheme.

676. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson agreed that they would, either individually or through their entities, take at least 50% ownership in an entity which would be created to accomplish Thompson's scheme.

677. They also agreed to accomplish the objectives described in paragraph 73 herein.

678. To accomplish those objectives and as part of the conspiracy, Michael Thompson authorized David Simpson to make the representations described in paragraph 83 herein. Thompson also instructed David Simpson to withhold from Leslie the relevant information described in paragraph 84 herein, which David Simpson agreed to do.

679. David Simpson and Nathan Simpson did in fact make the representations described in paragraph 83 herein and did in fact withhold from Leslie the relevant information described in paragraph 84 herein.

680. Further, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson agreed to set in motion a scheme whereby the real property would

go through multiple conveyances, disguised to look like lawful, successive, step-stage transactions.

681. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson in fact made multiple conveyances of the real property, skimming a profit for themselves on each conveyance.

682. As described in paragraph 81 herein, Michael Thompson sent an e-mail to Brandon Dente and Todd Dorny outlining the "project points." Dorny forwarded the e-mail to David Simpson and Nathan Simpson so they could pass the information contained in it to Ken Dolezsar, instructing and authorizing Dolezsar to provide the information to Leslie.

683. On or about March 10, 2005, Todd Dorny and David Simpson caused He Kiakolu to be registered with the State of Hawaii.

684. Through either Mai Ke Kula or Hanlei Kai, Michael Thompson owned 46% of He Kiakolu. Through Ka Mahina, Todd Dorny owned 20% of He Kiakolu. Through Dente LC, Brandon Dente owned 14% of He Kiakolu. Through, Wood Springs, David Simpson owned 20% of He Kiakolu.

685. On or about March 10, 2005, Todd Dorny registered Koamalu with the State of Hawaii.

686. The members of Koamalu are He Kiakolu and LD SQ, each owning a 50% interest.

687. By making agreements with each other and by forming He Kiakolu, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson formed an

"enterprise" as defined in Utah Code Annotated §76-10-1602(1). Further, Koamalu was also an enterprise under the same definition.

688. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, individually, through their single member entities, through He Kiakolu or through Koamalu, committed at least three episodes of unlawful activity in furtherance of the enterprise. A description of such acts follows.

689. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson arranged for Leslie's funds to be used to fund Nokaoi's purchase of Unit 2 from Balgos. Nokaoi paid Balgos \$3,800,000.00 for Unit 2 and Unit 3. Thompson, Dorny, Dente, David Simpson and Nathan Simpson used Leslie's funds for Nokaoi's purchase of Units 2 & 3 without Leslie's authorization or knowledge. They misrepresented to Leslie how her funds would be used. Such a mis-use of her funds constitutes theft and theft by deception.

690. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson arranged for ALS to purchase only Unit 2 from Nokaoi for \$2,900,000.00.

691. ALS then sold Unit 2 to Koamalu for \$3,100,000.00.

692. The \$200,000.00 difference was skimmed by Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson.

693. However, none of the conveyances occurred, including the conveyance from Balgos to Nokaoi, until Leslie provided her funds and they were released from escrow, described in paragraphs 115 through 119 herein.

694. As described in paragraph 138 herein, on or about June 28, 2005, Nokaoi executed an Apartment Deed conveying Unit 3 from Nokaoi to ALS. The Apartment Deed is signed on behalf of ALS by Todd Dorny. ALS paid \$2,800,000.00 for Unit 3, using Leslie's funds.

695. As described in paragraph 141 herein, in relation to the Unit 3 purchase, David Simpson transferred \$822,692.99 from LD SQ's savings account to the title company. In turn, the title company transferred \$823,612.14 to an account owned and/or controlled by Michael Thompson.

696. As described in paragraph 143 herein, on or about July 7, 2005, without Leslie's authorization or knowledge, David Simpson caused \$1,984,193.08 to be transferred from LD SQ's savings account for Koamalu's purchase of Unit 3 from ALS.

697. As described in paragraph 150 herein, on or about September 8, 2005, David Simpson and Nathan Simpson, acting on behalf of ALS and without Leslie's authorization or knowledge, sent POPS a check in the amount of \$54,809.75 in an attempt to bring the payments on the Balgos/Nokaoi-Unit 2 \$1,900,000.00 promissory note current.

698. As described in paragraph 156 herein, on or about November 10, 2005, without Leslie's authorization or knowledge, David Simpson transferred \$1,574,418.79 from LD SQ's checking account to POPS to pay in full the Balgos/Nokaoi - Unit 2 \$1,900,000.00 promissory note.

699. As described in paragraph 161 herein, on or about November 15, 2005, David Simpson and Todd Dorny, as managers of Koamalu, issued a promissory note to

David Simpson in the amount of \$1,900,000.00, along with a mortgage to secure the promissory note. David Simpson had not invested or loaned any of his personal funds to Koamalu. In furtherance of the enterprise, David Simpson and Dorny caused Koamalu to issue the promissory note and mortgage to skim funds from Koamalu

700. As described in paragraph 171 herein, on or about January 30, 2007, David Simpson, acting as the manager of Koamalu, gave himself a promissory note and mortgage in the amount of \$600,000.00.

701. By taking Leslie's and LD SQ's funds without her consent or authorization, as described in paragraphs 98, 99, 101, 119, 140, 141, 150, 156, 174, 175, 176, 177, 178 and 180 through 198 herein, and as described in this cause of action Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson engaged in conduct, solicited, requested, commanded, encouraged, and intentionally aided each other to commit multiple episodes of theft. They also attempted or conspired to commit multiple episodes of theft.

702. By making the false representations described in Plaintiffs' First Cause of Action for the purpose of inducing Leslie to invest her funds in the Koamalu Plantation development project, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson engaged in conduct, solicited, requested, commanded, encouraged, and intentionally aided each other to commit multiple episodes of theft by deception.

703. Further, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson attempted to commit and conspired to commit multiple episodes of

theft by deception.

704. At all relevant times, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson were fiduciaries in relation to Leslie and LD SQ as defined by Utah Code Annotated §76-6-513(a).

705. By taking the actions described in this cause of action and in Plaintiffs' Second Cause of Action, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson directly engaged in conduct which they knew was a violation of their fiduciary duties which involved substantial risks of loss or detriments to Leslie and LD SQ. They also solicited, requested, commanded, encouraged and intentionally aided each other in dealing with Leslie's and LD SQ's property and funds in a manner which they knew was a violation of their fiduciary duties which involved substantial risks of loss or detriments to Leslie and LD SQ.

706. Further, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson as part of an enterprise, attempted and conspired to deal with Leslie's and LD SQ's funds in a manner which they knew was a violation of their duties and which involved substantial risks of loss or detriments to Leslie and LD SQ.

707. As described in this cause of action and in Plaintiffs' First through Seventh and Ninth Causes of Action, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, either individually or through their entities, solicited, requested, commanded, encouraged and intentionally aided each other in obtaining or attempting to obtain Leslie's and LD SQ's funds by means of a confidence game. They

also attempted and conspired to obtain Leslie's and LD SQ's funds by means of a confidence game.

708. Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, either individually or through their entities, as described in this Cause of Action, devised a scheme to defraud Leslie and LD SQ and to obtain Leslie's and LD SQ's funds by means of false or fraudulent pretenses, representations, promises, or material omissions. Particularly, they promised Leslie that she would receive a 200% return on her investment and that she would have title of the real property in her own name.

709. Further, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, either individually or through their entities, directly or indirectly communicated to Leslie the representations described in paragraph 83 herein.

710. Such misrepresentations were communicated to Leslie and/or LD SQ for the purpose of executing and concealing the scheme to make multiple conveyances of the real property, to profit at Leslie's expense on each transaction, to skim Leslie's funds for themselves and to pay themselves "management fees" and "consulting fees," at Leslie's expense.

711. In an attempt and for the purpose of executing and concealing the scheme to make multiple conveyances of the real property, to profit at Leslie's expense on each transaction, to skim Leslie's funds for themselves, and to pay themselves "management fees" and "consulting fees," at Leslie's expense, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, either individually or through their entities,

intentionally, knowingly or with a reckless disregard for the truth, failed to disclose relevant material facts to Leslie, described in paragraph 84 herein.

712. By making the false or fraudulent representations, promises and material omissions described in Plaintiffs' First, Fourth and Fifth Causes of Action and in this cause of action, Michael Thompson, Todd Dorny, Brandon Dente, David Simpson and Nathan Simpson, either individually or through their entities, committed multiple episodes of communications fraud.

713. Leslie and LD SQ were damaged in the amount of \$7,186,139.41.

714. Further, pursuant to Utah Code Annotated §76-10-1605(1), Plaintiffs are entitled to recover twice the damages they sustained and their costs and reasonable attorney's fees.

715. Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente are liable under Utah's Pattern of Unlawful Activity Act for any and all criminal conduct accomplished through their entities, pursuant to Utah Code Annotated §76-2-204, because they are personally liable for criminal conduct "authorized, solicited, requested, commanded, or undertaken, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation or association." Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente are further liable under Utah's Pattern of Unlawful Activity Act for their entities' criminal acts pursuant to Utah Code Annotated §76-2-205 "for conduct constituting [a criminal] offense which he perform[ed] or cause[d] to be

performed in the name off on behalf of a corporation or association to the same extent as if such conduct were performed in his own name of behalf."

716. Plaintiffs are therefore entitled to judgment against Defendants David Simpson, Nathan Simpson, Michael Thompson, Todd Dorny, Brandon Dente, Wood Springs, LLC, ALS Properties, LLC, Mai Ke Kula, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, Dente, LC, He Kiakolu, LLC and Koamalu Plantation, LLC as set forth in paragraph 10 of the Prayer for Relief.

ELEVENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Fraud and Intentional Misrepresentations Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano - The Preserve)

717. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 716 as if fully set forth herein.

718. David Simpson and Nathan Simpson, knowing that Ken Dolezsar was acting as Leslie's agent, that he was managing Leslie's business affairs, that he was Leslie's husband and that he had access to Leslie's funds, persuaded Dolezsar that The Preserve at Mapleton development project was a blue chip investment opportunity.

719. As described in paragraph 247 herein, in an attempt to artificially raise the values of the real property, David Simpson and Nathan Simpson decided to purchase the

Whiting Property and develop it together with the 171 acres they had previously purchased.

720. David Simpson and Nathan Simpson did not have sufficient funds to purchase the Whiting Property. Therefore, they concocted a scheme to purchase the Whiting Property for themselves, using only Leslie's funds. Knowing that Ken Dolezsar was managing Leslie's business affairs and that Dolezsar was a manager of Leslie's business entities, they made the representations to Dolezsar described in paragraph 256 herein, requesting and authorizing him to make the same representations to Leslie.

721. As described in paragraphs 256 and 259 herein, Ken Dolezsar, in ignorance of the falsity of David Simpson's and Nathan Simpson's representations, as part of a conspiracy with the Simpsons or on the Simpsons' authorization, direction and instructions, repeated their representations to Leslie.

722. The representations described in paragraph 256 were statements of presently existing facts and intent.

723. The representations described in paragraph 256 were false as follows:

a. David Simpson and Nathan Simpson did not own outright the 171 acres of real property. Rather, the real property was encumbered by a deed of trust securing a promissory note to Clark Real Estate Company in the amount of \$10,890,000.00. The amount of the promissory note was in excess of the value of the real property;

b. The 171 acres was not worth \$17,000,000.00 undeveloped and would not be worth three or four times more if developed;

c. More than \$1,000,000.00 was needed to develop the Whiting property into sellable building lots;

d. The 30.7 acres would not be worth three or four times more than the \$4,300,000.00 David Simpson and Nathan Simpson wanted Leslie to invest;

e. The 30.7 acres could not be developed and sold in less than two years;

f. There was no way David Simpson and Nathan Simpson could repay Leslie all of her \$4,300,000.00 investment back, plus a profit of 200% on her investment; and

g. David Simpson and Nathan Simpson had no intention of purchasing the Whiting Property in Leslie's name. In fact, David Simpson and Nathan Simpson intended to acquire the Whiting Property in the name of SOS. As described in paragraph 263 herein, the Simpsons purchased the property in the name of SOS, using Leslie's funds.

724. David Simpson and Nathan Simpson failed to disclose the relevant material facts described in paragraph 257 herein.

725. When David Simpson, Nathan Simpson and Ken Dolezsar made the representations described in paragraph 256 herein, they knew they were false or made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

726. David Simpson, Nathan Simpson and Ken Dolezsar made the

representations described in paragraph 256 for the purpose of inducing Leslie to provide funds to purchase the Whiting property.

727. Leslie had no reason to know the representations were not true and in reasonable reliance on their representations agreed to furnish the funds.

728. Leslie in fact did furnish the funds to purchase the Whiting property, without knowing the true facts.

729. Leslie was induced to provide the funds for the purchase of the Whiting Property by David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

730. In December 2006, David Simpson and Nathan Simpson were running out of funds for The Preserve at Mapleton development project. They desperately needed an infusion of capital.

731. Ken Dolezsar, either acting on David Simpson's and Nathan Simpson's authorization and instructions, or as part of a conspiracy with the Simpsons, made the representations to Leslie described in paragraph 314 herein, to induce Leslie to invest more of her funds in The Preserve at Mapleton development project.

732. The representations described in paragraph 314 herein were statements of presently existing facts and intent.

733. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations described in paragraph 314 were false as follows:

- a. The sale of Lot 73 to David Nemelka was not a completed sale and the fourteen smaller one acre lots had not been sold;

b. The entire project could not be developed and sold out in less than three years; and

c. More than \$6,800,000.00 was needed to finish development of the project.

734. Ken Dolezsar, acting either on the authorization and instructions of David Simpson and Nathan Simpson or as part of a conspiracy with the Simpsons, made the representations to Leslie described in paragraph 315 herein.

735. The representations described in paragraph 315 herein were statements of presently existing facts or intent.

736. The representations described in paragraph 315 were false as follows:

a. The \$6,800,000.00 loan could not be repaid in twelve months; and

b. David Simpson and Nathan Simpson could not pay Leslie \$250,000.00 from the sale of each lot, nor did they intend to pay Leslie \$250,000.00 from the sale of each lot.

737. David Simpson, Nathan Simpson and Ken Dolezsar also represented to Leslie that the \$6,800,000.00 would be specifically used to fund development work at The Preserve at Mapleton development project, that she would receive a first position deed of trust securing a promissory note and that they would record the deed of trust in the office of the Utah County Recorder.

738. Such representations were false. David Simpson and Nathan Simpson intended to use the funds for other purposes, such as purchasing for themselves real

property located in Spanish Fork, Utah. They never intended to record the deed of trust. The Simpsons knew they needed to refinance the hard money loan with Clark Real Estate Company with a new loan from MagnetBank or another financial institution and that they would be unable to do so if the real property was encumbered with a deed of trust to LD III or Leslie. Therefore, David Simpson and Nathan Simpson never recorded the deed of trust.

739. Ken Dolezsar, acting on authorization and instructions from David Simpson and Nathan Simpson, or as part of a conspiracy with David Simpson and Nathan Simpson, made the representations described in paragraph 316 herein to Leslie.

740. The representations described in paragraph 316 herein were statements of presently existing facts and intent.

741. The representations described in paragraph 316 were false as follows:

a. David Simpson and Nathan Simpson did not have the ability to pay, and did not intend to pay, Leslie a 100% return on her \$6,800,000.00 investment within twelve months;

b. David Simpson and Nathan Simpson did not have the ability to pay, and did not intend to pay, Leslie an additional \$3,300,000.00 within eighteen months;

c. The thirty-one (31) acre parcel of prime industrial property was not ready-to-build-on property, was not worth \$3,300,000.00, was saturated with wetlands issues and contained serious violations of regulations enforced by the

United States Army Corps of Engineers; and

d. David Simpson and Nathan Simpson intended to take approximately \$1,148,811.18 of the \$6,800,000.00 loan to purchase for themselves property located in Spanish Fork, Utah, known as Spanish Vista.

742. David Simpson and Nathan Simpson failed to disclose the relevant material facts described in paragraph 317 herein.

743. David Simpson and Nathan Simpson made the misrepresentations described in paragraphs 314, 315, 316 herein and the other representations referenced in this cause of action, and failed to disclose the relevant material facts described in paragraph 317 herein for the purpose of inducing Leslie and LD III to loan them and/or The Preserve \$6,800,000.00.

744. Leslie had no reason to believe David Simpson's, Nathan Simpson's and Ken Dolezsar's representations were false, and in reasonable reliance on their representations agreed to provide a loan to David Simpson, Nathan Simpson and The Preserve in the amount of \$6,800,000.00, without knowing the true facts described in paragraph 318 herein.

745. Leslie was induced to provide the loan because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

746. As described in paragraph 319 herein, David Simpson, Nathan Simpson, Ken Dolezsar and Leslie executed a document purporting to account and summarize all of Leslie's funds that had been used for The Preserve at Mapleton development project.

747. David Simpson, Nathan Simpson and Ken Dolezsar represented that the document accurately summarized all of Leslie's and LD III's funds that have been used for The Preserve at Mapleton development project or that had otherwise been taken by the Simpsons and Dolezsar.

748. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations were statements of presently existing fact and intent.

749. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations that the document described in paragraph 319 herein were false because it did not accurately reflect all of Leslie's funds that had been taken by the Simpsons for The Preserve.

750. David Simpson, Nathan Simpson and Ken Dolezsar made the representations to induce Leslie to lend \$6,800,000.00 to the Simpsons and The Preserve.

751. David Simpson, Nathan Simpson and Ken Dolezsar knew their representations that the document described in paragraph 319 herein was accurate were false, or they made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

752. They made such representations to induce Leslie and LD III to lend \$6,800,000.00 to David Simpson, Nathan Simpson and The Preserve.

753. Leslie had no reason to know the representations and the contents of the document described in paragraph 319 herein were not true. In reasonable reliance on the representations, Leslie agreed to furnish additional funds and to enter into the new agreement.

754. Leslie provided David Simpson, Nathan Simpson and The Preserve a \$6,800,000.00 loan and agreed to the terms of the document described in paragraph 319 herein, without knowing the true facts described in paragraph 318 herein.

755. Leslie was induced to provide the loan and agree to the terms contained in the document described in paragraph 319 herein because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

756. Because of David Simpson's, Nathan Simpson's and Ken Dolezsar's misrepresentations, Leslie agreed to lend The Preserve and the Simpsons \$6,800,000.00. She also agreed to purchase approximately 31 acres of real property located in Springville, Utah from David Simpson and Nathan Simpson.

757. As part of the inducement for Leslie and LD III to make the \$6,800,000.00, loan, David Simpson, Nathan Simpson and Ken Dolezsar represented that the 31 acre parcel was prime commercial property and that Leslie could build an office building, warehouse and production facilities on the real property.

758. As a further inducement, David Simpson, Nathan Simpson and Ken Dolezsar represented that the 31 acre parcel was valued in excess of \$3,300,000.00. However, David Simpson and Nathan Simpson would sell it to Leslie for only \$1,500,000.00.

759. David Simpson, Nathan Simpson and Ken Dolezsar made the representations for the purpose of inducing Leslie to loan The Preserve the \$6,800,000.00 and for the purpose of inducing her to purchase the 31 acres, knowing that it had wetlands issues.

760. David Simpson's, Nathan Simpson's and Ken Dolezsar's statements were statements of presently existing facts and intent.

761. David Simpson and Nathan Simpson knew the 31 acres were not worth \$3,300,000.00, that it was not possible to build an office building, warehouse and production facilities on the real property and that it was saturated with wetlands issues.

762. They knew their representations were false or they made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

763. Leslie had no reason to know the representations were not true and in reasonable reliance on those representations agreed to make the loan and to purchase the 31 acres.

764. Without knowing the true facts, Leslie in fact provided a loan in the amount of \$6,800,000.00 and purchased the 31 acres.

765. Leslie was induced to provide the loan and to purchase the 31 acres because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

766. At the end of 2006, David Simpson and Nathan Simpson approached MagnetBank regarding a loan to refinance the outstanding hard money loan from Clark Real Estate Company.

767. As part of the loan process, David Simpson furnished MagnetBank and M&I Bank a personal financial statement dated December 15, 2006.

768. Nathan Simpson furnished two personal financial statements to MagnetBank and M&I Bank, one dated August 31, 2006 and the other dated January 31, 2007.

769. David Simpson and Nathan Simpson represented to MagnetBank and M&I Bank that their personal financial statements were complete and correct.

770. The information contained in David Simpson's and Nathan Simpson's personal financial statements, and the Simpson's representations that their personal financial statements were complete and correct, were statements of presently existing facts and intent.

771. As described in paragraph 352 herein, Nathan Simpson's personal financial statement dated August 31, 2006 was false because it overstated his assets by at least \$1,000,000.00 and understated his liabilities by at least \$11,000,000.00.

772. As described in paragraph 355 herein, Nathan Simpson's personal financial statement dated January 31, 2007 was false because it overstated his assets by at least \$2,000,000.00 and understated his liabilities by at least \$28,000,000.00.

773. As described in paragraph 353 herein, David Simpson's personal financial statement dated December 15, 2006 is false because it overstated his assets by at least \$5,000,000.00 and understated his liabilities by at least \$28,000,000.00.

774. Most glaringly, both David Simpson and Nathan Simpson omitted any reference to the funds owed by them to Leslie.

775. David Simpson and Nathan Simpson affirmed to MagnetBank and M&I Bank that the information contained in their personal financial statements was complete and correct.

776. David Simpson and Nathan Simpson knew the information contained in their

personal financial statements was false or they made the representations recklessly, knowing that they had insufficient knowledge on which to base such representations.

777. David Simpson and Nathan Simpson made the misrepresentations for the purpose of inducing MagnetBank and M&I Bank to lend them and The Preserve \$12,713,200.00 to refinance the Clark Real Estate Company hard money loan.

778. Based on the information contained in the Simpsons' financial statements, not knowing they were false and in reasonable reliance on the truthfulness thereof, MagnetBank lent David Simpson, Nathan Simpson and The Preserve \$12,713,200.00.

779. MagnetBank and M&I Bank would not have made their loans if the true facts and information had been included in the Simpsons' false financial statements.

780. MagnetBank and M&I Bank in fact reasonably relied on the false financial statements in making the loan.

781. As part of the loan process, MagnetBank required an appraisal be performed on The Preserve at Mapleton development project real property.

782. As described in paragraph 335 herein, David Simpson and Nathan Simpson arranged for the appraisal to be performed by Free and Associates, a firm that had prepared two previous appraisals on the real property.

783. As described in paragraph 340 herein, in arriving at a value for the property, Free and Associates relied on fourteen (14) "pre-sales" to Chad Carlson, Allen Hakes, Dallas Hakes and Michael Marx, along with a sale to David Nemelka.

784. Knowing the appraisal would be furnished to MagnetBank as part of the loan

process, David Simpson and Nathan Simpson furnished, or caused to be furnished, the "pre-sale" information to the appraiser, represented that the "pre-sales" were legitimate and that the sale to David Nemelka was a fully completed sale.

785. Further, as described in paragraph 341 herein, David Simpson and Nathan Simpson failed to inform the appraiser of the requirement that The Preserve dedicate 10 acres for cemetery for Mapleton City.

786. As described in paragraph 339 herein, David Simpson and Nathan Simpson also failed to inform the appraiser that The Preserve did not own the 3.85 acres necessary for the debris collection basin, that the debris basin was necessary for the property to be developed and that it was uncertain whether The Preserve would ever obtain ownership of the property needed to construct the debris basin.

787. Further, David Simpson and Nathan Simpson arranged for the appraiser to be provided copies of the "pre-sales," knowing the appraiser would incorporate them into his appraisal, would rely on them in valuing the real property and would include them in the appraisal he would provide MagnetBank. Further, the Simpsons provided the appraiser copies of the conditional David Nemelka purchase contract.

788. David Simpson and Nathan Simpson knew the appraisal of the real property was based on false information. However, they failed to inform MagnetBank and M&I Bank of the false information on which the appraisal was based.

789. By doing so, David Simpson and Nathan Simpson made representations of a presently existing fact which they knew were false or which they allowed to be conveyed

to MagnetBank and M&I Bank recklessly, knowing they had insufficient information on which to base their representations.

790. David Simpson and Nathan Simpson affirmed to MagnetBank that the appraisal was correct and complete for the purpose of inducing MagnetBank to lend them the funds necessary to refinance the Clark Real Estate Company hard money loan.

791. MagnetBank and M&I Bank in fact reasonably relied on the appraisal in making their loan decision.

792. MagnetBank and M&I Bank were in fact induced to make the loans by David Simpson's and Nathan Simpson's affirmation the appraisal was correct, the appraiser's conclusions were based on true and correct information and by the Simpsons failure to disclose to the banks the facts and information described in paragraph 358 herein. The banks in fact lent the funds to The Preserve, David Simpson and Nathan Simpson.

793. On or about February 26, 2008, Navona purchased the \$12,713,200.00 MagnetBank loan and all of the related loan documents from MagnetBank and M&I Bank, thereby receiving any and all of the rights the banks possessed.

794. As described in paragraphs 404 through 413 herein, in December 2007, David Simpson and Nathan Simpson caused The Preserve to sell Lot 67, consisting of approximately 5.26 acres, to Michael Aviano.

795. David Simpson and Nathan Simpson previously represented to MagnetBank that the listed sale price for Lot 67 was \$1,360,000.00.

796. In exchange for a \$2,000,000.00 personal loan to David Simpson from

Michael Aviano, David Simpson and Nathan Simpson agreed to sell Lot 67 to Aviano for only \$575,000.00.

797. The amount required to be paid to MagnetBank to release its security interest in Lot 67 was \$1,020,000.00.

798. As described in paragraph 408 herein, the closing documents showed the purchase price to be \$900,000.00.

799. As described in paragraph 409 herein, Michael Aviano, David Simpson and Nathan Simpson knew the purchase price was not \$900,000.00 but was really \$575,000.00.

800. Even though the closing documents misrepresented the purchase price, Michael Aviano, David Simpson and Nathan Simpson signed the closing documents, thereby fraudulently affirming the sales price was \$900,000.00, not \$575,000.00. Aviano and the Simpsons knew the closing documents would be provided to MagnetBank and intended to provide the closing documents to MagnetBank.

801. David Simpson and Nathan Simpson provided the closing documents to MagnetBank to induce the bank to lower the release price of Lot 67.

802. In a further attempt to fool MagnetBank regarding the true sales price of Lot 67, after the close of the sale to Michael Aviano, David Simpson and Nathan Simpson paid MagnetBank just under \$900,000.00, representing to MagnetBank that the lot had sold for \$900,000.00.

803. Having no other source of funding, David Simpson and Nathan Simpson used

funds from Michael Aviano's personal loan to David Simpson to make up the difference between the \$575,000.00 purchase price and the represented price of \$900,000.00, fooling MagnetBank into believing Aviano actually paid \$900,000.00.

804. David Simpson's and Nathan Simpson's representations that the closing documents were complete and correct, and the information contained in the closing documents themselves were statements of presently existing facts and intent.

805. David Simpson, Nathan Simpson and Michael Aviano knew the closing documents were false.

806. If MagnetBank had known the actual selling price, it would not have allowed the sale to go forward, it would have had reason to suspect the collateral for the loan was in peril and it would have taken steps to protect the collateral and the loan.

807. Because of Michael Aviano's, David Simpson's and Nathan Simpson's misrepresentations, MagnetBank believed that its collateral was protected, that the values of the lots in The Preserve at Mapleton development were in reality the values represented by David Simpson and Nathan Simpson and that values for the lots contained in the appraisal it received from Free and Associates were correct.

808. Had MagnetBank known the truth, it would have called the loan due.

809. MagnetBank reasonably relied on the contents of the closing documents.

810. It was thereby induced not to call the loan due or to take measures to protect its collateral.

811. As a direct and proximate result of David Simpson's, Nathan Simpson's and

Michael Aviano's misrepresentations, as described in this cause of action, Leslie, LD III and Navona were damaged in the amount of at least \$24,827,892.39.

812. Additionally, because David Simpson's, Nathan Simpson's and Michael Aviano's misrepresentations were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's, LD III's and MagnetBank's rights, Leslie, LD III and Navona are entitled to an award of punitive damages.

813. As described in paragraphs 533 through 536 herein, at all relevant times David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson and Nathan Simpson are jointly and severally liable with their entities described in paragraphs 533 through 536 herein.

814. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC and Michael Aviano as set forth in paragraph 11 of the Prayer for Relief.

TWELFTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Breach of Fiduciary Duty Claim Against

Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC;)

815. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 814 as if fully set forth herein.

816. From January 18, 2006 and at all relevant times, David Simpson was a manager of LD III and therefore there existed a principal-agent relationship between David Simpson and LD III and between David Simpson and Leslie.

817. At all relevant times David Simpson and Nathan Simpson were managers of The Preserve and therefore owed fiduciary duties to its members.

818. From at least December 1, 2006 to the present, LD III was a member of The Preserve, holding a forty-five percent (45%) ownership interest.

819. David Simpson, Nathan Simpson and Ken Dolezsar owed fiduciary duties to LD III and to Leslie.

820. David Simpson, Nathan Simpson and Ken Dolezsar were obligated to put LD III's and Leslie's interests above their own or others, and to act loyally for LD III's and Leslie's benefit.

821. By making the following misrepresentations, taking the following actions and by failing to disclose the following relevant material facts, David Simpson and Nathan Simpson breached their fiduciary duties to Leslie and LD III by acting in their own self interest and failing to act in LD III's and Leslie's best interests:

a. As described in paragraph 220 herein, David Simpson and Nathan Simpson failed to inform Leslie that on or about November 30, 2005, \$300,000.00 of her funds had been taken by them and used for The Preserve;

b. David Simpson and Nathan Simpson took \$300,000.00 of Leslie's funds for their own uses, without Leslie's knowledge or authorization;

c. As described in paragraph 236 herein, David Simpson and Nathan Simpson failed to inform Leslie that on or about December 20, 2005, \$44,000.00 of her funds had been taken by them and used for The Preserve;

d. David Simpson and Nathan Simpson took \$44,000.00 of Leslie's funds for their own uses;

e. As described in paragraph 266 herein, on or about May 10, 2006, David Simpson took \$200,000.00 from LD III's bank account for himself. He was never authorized to do so and never informed Leslie of his actions;

f. As described in paragraph 278 herein, on or about June 13, 2006, David Simpson took \$250,000.00 from LD III's bank account for The Preserve. Leslie never authorized him to do so;

g. As described in paragraph 250 herein, on or about March 3, 2006, David Simpson, acting as the manager of LD III, issued a check to Wood Springs in the amount of \$506,000.00. David Simpson and Nathan Simpson used \$200,000.00 of those funds to close on real property that was purchased by an entity in which the Simpsons had an interest, but which Leslie and LD III had no

interest. Leslie never authorized such use of her funds. The Simpsons used \$200,000.00 of the funds for The Preserve. Leslie never authorized the Simpsons to take \$200,000.00 of her and LD III's funds for The Preserve. The \$200,000.00 was never deposited into The Preserve's bank account. Additionally, the Simpsons took \$106,000.00 of the funds and gave them to Nathan Simpson. Leslie never authorized David Simpson to pay \$106,000.00 of LD III's funds to Nathan Simpson to buy into The Preserve. Rather, without any authorization and in an effort to enrich himself and Nathan Simpson at Leslie's expense, David Simpson took such funds and paid them to Nathan;

h. As described in paragraph 248 herein, David Simpson and Nathan Simpson, knowing that the all the funds they had received for The Preserve had come from Leslie, gave Ken Dolezsar, and Dolezsar accepted in his own name, a 15% ownership interest in SOS in exchange for the payments made to the Simpsons that were Leslie's or LD III's funds;

i. As described in paragraph 257 herein, at the time David Simpson and Nathan Simpson were attempting to induce Leslie or LD III to furnish \$4,300,000.00 to purchase the Whiting Property, they failed to inform Leslie that 171 acres owned by The Preserve were subject to a \$10,890,000.00 six-month hard money loan with debt service of \$163,350.00 per month, that the hard money loan was due and payable on June 11, 2006, that they intended to use the Whiting Property as additional collateral to extend the hard money loan and that they intended to

purchase the Whiting Property in the name of SOS, instead of in Leslie's name;

j. As described in paragraph 280, David Simpson took \$200,000.00 from The Preserve's checking account for his own use and purposes, without any like distribution to Leslie or LD III;

k. As described in paragraph 287 herein, David Simpson and Nathan Simpson encumbered the Whiting Property as security for the hard money loan and loan extension;

l. David Simpson and Nathan Simpson failed to inform Leslie of the problems connected with the debris collection basin, described in paragraphs 289 through 295 herein, and that the Preserve at Mapleton development project could not be built without the debris basin;

m. As described in paragraphs 298 through 299 herein, David and Nathan Simpson allowed David Nemelka to have an option to purchase the debris basin property, when they knew it had to be owned either by the city or the homeowners association;

n. David Simpson and Nathan Simpson failed to accept offers for 14 lots from Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes. Their offers were summarily rejected by the Simpsons, at a time when The Preserve was in desperate need of cash, even though the Hakes, Carlson, and Marx offers were in excess of \$316,700.00 per acre while David Nemelka's accepted offer was for \$205,814.00 per acre.

o. In the alternative, David Simpson and Nathan Simpson collaborated with Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes in a scheme in which Hakes, Carlson, Marx and Hakes would make substantially inflated offers to aid the Simpsons in artificially raising the values of the lots.

p. As described in paragraphs 314, 315, 316 and 317 herein, David Simpson and Nathan Simpson failed to disclose to Leslie the true facts surrounding their request for the \$6,800,000.00 loan;

q. David Simpson and Nathan Simpson intentionally failed to record LD III's Deed of Trust that secured its loan in the amount of \$6,800,000.00;

r. As described in paragraph 334 herein, David Simpson and Nathan Simpson acquired the bonds and the letter of credit for The Preserve to construct plats A and D in their personal names instead of in the name of The Preserve;

s. David Simpson and Nathan Simpson made numerous misrepresentations to MagnetBank and M&I Bank in procuring the loan for The Preserve. By doing so, they endangered the project and risked losing all of the real property, which put at risk all of the funds Leslie had invested in The Preserve at Mapleton development project;

t. As described in paragraph 371 herein, David Simpson and Nathan Simpson took \$187,484.83 of Leslie's \$6,800,000.00 loan to The Preserve and gave it to Carnesecca, an entity in which Leslie had no ownership interest;

u. David Simpson and Nathan Simpson arranged for construction of the

debris collection basin, knowing that the real property on which they were building the debris basin was owned by the State of Utah and that it could be a long process to procure title to the real property and it was not a sure thing that they could ever procure title to the real property;

v. As described in paragraph 379 herein, when David Simpson and Nathan Simpson were caught building the debris collection basin on real property owned by the State of Utah, instead of entering an agreement whereby The Preserve would own the real property needed for the debris basin, David Simpson entered into an agreement with the State of Utah and United States Fish and Wildlife Service whereby he would personally own the real property needed for the debris basin;

w. As described in paragraphs 383 through 396 herein, David Simpson and Nathan Simpson entered into the revised purchase agreement to sell a Lot 73 to David Nemelka. The new agreement raised the purchase price from \$800,000.00 to \$1,200,000.00 and allowed Nemelka to finance 100% of the purchase. Further, the Simpsons allowed Central Bank to take a first-position deed of trust to secure its \$400,000.00 loan to Nemelka. The Simpsons caused The Preserve to carry back a loan for \$800,000.00, secured by a deed of trust which was subordinate to Central Bank's deed of trust. The Simpsons made the new agreement knowing that The Preserve was required to pay MagnetBank \$600,000.00 to release its security interest in the lot, that Nemelka could rescind the

purchase and reform the note at his pleasure and that the promissory note from Nemelka to The Preserve was a non-recourse note;

x. As managers of The Preserve, David Simpson and Nathan Simpson executed a deed of trust in favor of MagnetBank that became senior to LD III's security interest in relation to the loan for \$6,800,000.00 because of the Simpson's failure to record the trust deed securing The Preserve's \$6,800,000.00 promissory note to LD III;

y. As described in paragraph 401 herein, without Leslie's authorization or knowledge, David Simpson took \$100,000.00 from LD H.T. Reynolds. The funds were used to cover Simpson's legal expenses and other expenses related to The Preserve;

z. As described in paragraph 403 herein, David Simpson, without Leslie's authorization, took \$15,000.00 from LD III's bank account and deposited it in The Preserve's account;

aa. As described in paragraph 418 herein, Leslie provided The Preserve \$281,693.59 to pay bills which were past due. Instead of paying the due and past due bills, David Simpson and Nathan Simpson paid themselves \$137,814.78; and

bb. As described in paragraph 421 herein, over a one month period Leslie provided The Preserve \$680,000.00 for payment of bills, particularly for The Preserve's share of the water tank project. However, David Simpson and Nathan Simpson failed to use the funds for the purposes for which Leslie provided, using

the funds to pay The Presidio's share of the water tank expense.

822. As a direct and proximate result of David Simpson's and Nathan Simpson's breach of their fiduciary duties to Leslie and LD III, Leslie and LD III were damaged in the amount of \$24,827,892.39.

823. Additionally, because David Simpson's and Nathan Simpson's breaches of their fiduciary duties were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III and are entitled to an award of punitive damages.

824. As described in paragraphs 533 through 536 herein, at all relevant times David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson and Nathan Simpson are jointly and severally liable with their entities described in paragraphs 533 through 536 herein.

825. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, as set forth in paragraph 12 of the Prayer for Relief.

THIRTEENTH CAUSE OF ACTION

Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Aiding and Abetting Breach of Fiduciary Duty Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemlka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC Michael Marx and Michael Aviano - The Preserve)

826. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 825 as if fully set forth herein.

827. Defendants Nathan Simpson, David Simpson, Michael Aviano, David Nemelka, Dallas Hakes, Allen Hakes, Chad Carlson and Michael Marx knowingly participated and aided David Simpson and Nathan Simpson in their breach of their fiduciary duties owed to Leslie and LD III, as described in Plaintiffs' Twelfth Cause of Action herein.

828. As a direct and proximate result of Nathan Simpson's, David Simpson's, Michael Aviano's, David Nemelka's, Dallas Hakes', Allen Hakes', Chad Carlson's and Michael Marx's aid in the Simpsons' breaches of their duties to Leslie and LD III, Leslie and LD III were damaged in the amount of \$24,827,892.39.

829. As described in paragraphs 527 through 536 herein, at all relevant times David Simpson, Nathan Simpson, Chad Carlson, Dallas Hakes and Allen Hakes were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson, Nathan Simpson, Chad

Carlson, Dallas Hakes and Allen Hakes are jointly and severally liable with their entities described in paragraphs 527 through 536 herein.

830. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, as set forth in paragraph 13 of the Prayer for Relief.

FOURTEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Fraudulent Non-Disclosure Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC)

831. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 830 as if fully set forth herein.

832. David Simpson and Nathan Simpson failed to disclose to Leslie and LD III that David Simpson and Nathan Simpson had given Ken Dolezsar, in his personal name, a 15% interest in SOS, when it was Leslie's funds which were invested.

833. David Simpson and Nathan Simpson, to induce Leslie and LD III to lend them \$4,300,00.00 to purchase and develop the Whiting Property, failed to disclose to Leslie and LD III the facts and information described in paragraph 257 herein.

834. David Simpson and Nathan Simpson, in soliciting loans from Leslie and LD III, failed to inform them of the 10 acre cemetery requirement imposed by Mapleton City.

835. David Simpson and Nathan Simpson, in soliciting loans from Leslie and LD III, failed to disclose to them that Ken Dolezsar had guaranteed the extension of the hard money loan and that the Simpsons intended to use, and did use, the Whiting Property as additional collateral for the loan extension.

836. David Simpson and Nathan Simpson, in soliciting loans from Leslie and LD III, failed to disclose the issues with the debris collection basin, as described in paragraphs 289 through 295 herein.

837. David Simpson and Nathan Simpson, in soliciting loans and funding from Leslie and LD III, failed to disclose that they had sold an option to purchase all or part of the debris basin property to David Nemelka and that the development agreement with Mapleton City stated the debris basin had to be owned either by the homeowners association or by Mapleton City.

838. David Simpson and Nathan Simpson, in soliciting a loan from Leslie and LD III in the amount of \$6,800,000.00, failed to disclose to Leslie and LD III the facts and information described in paragraph 317 herein.

839. David Simpson and Nathan Simpson also failed to disclose to Leslie and LD

III that they intended to take \$1,148,811.18 from the \$6,800,000.00 loan to purchase for themselves real property located in Spanish Fork, Utah.

840. David Simpson and Nathan Simpson failed to disclose to Leslie, LD III and MagnetBank that The Preserve had carried back a \$800,000.00 promissory note from David Nemelka and that they had caused The Preserve to pay an additional \$200,000.00 of LD III's or Leslie's funds to obtain the release of MagnetBank's and M&I Bank's security interest in the lot purchased by Nemelka.

841. David and Nathan Simpson failed to disclose to MagnetBank and M&I Bank that the fourteen (14) "pre-sales" referenced in the Free and Associates appraisal, which were used by the appraiser as a basis for valuing The Preserve at Mapleton development project and which were considered by MagnetBank and M&I Bank in their decisions to make a loan to The Preserve, were not actual sales or true "pre-sales" because the offers had been rejected. In the alternative, the Simpsons failed to disclose to MagnetBank and M&I Bank that they had collaborated with Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes in a scheme in which Hakes, Carlson, Marx, and Hakes would make substantially inflated offers to artificially raise the value of the lots.

842. David Simpson and Nathan Simpson failed to disclose to MagnetBank and M&I Bank the issues with the debris collection basin, described in paragraphs 337 through 341 herein.

843. David Simpson and Nathan Simpson failed to disclose to MagnetBank and M&I Bank and its participating bank the facts and information described in paragraph 358

herein.

844. David Simpson and Nathan Simpson failed to disclose to MagnetBank and M&I Bank the true sales price of the lot sold to Michael Aviano, described in paragraphs 404 through 423 herein.

845. As described in paragraph 418 herein, David Simpson and Nathan Simpson failed to disclose to Leslie and LD III that if Leslie contributed an additional \$281,693.59 to The Preserve, they intended to pay themselves, instead of paying the past due and due accounts of The Preserve,

846. David Simpson and Nathan Simpson failed to disclose to Leslie and LD III that the funds she invested in The Preserve, described in paragraph 421 herein, would be used for the Simpson's own purposes, including paying The Presidio's share of the water tank costs, instead of being used to pay the debts of The Preserve.

847. David Simpson and Nathan Simpson were well aware of the material relevant facts and information they failed to disclose to Leslie, LD III, MagnetBank and M&I Bank.

848. David Simpson and Nathan Simpson, had duties to disclose the true facts to Leslie, LD III, MagnetBank and M&I Bank.

849. In relation to their loan application, David Simpson and Nathan Simpson had duties to submit accurate information and to fully and accurately disclose their true financial conditions to MagnetBank and M&I Bank.

850. David Simpson and Nathan Simpson also had continuing duties to disclose to MagnetBank and M&I Bank accurate information regarding lot sales in The Preserve

development project.

851. As a direct and proximate result of David Simpson's and Nathan Simpson's failures to disclose the relevant and material facts of which they had knowledge, Leslie, LD III and Navona were damaged in the amount of \$24,827,892.39.

852. Additionally, because David Simpson's and Nathan Simpson's failure to disclose the relevant material facts and information of which they had knowledge was willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III and are entitled to an award of punitive damages.

853. As described in paragraphs 533 through 536 herein, at all relevant times David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that the Simpsons are jointly and severally liable with their entities described in paragraphs 533 through 536 herein.

854. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC as set forth in paragraph 14 of the Prayer for Relief.

FIFTEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's LD III, LLC's and Navona, LC's Aiding and Abetting Fraudulent Non-Disclosure Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano)

855. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 854 as if fully set forth herein.

856. Plaintiffs allege that Michael Aviano, David Nemelka, Chad Carlson, Allen Hakes, Dallas Hakes and Michael Marx each aided and abetted David Simpson and Nathan Simpson in the fraudulent non-disclosure of material facts, as described in Plaintiffs' Fourteenth Cause of Action herein.

857. David Simpson and Nathan Simpson, individually and collectively, had a duty to disclose the true and material facts to Leslie, LD III, MagnetBank and M&I Bank regarding the purchases or offers to purchase lots in The Preserve at Mapleton development project.

858. Michael Aviano, David Nemelka, Chad Carlson, Michael Marx, Allen Hakes and Dallas Hakes knowingly participated and aided David Simpson and Nathan Simpson in fraudulently failing to disclose the true facts regarding Aviano's, Nemelka's, Carlson's, Marx's, Allen Hakes' and Dallas Hakes' purchases or offers to purchase lots in The Preserve at Mapleton development project, knowing that the Simpsons had duties to

disclose the true facts to Leslie, LD III, MagnetBank and M&I Bank.

859. As a direct and proximate result of Michael Aviano's, David Nemelka's, Chad Carlson's, Michael Marx's, Allen Hakes' and Dallas Hakes' aid and participation in David Simpson's and Nathan Simpson's breach of their duties to disclose the relevant material facts regarding the purchases and offers to purchase lots in The Preserve at Mapleton development project, Leslie, LD III, MagnetBank, and M&I Bank were damaged in the amount of \$24,827,892.39.

860. As described in paragraphs 527 through 536 herein, at all relevant times David Simpson, Nathan Simpson, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson, Nathan Simpson, Carlson, Dallas Hakes, Allen Hakes and Michael Marx are jointly and severally liable with their entities described in paragraphs 527 through 536 herein.

861. Additionally, because David Simpson's, Nathan Simpson's, Chad Carlson's, Dallas Hakes', Allen Hakes' and Michael Marx's aiding and abetting David Simpson and Nathan Simpson failing to disclose the relevant material facts of which they had knowledge was willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III and are entitled to an award of punitive damages.

862. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge,

LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano as set forth in paragraph 15 of the Prayer for Relief.

SIXTEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Negligent Misrepresentations Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano - The Preserve)

863. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 862 as if fully set forth herein.

864. David Simpson and Nathan Simpson, knowing that Ken Dolezsar was acting as Leslie's agent, that he was managing Leslie's business affairs, that he was Leslie's husband and that he had access to Leslie's funds, persuaded Dolezsar that The Preserve at Mapleton development project was a blue chip investment opportunity.

865. As described in paragraphs 247 herein, in an attempt to artificially raise the values of the real property, David Simpson and Nathan Simpson decided to purchase the

Whiting Property and develop it along with the 171 acres they had previously purchased.

866. David Simpson and Nathan Simpson did not have the funds to purchase the Whiting Property. Therefore, they concocted a scheme to purchase the Whiting Property for themselves, using only Leslie's funds. Knowing that Ken Dolezsar was managing Leslie's business affairs and that Dolezsar was a manager of Leslie's business entities, they made the representations to Dolezsar described in paragraph 256 herein, requesting and authorizing him to make the same representations to Leslie.

867. As described in paragraphs 256 and 259 herein, Ken Dolezsar, in ignorance of the falsity David Simpson's and Nathan Simpson's representations, as part of a conspiracy with the Simpsons or on the Simpsons' authorization, direction and instructions, repeated their representations to Leslie.

868. The representations described in paragraph 256 were statements of presently existing facts and intent.

869. The representations described in paragraph 256 were false as follows:

a. David Simpson and Nathan Simpson did not own outright the 171 acres of real property. Rather, the real property was encumbered by a deed of trust securing a promissory note to Clark Real Estate Company in the amount of \$10,890,000.00. The amount of the promissory note was in excess of the value of the real property;

b. The 171 acres was not worth \$17,000,000.00 undeveloped and would not be worth three or four times more if developed;

c. More than \$1,000,000.00 was needed to develop the Whiting property into sellable building lots;

d. The 30.7 acres would not be worth three or four times more than the \$4,300,000.00 David Simpson and Nathan Simpson wanted Leslie to invest;

e. The 30.7 acres could not be developed and sold in less than two years;

f. There was no way David Simpson and Nathan Simpson could repay Leslie all of her \$4,300,000.00 investment, plus a profit of 200% on her investment; and

g. David Simpson and Nathan Simpson had no intention of purchasing the Whiting Property in Leslie's name. In fact, the Simpsons intended to acquire the Whiting Property in the name of SOS. As described in paragraph 263 herein, the Simpsons purchased the property in the name of SOS, using Leslie's funds.

870. When David Simpson, Nathan Simpson and Ken Dolezsar made the representations described in paragraph 256 above, they knew they made them carelessly and negligently.

871. David Simpson, Nathan Simpson and Ken Dolezsar made the representations described in paragraph 256 for the purpose of inducing Leslie to provide funds to purchase the Whiting Property.

872. Leslie had no reason to know the representations were not true and in reasonable reliance on their representations agreed to furnish the funds.

873. Leslie in fact did furnish funds to purchase the Whiting Property, without knowing the true facts.

874. Leslie was induced to provide the funds for the purchase of the Whiting Property by David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

875. In December 2006, David Simpson and Nathan Simpson were running out of funds for The Preserve at Mapleton development project. They desperately needed an infusion of capital.

876. Ken Dolezsar, either acting on David Simpson's and Nathan Simpson's authorization and instructions, or as part of a conspiracy with the Simpsons, made the representations to Leslie described in paragraph 314 herein, to induce Leslie to invest more of her funds in The Preserve development project.

877. The representations described in paragraph 314 herein were statements of presently existing facts and intent.

878. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations described in paragraph 314 were false as follows:

- a. The sale of Lot 73 to David Nemelka was not a completed sale and the fourteen smaller one acre lots had not been sold;
- b. The entire project could not be developed and sold out in less than three years; and
- c. More than \$6,800,000.00 was needed to finish development of the project.

879. Ken Dolezsar, acting either on the authorization and instructions of David Simpson and Nathan Simpson or as part of a conspiracy with the Simpsons, made the representations to Leslie described in paragraph 315 herein.

880. The representations described in paragraph 315 herein were statements of presently existing facts and intent.

881. The representations described in paragraph 315 herein were false as follows:

- a. The \$6,800,000.00 loan could not be repaid in twelve months; and
- b. David Simpson and Nathan Simpson could not pay Leslie \$250,000.00 from the sale of each lot, nor did they intend to pay Leslie \$250,000.00 from the sale of each lot.

882. David Simpson, Nathan Simpson and Ken Dolezsar also represented to Leslie that the \$6,800,000.00 would be specifically used to fund development of The Preserve at Mapleton development project and that she would receive a first position deed of trust securing a promissory note and that they would record the deed of trust in the office of the Utah County Recorder.

883. Such representations were false. David Simpson and Nathan Simpson intended to use the funds for other purposes, such as purchasing for themselves real property located in Spanish Fork, Utah. They never intended to record the deed of trust. The Simpsons knew they needed to refinance the hard money loan from Clark Real Estate Company with a new loan from MagnetBank or another financial institution and that they would be unable to do so if the real property was encumbered with a deed of trust to Leslie

or LD III. Therefore, the Simpsons never recorded the deed of trust.

884. Ken Dolezsar, acting on authorization and instructions from David Simpson and Nathan Simpson, or as part of a conspiracy with the Simpsons, made the representations described in paragraph 316 herein to Leslie.

885. The representations described in paragraph 316 herein were statements of presently existing facts and intent.

886. The representations described in paragraph 316 were false as follows:

a. David Simpson and Nathan Simpson did not have the ability to pay, and did not intend to pay, Leslie a 100% return on her \$6,800,000.00 investment within twelve months;

b. David Simpson and Nathan Simpson did not have the ability to pay, and did not intend to pay, Leslie an additional \$3,300,000.00 within eighteen months;

c. The thirty-one (31) acres of prime industrial property was not ready-to-build property, was not worth \$3,300,000.00, was saturated with wetlands issues and contained serious violations of regulations enforced by the United States Army Corps of Engineers; and

d. David Simpson and Nathan Simpson intended to take approximately \$1,148,811.18 of the \$6,800,000.00 loan to purchase for themselves property located in Spanish Fork, Utah, known as Spanish Vista.

887. David Simpson and Nathan Simpson failed to disclose relevant material facts

described in paragraph 317 herein.

888. David Simpson and Nathan Simpson made the misrepresentations described in paragraph 314, 315 and 316 herein and the other representations in this cause of action, and failed to disclose the relevant facts described in paragraph 317 herein for the purpose of inducing Leslie and LD III to lend them and/or The Preserve \$6,800,000.00.

889. Leslie had no reason to believe David Simpson's, Nathan Simpson's and Ken Dolezsar's representations were false and in reasonable reliance on their representations agreed to provide a loan to the Simpsons and The Preserve in the amount of \$6,800,000.00, without knowing the true facts described in paragraph 318 herein.

890. Leslie was induced to provide the loan because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

891. As described in paragraph 319 herein, David Simpson, Nathan Simpson, Ken Dolezsar and Leslie executed a document purporting to account and summarize all of Leslie's funds that had been used for The Preserve at Mapleton development project.

892. David Simpson, Nathan Simpson and Ken Dolezsar represented that the document accurately summarized all of Leslie's and LD III's funds that has been used for The Preserve at Mapleton development project or that had otherwise been taken by the Simpsons and Dolezsar.

893. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations were statements of presently existing facts or intent.

894. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations

regarding the document described in paragraph 319 herein were false because it did not accurately reflect all of Leslie's and LD III's funds that had been taken by the Simpsons for The Preserve.

895. David Simpson, Nathan Simpson and Ken Dolezsar made the representations to induce Leslie to lend \$6,800,000.00 to the Simpsons and The Preserve.

896. David Simpson, Nathan Simpson and Ken Dolezsar made their representations that the document described in paragraph 319 herein was accurate were made carelessly and negligently.

897. Leslie had no reason to know the representations and the contents of the document described in paragraph 319 herein were not true. In reasonable reliance on the representations, Leslie agreed to furnish additional funds, and to enter into a new agreement.

898. Leslie provided David Simpson, Nathan Simpson and The Preserve a \$6,800,000.00 loan and agreed to the terms of the document described in paragraph 319 herein, without knowing the true facts described in paragraph 318 herein.

899. Leslie was induced to provide the loan and to agree to the terms contained in the document described in paragraph 319 herein because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

900. Because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations, Leslie agreed to lend The Preserve and the Simpsons \$6,800,000.00. She also agreed to purchase approximately 31 acres of real property located in Springville,

Utah from the Simpsons.

901. As part of the inducement for Leslie to make the \$6,800,000.00 loan, David Simpson, Nathan Simpson and Ken Dolezsar represented that 31 acre parcel was prime commercial property and that Leslie could build an office building, warehouse and production facilities on the real property.

902. As a further inducement, David Simpson, Nathan Simpson, and Ken Dolezsar represented that the 31 acre parcel was valued in excess of \$3,300,000.00. However, the Simpsons would sell it to Leslie for only \$1,500,000.00.

903. David Simpson, Nathan Simpson and Ken Dolezsar made the representations for the purpose of inducing Leslie to lend The Preserve the \$6,800,000.00 and for the purpose of inducing her to purchase the 31 acres, knowing it had wetlands issues.

904. David Simpson's, Nathan Simpson's and Ken Dolezsar's representations were statements of presently existing facts and intent.

905. David Simpson, Nathan Simpson and Ken Dolezsar knew the 31 acres were not worth \$3,300,000.00, that it was not possible to build and office building, warehouse and production facilities on the real property and that it was saturated with wetlands issues.

906. David Simpson, Nathan Simpson and Ken Dolezsar made the representations regarding the 31 acres carelessly and negligently.

907. Leslie had no reason to know the representations were not true and in reasonable reliance on those representations, agreed to make the loan and to purchase

the 31 acres.

908. Without knowing the true facts, Leslie provided a loan in the amount of \$6,800,000.00 and purchased the 31 acres.

909. Leslie was induced to provide the loan and to purchase the 31 acres because of David Simpson's, Nathan Simpson's and Ken Dolezsar's representations.

910. At the end of 2006, David Simpson and Nathan Simpson approached MagnetBank regarding a loan to refinance the outstanding hard money loan from Clark Real Estate Company.

911. As part of the loan process, David Simpson furnished MagnetBank and M&I Bank a personal financial statement dated December 15, 2006.

912. Nathan Simpson furnished two personal financial statements to MagnetBank and M&I Bank, one dated August 31, 2006 and one dated January 31, 2007.

913. David Simpson and Nathan Simpson represented to MagnetBank and M&I Bank that their personal financial statements were complete and correct.

914. The information in contained in David Simpson's and Nathan Simpson's personal financial statements, and the Simpsons' representations that their personal financial statements were complete and correct, were statements of presently existing facts and intent.

915. As described in paragraph 352 herein, Nathan Simpson's personal financial statement dated August 31, 2006 was false because overstated his assets by at least \$1,000,000.00 and understated his liabilities by at least \$11,000,000.00.

916. As described in paragraph 355 herein, Nathan Simpson's personal financial statement dated January 31, 2007 was false because it overstated his assets by at least \$2,000,000.00 and understated his liabilities by at least \$28,000,000.00.

917. As described in paragraph 353 herein, David Simpson's personal financial statement dated December 15, 2006 was false because it overstated his assets by at least \$5,000,000.00 and understated his liabilities by at least \$28,000,000.00.

918. Most glaringly, both David Simpson and Nathan Simpson omitted any reference to the funds owed to Leslie.

919. David Simpson and Nathan Simpson affirmed to MagnetBank and M&I Bank that the information contained in their personal financial statements was complete and correct.

920. David Simpson and Nathan Simpson submitted the information in their personal financial statements and affirmed the correctness of their personal financial statements carelessly and negligently.

921. David Simpson and Nathan Simpson made the misrepresentations for the purpose of inducing MagnetBank and M&I Bank to lend them and The Preserve \$12,713,200.00 to refinance the Clark Real Estate Company hard money loan.

922. Based on the information contained in the Simpsons' personal financial statements, not knowing they were false and in reasonable reliance on the truthfulness thereof, MagnetBank and M&I Bank lent David Simpson, Nathan Simpson and The Preserve \$12,713,200.00.

923. MagnetBank and M&I Bank would not have made their loans if the true facts and information had been included in the Simpsons' false personal financial statements.

924. MagnetBank and M&I Bank in fact reasonably relied on the false financial statements in making the loan.

925. As part of the loan process, MagnetBank required an appraisal be performed on The Preserve at Mapleton development project's real property.

926. As described in paragraph 335 herein, David Simpson and Nathan Simpson arranged for the appraisal to be performed by Free and Associates, a firm that had prepared two previous appraisals on the property.

927. As described in paragraph 340 herein in arriving at a value for the property, Free and Associates relied on fourteen (14) "pre-sales" to Chad Carlson, Allen Hakes, Dallas Hakes and Michael Marx, along with the sale to David Nemelka.

928. Knowing the appraisal would be furnished to MagnetBank as part of the loan process, David Simpson and Nathan Simpson furnished, or caused to be furnished, the "pre-sale" information to the appraiser, representing that the "pre-sales" were legitimate and that the sale to David Nemelka was a fully completed sale.

929. Further, As described in paragraph 341 herein, David Simpson and Nathan Simpson failed to inform the appraiser of the requirement that The Preserve dedicate 10 acres for cemetery for Mapleton City.

930. As described in paragraph 339 herein, David Simpson and Nathan Simpson also failed to inform the appraiser that The Preserve did not own the 3.85 acres necessary

for the debris collection basin, that the debris basin was necessary for the property to be developed and that it was uncertain whether The Preserve would ever obtain ownership of the property needed to construct the debris basin.

931. Further, David Simpson and Nathan Simpson arranged for the appraiser to be provided copies of the "pre-sales," knowing the appraiser would incorporate them into his appraisal, would rely on them in valuing the real property and would include them in the appraisal he would provide MagnetBank. The Simpsons also provided the appraiser a copy of the conditional David Nemelka purchase contract.

932. David Simpson and Nathan Simpson knew the appraisal of the real property was based on false information. However, they carelessly and negligently failed to inform MagnetBank and M&I Bank of the false information on which the appraisal was based.

933. By doing so, David Simpson and Nathan Simpson made representations of presently existing facts and intent.

934. David Simpson and Nathan Simpson affirmed to MagnetBank that the appraisal was correct and complete for the purpose of inducing MagnetBank to lend them the funds necessary to refinance the Clark Real Estate Company hard money loan.

935. MagnetBank and M&I Bank in fact reasonably relied on the appraisal in making their loan decision.

936. MagnetBank and M&I Bank were in fact induced to make the loans by David Simpson's and Nathan Simpson's affirmation the appraisal was correct, the appraiser's conclusions were based on true and correct information and by the Simpsons' failure to

disclose to the banks the facts and information described in paragraph 358 herein. The banks in fact lent the funds to The Preserve, David Simpson and Nathan Simpson.

937. On or about February 26, 2008, Navona purchased the \$12,713,200.00 MagnetBank loan and all of the related loan documents from MagnetBank and M&I Bank, thereby receiving any and all of the rights the banks possessed.

938. As described in paragraphs 404 through 413 herein In December 2007, David Simpson and Nathan Simpson caused The Preserve to sell Lot 67, consisting of approximately 5.26 acres, to Michael Aviano.

939. David Simpson and Nathan Simpson previously represented to MagnetBank that the listed sale price for Lot 67 was \$1,360,000.00.

940. In exchange for a \$2,000,000.00 personal loan to David Simpson from Michael Aviano, David Simpson and Nathan Simpson agreed to sell Lot 67 to Aviano for only \$575,000.00.

941. The amount required to be paid to MagnetBank to release its security interest in Lot 67 was \$1,020,000.00.

942. As described in paragraph 408 herein, the closing documents showed the purchase price to be \$900,000.00.

943. As described in paragraph 409 herein, Michael Aviano, David Simpson and Nathan Simpson knew the purchase price was not \$900,000.00 but was really \$575,000.00.

944. Even though the closing documents misrepresented the purchase price,

Michael Aviano, David Simpson and Nathan Simpson signed the closing documents, thereby fraudulently affirming the sales price was \$900,000.00, not \$575,000.00. Aviano and the Simpsons knew the closing documents would be provided to MagnetBank and intended to provide the closing documents to MagnetBank.

945. David Simpson and Nathan Simpson provided the closing documents to MagnetBank to induce the bank to lower the release price of Lot 67.

946. In a further attempt to fool MagnetBank regarding the true sales price of Lot 67, after the close of the sale to Michael Aviano, David Simpson and Nathan Simpson paid MagnetBank just under \$900,000.00, representing to MagnetBank that the lot had sold for \$900,000.00.

947. Having no other source of funds, David Simpson and Nathan Simpson used funds from Michael Aviano's personal loan to David Simpson to make up the difference between the \$575,000.00 purchase price and the represented price of \$900,000.00, fooling MagnetBank into believing Aviano actually paid \$900,000.00.

948. David Simpson's and Nathan Simpson's representations that the closing documents were complete and correct, and the information contained in the closing documents themselves, were statements of presently existing facts and intent.

949. By making such representations, David Simpson and Nathan Simpson acted carelessly and negligently.

950. If MagnetBank had known the actual selling price, it would not have allowed the sale to go forward, it would have had reason to suspect the collateral for the loan was

in peril and it would have taken steps to protect the collateral and the loan.

951. Because of Michael Aviano's, David Simpson's and Nathan Simpson's misrepresentations, MagnetBank believed that its collateral was protected, that the values of the lots in The Preserve at Mapleton development were in reality the values represented by the Simpsons and that values for the lots contained in the appraisal it received from Free and Associates were correct.

952. Michael Aviano's, David Simpson's and Nathan Simpson's representations regarding the actual sales price of the lot to Aviano were made carelessly and negligently.

953. Had MagnetBank known the truth, it would have called the loan due.

954. MagnetBank reasonably relied on the contents of the closing documents.

955. It was thereby induced not to call the loan due or to take measures to protect its collateral.

956. As a direct and proximate result of David Simpson's, Nathan Simpson's, David Nemelka, Chad Carlson, Dallas Hakes, Allen Hakes, Michael Marx and Michael Aviano's misrepresentations, Leslie, LD III and Navona were damaged in the amount of at least \$24,827,892.39.

957. As described in paragraphs 527 through 536 herein, at all relevant times David Simpson, Nathan Simpson, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson, Nathan Simpson, Carlson, Dallas Hakes, Allen Hakes and Michael Marx are jointly and severally liable with

their entities described in paragraphs 527 through 536 herein.

958. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano as set forth in paragraph 16 of the Prayer for Relief.

SEVENTEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Conversion Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah - The Preserve)

959. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 958 as if fully set forth herein.

960. David Simpson and Nathan Simpson intentionally exercised control over Leslie's and LD III's funds and used them for their own purposes without Leslie's and LD III's permission and in contravention of Leslie's and LD III's rights.

961. David Simpson and Nathan Simpson used Leslie's and LD III's funds for their

own purposes as described in paragraphs 211, 212, 220, 221, 236, 237, 248, 250 through 253, 261, 263, 266, 267, 278, 281, 418 and 421 herein.

962. By doing so, they deprived Leslie and LD III of the possession and use of their funds.

963. Additionally, because David Simpson's and Nathan Simpson's actions were willful, malicious and intentional, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

964. As described in paragraphs 533 through 536 herein, at all relevant times David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson and Nathan Simpson, are jointly and severally liable with their entities described in paragraphs 533 through 536 herein.

965. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah as set forth in paragraph 17 of the Prayer for Relief.

EIGHTEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Unjust Enrichment Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC - The Preserve)

966. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 965 as if fully set forth herein

967. By taking the funds as described in paragraphs 211, 212, 220, 221, 236, 237, 248, 250 through 253, 261, 263, 266, 267, 278, 281, 418 and 421 herein, David Simpson and Nathan Simpson were unjustly enriched at Leslie's and LD III's expense.

968. It would be inequitable for them to retain the benefit conferred upon them by Leslie and LD III.

969. As described in paragraphs 533 through 536 herein, at all relevant times David Simpson and Nathan Simpson were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that the Simpsons are jointly and severally liable with their entities described in paragraphs 533 through 536 herein.

970. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development

Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC as set forth in paragraph 18 of the Prayer for Relief.

NINETEENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Conspiracy Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano - The Preserve)

971. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 970 as if fully set forth herein.

972. David Simpson and Nathan Simpson became aware that approximately 171 acres of real property located on the Mapleton Bench owned by Suburban Land Reserve and known as the Preserve was being offered for sale.

973. They agreed with each other that they would acquire the real property and develop it, without risking any of their own funds and by using other's funds.

974. David Simpson and Nathan Simpson approached Ken Dolezsar regarding The Preserve. Dolezsar agreed to help the Simpsons.

975. David Simpson, Nathan Simpson and Ken Dolezsar conspired and agreed with each other, individually and collectively, to take Leslie's and LD III's funds and property and convert the same, and in fact converted Leslie's and LD III's funds property as

described in paragraphs 211, 212, 220, 221, 236, 237, 248, 250 through 253, 261, 263, 266, 267, 278, 281, 418 and 421 herein.

976. Leslie and LD III were damaged as a result of David Simpson's, Nathan Simpson's and Ken Dolezsar's conversion of their funds and property.

977. David Simpson, Nathan Simpson, Ken Dolezsar, David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx conspired and agreed with each other, individually and collectively, to make the misrepresentations and to omit the relevant material facts, and in fact made the misrepresentations and omitted the relevant material facts, described in paragraphs 256, 257, 259, 300 through 304, 387, 288, 314, 315, 316, 317, 319 and 320 herein, and as described in Plaintiffs' Eleventh Cause of Action herein.

978. Leslie and LD III were damaged as a result of the misrepresentations and material omissions made by David Simpson, Nathan Simpson, Ken Dolezsar, David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx.

979. David Simpson, Nathan Simpson and Ken Dolezsar conspired and agreed with each other individually and collectively, and with David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx to breach their individual and collective fiduciary duties to Leslie and LD III, and in fact did breach their fiduciary duties to Leslie and LD III, as described in Plaintiffs' Twelfth and Thirteenth Causes of Action herein.

980. As part of the conspiracy, David Simpson, Nathan Simpson and Ken

Dolezsar, converted Leslie's funds, as described in this cause of action and in Plaintiff's Seventeenth Cause of Action herein, they caused fraudulent misrepresentations to be made to Leslie to convince her to invest her funds in The Preserve at Mapleton development project, as described in the Plaintiffs' Eleventh and Fourteenth Causes of Action herein and they breached their fiduciary duties or aided and abetted each other in breaching their fiduciary duties to Leslie, LD III and MagnetBank as described in Plaintiffs' Twelfth and Thirteenth Causes of Action herein.

981. Therefore, David Simpson, Nathan Simpson, David Nemelka, Chad Carlson, Dallas Hakes, Allen Hakes, Michael Marx and Michael Aviano are jointly and severally liable for all the harm and damages incurred by Leslie and LD SQ set forth in Plaintiffs' Eleventh through Nineteenth Causes of Action herein, in the amount of \$24,827,892.39.

982. As described in paragraphs 527 through 536 herein, at all relevant times David Simpson, Nathan Simpson, Chad Carlson, Dallas Hakes, and Allen Hakes were acting on behalf and through their respective entities and have so intermingled their personal affairs with those of their entities that David Simpson, Nathan Simpson, Carlson, Dallas Hakes and Allen Hakes are jointly and severally liable with their entities described in paragraphs 527 through 536 herein.

983. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development

Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano as set forth in paragraph 19 of the Prayer for Relief.

TWENTIETH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Utah Pattern of Unlawful Activity Claim Against Defendants David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano - The Preserve)

984. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 983 as if fully set forth herein.

985. As described in paragraph 215 herein, Suburban Land Reserve offered for sale approximately 171 acres located on the Mapleton Bench.

986. David Simpson, Nathan Simpson and Craig Thueson agreed to work together with each other, and with various entities owned or controlled by them, to purchase the Suburban Land Reserve property. By doing so, they formed an enterprise as defined in Utah Code Annotated §76-10-1602(1).

987. David Simpson and Nathan Simpson planned on developing The Preserve at Mapleton development project, using only the funds of a wealthy investor, never risking

their own funds and taking funds provided by the investor for their own use and benefit. In the furtherance of the enterprise, the Simpsons planned on, and in fact did, commit the crimes of theft, theft by deception, unlawful dealing with property by a fiduciary, making a false credit report, confidence game, communications fraud, receiving stolen property and defrauding creditors.

988. In furtherance of their enterprise, David Simpson and Nathan Simpson registered SOS with the State of Utah on or about December 9, 2005.

989. In furtherance of their enterprise, David Simpson, Nathan Simpson and Craig Thueson registered The Preserve with the State of Utah on or about December 12, 2005.

990. Ken Dolezsar became part of the enterprise as described in paragraphs 211, 212, 213, and 216 herein.

991. By taking Leslie's funds and exercising control and dominion over them as described in paragraphs 210, 211, 212, 213, 220, 221, 236, 237, 250, 251, 252, 253, 266, 267, 278, 279, 281, 342, 346, 371, 390, 401, 402, 418, 419, 421, 442, 463, 464, 476, 479, 480, 489 and 506 herein, David Simpson, Nathan Simpson and Ken Dolezsar, in furtherance of their enterprise, committed, attempted to commit or conspired to commit at least 20 episodes of theft, in that they sought to obtain or exercise control over Leslie's and LD III's property with the purpose to deprive Leslie and LD III of it, and they did in fact obtain and exercise control over Leslie's and LD III's property with the purpose to deprive her of it.

992. By taking Leslie's funds and exercising control over them by means of

deception as described in paragraphs 210, 211, 212, 213, 220, 221, 236, 237, 248, 249, 250, 251, 252, 253, 256 through 261, 263, 266, 267, 275, 276, 278, 279, 281, 314 through 328, 342, 346, 348, 371, 390, 394, 401, 402, 418, 421, 442, 463, 464, 479, 480, 489 and 506 herein, David Simpson, Nathan Simpson and Ken Dolezsar, in furtherance of the enterprise, committed, attempted to commit or conspired to commit at least 20 episodes of theft by deception, in that they sought to, and did, obtain and exercise control over Leslie's and LD III's property by deception and with the purpose to deprive Leslie and LD III of their property.

993. From January 18, 2006 to the present, David Simpson was a manager of LD III, at all relevant times David Simpson and Nathan Simpson were managers of The Preserve and from at least December 1, 2006, LD III was a member of The Preserve, holding a forty-five percent (45%) ownership interest. Therefore, David Simpson, Nathan Simpson and Ken Dolezsar were fiduciaries for Leslie and LD III as defined in Utah Code Annotated §76-6-513(1)(a).

994. By making the following misrepresentations, taking the following actions and by making the following omissions. David Simpson, Nathan Simpson and Ken Dolezsar attempted to deal, conspired to deal or dealt with Leslie's and LD III's property that had been entrusted to them in a manner which they knew was a violation of their duties or which involved a substantial risk of loss or detriment to Leslie and LD III:

- a. As described in paragraph 220 herein, David Simpson and Nathan Simpson failed to inform Leslie that on or about November 30, 2005, \$300,000.00

of her funds had been taken by them and used for The Preserve;

b. David Simpson and Nathan Simpson took \$300,000.00 of Leslie's funds for their own uses, without Leslie's knowledge or authorization;

c. As described in paragraph 236 herein, David Simpson and Nathan Simpson failed to inform Leslie that on or about December 20, 2005, \$44,000.00 of her funds had been taken by them and used by The Preserve;

d. David Simpson and Nathan Simpson took \$44,000.00 of Leslie's funds for their own uses;

e. As described in paragraph 266 herein, on or about May 10, 2006, David Simpson took \$200,000.00 from LD III's bank account for himself. He was never authorized to do so and never informed Leslie of his actions;

f. As described in paragraph 278 herein, on or about June 13, 2006, David Simpson took \$250,000.00 from LD III's bank account for The Preserve. Leslie never authorized him to do so;

g. As described in paragraph 250 herein, on or about March 3, 2006, David Simpson, acting as the manager of LD III, issued a check to Wood Springs in the amount of \$506,000.00. David Simpson and Nathan Simpson used \$200,000.00 of those funds to close on real property that was purchased by an entity in which the Simpsons had an interest, but which Leslie and LD III had no interest. Leslie never authorized such use of her or LD III's funds. The Simpsons used \$200,000.00 of the funds for The Preserve. Leslie never authorized the

Simpsons to take \$200,000.00 of her and LD III's funds for The Preserve. The \$200,000.00 was never deposited into The Preserve's bank account. Additionally, the Simpsons took \$106,000.00 of the funds and gave them to Nathan Simpson. Leslie never authorized David Simpson to pay \$106,000.00 of LD III's funds to Nathan Simpson to buy into The Preserve. Rather, without any authorization and in an effort to enrich himself and Nathan Simpson at Leslie's expense, David Simpson took such funds and paid them to Nathan Simpson;

h. As described in paragraph 248 herein, David Simpson and Nathan Simpson, knowing that the all the funds they had received for The Preserve had come from Leslie, gave Ken Dolezsar, and Dolezsar accepted in his own name, a 15% ownership interest in SOS in exchange for the payments made to the Simpsons that were Leslie's or LD III's funds;

i. As described in paragraph 257 herein, at the time David Simpson and Nathan Simpson were attempting to induce Leslie or LD III to furnish \$4,300,000.00 to purchase the Whiting Property, they failed to inform Leslie that 171 acres owned by The Preserve were subject to a \$10,890,000.00 six-month hard money loan, with debt service of \$163,350.00 per month, that the hard money loan was due and payable on June 11, 2006, that they intended to use the Whiting Property as additional collateral to extend the hard money loan and that they intended to purchase the Whiting Property in the name of SOS, instead of in Leslie's name or LD III's;

j. As described in paragraph 280 herein, David Simpson took \$200,000.00 from The Preserve's checking account for his own use and purposes, without any like distribution to Leslie or LD III;

k. As described in paragraph 287 herein, David Simpson and Nathan Simpson encumbered the Whiting Property as security for the hard money loan and loan extension;

l. David Simpson and Nathan Simpson failed to inform Leslie of the problems connected with the debris collection basin, described in paragraphs 289 through 295 herein, and that The Preserve at Mapleton development project could not be built without the debris basin;

m. As described in paragraphs 298 through 299 herein, David Simpson and Nathan Simpson allowed David Nemelka to have an option to purchase the debris basin property, when they knew it had to be owned either by the city or the homeowners association;

n. David Simpson and Nathan Simpson failed to accept offers for 14 lots from Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes. Their offers were summarily rejected by the Simpsons, at a time when The Preserve was in desperate need of cash, even though the offers were in excess of \$316,700.00 per acre, while David Nemelka's accepted offer was for \$205,814.00 per acre;

o. In the alternative, David Simpson and Nathan Simpson collaborated with Dallas Hakes, Chad Carlson, Michael Marx and Allen Hakes in a scheme in

which Hakes, Carlson, Marx, and Hakes would make substantially inflated offers to aid the Simpsons in artificially raising the values of the lots;

p. As described in paragraphs 314, 315, 316 and 317 herein, David Simpson and Nathan Simpson failed to disclose to Leslie the true facts surrounding the request for the \$6,800,000.00 loan;

q. David Simpson and Nathan Simpson intentionally failed to record LD III's Deed of Trust that secured its loan in the amount of \$6,800,000.00;

r. As described in paragraph 334 herein, David Simpson and Nathan Simpson acquired the bonds and the letter of credit for The Preserve to construct plats A and D were in their personal names instead of in the name of The Preserve;

s. David Simpson and Nathan Simpson made numerous misrepresentations to MagnetBank and M&I Bank in procuring the loan for The Preserve. By doing so, they endangered the project and risked losing all of the real property, which put at risk all of the funds Leslie had invested in The Preserve at Mapleton development project;

t. As described in paragraph 371 herein, David Simpson and Nathan Simpson took \$187,484.83 of Leslie's \$6,800,000.00 loan to The Preserve and gave it to Carnesecca, an entity in which Leslie had no ownership interest;

u. David Simpson and Nathan Simpson arranged for construction of the debris collection basin, knowing that the real property on which they were building the debris basin was owned by the State of Utah and that it could be a long process

to procure title to the real property and it was not a sure thing that they could ever procure title to the real property;

v. As described, in paragraph 379 herein, when David Simpson and Nathan Simpson were caught building the debris collection basin on real property owned by the State of Utah, instead of entering into an agreement whereby The Preserve would own the real property needed for the debris basin, David Simpson entered an agreement with the State of Utah and the United States Fish and Wildlife Service whereby he would personally own the real property needed for the debris basin;

w. As described in paragraphs 383 through 396 herein, David Simpson and Nathan Simpson entered into the revised purchase agreement to sell Lot 73 to David Nemelka. The new agreement raised the purchase price from \$800,000.00 to \$1,200,000.00 and allowed Nemelka to finance 100% of the purchase. Further, the Simpsons allowed Central Bank to take a first-position deed of trust to secure its \$400,000.00 loan to Nemelka. The Simpsons caused The Preserve to carry back a loan for \$800,000.00, secured by a deed of trust which was subordinate to Central Bank's deed of trust. The Simpsons made the new agreement knowing that The Preserve was required to pay MagnetBank \$600,000.00 to release its security interest in the lot, that Nemelka could rescind the purchase and reform the note at his discretion and that the promissory note from Nemelka to The Preserve was a non-recourse note;

x. As managers of The Preserve, David Simpson and Nathan Simpson executed a deed of trust in favor of MagnetBank that became senior to LD III's security interest in relation to the loan for \$6,800,000.00 because of the Simpsons failure to record the deed of trust securing The Preserve's \$6,800,000.00 promissory note to LD III;

y. As described in paragraph 401 herein, without Leslie's authorization or knowledge, David Simpson took \$100,000.00 from LD H.T. Reynolds, LLC. The funds were used to cover Simpson's legal expenses and other expenses related to The Preserve;

z. As described in paragraph 403 herein, David Simpson, without Leslie's authorization or knowledge, took \$15,000.00 from LD III's bank account and deposited it into The Preserve's bank account;

aa. As described in paragraph 418 herein, Leslie provided The Preserve \$281,693.59 to pay bills which were past due. Instead of paying the due and past due bills, David Simpson and Nathan Simpson paid themselves \$137,814.78;

bb. As described in paragraph 421 herein, over a one month period, Leslie provided The Preserve \$680,000.00 for payment of bills, particularly for The Preserve's share of the water tank project. However, David Simpson and Nathan Simpson failed to use the funds for the purposes for which Leslie provided them, using the funds to pay The Presidio's share of the water tank expense;

cc. David and Nathan Simpson used Leslie' and/or LD III's funds which

were earmarked for construction on The Preserve at Mapleton development project to pay \$200,000.00 to MagnetBank in relation to the sale of the lot to David Nemelka;

dd. David Simpson and Nathan Simpson sold Leslie the 31 acres located in Springville, Utah, knowing that it was unsuitable for building an office, warehouse and production facility and knowing it had extensive wetlands issues and took Leslie's \$1,500,000.00 for the 31 acres;

ee. As described in paragraph 442 herein, in addition to the \$1,500,000.00 Leslie paid for the 31 acres located in Springville, Utah, David Simpson and Nathan Simpson took another \$356,000.00 of Leslie's funds for payment of the 31 acres;

ff. David Simpson and Nathan Simpson took \$500,000.00 of Leslie's funds for a down payment on for The Presidio real property for the purchase of that real property by Wood Springs;

gg. As described in paragraphs 477, 478, 479 and 480 herein, David Simpson and Nathan Simpson used funds contributed by Leslie to The Preserve to pay The Presidio's share of the water tank costs;

hh. Failing to disclose the relevant and material facts described in paragraph 486 herein;

ii. As described in paragraph 489 herein, taking \$214,375.00 of LD III's funds to purchase water shares in the name of Wood Springs;

jj. As described in paragraph 504, David Simpson retained water rights

for himself; and

kk. Using Leslie's, LD III's and The Preserve's funds to make interest and principal payments to Templeman when The Preserve never received the proceeds of the loan.

995. Further, David Nemelka became part of the enterprise and solicited, requested, encouraged and intentionally aided David Simpson and Nathan Simpson in unlawfully dealing with Leslie's and LD III's property as fiduciaries as described in subparagraph 994(m), (n), and (w). Nemelka encouraged David Simpson and Nathan Simpson to amend his purchase contract, appearing to change the purchase price, and allowing him to rescind the purchase contract at his discretion. Nemelka also encouraged the Simpsons to arrange for The Preserve to carry a \$800,000.00 non-recourse note that Nemelka could reform at his discretion to reduce the principal amount to \$400,000.00 and to revise his purchase contract in such a way that The Preserve had to pay MagnetBank \$200,000.00 from Leslie's funds to obtain a release of MagnetBank's security interest.

996. By submitting false personal financial statements to MagnetBank and M&I Bank, as described in paragraphs 351 through 359, David Simpson and Nathan Simpson, in furtherance of the enterprise, made materially false and misleading written statements to MagnetBank and M&I Bank to obtain credit for The Preserve and themselves and therefore committed at least three episodes of Making a False Credit Report.

997. By collaborating with David Simpson and Nathan Simpson in making offers for lots that they knew would not be accepted and that were contrived for the sole purpose

of artificially inflating the values of the lots, knowing the appraiser would rely on such offers in valuing the property, Dallas Hakes, Chad Carlson, Michael Marx, and Allen Hakes participated in the enterprise by encouraging and intentionally aiding the Simpsons in making a false credit report.

998. By making the material misrepresentations and failing to disclose the relevant material facts and information, as described in paragraphs 256, 289 through 295, 314, 315, 317, 316, 318, 319, 337 through 341 and 404 through 423 herein, and as described in Plaintiffs' Eleventh, Fourteenth, Twenty-First, Twenty-Fourth, Twenty-Sixth, Twenty-Ninth, and Thirty-Second Causes of Action, David Simpson and Nathan Simpson, in furtherance of the enterprise, obtained and attempted to obtain money and property from Leslie and LD III by means of a confidence game, as defined in Utah Code Annotated §76-10-1109.

999. By making the material misrepresentations and material omissions described in paragraphs 256, 289 through 295, 314, 315, 317, 316, 318, 319, 337 through 341 and 404 through 423, 434, 435, 479 480, 485, 486 herein, and as described in Plaintiffs Eleventh and Fourteenth Causes of Action, David Simpson and Nathan Simpson communicated with each other and with others in furtherance of the enterprise, and thereby committed, attempted to commit and conspired to commit Communications Fraud, as defined in Utah Code Annotated §76-10-1801.

1000. David Simpson and Nathan Simpson communicated with each other, with David Nemelka regarding his original purchase contract and his revised purchase contract, with Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx regarding their sham

offers and with Michael Aviano regarding the fact that he only paid \$575,000.00 for his lot but that they would represent that the sale price was \$900,000.00.

1001. By taking the funds, as described in paragraphs 210, 211, 212, 213, 220, 221, 236, 237, 250, 251, 252, 253, 266, 267, 278, 279, 281, 342, 346, 371, 390, 401, 402, 418, 419, 421, 437, 442, 463, 464, and 490 herein, David Simpson, Nathan Simpson and Ken Dolezsar, in further of their enterprise, committed, attempted or conspired to commit at least 18 episodes of the crime of receiving stolen property in that they knew the funds were stolen or that they probably had been stolen.

1002. As described in paragraphs 511 through 518 herein, by transferring, attempting to transfer and conspiring to transfer TDRs and water rights associated with The Preserve at Mapleton development project, which are subject to a security interest held by Navona, David Simpson and Nathan Simpson, in furtherance of the enterprise, committed the crime of defrauding creditors, as defined by Utah Code Annotated §76-6-511, in that they transferred, attempted to transfer and/or conspired to transfer the TDRs and water rights and credits with the purpose to hinder enforcement of Navona's security interest. The Simpsons attempted on multiple occasions to transfer the TDRs, water rights and water credits and succeeded on several occasions . Therefore, they committed several episodes of unlawful behavior.

1003. As described in this cause of action, David Simpson, Nathan Simpson, David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx were all part of an enterprise as defined by Utah Code Annotated §76-10-1602, in that they

all engaged in a pattern of conduct constituting at least three episodes of unlawful activity, as defined in Utah Code Annotated §76-10-1602(4) and as described in this cause of action.

1004. Pursuant to Utah Code Annotated §76-10-1602(1), Plaintiffs are entitled to judgment against David Simpson, Nathan Simpson, David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes, Allen Hakes and Michael Marx for twice the damages they sustained, in addition to their costs and reasonable attorney's fees.

1005. Defendants David Simpson, Nathan Simpson, Chad Carlson, Dallas Hakes and Allen Hakes are liable under Utah's Pattern of Unlawful Activity Act for any and all criminal conduct accomplished through their entities, pursuant to Utah Code Annotated §76-2-204 because they are personally liable for criminal conduct "authorized, solicited, requested, commanded, or undertaken, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation or association." Defendants David Simpson, Nathan Simpson, David Nemelka, Michael Aviano, Chad Carlson, Dallas Hakes and Allen Hakes are further liable Utah's Pattern of Unlawful Activity Act for their entities' criminal acts pursuant to Utah Code Annotated §76-2-205 "for conduct constituting [a criminal] offense which he perform[ed] or cause[d] to be performed in the name off on behalf of a corporation or association to the same extent as if such conduct were performed in his own name of behalf."

1006. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan

Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC; Michael Marx and Michael Aviano as set forth in paragraph 20 of the Prayer for Relief.

TWENTY-FIRST CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Fraud and Intentional Misrepresentation Claim Against Defendants David Simpson, Nathan Simpson, Wood Springs and Pheasant Meadows - Prime Commercial Property)

1007. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1006 as if fully set forth herein.

1008. As part of their efforts to induce Leslie and LD III to lend \$6,800,000.00 to The Preserve, David Simpson and Nathan Simpson offered to sell Leslie approximately 31 acres located in Springville, Utah, for a sale price of \$1,500,000.00.

1009. As described in paragraphs 427 through 430 herein, Pheasant Meadows purchased the real property from Springville City.

1010. As described in paragraph 431 herein, David Simpson transferred ownership of the real property to another of his entities, Wood Springs.

1011. As described in paragraph 432 herein, David Simpson, acting as Wood

Springs' manager, executed a deed of trust encumbering the real property in favor of Oak Leaf Investments, LLC, securing a debt in the amount of \$2,800,000.00.

1012. As described in paragraph 433 herein, David Simpson and Nathan Simpson learned that Leslie was interested in acquiring real property for construction of an office building, warehouse and production facility.

1013. David Simpson and Nathan Simpson contrived a scheme to induce Leslie to give The Preserve a loan and to induce Leslie to purchase the approximately 31 acres, which they knew was saturated with wetlands issues.

1014. To induce Leslie to lend The Preserve \$6,800,000.00 and to purchase the approximately 31 acres, David Simpson, Nathan Simpson and Ken Dolezsar made the representations described in paragraph 434 herein.

1015. The representations described in paragraph 434 herein, were statements of presently existing facts and intent.

1016. The representations described in paragraph 434 herein, were false as follows:

- a. The real property was encumbered by a deed of trust in favor of Oak Leaf Investments, LLC, in the amount of \$2,800,000.00;
- b. The real property was not prime commercial real property and was not ready to build on;
- c. The real property was not worth \$3,300,000.00 because of the wetlands issues; and

d. Leslie could not sub-divide, sell, or lease any part of the approximately 31 acres because of wetlands problems.

1017. When David Simpson, Nathan Simpson and Ken Dolezsar made the representations, they knew they were false or made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

1018. Leslie was induced by the representations to make the \$6,800,000.00 loan and to purchase the real property.

1019. In ignorance of the truth, Leslie reasonably relied on David Simpson's, Nathan Simpson' and Ken Dolezsar's representations. In reliance on their representations, on or about December 1, 2006, LD III, lent The Preserve, David Simpson and Nathan Simpson \$6,800,000.00 and Leslie purchased the approximately 31 acres for \$1,500,000.00.

1020. Upon receipt of Leslie's \$1,500,000.00 check, David Simpson and Nathan Simpson used the funds to pay the amount owing Springville City for the original purchase of the real property by Pheasant Meadows.

1021. However, as described in paragraph 438 herein, David Simpson and Nathan Simpson failed to convey title to Leslie, but instead retained title in Wood Spring's name.

1022. Further, they failed to pay the debt owing to Oak Leaf Investments, LLC and therefore the trust deed to Oak Leaf Investments, LLC remained as an encumbrance on the real property.

1023. As described in paragraph 440 herein, six months after Leslie had purchased

the approximately 31 acres, Ken Dolezsar, acting as manager of LD Purpose and David Simpson acting for Wood Springs, executed a Real Estate Purchase Contract representing the purchase price of the approximately 31 acres was \$1,856,000.00, not the \$1,500,000.00 Leslie had previously agreed to.

1024. As described in paragraph 442 herein, David Simpson and Nathan Simpson received a check in the amount of \$356,000.00. At that time, David Simpson and Nathan Simpson still failed and refused to convey title to the real property to Leslie or one of her entities and they still failed and refused to remove the encumbrance to Oak Leaf Investments, LLC.

1025. David Simpson, Nathan Simpson and Ken Dolezsar took the \$356,000.00 without Leslie's authorization or knowledge.

1026. As described in paragraph 445 herein, nearly eleven months after Leslie purchased the approximately 31 acres, Pro Title, acting as the trustee for Wood Springs, reconveyed the \$2,800,000.00 trust deed. However, David Simpson and Nathan Simpson still failed and refused to convey the property to Leslie or one of her entities.

1027. David Simpson and Nathan Simpson represented that the purchase price of the property was \$1,500,000.00 when in truth it was \$1,856,000.00, that they would convey title to Leslie or one of her entities and that the real property was free of any encumbrances.

1028. David Simpson's and Nathan Simpson's misrepresentations were statements of presently existing facts or intent.

1029. David Simpson's and Nathan Simpson's representations were false.

1030. When David Simpson and Nathan Simpson made the misrepresentations they knew they were false or made them recklessly, knowing that there was insufficient knowledge upon which to base such misrepresentations.

1031. They made them to induce Leslie to lend The Preserve, David Simpson and Nathan Simpson \$6,800,000.00 and to induce Leslie to purchase the approximately 31 acres.

1032. Leslie, in reasonable reliance on the misrepresentations, was in fact induced to purchase the real property and to make the loan.

1033. As a direct and proximate result of David Simpson's and Nathan Simpson's misrepresentations, Leslie, LD III and LD Purpose were damaged in the amount of at least \$5,656,000.00.

1034. Additionally, because David Simpson's and Nathan Simpson's misrepresentations were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's, LD III's and LD Purpose's rights, Leslie, LD III and LD Purpose are entitled to an award of punitive damages.

1035. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Wood Springs and Pheasant Meadows as set forth in paragraph 21 of the Prayer for Relief.

TWENTY-SECOND CAUSE OF ACTION

(Plaintiffs Leslie Mower, LD III, LLC's and LD Purposes's Negligent Misrepresentation Claim Against Defendants David Simpson, and Nathan Simpson - Prime Commercial Property)

1036. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1035 as if fully set forth herein.

1037. As part of their efforts to induce Leslie and LD III to lend \$6,800,000.00 to The Preserve, David Simpson and Nathan Simpson offered to sell Leslie approximately 31 acres located in Springville, Utah for a sale price of \$1,500,000.00.

1038. As described in paragraphs 427 through 430 herein, Pheasant Meadows purchased the approximately 31 acres from Springville City.

1039. As described in paragraph 431 herein, David Simpson transferred ownership of the real property to another of his entities, Wood Springs.

1040. As described in paragraph 432 herein, David Simpson, acting as Wood Springs manager, executed a deed of trust encumbering the real property in favor of Oak Leaf Investments, LLC securing a debt of \$2,800,000.00.

1041. As described in paragraph 433 herein, David Simpson and Nathan Simpson learned that Leslie was interesting in acquiring real property for construction of an office building, warehouse and production facility.

1042. David Simpson and Nathan Simpson contrived a scheme to induce Leslie to give The Preserve a loan and induce Leslie to purchase the approximately 31 acres, which they knew was saturated with wetlands issues.

1043. To induce Leslie to lend The Preserve \$6,800,000.00 and to purchase the approximately 31 acres, David Simpson, Nathan Simpson, and Ken Dolezsar made the representations described in paragraph 434 herein.

1044. The representations described in paragraph 434 herein, were statements of presently existing facts and intent.

1045. The representations described in paragraph 434 herein, were false as follows:

- a. The real property was encumbered by a deed of trust in favor of Oak Leaf Investments, LLC, in the amount of \$2,800,000.00;
- b. The real property was not prime commercial real property and was not ready to build on;
- c. The real property was not worth \$3,300,000.00 because of the wetlands issues; and
- d. Leslie not sub-divide, sell, or lease any part of the approximately 31 acres because of the wetlands problems.

1046. David Simpson, Nathan Simpson and Ken Dolezsar made the representations carelessly and negligently.

1047. Leslie was induced by the representations to make the \$6,800,000.00 loan and to purchase the real property.

1048. In ignorance of the truth, Leslie reasonably relied on David Simpson's, Nathan Simpson's and Ken Dolezsar's representations. In reliance on their

representations, on or about December 1, 2006, LD III lent The Preserve, David Simpson and Nathan Simpson \$6,800,000.00 and Leslie purchased the approximately 31 acres, for \$1,500,000.00.

1049. Upon receipt of Leslie's \$1,500,000.00 check, David Simpson and Nathan Simpson used the funds to pay the amount owing Springville City for the original purchase of the real property by Pheasant Meadows.

1050. However, as described in paragraph 438 herein, David Simpson and Nathan Simpson failed to convey title to Leslie but instead retained title in Wood Spring's name.

1051. Further, they failed to pay the debt owing to Oak Leaf Investments, LLC and therefore the deed of trust to Oak Leaf Investments, LLC remained as an encumbrance on the real property.

1052. As described in paragraph 440 herein, six month after Leslie had purchased the approximately 31 acres, Ken Dolezsar, acting as manager of LD Purpose and David Simpson acting for Wood Springs, executed a Real Estate Purchase Contract representing the purchase price of the approximately 31 acres was \$1,856,000.00, not the \$1,500,000.00 as Leslie had previously agreed to.

1053. As described in paragraph 442 herein, David Simpson and Nathan Simpson received a check in the amount of \$356,000.00. At that time, the Simpsons still failed and refused to convey title to the real property to Leslie or one of her entities and they still failed and refused to remove the encumbrance to Oak Leaf Investments, LLC.

1054. David Simpson, Nathan Simpson and Ken Dolezsar took the \$356,000.00

without Leslie's authorization or knowledge.

1055. As described in paragraph 445 herein, nearly eleven months after Leslie purchased the approximately 31 acres, Pro Title, acting as the trustee for Wood Springs, reconveyed the \$2,800,000.00 deed of trust. However, David Simpson and Nathan Simpson still failed and refused to convey the property to Leslie or one of her entities.

1056. David Simpson and Nathan Simpson represented that the purchase price of the property was \$1,500,000.00, when in truth it was \$1,856,000.00, that they would convey title to Leslie or one of her entities, and that the real property was free of any encumbrances.

1057. David Simpson's and Nathan Simpson's misrepresentations were statements of presently existing facts or intent.

1058. David Simpson's and Nathan Simpson's representations were false.

1059. David Simpson and Nathan Simpson made the representations carelessly or negligently.

1060. They made them to induce Leslie to lend The Preserve, David Simpson and Nathan Simpson \$6,800,000.00 and to induce Leslie to purchase the approximately 31 acres.

1061. Leslie, in reasonable reliance on the misrepresentations, was in fact induced to purchase the real property and to make the loan.

1062. As a direct and proximate result of David Simpson's and Nathan Simpson's misrepresentations, Leslie, LD III and LD Purpose were damaged in the amount of at least

\$5,856,000.00.

1063. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Wood Springs and Pheasant Meadows as set forth in paragraph 22 of the Prayer for Relief.

TWENTY-THIRD CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and LD Purpose, LLC's Breach of Fiduciary Duty Claim Against Defendants David Simpson and Nathan Simpson - The Prime Commercial Property)

1064. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1063 as if fully set forth herein.

1065. From January 18, 2006 and at all relevant times, David Simpson was a manager of LD III and therefore there existed a principal-agent relationship between David Simpson and LD III and between David Simpson and Leslie.

1066. At all relevant times, David Simpson and Nathan Simpson were managers of The Preserve and therefore owed fiduciary duties to its members.

1067. From at least December 1, 2006 to the present, LD III was a member of The Preserve, holding a forty-five percent (45%) ownership interest.

1068. David Simpson, Nathan Simpson and Ken Dolezsar owed fiduciary duties to LD III and to Leslie.

1069. David Simpson, Nathan Simpson and Ken Dolezsar were obligated to put LD III's and Leslie's interests above their own or others, and to act loyally for LD III's and Leslie's benefit.

1070. By making the misrepresentations, taking the actions, failing to take the actions and by making failing to disclose the relevant material facts described in paragraphs 433, 434, 435, 438, 439, 440, 441, 442, 445 and 447 herein, David Simpson and Nathan Simpson breached their fiduciary duties to Leslie and LD III, acted in their own self interest and failed to act in LD III's and Leslie' best interests.

1071. As a direct and proximate result of David Simpson's and Nathan Simpson's breach of their fiduciary duties to Leslie and LD III, Leslie and LD III were damaged in the amount of \$5,856,000.00.

1072. Additionally, because David Simpson's and Nathan Simpson's breaches of their fiduciary duties were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's, LD III's and LD Purpose's rights, Leslie, LD III and LD Purpose are entitled to an award of punitive damages.

1073. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 23 of the Prayer for Relief.

TWENTY-FOURTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and Navona, LC's Fraudulent Non-Disclosure Claim Against Defendants David Simpson and Nathan Simpson - The Prime Commercial Property)

1074. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1073 as if fully set forth herein..

1075. David Simpson and Nathan Simpson failed to disclose to Leslie and LD III

the relevant material facts and information as described in paragraphs 435, 440, 441, 442, 443, 444, 445, 446, 448, 449, 450 and 451 herein.

1076. David Simpson and Nathan Simpson were well aware of the relevant material facts and information they failed to disclose to Leslie and, LD III.

1077. David Simpson and Nathan Simpson had duties to disclose the relevant material facts to Leslie and LD III.

1078. As a direct and proximate result of David Simpson's and Nathan Simpson's failures to disclose the relevant material facts of which they had knowledge, Leslie and LD III were damaged in the amount of \$5,856,000.00.

1079. Additionally, because David Simpson's and Nathan Simpson's failures to disclose the relevant material facts and information were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's, LD III's and LD Purpose's rights, Leslie, LD III and LD Purpose are entitled to an award of punitive damages.

1080. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 24 of the Prayer for Relief.

TWENTY-FIFTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and LD Purpose, LLC's Conspiracy Claim Against Defendants David Simpson, Nathan Simpson, Wood Springs, Pheasant Meadows and The Preserve - The Prime Commercial Property)

1081. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1080 as if fully set forth herein.

1082. David Simpson and Nathan Simpson agreed and conspired with each other, and with Wood Springs and Pheasant Meadows, to sell approximately 31 acres located in Springville, Utah to Leslie or one of her entities in return for a loan of \$6,800,000.00 to the Preserve and payment of \$1,856,000.00.

1083. As described in paragraph 430 herein, David Simpson, acting on behalf of Pheasant Meadows, encumbered the property with a deed of trust to Springville City.

1084. As described in paragraph 431 herein, David Simpson, acting on behalf of Pheasant Meadows conveyed the real property to Wood Springs.

1085. As described in paragraph 432 herein, David Simpson, acting on behalf of Wood Springs, encumbered the property with a deed of trust to Oak Leaf Investments, LLC.

1086. As described in paragraphs 433 and 434 herein, David Simpson and Nathan Simpson, acting on their own behalf and on the behalf of The Preserve, contrived and executed a scheme whereby they would induce Leslie or one of her entities to make a \$6,800,000.00 loan to The Preserve and the Simpsons and to purchase real property they knew had wetlands issues.

1087. David Simpson and Nathan Simpson agreed to make the representations described in paragraph 434 and to not disclose the relevant material facts and information described in paragraph 435 herein.

1088. In furtherance of the conspiracy and with Ken Dolezsar's cooperation and participation, David Simpson and Nathan Simpson, as they had previously agreed,

prepared a false Real Estate Purchase Contract. Under the guise of adhering to its terms, they took an additional \$356,000.00 of Leslie's funds.

1089. As described in Plaintiff's Twenty-First, Twenty-Third, and Twenty-Fourth Causes of Action, David Simpson and Nathan Simpson conspired with each other and with others to commit fraud, fraudulent non-disclosure and breached their fiduciary duties, and in fact committed fraud, fraudulent non-disclosure and breached their fiduciary duties.

1090. David Simpson, Nathan Simpson and Ken Dolezsar agreed and conspired to commit fraud, fraudulent non-disclosure and to breach their fiduciary duties to procure the \$6,800,000.00 loan for The Preserve and to sell the approximately 31 acres to Leslie for \$1,856,000.00 without her being aware of its true condition.

1091. The members of the conspiracy are jointly and severally liable for all the harm and damages incurred by Leslie, LD III and LD Purpose caused by the actions taken pursuant to the conspiracy in the amount of \$5,856,000.00 plus punitive damages.

1092. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, Pheasant Meadows and Wood Springs as set forth in paragraph 26 of the Prayer for Relief.

TWENTY-SIXTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Fraud Claim Against Defendants David Simpson and Nathan Simpson - Presidio Land and Water)

1093. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1092 as if fully set forth herein.

1094. David Simpson and Nathan Simpson represented to Leslie's son, Robert Steed, that The Preserve needed at least \$281,693.59 to pay due and past due bills. They represented that a large portion of the funds were needed to pay The Preserve's pro rata share of the cost of the water tank.

1095. In February 2008, David Simpson and Nathan Simpson authorized and requested that Robert Steed relay their representations and requests to Leslie. In ignorance or the falsity of the representations, Steed repeated the Simpson's representations to Leslie.

1096. At the end of March or the beginning of April 2008, David Simpson and Nathan Simpson again represented to Robert Steed that The Preserve needed additional funds to fully satisfy its pro rata share of the costs associated with water tank.

1097. David Simpson and Nathan Simpson authorized and requested that Robert Steed relay their representations to Leslie. In ignorance of the falsity of the representations, Steed repeated them to Leslie.

1098. On or about September 18, 2008, Nathan Simpson reported to Mapleton City that The Preserve still owed \$331,620.00 for its share of the water tank project.

1099. As described in paragraph 485 herein, on or about November 15, 2007, David Simpson and Nathan Simpson represented to Leslie through her representatives that The Preserve needed additional funds to pay the due and past due bills of The Preserve.

1100. David Simpson's and Nathan Simpson representations were presently

existing statements of facts and intent.

1101. David Simpson's and Nathan Simpson representations were false as follows:

- a. David Simpson and Nathan Simpson used the funds they requested from Leslie and that she contributed for the payment of The Preserve's debts to pay Nathan Simpson \$72,814.78 and to pay David Simpson \$65,000.00;
- b. The funds were not used to pay The Preserve's share of the water tank costs;
- c. The additional funds described in paragraph 480 herein were not used to satisfy The Preserve's share of the water tank costs, but rather, \$151,037.28 was used to satisfy The Presidio's share of the water tank expenses; and
- d. In relation to David Simpson's and Nathan Simpson's representations referred to in paragraph 485 herein, the Simpsons were in actuality seeking funds to cover the \$500,000.00 obligation that The Presidio owed for its share of the water tank project and which David Simpson, on behalf of Wood Springs, had agreed to pay as part of its agreement to purchase The Presidio's real property, which agreement is described in paragraphs 459, 460, 461 and 462 herein.

1102. When David Simpson and Nathan Simpson made the representations, they knew they were false or made them recklessly, knowing that there was insufficient knowledge upon which to base such representations.

1103. They made the representations to induce Leslie to contribute her funds.

1104. Leslie, was induced to give her funds in reasonable reliance on David

Simpson's and Nathan Simpson's representations, without knowing the truth.

1105. As a direct and proximate result of David Simpson's and Nathan Simpson's misrepresentations, Leslie and LD III were damaged in the amount of at least \$938,495.20.

1106. Additionally, because David Simpson's and Nathan Simpson's misrepresentations were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

1107. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 26 of the Prayer for Relief.

TWENTY-SEVENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and, LD III, LLC's Negligent Misrepresentation Claim Against Defendants David Simpson and Nathan Simpson - Prime Commercial Property)

1108. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1107 as if fully set forth herein.

1109. David Simpson and Nathan Simpson represented to Leslie's son, Robert Steed, that The Preserve needed at least \$281,693.59 to pay due and past due bills. They represented that a large portion of the funds were needed to pay The Preserve's pro rata share of the cost of the water tank.

1110. In February 2008, David Simpson and Nathan Simpson authorized and requested that Robert Steed relay their representations and requests to Leslie. In ignorance or the falsity of the representations, Steed repeated the Simpsons'

representations to Leslie.

1111. At the end of March or the beginning of April 2008, David Simpson and Nathan Simpson again represented to Robert Steed that The Preserve needed additional funds to fully satisfy its pro rata share of the water tank.

1112. David Simpson and Nathan Simpson authorized and requested that Robert Steed relay their representations to Leslie. In ignorance of the falsity of the representations, Steed repeated them to Leslie.

1113. On or about September 18, 2008, Nathan Simpson reported to Mapleton City that The Preserve still owed \$331,620.00 for its share of the water tank project.

1114. As described in paragraph 485 herein, on or about November 15, 2007, David Simpson and Nathan Simpson represented to Leslie through her representatives that The Preserve needed additional funds to pay the due and past due bills of The Preserve.

1115. David Simpson's and Nathan Simpson's representations were presently existing statements of facts and intent.

1116. David Simpson's and Nathan Simpson representations were false as follows:

a. David Simpson and Nathan Simpson used the funds they requested from Leslie and that she contributed for the payment of The Preserve's debts to pay Nathan Simpson \$72,814.78 and to pay David Simpson \$65,000.00;

b. The funds were not used to pay The Preserve's share of the water tank costs;

c. The additional funds described in paragraph 480 herein were not used to satisfy The Preserve's share of the water tank costs, but rather, \$151,037.28 was used to satisfy The Presidio's share of the water tank expenses; and

d. In relation to David Simpson's and Nathan Simpson's representations referred to in paragraph 485 herein, the Simpsons were in actuality seeking funds to cover the \$500,000.00 obligation that The Presidio owed for its share of the water tank project and which David Simpson, on behalf of Wood Springs, agreed to pay as part of its agreement to purchase The Presidio's real property, which agreement is described in paragraphs 459, 460, 461 and 462 therein.

1117. When David Simpson and Nathan Simpson made the representations, they made them carelessly and negligently.

1118. They made the representations to induce Leslie to contribute her funds.

1119. Leslie, was induced to give her funds in reasonable reliance on David Simpson's and Nathan Simpson's representations, without knowing the truth.

1120. As a direct and proximate result of David Simpson's and Nathan Simpson's misrepresentations, Leslie and LD III were damaged in the amount of at least \$938,495.20.

1121. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 27 of the Prayer for Relief.

TWENTY-EIGHTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and, LD III, LLC's Breach of Fiduciary Duty Claim Against David Simpson and Nathan Simpson - The Presidio Land and Water)

1122. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1121 as if fully set forth herein.

1123. From January 18, 2006 and at all relevant times, David Simpson was a manager of LD III and therefore there existed a principal-agent relationship between David Simpson and LD III and between David Simpson and Leslie.

1124. At all relevant times David Simpson and Nathan Simpson were managers of The Preserve and therefore owed fiduciary duties to its members.

1125. From at least December 1, 2006 to the present, LD III was a member of The Preserve, holding a forty-five percent (45%) ownership interest.

1126. At all relevant times, Nathan Simpson was a manager of The Preserve and the manager of Maple Mountain Water Tank.

1127. David Simpson, Nathan Simpson and Ken Dolezsar owed fiduciary duties to LD III and to Leslie.

1128. David Simpson, Nathan Simpson and Ken Dolezsar were obligated to put LD III's and Leslie's interests above their own or others, and to act loyally for LD III's and Leslie's benefit.

1129. By making the misrepresentations, taking the actions, failing to take the actions and by failing to disclose the relevant material facts described in this cause of action and those described in paragraphs 455, 456, 459, 462 through 465, 467, 474 and 476 through 486 herein, David Simpson and Nathan Simpson breached their fiduciary duties to Leslie and LD III, acted in their own self interest and failed to act in LD III's and

Leslie's best interests.

1130. As a direct and proximate result of David Simpson's and Nathan Simpson's breaches of their fiduciary duties to Leslie and LD III, Leslie and LD III were damaged in the amount of \$938,495.20.

1131. Additionally, because David Simpson's and Nathan Simpson's misrepresentations were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

1132. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 28 of the Prayer for Relief.

TWENTY-NINTH CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Fraudulent Non-Disclosure Claim Against Defendants David Simpson and Nathan Simpson - The Presidio Land and Water)

1133. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1132 as if fully set forth herein.

1134. David Simpson and Nathan Simpson failed to disclose to Leslie and LD III the relevant material facts and information as described in paragraphs 459 through 465, 467, 469, 474, 476 through 481, 483, 484 and 486 herein.

1135. David Simpson and Nathan Simpson were well aware of the relevant material facts and information they failed to disclose to Leslie and LD III.

1136. David Simpson and Nathan Simpson, had a duty to disclose the relevant

material facts to Leslie and LD III.

1137. As a direct and proximate result of David Simpson's and Nathan Simpson's failures to disclose the relevant material facts of which they had knowledge, Leslie and LD III were damaged in the amount of \$938,495.20.

1138. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 29 of the Prayer for Relief.

THIRTIETH CAUSE OF ACTION

(Plaintiffs Leslie Mower's, LD III, LLC's and LD Purpose, LLC's Conspiracy Claim Against Defendants David Simpson, Nathan Simpson, Wood Springs, LLC, The Preserve at Mapleton Development Company, LLC and Maple Mountain Water Tank, LLC - The Presidio Land and Water)

1139. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1038 as if fully set forth herein.

1140. David Simpson and Nathan Simpson agreed and conspired with each other, and with The Preserve, Wood Springs and Maple Mountain Water Tank, to obtain for themselves ownership of The Presidio's real property and to pay The Presidio's share of the water tank costs as part of the down payment for the real property, using only Leslie's funds.

1141. As described in paragraphs 459 through 462 herein, David Simpson and Wood Springs executed an agreement to purchase the real property owned by The Presidio.

1142. As described in paragraph 462 herein, David Simpson and Wood Springs

agreed that as part of the down payment for the Presidio's real property, David Simpson and Wood Springs would pay \$500,000.00 of The Presidio's share of the costs of the water tank.

1143. As described in paragraphs 463 and 464 herein, David Simpson and Wood Springs, unknown to Leslie and unauthorized by her, used \$500,000.00 of her funds for the down payment.

1144. As part of the conspiracy, David Simpson and Nathan Simpson agreed that they would used funds contributed by Leslie for The Preserve's share of the water tank costs to pay a part of The Presidio's share of the water tank costs, pursuant to David Simpson's agreement to do so as part of the down payment for the real property owned by The Presidio.

1145. Because Maple Mountain Water was not yet formed, Nathan Simpson and David Simpson paid all invoices for the water tank project from The Preserve's account. The Simpsons paid The Presidio's obligatory share of the costs of the water tank using funds provided by Leslie to pay The Preserve's share of the water tank costs.

1146. As described in paragraph 477 herein, The Preserve paid at least \$140,111.00 for The Presidio's share of the water tank costs, for which it was never reimbursed by The Presidio.

1147. As described in paragraph 478 herein, The Preserve paid \$45,000.00 to Maple Mountain Water. Nathan Simpson directed Maple Mountain Water's bookkeeper to apply the payment for both The Presidio's and The Preserve's shares of the costs of the

water tank.

1148. As described in paragraph 479 herein, Nathan Simpson and David Simpson, instead of paying the bills and water tank costs of The Preserve, took \$72,814.78 and \$65,000.00 for themselves, respectively.

1149. As described in paragraph 480 herein, after receiving \$300,000.00 from Leslie to pay The Preserve's bills, David Simpson and Nathan Simpson paid Maple Mountain Water \$200,384.20, allocating only \$49,346.92 for The Preserve's share of the water tank costs and allocating the larger part, \$151,037.28, to The Presidio's share of the water tank costs.

1150. As described in paragraph 483 herein, David Simpson and Nathan Simpson caused The Preserve to pay \$227,775.56 for The Presidio's share of the water tank costs.

1151. As described in paragraph 486 herein and in furtherance of their conspiracy and scheme, David Simpson and Nathan Simpson agreed to withhold from Leslie the relevant material facts described in paragraph 486 herein.

1152. David Simpson and Nathan Simpson agreed to make the misrepresentations and to not disclose the relevant material facts and information described in this cause of action.

1153. Further, David Simpson and Nathan Simpson, as they had agreed, took \$500,000.00 of Leslie's funds to partially fund Wood Spring's down payment for The Presidio's real property. They took the funds in furtherance of the conspiracy and with the cooperation and agreement of Ken Dolezsar.

1154. By making false representations, by failing to disclose the relevant material facts, by taking Leslie's funds for their own purposes and depriving her of those funds and by breaching their fiduciary duties, David Simpson and Nathan Simpson, in concert with each other, committed fraud, fraudulent non-disclosure, conversion and breached their fiduciary duties.

1155. David Simpson, Nathan Simpson and Ken Dolezsar agreed that they would take such actions to enable them to purchase the Presidio's real property.

1156. As a direct and proximate result of the actions taken pursuant to the conspiracy, Leslie, and LD III were damaged in the amount of \$938,495.20.

1157. The members of the conspiracy are jointly and severally liable for all the harm and damages incurred by Leslie and LD III caused by the actions taken pursuant to the conspiracy in the amount of \$938,495.20, and for punitive damages.

1158. Plaintiffs are therefore entitled to judgment against David Simpson, Nathan Simpson, The Preserve, Maple Mountain Water and Wood Springs, jointly and severally, as set forth in paragraph 30 of the Prayer for Relief.

THIRTY-FIRST CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Breach of Fiduciary Duty Claim Against Defendant David Simpson - The Double T Ranch Water Purchase)

1159. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1058 as if fully set forth herein.

1160. At all relevant times, David Simpson was a manager of LD III and therefore

there existed a principal-agent relationship between David Simpson and LD III and between David Simpson and Leslie.

1161. David Simpson therefore owed fiduciary duties to LD III and to Leslie.

1162. David Simpson was obligated to put LD III's and Leslie's interests above his own or others, and to act loyally for LD III's and Leslie's benefit.

1163. As described in paragraph 489 herein, David Simpson took \$214,375.00 of LD III's funds to purchase water shares in the name of Wood Springs.

1164. As described in paragraph 493 herein, David Simpson used LD III's funds to make an initial non-refundable payment to Double T Ranch in relation to the purchase of the water rights.

1165. Wood Springs received 540 share of water from Double T Ranch.

1166. As described in paragraph 498 herein, David Simpson, on behalf of Wood Springs, entered into an agreement to sell the water shares Wood Springs had acquired from Double T Ranch.

1167. As described in paragraph 501 herein, Simpson and Wood Springs failed and refused to deliver the water it had sold and a lawsuit was filed against David Simpson and Wood Springs.

1168. As described in paragraph 502 herein, David Simpson and Wood Springs reached a settlement of the lawsuit whereby David Simpson and Wood Springs agreed to transfer 485.75 acre feet of water at a price of \$3,500.00 per acre foot and a total price of \$1,700,125.00.

1169. David Simpson and Wood Springs told the purchasers of the water that they could not deliver the full 564 acre feet as promised. Instead, Simpson and/or Wood Springs wrongfully retained a portion of the water rights.

1170. On information and belief, David Simpson and Wood Springs received partial payment for the water shares, but David Simpson has failed and refused to pay any funds to LD III.

1171. By taking LD III's funds and using them for his own purposes and failing to reimburse LD III its funds or paying LD III a profit, David Simpson breached his fiduciary duties to Leslie and LD III.

1172. As a direct and proximate result of David Simpson's breach of his fiduciary duties to Leslie and LD III, Leslie and LD III were damaged in the amount of at least \$300,125.00.

1173. Additionally, because David Simpson's breaches of his fiduciary duties were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

1174. Plaintiffs are therefore entitled to judgment against David Simpson as set forth in paragraph 31 of the Prayer for Relief.

THIRTY-SECOND CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Claim for Fraudulent Non-Disclosure Claim Against Defendant David Simpson - The Double T Ranch Water Purchase)

1175. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1174 as if fully set forth herein..

1176. David Simpson failed to disclose to Leslie that he had used \$214,375.00 of LD III's funds to purchase water shares in the name of Wood Springs.

1177. He failed to disclose to Leslie or LD III of the lawsuit initiated by the water purchasers.

1178. He failed to disclose to Leslie and LD III of the settlement he made of the lawsuit and that he had transferred the water shares.

1179. He failed to disclose to Leslie and LD III that he had retained for himself some of the water shares purchased.

1180. David Simpson was well aware of the relevant material facts and information he failed to disclose to Leslie and LD III.

1181. David Simpson had a duty to disclose the relevant material facts to Leslie and LD III.

1182. As a direct and proximate result of David Simpson's failures to disclose the relevant material facts of which he had knowledge, Leslie and LD III were damaged in the amount of at least \$300,125.00.

1183. Additionally, because David Simpson's failures to disclose the relevant material facts and information were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

1184. Plaintiffs are therefore entitled to judgment against David Simpson as set forth in paragraph 32 of the Prayer for Relief.

THIRTY-THIRD CAUSE OF ACTION

(Plaintiffs Leslie Mower's and LD III, LLC's Breach of Fiduciary Duty Claim Against Defendants David Simpson, Nathan Simpson and The Preserve at Mapleton Development Company, LLC - Templeman)

1185. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1184 as if fully set forth herein.

1186. As described in paragraphs 506 and 507 herein, The Preserve used Leslie's and LD III's funds to make purported interest and principle payments to Kathy Templeman.

1187. Plaintiff's are not aware of a promissory note or other loan documents memorializing any loan to The Preserve from Kathy Templeman. There is no record of the proceeds from any such loan ever being deposited into The Preserve's checking account.

1188. As managers of The Preserve, David Simpson and Nathan Simpson were obligated to put LD III's and Leslie's interests above their own or others, and to act loyally for LD III's and Leslie's benefit.

1189. David Simpson and Nathan Simpson breached their fiduciary duties to Leslie and LD III by taking The Preserve's and LD III's funds to pay Kathy Templeman for a purported loan The Preserve never received.

1190. As a direct and proximate result of David Simpson's and Nathan Simpson's breach of their fiduciary duties to Leslie and LD III, Leslie and LD III were damaged in the amount of at least \$75,080.00.

1191. Additionally, because David Simpson's and Nathan Simpson's breaches of their fiduciary duties were willful, malicious and intentionally fraudulent, and manifested a knowing and reckless indifference toward and a disregard of Leslie's and LD III's rights, Leslie and LD III are entitled to an award of punitive damages.

1192. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 33 of the Prayer for Relief.

THIRTY-FOURTH CAUSE OF ACTION

(Plaintiffs: Leslie Mower and LD SQ, LLC'S Breach of Contract Claims Against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc.; Wood Springs, LLC and Dente, LLC)

1193. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1091 as if fully set forth herein.

1194. Plaintiffs claim that Defendants made representations and an offer as described in paragraphs 83, 85 and 86 herein.

1195. Plaintiffs claim that Defendants' offer was accepted by Plaintiffs' agreement to invest \$5,000,000.00 for the Koamalu Plantation development project to acquire the land and do the preliminary development work (as stated in paragraph 87 herein), creating a valid contract enforceable by Plaintiffs.

1196. Plaintiffs fully performed by providing the \$5,000,000.00 funding as described in paragraphs 89, 111-114 and 135-136 herein.

1197. Plaintiffs claim that Defendants materially breached the contract as described

in paragraphs 73 through 204 herein.

1198. Plaintiffs are entitled to a judgment that will place Plaintiffs in as good of a position as they would have been had Defendants not breached – meaning in this instance, a return of Plaintiffs' \$5,000,000.00 investment, plus a profit of two hundred percent (200%) return on Plaintiffs' investment.

1199. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Michael K. Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc.; Wood Springs, LLC; and, Dente, LLC as set forth in paragraph 34 of the Prayer for Relief.

THIRTY-FIFTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD SQ, LLC's Detrimental Reliance, Promissory Estoppel and Quasi Contract Claims Against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc.; Wood Springs, LLC and Dente, LLC)

1200. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1199 as if fully set forth herein.

1201. Plaintiffs claim, *inter alia*, that they, in justifiable and reasonable reliance on Defendants' representations described in paragraphs 83, 85 and 86 herein and not being aware of the relevant material facts (described in paragraph 84 herein) that were knowingly, intentionally and deceitfully not disclosed to, omitted and withheld from Plaintiffs, provided funds to Defendants for the Koamalu Plantation development project.

1202. Plaintiffs claim that Defendants have in fact benefitted from the funds provided by Plaintiffs as described in paragraphs 73 through 204 herein.

1203. Plaintiffs claim that Defendants are well aware of the benefits conferred upon them by Plaintiffs.

1204. Plaintiffs claim that to permit Defendants to retain the benefits received without fully compensating Plaintiffs would result in an unconscionable and unjust enrichment of Defendants at Plaintiffs' expense.

1205. Plaintiffs are entitled to a judgment that will restore their money or the benefit of their money.

1206. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Michael K. Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc.; Wood Springs, LLC and Dente, LLC as set forth in paragraph 35 of their Prayer for Relief.

THIRTY-SIXTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC'S Breach of Contract Claim Against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1207. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1206 as if fully set forth herein.

1208. Plaintiffs claim that Defendants made representations and an offer as set

forth in paragraphs 256, 258 and 259 herein.

1209. Plaintiffs claim that Defendants' offer was accepted by Plaintiffs' agreement to invest \$4,300,000.00 to purchase the 30.7 acre Whiting property for \$3,300,000.00 and to fund an additional \$1,000,000.00 for development work (as stated in paragraph 260 herein), creating a valid contract enforceable by Plaintiffs.

1210. Plaintiffs fully performed by providing the \$4,300,000.00 funding as described in paragraphs 261 and 262 herein.

1211. Plaintiffs claim that Defendants materially breached the contract as described in paragraphs 205 through 451 herein.

1212. Plaintiffs are entitled to a judgment that will place Plaintiffs in as good of a position as they would have been had Defendants not breached – meaning in this instance, a return of Plaintiffs' \$4,300,000.00 investment, plus a profit of two hundred percent (200%) return on Plaintiffs' investment.

1213. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 36 of the Prayer for Relief.

THIRTY-SEVENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower; LD III, LLC; LD Purpose, LLC; and, Navona, LC's; Detrimental Reliance, Promissory Estoppel and Quasi Contract claims against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1214. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1213 as if fully set forth herein.

1215. Plaintiffs claim, *inter alia*, that they, in justifiable and reasonable reliance on Defendants' representations described in paragraphs 256, 258 and 259 herein and not being aware of the relevant material facts (described in paragraph 257 herein) that were knowingly, intentionally and deceitfully not disclosed to, omitted and withheld from Plaintiffs, provided funds to Defendants to purchase the 30.7 acre Whiting property for \$3,300,000.00 and to fund an additional \$1,000,000.00 for development work on the 30.7 acres.

1216. Plaintiffs claim that Defendants have in fact benefitted from the funds provided by Plaintiffs as described in paragraphs 205 through 451 herein.

1217. Plaintiffs claim that Defendants are well aware of the benefits conferred upon them by Plaintiffs.

1218. Plaintiffs claim that to permit Defendants to retain the benefits received without fully compensating Plaintiffs would result in an unconscionable and unjust enrichment of Defendants at Plaintiffs' expense.

1219. Plaintiffs are entitled to a judgment that will restore their money or the benefit of their money.

1220. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development

Company, LLC as set forth in paragraph 37 of the Prayer for Relief.

THIRTY-EIGHTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC's Breach of Contract Claims Against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1221. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1220 as if fully set forth herein..

1222. Plaintiffs claim that the \$6,800,000.00 *Trust Deed Note*, (a copy of which is attached to this Second Amended Complaint as Exhibit 108), constitutes and evidences a valid contract enforceable by Plaintiffs against Defendants.

1223. Plaintiffs claim they provided \$6,800,000.00 to The Preserve pursuant to the terms of the *Trust Deed Note*.

1224. Plaintiffs claim that Defendant The Preserve has materially breached by failing and refusing to pay its \$6,800,000.00 *Trust Deed Note* to Plaintiff LD III.

1225. Plaintiffs claim that Defendants David Simpson and Nathan Simpson, individually, in collusion, and in their capacities as owners, shareholders, members, directors, officers, managers, control persons, partners, principals, agents and/or affiliates of Defendants Landmark, Wood Springs, DN Simpson Mapleton, The Preserve, SOS and/or others, have caused The Preserve to materially breach the terms of the \$6,800,000.00 *Trust Deed Note* payable to Plaintiff LD III by failing and refusing to repay the amounts due pursuant to the terms of the *Trust Deed Note*.

1226. Plaintiffs claim that penalty interest designated in the \$6,800,000.00 *Trust Deed Note*, accrues from the moment it was executed because it was fraudulently created and always in default. Defendants never intended to honor the *Trust Deed Note* when they fraudulently executed and tendered the same.

1227. Plaintiffs are entitled to a judgment that will place Plaintiffs in as good of a position as they would have been had Defendants not breached – meaning in this instance, a return of Plaintiffs' \$6,800,000.00 investment, plus interest at the rate of twelve percent (12%) per annum, and penalty interest of one percent (1%) per month.

1228. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 38 of the Prayer for Relief.

THIRTY-NINTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC's Detrimental Reliance, Promissory Estoppel and Quasi Contract Claims Against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC])

1229. Plaintiffs incorporate herein the allegations and claims contained in the preceding paragraphs of this Second Amended Complaint.

1230. Plaintiffs claim, *inter alia*, that they, in justifiable and reasonable reliance on Defendants' representations described in paragraphs 314 through 316 herein and not

being aware of the relevant material facts (described in paragraph 317 herein) that were knowingly, intentionally and deceitfully not disclosed to, omitted and withheld from Plaintiffs, provided a \$6,800,000.00 loan to The Preserve to finish development of The Preserve at Mapleton project.

1231. Plaintiffs claim that Defendants have in fact benefitted from the funds provided by Plaintiffs as described in paragraphs 205 through 451 herein.

1232. Plaintiffs claim that Defendants are well aware of the benefits conferred upon them by Plaintiffs.

1233. Plaintiffs claim that to permit Defendants to retain the benefits received without fully compensating Plaintiffs would result in an unconscionable and unjust enrichment of Defendants at Plaintiffs' expense.

1234. Plaintiffs are entitled to a judgment that will restore their money or the benefit of their money.

1235. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 39 of the Prayer for Relief.

FORTIETH CAUSE OF ACTION

(Plaintiff Leslie Mower's Breach of Contract Claim Against David Simpson and Nathan Simpson)

1236. Plaintiffs hereby incorporate by this reference the allegations set forth above

in paragraphs 1 through 1235 as if fully set forth herein.

1237. Plaintiff claims that the \$6,800,000.00 *Promissory Note* and \$3,300,000.00 *Promissory Note* (copies of which are attached to this Second Amended Complaint as Exhibits 109 and 110), constitute and evidence valid contracts enforceable by Plaintiff against Defendants.

1238. Defendants offered the \$6,800,000.00 *Promissory Note* and \$3,300,000.00 *Promissory Note* as prepaid consideration in order to induce and ensure immediacy of Plaintiff's \$6,800,000.00 loan. Plaintiff accepted Defendants' offer and performed her contractual obligation by providing a \$6,800,000.00 loan to The Preserve to finish development of The Preserve at Mapleton project.

1239. Plaintiff claims that Defendants have materially breached the terms of both the \$6,800,000.00 *Promissory Note* and the \$3,300,000.00 *Promissory Note* by failing and refusing to pay the amounts due pursuant to the terms of the *Promissory Notes*.

1240. Plaintiff claims that penalty interest designated in the \$6,800,000.00 and \$3,300,000.00 *Promissory Notes*, accrues from the moment they were executed because they were fraudulently created and always in default. Defendants never intended to honor the *Promissory Notes* when they fraudulently executed and tendered the same.

1241. Plaintiffs are therefore entitled to judgment against David Simpson and Nathan Simpson as set forth in paragraph 40 of the Prayer for Relief.

FORTY-FIRST CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC'S Breach of Contract Claim Against David

Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1242. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1241 as if fully set forth herein.

1243. Plaintiffs claim that a document identified as *Leslie DeeAnn Mower Investments LD III*, (a copy of which is attached to this Second Amended Complaint as Exhibit 105), constitutes and evidences a valid contract enforceable by Plaintiffs against Defendants.

1244. Plaintiffs claim that they performed everything required of them by the terms of the Leslie DeeAnn Mower Investments LD III contract.

1245. Plaintiffs claim that Defendants David Simpson and Nathan Simpson, individually and in collusion, have materially breached the terms of the Leslie DeeAnn Mower Investments LD III contract, and in their capacities as owners, shareholders, members, directors, officers, managers, control persons, partners, principals, agents and/or affiliates, have also caused The Preserve and other defendants to materially breach the terms of the Leslie DeeAnn Mower Investments LD III contract:

a. By failing and refusing to pay Leslie the amounts due pursuant to the \$6,800,000.00 *Promissory Note* and the \$3,300,000.00 *Promissory Note* (see Exhibits 109 and 110);

b. By failing and refusing to pay Plaintiffs the amounts due pursuant to

the \$6,800,000.00 *Trust Deed Note* to LD III (see Exhibit 108);

c. By not conveying the 30.76 acres of real property located in Springville, Utah, (described more particularly in paragraphs 427 through 451 herein), to Plaintiff LD III at the time they received payment but instead holding the real property in the name of Defendant Wood Springs until March 27, 2008 and allowing the title to be encumbered by a *Trust Deed* in favor of Defendant Oak Leaf until October 22, 2007; and,

d. By failing and refusing to pay Plaintiffs the required \$250,000.00 upon the sale of lots to Defendants David Nemelka and Michael Aviano.

1246. Plaintiffs are entitled to a judgment that will place Plaintiffs in as good of a position as they would have been had Defendants not breached – meaning in this instance, pay back of the \$3,300,000.00 and \$6,800,000.00 *Promissory Notes*, plus forty-five percent (45%) of the projected profits or \$12,581,550.00.

1247. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 41 of the Prayer for Relief.

FORTY-SECOND CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC'S Detrimental Reliance, Promissory Estoppel and Quasi Contract Claims Against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1248. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1247 as if fully set forth herein.

1249. Plaintiffs claim, *inter alia*, that they, in justifiable and reasonable reliance on Defendants' representations described in paragraphs 314, 315, 316 and 434 herein and not being aware of the relevant material facts (described in paragraphs 317 and 435 herein) that were knowingly, intentionally and deceitfully not disclosed to, omitted and withheld from Plaintiffs, provided \$330,000.00 (described in paragraph 211), \$306,000.00 (described in paragraph 250) and the \$1,500,000.00 to purchase from defendants the 30.76 acres of real property as described in paragraphs 427 through 451 herein;

1250. Plaintiffs claim that Defendants have in fact benefitted from the funds provided by Plaintiffs.

1251. Plaintiffs claim that Defendants are well aware of the benefits conferred upon them by Plaintiffs.

1252. Plaintiffs claim that to permit Defendants to retain funds received without fully compensating Plaintiffs and to retain title to real property after payment in full by Plaintiffs would result in an unconscionable and unjust enrichment of Defendants at Plaintiffs' expense.

1253. Plaintiffs are entitled to a judgment that will restore their money or the benefit of their money.

1254. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC;

SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 42 of the Prayer for Relief.

FORTY-THIRD CAUSE OF ACTION

(Plaintiffs Leslie Mower and Navona, LC's Breach of Contract Claims Against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1255. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1254 as if fully set forth herein.

1256. Plaintiffs claim that the *Loan Agreement* and \$12,713,200.00 *Promissory Note* (copies of which are attached to this Second Amended Complaint as Exhibits 122 and 123), constitute and evidence valid and enforceable contracts between MagnetBank and The Preserve, as well as The Preserve's members, managers, control persons, principals, agents and/or affiliates.

1257. Plaintiffs claim that the *Repayment Guaranty* (a copy of which is attached to this Second Amended Complaint as Exhibit 131) constitutes and evidences a valid and enforceable contract between MagnetBank and Defendants David Simpson and Nathan Simpson.

1258. Plaintiffs claim that by virtue of the *Assignment Agreement* (a copy of which is attached to this Second Amended Complaint as Exhibit 148), Plaintiffs are successors-in-interest to all of MagnetBank's right, title and interest in and to the *Loan Agreement*, the \$12,713,200.00 *Promissory Note* and the *Repayment Guaranty*.

1259. Plaintiffs claim that MagnetBank provided funds to The Preserve pursuant to the terms of the *Loan Agreement*, the *Promissory Note* and the *Repayment Guaranty*.

1260. Plaintiffs claim that Defendants materially breached the terms of the *Loan Agreement*, the *Promissory Note*, and the *Repayment Guaranty*, and that they were in breach of the terms of the *Loan Agreement*, the *Promissory Note* and the *Repayment Guaranty* from the moment these documents were executed because Defendants, *inter alia*:

- a. Failed and refused to pay the amounts due pursuant to the terms of the \$12,713,200.00 *Promissory Note*;
- b. Provided false information, as described in paragraph 358 herein, to MagnetBank at the time they applied for the loan;
- c. Failed to disclose The Preserve's indebtedness to MagnetBank, including the existence of a \$6,800,000.00 *Deed of Trust* in favor of LD III to secure indebtedness; and,
- d. Failed to disclose to MagnetBank the terms of agreement contained in the Leslie DeeAnn Mower Investments LD III document (see Exhibit 105).

1261. Plaintiffs are entitled to a judgment that will place Plaintiffs in as good of a position as they would have been had Defendants not breached – meaning in this instance, pay back of the outstanding balance of the \$13,713,200.00 *Promissory Note*.

1262. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton

Development Company, LLC as set forth in paragraph 43 of the Prayer for Relief.

FORTY-FOURTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and Navona, LC'S Detrimental Reliance, Promissory Estoppel and Quasi Contract Claims Against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC)

1263. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1262 as if fully set forth herein.

1264. Plaintiffs claim that MagnetBank, in justifiable and reasonable reliance on Defendants' representations, as described in paragraphs 351 through 357 herein, and not being aware of the relevant material facts (described in paragraph 358 herein) that were knowingly, intentionally and deceitfully not disclosed, but omitted and withheld, provided \$12,713,200.00 to Defendants for The Preserve at Mapleton development project.

1265. Plaintiffs claim that Defendants have in fact benefitted from the funds provided by MagnetBank.

1266. Plaintiffs claim that Defendants are well aware of the benefits conferred upon them by MagnetBank.

1267. Plaintiffs claim that by virtue of the *Assignment Agreement* (a copy of which is attached to this Second Amended Complaint as Exhibit 148), Plaintiffs are successors-in-interest to all of MagnetBank's right, title and interest in and to the *Loan Agreement*, the \$12,713,200.00 *Promissory Note* and the *Repayment Guaranty*, as well as any and all causes of action Magnetbank may have held against Defendants.

1268. Plaintiffs claim that to permit Defendants to retain the benefits received

without fully compensating Plaintiffs, as MagnetBank's successors-in-interest, would result in an unconscionable and unjust enrichment of Defendants at Plaintiffs' expense.

1269. Plaintiffs are entitled to a judgment that will restore their money or the benefit of their money.

1270. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC as set forth in paragraph 44 of the Prayer for Relief.

FORTY-FIFTH CAUSE OF ACTION

(Plaintiffs Leslie Mower; LD SQ, LLC; LD III, LLC; LD Purpose, LLC; and, Navona, LC's Claims for an Injunction Against David Simpson; Nathan Simpson; David Nemelka; Michael Aviano; Koamalu Plantation, LLC; Wood Springs, LLC; Sunny Ridge, LLC; The Preserve at Mapleton Development Company, LLC; Carnesecca Orchard Estates, LLC and Spanish Vista Plat I, LLC)

1271. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1270 as if fully set forth herein.

1272. Plaintiffs claim that Defendants David Simpson, Nathan Simpson and Koamalu Plantation continue to attempt to complete work and get necessary permits for the Koamalu Plantation development project.

1273. Plaintiffs claim that if work continues on the Koamalu Plantation development project, Plaintiffs will be irreparably harmed because the character of the real property will be changed and the real property could be developed and sold during the pendency of this matter. Such actions would not only irreparably harm Plaintiffs, but would necessarily involve third parties in this matter.

1274. Plaintiffs claim that in relation to The Preserve at Mapleton development project, despite their breach of the *Loan Agreement*, the *Promissory Note* and the *Repayment Guaranty* (copies of which are attached to this Second Amended Complaint as Exhibits 122, 123 and 131), Defendants David Simpson, Nathan Simpson and The Preserve have repeatedly failed and refused to turn over to Plaintiffs Leslie and Navona all items of personal property owned by The Preserve which serve as security for the MagnetBank loan, as evidenced by the *Deed of Trust* and the *Acknowledgment of Filing* (copies of which are attached to this Second Amended Complaint as Exhibits 124 and 180); and, notwithstanding Navona's demands that David Simpson, Nathan Simpson and The Preserve deliver all such items of property to Navona, David Simpson, Nathan Simpson and The Preserve have alienated items of personal property, as described in paragraphs 511 through 518 of this Second Amended Complaint.

1275. Plaintiffs claim that if the items of personal property, including TDRs, water rights and other items of personal property are alienated by Defendants David Simpson, Nathan Simpson and The Preserve, it will very difficult, if not impossible to recover those items of property and Plaintiffs Leslie and Navona will be forever deprived of their security and therefore be irreparably harmed.

1276. Plaintiffs claim, as described in paragraph 371 of this Second Amended Complaint, that Defendant Carnesecca received Plaintiffs' funds which were wrongfully diverted to it by Defendants David Simpson and Nathan Simpson. Plaintiffs also claim that, as described in paragraphs 175 and 177, that Defendant Sunny Ridge received funds

which were wrongfully diverted to it by Defendants David Simpson and Nathan Simpson.

1277. Plaintiffs claim that those funds were most probably used to fund acquisition and/or development of real property owned and held by Defendants Sunny Ridge and Carnesecca.

1278. Plaintiffs claim that the real property owned by Defendants Sunny Ridge and Carnesecca has been sold and/or is being actively marketed for sale.

1279. Plaintiffs claim that if the real property owned by Defendants Sunny Ridge and Carnesecca is sold, Plaintiffs will be irreparably harmed because there will be no assets from which they can satisfy any judgment and because they have a legitimate claim on the real property which their funds were used to purchase. Not only would such actions irreparably harm Plaintiffs, but would necessarily involve third parties in this matter.

1280. Plaintiffs claim that the real property owned by Defendant Spanish Vista was purchased by Spanish Vista in part with Leslie's funds which Defendants David Simpson and Nathan Simpson wrongfully took and diverted from The Preserve to Spanish Vista.

1281. Many of the lots in Spanish Vista have been sold and Spanish Vista is actively selling lots at the current time.

1282. Because Leslie's funds were used to purchase the real property owned by Spanish Vista, Plaintiffs have a legitimate claim on that real property. If the real property is allowed to be conveyed, Plaintiffs will lose their ability to recover their funds wrongfully taken and diverted by Defendants David Simpson and Nathan Simpson and the Court would later have to involve other parties in this matter who may hereafter purchase real

property owned by Spanish Vista.

1283. Plaintiffs claim, as described in paragraphs 489 through 505 of this Second Amended Complaint, that Defendants Wood Springs and David Simpson hold title to water shares which are subject of this Second Amended Complaint.

1284. Plaintiffs claim that given Defendants David Simpson's and Nathan Simpson's proclivity to, and record of, alienating property, despite the fact that it is security for unpaid loans, there is a high danger that they, through one or more of their entities, will transfer water shares currently in possession of Defendants David Simpson, Nathan Simpson, Wood Springs and/or one or more of their entities.

1285. Plaintiffs claim that if any such water shares are transferred, Plaintiffs' ability to recover their funds wrongfully taken by Defendants David Simpson, Nathan Simpson and/or their entities will be greatly hindered and the Court would have to later involve those individuals or entities who received such water shares.

1286. Plaintiffs claim that because of the conduct and facts described above, the Court should enjoin Defendants David Simpson and Nathan Simpson, and any one acting in their behalf in any form, from transferring, conveying or otherwise alienating any assets hid by them either personally or by any entity in which they hold an interest during the pendency of this matter.

1287. Plaintiffs claim that Defendant Koamalu Plantation, and anyone acting on its behalf in any way, should be enjoined from continuing any work on the Koamalu Plantation development project during the pendency of this matter.

1288. Plaintiffs claim that Defendants Sunny Ridge and Carnesecca, and/or anyone acting in or on their behalf in any way, should be enjoined from conveying, alienating, selling or transferring any interest whatsoever in any real property owned by them during the pendency of this matter.

1289. Plaintiffs claim that Defendant Spanish Vista, and/or anyone acting on or in its behalf in any way, should be enjoined from conveying, alienating, selling or transferring any interest whatsoever in any and all real property owned by it during the pendency of this matter.

1290. Plaintiffs claim that Defendant Wood Springs, and/or anyone acting on or in its behalf in any way, should be enjoined from conveying, alienating, selling or transferring any interest whatsoever in any and all water rights or water shares in its possession or control during the pendency of this matter.

1291. Plaintiffs claim that there is a substantial likelihood that they will prevail on the above mentioned issues in this matter or that these are serious issues on the merits which should be the subject of further litigation.

1292. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; David Nemlka; Michael Aviano; Koamalu Plantation, LLC; Wood Springs, LLC; Sunny Ridge, LLC; The Preserve at Mapleton Development Company, LLC; Carnesecca Orchard Estates, LLC and Spanish Vista Plat I, LLC as set forth in paragraph 45 of the Prayer for Relief.

FORTY-SIXTH CAUSE OF ACTION

(Plaintiffs Leslie Mower; and, Navona, LLC's Claim for Specific Performance Against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; and, Landmark Homes of Utah, LLC)

1293. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1292 as if fully set forth herein.

1294. Plaintiffs claim that under the circumstances, conditions, and terms described in paragraphs 506 through 520 in this Second Amended Complaint and pursuant to the terms of the *Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing* and the *UCC Acknowledgment of Fixture Filing*, they are entitled to an order of Specific Performance ordering the defendant individuals identified in paragraphs 8 through 11 and the defendant entities identified in paragraphs 30 through 32, paragraphs 34 through 40 and paragraph 43 to convey and deliver to Plaintiffs any and all personal property now owned by The Preserve or transferred from The Preserve, including, but not limited to, water rights certificates or other evidences of water rights or stock in water or irrigations companies, TDRs, funds, tools, machines and any other personal property that is owned, or was owned, by The Preserve.

1295. Plaintiffs claim they are entitled to avoidance of transfers, attachments of assets, or any other relief the circumstances may require as allowed and determined pursuant to §25-6-8 of Utah's Uniform Fraudulent Transfer Act.

1296. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf Investments, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC and Landmark Homes of Utah, LLC as set forth in paragraph 46 of the Prayer for Relief.

FORTY-SEVENTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and, LD III, LLC'S Constructive Trust Claim Against David Simpson; Nathan Simpson and Spanish Vista Plat I, LLC)

1297. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1296 as if fully set forth herein.

1298. Plaintiffs claim that they are entitled to a constructive trust on certain real property located in Spanish Fork, Utah, titled in the name of Defendant Spanish Vista because the real property was purchased in substantial part with the \$1,148,811.18 wrongfully taken and converted by Defendants David Simpson and Nathan Simpson as described in paragraph 346 herein.

1299. Plaintiffs claim that the \$1,148,811.18 was part of the \$6,800,000.00 Defendants David Simpson and Nathan Simpson solicited for The Preserve (as described in paragraph 314 herein), and obtained from Leslie (as described in paragraph 318 herein), to finish development of The Preserve at Mapleton project.

1300. Plaintiffs claim that Defendants David Simpson and Nathan Simpson

wrongfully transferred funds from The Preserve's checking account to Bank of American Fork to purchase real property in the name of Defendant Spanish Vista. Spanish Vista's ownership of the real property can be directly traced to the wrongful behavior of David Simpson and Nathan Simpson.

1301. Plaintiffs claim that they have been unjustly deprived and that Defendants David Simpson, Nathan Simpson and Spanish Vista have been unjustly enriched by these defendants wrongfully taking.

1302. Plaintiffs are entitled to judgment against Defendants David Simpson, Nathan Simpson and Spanish Vista imposing a constructive trust for the benefit of Plaintiffs on the real property owned by Spanish Vista and possession and ownership of such property should be ordered by the Court to be transferred to Plaintiffs.

1303. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson and Spanish Vista Plat I, LLC as set forth in paragraph 47 of the Prayer for Relief.

FORTY-EIGHTH CAUSE OF ACTION

(Plaintiffs Leslie Mower and LD III, LLC's claims for an Equitable Lien Against David Simpson; Nathan Simpson and Spanish Vista Plat I, LLC)

1304. Plaintiffs hereby incorporate by this reference the allegations set forth above in paragraphs 1 through 1303 as if fully set forth herein.

1305. Plaintiffs claim that they are entitled to an equitable lien on certain real property located in Spanish Fork, Utah, titled in the name of Defendant Spanish Vista because the real property was purchased in substantial part with the \$1,148,811.18

misappropriated by Defendants David Simpson and Nathan Simpson as described in paragraph 346 herein.

1306. Plaintiffs claim that the \$1,148,811.18 was part of the \$6,800,000.00 Defendants David Simpson and Nathan Simpson solicited for The Preserve (as described in paragraph 314 herein), and obtained from Leslie (as described in paragraph 318 herein), to finish development of The Preserve at Mapleton project.

1307. Plaintiffs claim that Defendants David Simpson and Nathan Simpson misappropriated Plaintiffs' funds from The Preserve's checking account to purchase real property in the name of Defendant Spanish Vista.

1308. Plaintiffs claim that they have been unjustly deprived and that Defendants David Simpson, Nathan Simpson and Spanish Vista have been unjustly enriched by these defendants misappropriation.

1309. Plaintiffs are entitled to an equitable lien on the real property owned by Spanish Vista.

1310. Plaintiffs are therefore entitled to judgment against David Simpson; Nathan Simpson and Spanish Vista Plat I, LLC as set forth in paragraph 48 of the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants David Simpson; Nathan Simpson; Michael K. Thompson; Todd Dorny; Brandon Dente; David Nemelka; Dallas Hakes; Chad Carlson; Allen Hakes; Michael Aviano; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu

Plantation, LLC; Landmark Real Estate, LLC; Oak Leaf, LLC, Dente, LLC; Sunny Ridge, LLC, KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC, The Preserve at Mapleton Development Company, LLC, Pheasant Meadows, LLC, Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC, Landmark Homes of Utah, LLC, Maple Mountain Water Tank, LLC, Lonestar Gutters, LLC and 2 Brothers Communications and Lonestar Builders, Inc., jointly and severally, as follows:

1. On Plaintiffs' First Cause of Action, asserting a claim for Fraud and Intentional Misrepresentation against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and an award of punitive damages in the amount of at least \$22,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

2. On Plaintiffs' Second Cause of Action, asserting claim for Breach of Fiduciary Duties against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment

against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and an award of punitive damages in the amount of at least \$22,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

3. On Plaintiffs' Third Cause of Action, asserting a claim for Aiding and Abetting Breach of Fiduciary Duty against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and an award of punitive damages in the amount of at least \$22,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

4. On Plaintiffs' Fourth Cause of Action, asserting a claim for Fraudulent Non-Disclosure against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon

Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41, and an award of punitive damages in the amount of at least \$22,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

5. On Plaintiffs' Fifth Cause of Action, asserting a claim for Aiding and Abetting Fraudulent Non-Disclosure against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and punitive damages in the amount of at least \$22,000,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

6. On Plaintiffs' Sixth Cause of Action, asserting a claim for Negligent Misrepresentation against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai

Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

7. On Plaintiffs' Seventh Cause of Action, asserting a claim for Conversion against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Lai Holdings, LLC; Dente, LLC; He Kiakolu, LLC and Koamalu Plantation, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and an award of punitive damages in the amount of at least \$22,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

8. On Plaintiffs' Eighth Cause of Action, asserting a claim for Unjust Enrichment against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, for judgment against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, jointly and severally, in the amount of at least \$7,186,139.41, the exact amount to be determined at trial, together with post judgment

interest accruing at the legal rate.

9. On Plaintiffs' Ninth Cause of Action, asserting a claim for Conspiracy against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, for judgment against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, jointly and severally, in the amount of at least \$7,186,139.41 and an award of punitive damages in the amount of at least \$22,000,000.00 the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

10. On Plaintiffs' Tenth Cause of Action, asserting a Utah Pattern of Unlawful Activity claim against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, for judgment against David Simpson; Nathan Simpson; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC and Dente, LLC, jointly and severally, for twice damages, in the amount of at least \$14,372,278.82, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate and Plaintiffs' reasonable attorney's fees and costs incurred herein.

11. On Plaintiffs' Eleventh Cause of Action, asserting a claim for Fraud and Intentional

Misrepresentation against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC , Michael Marx and Michael Aviano, jointly and severally, in the amount of at least \$24,827,892.39 and an award of punitive damages in the amount of at least \$75,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

12. On Plaintiffs' Twelfth Cause of Action, asserting claim for Breach of Fiduciary Duty against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson

Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, jointly and severally, in the amount of at least \$24,827,892.39 and an award of punitive damages in the amount of at least \$75,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate

13. On Plaintiffs' Thirteenth Cause of Action, asserting a claim for Aiding and Abetting Breach of Fiduciary Duty against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan

Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, jointly and severally, in the amount of at least \$24,827,892.39, and for punitive damages in the amount of at least \$75,000,000.00 the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

14. On Plaintiffs' Fourteenth Cause of Action, asserting a claim for Fraudulent Non-Disclosure against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC

and Landmark Homes of Utah, LLC, jointly and severally, in the amount of at least \$24,827,892.39, and for punitive damages in the amount of at least \$75,000,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

15. On Plaintiffs' Fifteenth Cause of Action, asserting a claim for Aiding and Abetting Fraudulent Non-Disclosure against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, jointly and severally, in the amount of at least \$24,827,892.39, and for punitive damages in the amount of at least \$75,000,000.00,

the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

16. On Plaintiffs' Sixteenth Cause of Action, asserting a claim for Negligent Misrepresentation against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, jointly and severally, in the amount of at least \$24,827,892.3, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

17. On Plaintiffs' Seventeenth Cause of Action, asserting a Conversion claim

against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, jointly and severally, in the amount of at least \$24,827,892.39, and for punitive damages in the amount of at least \$75,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

18. On Plaintiffs' Eighteenth Cause of Action, asserting an Unjust Enrichment claim against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC; for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC;

DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC and Landmark Homes of Utah, LLC, jointly and severally, in the amount of at least \$24,827,892.39, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

19. On Plaintiffs' Nineteenth Cause of Action, asserting a claim of Conspiracy against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; DavidNemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, jointly and severally, in

the amount of at least \$24,827,892.39, and for punitive damages in the amount of at least \$75,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

20. On Plaintiffs' Twentieth Cause of Action, asserting a claim under the Utah Pattern of Conduct Statute against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC ;Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC, Michael Marx and Michael Aviano, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka, Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes; Lonestar Builders, LLC Michael Marx, and Michael Aviano, jointly and severally, for twice damages, in the amount of at least \$49,655,784.78, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

21. On Plaintiffs' Twenty-First Cause of Action, asserting a Fraud and Intentional Misrepresentation claim against David Simpson, Nathan Simpson, Wood Springs, LLC and Pheasant Meadows, LLC, for judgment against David Simpson, Nathan Simpson, Wood Springs, LLC and Pheasant Meadows, LLC, jointly and severally, in the amount of at least \$5,856,000.00 and punitive damages in the amount of at least \$18,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

22. On Plaintiffs' Twenty-Second Cause of Action, asserting a Negligent Misrepresentation claim against David Simpson and Nathan, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$5,856,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

23. On Plaintiffs' Twenty-Third Cause of Action, asserting a claim for Breach of Fiduciary Duty against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$5,856,000.00 and punitive damages in the amount of at least \$18,000,000.00 the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

24. On Plaintiffs' Twenty-Fourth Cause of Action, asserting a claim for Fraudulent Non-Disclosure against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least

\$5,856,000.00 and punitive damages in the amount of at least \$18,000,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

25. On Plaintiff's Twenty-Fifth Cause of Action, asserting a claim for Conspiracy against David Simpson; Nathan Simpson; Wood Springs, LLC; Pheasant Meadows, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; Pheasant Meadows, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$5,856,000.00 and punitive damages in the amount of at least \$18,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

26. On Plaintiffs' Twenty-Sixth Cause of Action, asserting a Fraud and Intentional Misrepresentation claim against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$938,495.00 and for punitive damages in the amount of at least \$3,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

27. On Plaintiffs' Twenty-Seventh Cause of Action, asserting a claim for Negligent Misrepresentation against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$938,495.00, the exact amount to be determined at trial, together with post judgment

interest accruing at the legal rate.

28. On Plaintiffs' Twenty-Eighth Cause of Action, asserting a Breach of Fiduciary Duty against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$938,495.00 and for punitive damages in the amount of at least \$3,000,000.00, the exact amounts to be determined at the trial of this matter.

29. On Plaintiffs' Twenty-Ninth Cause of Action, asserting a Fraudulent Non-Disclosure claim against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$938,495.00 and for punitive damages in the amount of at least \$3,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

30. On Plaintiff's Thirtieth Cause of Action, asserting a Conspiracy claim against David Simpson; Nathan Simpson; Wood Springs, LLC; The Preserve at Mapleton Development Company, LLC; and Maple Mountain Water Tank, LLC; for judgment against David Simpson; Nathan Simpson; Wood Springs, LLC; The Preserve at Mapleton Development Company, LLC; and Maple Mountain Water Tank, LLC, jointly and severally, in the amount of at least \$938,495.00 and for punitive damages in the amount of at least \$3,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

31. On Plaintiffs' Thirty-First Cause of Action, asserting a claim for Breach of Fiduciary Duty against David Simpson, for judgment against David Simpson in the amount

of at least \$300,125.00, and for punitive damages in the amount of at least \$1,000,000.00, the exact amounts to be determined at trial, together with post judgment interest accruing at the legal rate.

32. On Plaintiffs' Thirty-Second Cause of Action, asserting a claim for Fraudulent Non-Disclosure against David Simpson, for judgment against David Simpson in the amount of at least \$300,125.00, and for punitive damages in the amount of at least \$1,000,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

33. On Plaintiffs' Thirty-Third Cause of Action, asserting a Breach of Fiduciary Claim against David Simpson, Nathan Simpson and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson, Nathan Simpson and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$75,080.00, and punitive damages of at least \$250,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

34. On Plaintiffs' Thirty-Fourth Cause of Action, asserting a Breach of Contract Claim against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc. and Dente, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings,

LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc. and Dente, LLC, jointly and severally, in the amount of at least \$15,000,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

35. On Plaintiffs' Thirty-Fifth Cause of Action, asserting a Detrimental Reliance, Promissory Estoppel and Quasi Contract Claim against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc. and Dente, LLC, for judgment against David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; ALS Properties, LLC; Mai Ke Kula, LLC; Hanalei Kai Holdings, LLC; Ka Mahina, LLC; He Kiakolu, LLC; Koamalu Plantation, LLC; Landmark Real Estate, Inc. and Dente, LLC, jointly and severally, in the amount of at least \$7,186,139.41, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

36. On Plaintiffs' Thirty-Sixth Cause of Action, asserting a Breach of Contract Claim against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least

\$12,900,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

37. On Plaintiffs' Thirty-Seventh Cause of Action, asserting claims for Detrimental Reliance, Promissory Estoppel, and Quasi Contract against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment, jointly and severally, against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC in the amount of at least \$4,300,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

38. On Plaintiffs' Thirty-Eighth Cause of Action, asserting a Breach of Contract Claim against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$13,647,825.45, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

39. On Plaintiffs' Thirty-Ninth Cause of Action, asserting claims for Detrimental

Reliance, Promissory Estoppel and Quasi Contract against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$6,800,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

40. On Plaintiff's Fortieth Cause of Action, asserting a Breach of Contract claim against David Simpson and Nathan Simpson, for judgment against David Simpson and Nathan Simpson, jointly and severally, in the amount of at least \$13,647,825.45, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

41. On Plaintiffs' Forty-First Cause of Action, asserting a Breach of Contract Claim against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$30,950,912.45, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

42. On Plaintiffs' Forty-Second Cause of Action, asserting claims for Detrimental Reliance, Promissory Estoppel and Quasi Contract against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC ; Oak Leaf, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; Landmark Real Estate, Inc.; Wood Springs, LLC; Oak Leaf, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$2,136,000.00, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

43. On Plaintiffs' Forty-Third Cause of Action, asserting a Breach of Contract Claim against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson; Nathan Simpson; DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount at least \$13,691,995.01, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

44. On Plaintiffs' Forty-Fourth Cause of Action, asserting a claim for Detrimental Reliance, Promissory Estoppel and Quasi Contract, for judgment against David Simpson, Nathan Simpson, DN Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, for judgment against David Simpson, Nathan Simpson, DN

Simpson Mapleton Holdings, LLC and The Preserve at Mapleton Development Company, LLC, jointly and severally, in the amount of at least \$11,221,198.80, the exact amount to be determined at trial, together with post judgment interest accruing at the legal rate.

45. On Plaintiffs' Forty-Fifth Cause of Action, asserting a claim for Injunctive Relief against David Simpson; Nathan Simpson; David Nemelka; Michael Aviano; Koamalu Plantation Development Company, LLC; Wood Springs, LLC; Sunny Ridge, LLC; The Preserve at Mapleton Development Company, LLC; Carnesecca Orchard Estate, LLC and Spanish Vista Plat I, LLC, for an injunction preventing any work from taking place on the Koamalu Plantation development project, for an injunction against alienating or transferring any property, real or personal, owned by The Preserve at Mapleton Development Company, LLC which is subject to a security interest, an injunction preventing Carnesecca Orchard Estates and Sunny Ridge, LLC from transferring any real property owned by them, and injunction preventing Spanish Vista Plat I from transferring any of its real property and for an injunction preventing Wood Springs from transferring any of its assets.

46. On Plaintiffs' Forty-Sixth Cause of Action, asserting a claim for Specific Performance against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development Company, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; and Landmark Homes of Utah, LLC, for an order against David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf,

LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development Company, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC and Landmark Homes of Utah, LLC, ordering them to convey and deliver to Plaintiffs any and all personal property now owned or previously transferred by The Preserve at Mapleton Development Company, LLC and avoiding any previous transfers.

47. On Plaintiffs Forty-Seventh Cause of Action, asserting a Constructive Trust claim against David Simpson, Nathan Simpson and Spanish Vista Plat I, LLC, for judgment against David Simpson, Nathan Simpson and Spanish Vista Plat I, LLC ordering that Spanish Vista Plat I, LLC holds the real property it owns in a constructive trust for Plaintiffs.

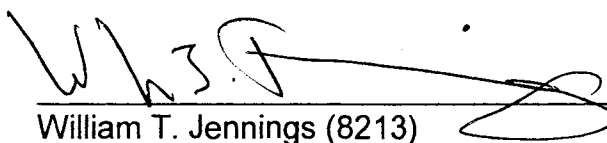
48. On Plaintiff's Forty-Eighth Cause of Action, asserting a claim for an Equitable Lien against David Simpson, Nathan Simpson and Spanish Vista Plat I, LLC, for judgment against David Simpson, Nathan Simpson and Spanish Vista Plat I, LLC granting Plaintiffs and equitable lien on the real property owned by Spanish Vista Plat I, LLC.

51. For Plaintiff's attorney's fees and costs incurred herein.

52. For such other and further relief as the Court deems just and proper.

Dated this 5th day of March, 2010.

BAILEY & JENNINGS, LC
Attorneys for Plaintiffs


William T. Jennings (8213)

Tab C

FILED

JUN 22 2010

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

Craig Carlile (0571)
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Attorneys for Defendants David R. Simpson, Nathan R. Simpson, Michael K. Thompson, Todd Dorny, Brandon Dente, ALS Properties, LLC, Mai Ke Kula, LLC, Hanalei Kai Holdings, LLC, Ka Mahina, LLC, He Kiakolu, LLC, Koamalu Plantation, LLC, Landmark Real Estate, Inc., Wood Springs, LLC, Oak Leaf, LLC, Dente, LLC, Sunny Ridge, LLC, KNDJ Development, LLC, DN Simpson Holdings, LLC, SOS Mapleton Development, LLC, DN Simpson Mapleton Holdings, LLC, The Preserve at Mapleton Development Company, LLC, Pheasant Meadows, LLC, Carnesecca Orchard Estates, LLC, Spanish Vista Plat I, LLC, Landmark Homes of Utah, LLC, Maple Mountain Water Tank, LLC, and Kathy A. Templeman

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH, PROVO DEPARTMENT

LESLIE D. MOWER, an individual; et al.,

Plaintiff,

v.

DAVID R. SIMPSON, an individual; et al.,

Defendants

and

KOAMALU PLANTATION INVESTMENT,
LLC, a Utah limited liability company, et al.,

Rule 19 Defendants.

**RULING AND ORDER ON
DEFENDANTS' MOTIONS TO DISMISS
THE SECOND AMENDED COMPLAINT**

Civil No: 090403844

Judge: Samuel D. McVey

Before the Court are the following motions to dismiss related to the Second Amended Complaint: Motion to Dismiss Second Amended Complaint (the "Simpson Motion"); Defendant Michael W. Aviano's Motion to Dismiss Plaintiffs' Second Amended Complaint (the "Aviano

Motion”); Defendant Chad D. Carlson’s Motion to Dismiss Plaintiffs’ Second Amended Complaint (the “Carlson Motion”); and Defendant David Nemelka’s Motion to Dismiss (the “Nemelka Motion”).

After careful review of the memoranda and authorities submitted by the parties, and having heard oral argument concerning the matters, the Court will dismiss Plaintiffs’ fraud-based claims (Claim Nos. 1, 4, 5, 11, 14, 15, 21, 24, 26, 29, and 32¹), as well as Plaintiffs’ claims for conspiracy (Claim Nos. 9, 19, 25, and 30) and violation of the Utah Pattern of Unlawful Activity Act (Claim Nos. 10 and 20) to the extent they are based on allegations of fraud, for failure to plead with particularity as required by Utah Rule of Civil Procedure 9(b). The Court previously dismissed all of the fraud allegations in Plaintiffs’ First Amended Complaint for failure to meet the pleading standards under Rule 9(b), but allowed Plaintiffs one more chance to plead its fraud claims concisely and with particularity. Despite Plaintiffs’ addition of 145 more pages, the Second Amended Complaint still does not provide the particularity mandated by Rule 9(b). Instead, Plaintiffs’ “much too long and involved” Second Amended Complaint merely “dumps upon the [Court] . . . the burden of sifting through the hundreds of paragraphs of alleged facts to ascertain whether Plaintiffs have allege[d] . . . the facts necessary to make all their elements of fraud.” *Coroles v. Sabey*, 2003 UT App 339, ¶¶ 23, 27, 79 P.3d 974 (internal quotations omitted). Accordingly, for the reasons set forth in the memoranda supporting the Simpson Motion, the Court will dismiss Plaintiffs’ fraud-based claims without leave to amend.

¹ The Court will also dismiss Claim No. 32 for failure to state a claim under Utah R. Civ. P. 12(b)(6). Claim No. 32 is a fraudulent nondisclosure claim. Yet, Plaintiffs fail to allege that any of the facts Defendants allegedly failed to disclose induced any action or influenced any decision of Plaintiffs.

Additionally, the Court will dismiss Plaintiffs' claims for aiding and abetting (Claim Nos. 3, 5, 13, and 15) for failure to state a claim under Utah R. Civ. P. 12(b)(6). The Utah Supreme Court has not yet recognized a claim for aiding and abetting under Utah law, and the Court declines to do so here. *See Coroles v. Sabey*, 2003 UT App 339, 79 P.3d 974 (declining to decide whether claims for aiding and abetting breach of fiduciary duty and fraud are cognizable under Utah law).

The Court has taken under advisement the issues raised in the Simpson Motion under Utah Rule of Civil Procedure 19(b) and will issue a ruling after further review.

The Court denies the Aviano Motion, the Carlson Motion, and the Nemelka Motion with respect to Plaintiffs' conspiracy claim related to the Mapleton development (Claim No. 19), to the extent such claim is based on alleged breaches of fiduciary duties, which are not subject to the particularity requirements of Utah R. Civ. P. 9(b). Likewise, the Nemelka Motion is denied with respect to Plaintiffs' claim under the Utah Pattern of Unlawful Activity Act (Claim No. 20), insofar as that claim is not based on allegations of fraud.² Finally, the Court denies the Aviano Motion with respect to Plaintiffs' claim for negligent misrepresentation concerning the Mapleton development, which claim the Court finds is not subject to the particularity requirements of Utah R. Civ. P. 9(b).

Accordingly, for all of the reasons set forth above, and those stated by the Court from the bench during the May 13, 2010 hearing in this matter,

² To the extent alleged against Defendants Carlson, 2 Brothers Communication, Allen Hakes, Lonestar Gutters, LLC, Dallas Hakes, Lonestar Builders, LLC, and Aviano, Plaintiffs' Claim No. 20 is based entirely on Plaintiffs' inadequate fraud allegations. Accordingly, Claim No. 20 shall be dismissed in its entirety with respect to these defendants, for the reasons set forth above.

IT IS HEREBY ORDERED that Claim Nos. 1, 4, 5, 11, 14, 15, 21, 24, 26, 29, and 32 in the Plaintiffs' Second Amended Complaint are DISMISSED WITHOUT LEAVE TO AMEND for failure to meet the pleading standard found in Utah R. Civ. P. 9(b).

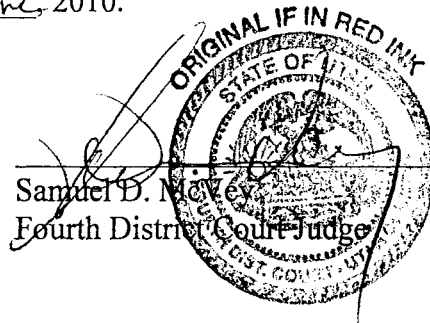
IT IS FURTHER ORDERED that Claim Nos. 9, 10, 19, 25, and 30 in the Plaintiffs' Second Amended Complaint are DISMISSED WITHOUT LEAVE TO AMEND to the extent those claims are based on allegations of fraud for failure to meet the pleading standard found in Utah R. Civ. P. 9(b).

IT IS FURTHER ORDERED that Claim No. 20 in the Plaintiffs' Second Amended Complaint is DISMISSED IN ITS ENTIRETY AND WITHOUT LEAVE TO AMEND with respect to Defendants Carlson, 2 Brothers Communication, Allen Hakes, Lonestar Gutters, LLC, Dallas Hakes, Lonestar Builders, LLC, and Aviano for failure to meet the pleading standard found in Utah R. Civ. P. 9(b).

IT IS FURTHER ORDERED that Claim No. 20 in the Plaintiffs' Second Amended Complaint is DISMISSED WITHOUT LEAVE TO AMEND with respect to the remaining Defendants to the extent Claim No. 20 is based on allegations of fraud for failure to meet the pleading standard found in Utah R. Civ. P. 9(b).

IT IS FURTHER ORDERED that Claim Nos. 3, 5, 13, 15, and 32 are DISMISSED WITHOUT LEAVE TO AMEND under Utah R. Civ. P. 12(b) for failure to state a claim upon which relief can be granted.

ENTERED this 22 day of June, 2010.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RULING AND ORDER ON DEFENDANTS' MOTIONS TO DISMISS THE SECOND AMENDED COMPLAINT** was mailed by First Class U.S. Mail, postage prepaid, on this 28 day of May, 2010 to the following:

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A handwritten signature in cursive script, reading "Rhonda Bartholomew", written over a horizontal line.

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Tab D

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**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

LESLIE D. MOWER, an individual; et al.,

Plaintiff,

v.

DAVID R. SIMPSON, an individual; et al.,

Defendants

And

KOAMALU PLANTATION
INVESTMENT, LLC, a Utah limited liability
company, et al.,

Rule 19 Defendants

**RULING AND ORDER ON
DEFENDANTS' MOTION TO DISMISS
FRAUD CLAIMS IN SECOND
AMENDED COMPLAINT UNDER RULE
19**

Case No: 090403844

Judge Samuel D. McVey

The Court, having heard the arguments of counsel and having carefully reviewed the motion and memoranda submitted by counsel makes the following Ruling and Order.

I. Procedural History

The current case was filed in October, 2009. On March 5, 2010, Ms. Mower and the other plaintiffs ("Ms. Mower") filed a Second Amended Complaint. On April 13, 2010, the Simpson defendants filed a Memorandum in Support of Motion to Dismiss Second Amended Complaint including an argument that the estate of Mr. Dolezsar, Ms. Mower's deceased husband who died on November 15, 2007, should have been joined as a necessary and indispensable party. On April 26, 2010, Ms. Mower filed a Memorandum in Opposition to the Simpson Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint. On May 6, 2010, the Simpson Defendants filed a Reply Memorandum in Support of Motion to Dismiss Second Amended Complaint. The Court heard oral argument and took the issue under advisement.

II. Analysis

The Simpson and related defendants (the "Simpsons"), argue plaintiff's fraud claims should be dismissed under Utah Rules of Civil Procedure, Rule 19(b) as Ken Dolezsar is a necessary and indispensable party to this case and cannot now be joined because the statute of limitations in which to sue his estate has run. The Simpsons support this argument by citing *Turville v. J&J Properties, L.C.*, 145 P.3d 1146 (Utah App. 2006). *Turville* quotes from *Seftel v. Capital City* in setting out the required steps for a case to be dismissed under Rule 19(b). *Seftel*

v. *Capital City Bank*, 767 P.2d 941, 945 (Utah App. 1989). First, a court must determine if a party “has sufficient interest in the action to make it a necessary party.” *Id.* Second, if the court has held the party is necessary, and joinder is not feasible, the court must determine whether a party is indispensable. *See id.* To determine if a party is indispensable, the court considers the four factors found in Rule 19(b):

- 1) To what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties.
- 2) The extent to which the prejudice can be lessened or avoided.
- 3) Whether a judgment rendered in a person’s absence will be adequate.
- 4) Whether a plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Simpsons compare Mr. Dolezsar in the present case to Mr. Clark in *Turville* as one who occupied a pivotal representative role. Mr. Clark actively participated in a scheme to defraud other parties and was the figure in the scheme who withheld material information from and made false representations to property owners. Like Mr. Clark in *Turville*, Mr. Dolezsar was the person with whom Ms. Mower dealt. Ms. Mower does not dispute that Dolezsar passed all of the allegedly fraudulent information to her. Ms. Mower does not cite an instance where Simpsons directly made a misrepresentation to her. Additionally, there is no factual basis in the complaint for what, if anything, Simpsons actually told Mr. Dolezsar and no way of determining the accuracy of any information Mr. Dolezsar may have passed to Ms. Mower from Simpsons. This is one of the problems with the fraud allegation in the Complaint. What Mr. Dolezsar specifically told Ms. Mower and how and where he said it is presumably known only to her, but none of her complaints identify it with particularity.

Ms. Mower does not contest the inability to join Dolezsar’s estate due to the statute of limitations but disagrees *Turville* is applicable to the present case. Ms. Mower states the only similarity *Turville* and the present matter is someone died and thus could not be joined. Ms. Mower attempts to distinguish Mr. Dolezsar from Mr. Clark, the *Turville* party, by referring to Mr. Dolezsar as a simple go-between while Mr. Clark was a principle perpetrator of fraud. However, Ms. Mower previously admitted more than this. In the Second Amended Complaint, Ms. Mower acknowledged all the alleged misrepresentations from Simpsons were made by Mr. Dolezsar to Ms. Mower, and Mr. Dolezsar may have been acting as part of the alleged conspiracy. Again, she does not give sufficient particulars even though she is presumably the only one with specific knowledge, and omitted an adequate explanation of why she did not share that knowledge in her serial complaints.

Additionally, Ms. Mower claims Simpsons do not meet the standard for Rule 19 as stated in *Grand County v. Rogers*, 44 P. 3d 734 (Utah 2002). In *Grand County*, the court determined the burden was on the party attempting to persuade the court to present specific facts. *Id.* at 741. Ms. Mower claims Simpsons did not present specific facts sufficient to meet the Rule 19 standard. However, Simpsons accurately presented the facts alleged in the Second Amended Complaint, noting that all of the alleged fraudulent information passed to Ms. Mower came via Mr. Dolezsar, and Mr. Dolezsar may have been part of the alleged conspiracy.

In the present case, the Court finds the Second Amended Complaint alleges, at least in the alternative, Mr. Dolezsar acted as more than a simple go-between. He occupied a pivotal representative role in the alleged fraud. In his absence, complete relief would not be available for those who are already parties because of the inability to hold him accountable as well as the other reasons identified by Simpsons. There is, therefore, sufficient interest to make him a party to this action. The statute of limitations as found in Utah Code Ann. § 75-3-803(1) (a) – (b) (1993)) has already run and Mr. Dolezsar cannot be joined unless Ms. Mower presented an exception to tolling the limitations period, which she has not attempted to do. Thus, the Court will look to the Rule 19(b) factors to determine whether Mr. Dolezsar is an indispensable party. No Rule 19 factor is determinative and each must be given weight appropriate to the facts of this case. *Glenny v. Am. Metal Climax, Inc.*, 494 F.2d 651, 653 (10th Cir. 1974).

First, the Court must determine to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties to the action. Ms. Mower claims Mr. Dolezsar is simply a joint tortfeasor and his absence would not unfairly prejudice any current parties. Simpsons properly assert Mr. Dolezsar is more than a mere joint tortfeasor and is one of the major actors in this case—potentially one who self-dealt and defrauded others; all the allegedly fraudulent statements were made to Ms. Mower by Mr. Dolezsar. The Defendants will be unfairly prejudiced by any judgment issued in the absence of Mr. Dolezsar because of, for example, their inability to cross claim against him.

Second, the Court must decide the extent to which the prejudice can be mitigated. Ms. Mower made no argument concerning this factor, however Simpsons properly noted the prejudice can be avoided by dismissing the claims for fraud.

Third, the Court must ascertain whether a judgment rendered in a person's absence will be adequate. Ms. Mower claims the Court should consider adequacy of judgment from the Plaintiff's point-of-view. In *Davis v. United States*, 343 F.3d 1282, 1292-93 (10th Cir. 2003) the Tenth Circuit addresses adequacy not from the standpoint of the plaintiff, but by evaluating the quality of the resolution of the dispute. *Id.* In looking at the resolution, judgment rendered without Mr. Dolezsar would be inadequate because, among other things mentioned by Simpsons, no cross claims can now be brought against his estate.

Finally, the Court must determine whether a plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Dismissal of the fraud claims will not affect Ms. Mower's claims for breach of contract, breach of fiduciary duty, conversion and unjust enrichment. The Court is well aware these claims may not perfectly protect Ms. Mower's interests were all of the facts alleged to be proved. (The Court previously ruled, however, inadequate facts regarding fraud were alleged by plaintiffs.) In the absence of Mr. Dolezsar and with the inability to join his estate as a party at this juncture, the remaining claims must suffice.

Based on the above analysis and all other reasons stated by Simpsons, the Court finds Simpsons would be substantially prejudiced by proceeding with the fraud claims in the absence of Mr. Dolezsar. Mr. Dolezsar played a key role in the communication of the information which is claimed to form the basis of the alleged fraud in this action. The Court cannot conclude an adequate resolution to the claims for fraud may be reached in the absence of Mr. Dolezsar's

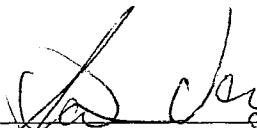
estate, and the only way to mitigate the resulting prejudice to Simpsons is to dismiss the claims for fraud. Ms. Mower's remaining claims provide an adequate remedy for the injuries of which she complains.

III. Conclusion

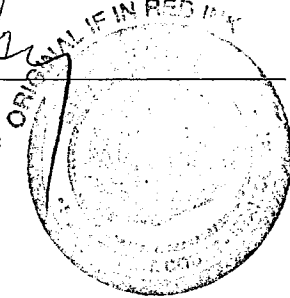
The Simpson defendant's Motion to Dismiss fraud claims in the Second Amended Complaint on the basis of Rule 19 is GRANTED.

DATED this 16 of June, 2010

BY THE COURT:



Samuel D. McVey
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 090403844 by the method and on the date specified.

MAIL: BART J BAILEY 584 S STATE ST OREM, UT 84058
MAIL: CRAIG CARLILE 86 NORTH UNIVERSITY STE 430 RAY QUINNEY &
NEBEKER PROVO UT 84601-4420
MAIL: MARK D EDDY 233 S PLEASANT GROVE BLVD STE 202 PLEASANT GROVE
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CITY UT 84145-0898
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Date: 6/17/10

Call Stephen
Deputy Court Clerk

Tab E

2010 APR 13 P 5:55 (9)

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<p>LESLIE D. MOWER, an individual; et al.,</p> <p>Plaintiff,</p> <p>v.</p> <p>DAVID R. SIMPSON, an individual; et al.,</p> <p>Defendants</p> <p>and</p> <p>KOAMALU PLANTATION INVESTMENT, LLC, a Utah limited liability company, et al.,</p> <p>Rule 19 Defendants.</p>	<p>MOTION TO DISMISS SECOND AMENDED COMPLAINT</p> <p>Civil No: 090403844 Judge: Samuel D. McVey</p>
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Defendants David R. Simpson, Nathan R. Simpson, Todd Dorny, Koamalu Plantation, LLC, Landmark Real Estate, Inc., Wood Springs, LLC, Oak Leaf Investments, LLC, Dente, LLC, Sunny Ridge, LLC, KNDJ Development, LLC, DN Simpson Holdings, LLC, SOS Mapleton Development, LLC, DN Simpson Mapleton Holdings, LLC, The Preserve at Mapleton

Development Company, LLC, Pheasant Meadows, LLC, Carnesecca Orchard Estates, LLC, Spanish Vista Plat I, LLC, Landmark Homes of Utah, LLC, Maple Mountain Water Tank, LLC, and Kathy A. Templeman hereby move to dismiss the Second Amended Complaint of Plaintiffs Leslie D. Mower, LD SQ, LLC, LD III, LLC, LD Purpose, LLC, and Navona, LC (collectively, "Plaintiffs"), pursuant to Rules 8(a), 9(b), 12(b)(6), and 19(b) of the Utah Rules of Civil Procedure.

The grounds for this motion are that Plaintiffs' Second Amended Complaint again fails to meet the basic pleading requirements of Rules 8(a) and 9(b) of the Utah Rules of Civil Procedure. The Court previously dismissed the allegations of fraud in Plaintiffs' 216-page First Amended Complaint because they did not contain the level of particularity required under Rule 9(b). Despite now spanning 361 pages, the Second Amended Complaint still fails to provide the concise particularity required by the pleading standards under the Utah Rules of Civil Procedure and, therefore, must be dismissed.

Additionally, Plaintiffs' fraud-based claims related to Ken Dolezsar (Plaintiff Mower's ex-husband who was killed in November 2007) must be dismissed for failure to join an indispensable party under Rule 19(b). Ken Dolezsar is the central figure in this case. Plaintiffs affirmatively allege that all of the claimed misrepresentations with respect to the Hawaii development, the Mapleton development, and the Springville property were communicated to Mower by Dolezsar, who was allegedly acting in conspiracy with Defendants David Simpson and Nathan Simpson. However, Dolezsar cannot be joined because Plaintiffs failed to bring this case within the one year statute of limitations for claims against Dolezsar's estate after his death. The other defendants are thus prevented from asserting their claims against Dolezsar and from

otherwise requiring Dolezsar to account for his alleged actions by way of deposition or trial testimony. Under these circumstances, the fraud-based claims related to Dolezsar must be dismissed under Rule 19(b).

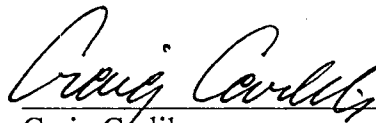
Plaintiffs' claim for fraudulent nondisclosure with respect to the alleged purchase of water shares from Double T Ranch should also be dismissed for failure to state a claim because Plaintiffs fail to allege any justifiable reliance resulting in damages.

Finally, Plaintiffs' claims for aiding and abetting breach of fiduciary duty and aiding and abetting fraudulent nondisclosure should be dismissed for failure to state a claim as Utah courts have not recognized a cognizable civil cause of action for "aiding and abetting."

Therefore, as more fully stated in the supporting memorandum filed contemporaneously herewith, the Court should (1) dismiss Plaintiffs' fraud allegations for failure to plead in accordance with Rules 8(a) and 9(b); (2) dismiss Plaintiffs' fraud-based claims related to the Hawaii Development (Claim Nos. 1, 4-6, 9, and 10), the Mapleton Development (Claim Nos. 11, 14-16, 19, and 20), and the Springville Property (Claim Nos. 21, 22, 24, and 25) under Rule 19(b) for failing to join an indispensable party; (3) dismiss Plaintiff's fraudulent nondisclosure claim with respect to the Double T Ranch water purchase (Claim No. 32) under Rule 12(b)(6); and (4) dismiss Plaintiff's claims for aiding and abetting breach of fiduciary duty (Claim Nos. 3, and 13) and aiding and abetting fraudulent nondisclosure (Claim Nos. 5, and 15) under Rule 12(b)(6).

DATED this 31 day of April, 2010.

RAY QUINNEY & NEBEKER P.C.

A handwritten signature in cursive script, appearing to read "Craig Carlile", is written over a horizontal line.

Craig Carlile
Caleb J. Frischknecht
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS
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Tab F

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH, PROVO DEPARTMENT

LESLIE D. MOWER, an individual; et al.,

Plaintiff,

v.

DAVID R. SIMPSON, an individual; et al.,

Defendants

and

KOAMALU PLANTATION INVESTMENT,
LLC, a Utah limited liability company, et al.,

Rule 19 Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Civil No: 090403844

Judge: Samuel D. McVey

Defendants David R. Simpson, Nathan R. Simpson, Todd Dorny, Koamalu Plantation, LLC, Landmark Real Estate, Inc., Wood Springs, LLC, Oak Leaf Investments, LLC, Dente, LLC, Sunny Ridge, LLC, KNDJ Development, LLC, DN Simpson Holdings, LLC, SOS Mapleton Development, LLC, DN Simpson Mapleton Holdings, LLC, The Preserve at Mapleton

Development Company, LLC, Pheasant Meadows, LLC, Carnesecca Orchard Estates, LLC, Spanish Vista Plat I, LLC, Landmark Homes of Utah, LLC, Maple Mountain Water Tank, LLC, and Kathy A. Templeman submit this memorandum in support of their Motion to Dismiss Second Amended Complaint.

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INTRODUCTION

The Plaintiffs' Second Amended Complaint again fails to meet the basic pleading requirements of Rules 8 and 9 of the Utah Rules of Civil Procedure. The Court previously dismissed the allegations of fraud in Plaintiffs' 216-page First Amended Complaint because they did not contain the level of particularity required under Rule 9(b). At that time, Plaintiffs were given a "chance to plead fraud within 20 days . . . and *do it concisely and with particularity.*" (Ruling Granting in Part the Various Defendants' Motions to Dismiss (emphasis added).) Plaintiffs have responded by adding 145 more unnecessary pages to their Second Amended Complaint. Despite now spanning 361 pages, the Second Amended Complaint still fails to provide the concise particularity required by the pleading standards under the Utah Rules of Civil Procedure. As Plaintiffs have now failed on all three of their chances, their improperly-pleaded fraud claims should be dismissed with prejudice.

Additionally, Plaintiffs' fraud-based claims with respect to the Hawaii development, the Mapleton development, and the Springville property must be dismissed for failure to join an indispensable party under Rule 19. As demonstrated by the allegations in the Second Amended Complaint, Ken Dolezsar (Plaintiff Mower's ex-husband who was killed in November 2007) is the central figure in this case. Plaintiffs affirmatively allege that all of the claimed misrepresentations with respect to these three transactions were communicated to Mower by Dolezsar, who was allegedly acting in conspiracy with Defendants David Simpson and Nathan Simpson. However, Plaintiffs failed to bring this case within the one year statute of limitations for claims against Dolezsar's estate after his death. See Utah Code Ann. § 75-3-803(a).

Consequently, Dolezsar cannot be made a party to this case. The other defendants are thus prevented from asserting their claims against Dolezsar and from otherwise requiring Dolezsar to account for his alleged actions by way of deposition or trial testimony. Under these circumstances, the fraud-based claims related to the Hawaii development, the Mapleton development, and the Springville property cannot proceed in equity and good conscience in Dolezsar's absence. Accordingly, these claims must be dismissed under Rule 19(b).

Plaintiffs' claim for fraudulent nondisclosure with respect to the alleged purchase of water shares from Double T Ranch should also be dismissed for failure to state a claim. Plaintiffs fail to allege any justifiable reliance resulting in damages from the alleged omissions concerning the Double T Ranch water shares.

Finally, Plaintiffs' claims for aiding and abetting breach of fiduciary duty and aiding and abetting fraudulent nondisclosure should be dismissed for failure to state a claim as Utah courts have not recognized a cognizable civil cause of action for "aiding and abetting."

STATEMENT OF FACTS

1. Plaintiffs Leslie D. Mower, LD SQ, LLC, LD III, LLC, LD Purpose, LLC, and Navona, LC (collectively, "Plaintiffs") originally filed this lawsuit on October 20, 2009. (*See* Docket.)

2. After motions to dismiss were filed by multiple defendants, Plaintiffs filed a First Amended Complaint on November 27, 2009, which contained 216 pages and 713 numbered paragraphs. (First Amended Complaint.)

3. The First Amended Complaint prompted several more motions to dismiss from the defendants. (*See* Docket.)

4. On January 22, 2010, the Court “dismis[s]e[d] the fraud allegations arising throughout the Amended Complaint since they [did] not contain the required level of particularity” under Utah Rule of Civil Procedure 9(b). (Ruling Granting in Part the Various Defendants’ Motions to Dismiss, dated January 22, 2010, attached hereto as Ex. A (hereinafter, “January 22, 2010 Order”).)

5. The Court granted Plaintiffs a “*chance to plead fraud within 20 days [of the January 22, 2010 Order] and do it concisely and with particularity.*” (*Id.* (emphasis added).)

6. On March 5, 2010, Plaintiffs filed their Second Amended Complaint (hereinafter “Complaint”), which now contains 361 pages, 48 causes of action and 1362 numbered paragraphs.

7. Then, on March 12, 2010, Plaintiffs filed an 11-page Notice of Errata Regarding Second Amended Complaint.

8. The claims alleged in the Complaint primarily arise from two real property developments: a condominium development on the island of Kauai in Hawaii (the “Hawaii Development”) and an up-scale residential subdivision in Mapleton, Utah called The Preserve at Mapleton (the “Mapleton Development”).

9. In Claim Nos. 1-10, Plaintiffs allege claims related to the Hawaii Development for fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent nondisclosure, aiding and abetting fraudulent nondisclosure, conversion, unjust enrichment, conspiracy, and violation of the Utah Pattern of Unlawful Activity Act against the following defendants: David Simpson; Nathan Simpson; Michael Thompson; Todd Dorny; Brandon Dente; Wood Springs, LLC; ALS Properties, LLC; Mai Ke Kula; Hanalei Kai Holdings, LLC; Ka

Mahina, LLC; Dente, LLC; He Kaikolu, LLC; and Koamalu Plantation (collectively, the “Hawaii Development Defendants”).

10. In the fraud-based claims related to the Hawaii Development, Plaintiffs allege that Ken Dolezsar (Plaintiff Mower’s late ex-husband) communicated a number of misrepresentations to Mower. Plaintiffs allege that Dolezsar communicated these misrepresentations to Mower after allegedly hearing them from David Simpson and Nathan Simpson, either “in ignorance of the falsity of the representations or as part of a conspiracy” with the Simpsons. (Complaint ¶ 543.)

11. Nowhere in the fraud allegations associated with the Hawaii Development do Plaintiffs allege that the Simpsons or the other Hawaii Development Defendants made any representations directly to Mower. (Complaint ¶¶ 538-559.)

12. In Claim Nos. 11-20, Plaintiffs allege claims related to the Mapleton Development for fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent nondisclosure, aiding and abetting fraudulent nondisclosure, conversion, unjust enrichment, conspiracy, and violation of the Utah Pattern of Activity Act against the following defendants: David Simpson; Nathan Simpson; Wood Springs, LLC; Landmark Real Estate, Inc.; Oak Leaf, LLC; Sunny Ridge, LLC; KNDJ Development, LLC; DN Simpson Holdings, LLC; SOS Mapleton Development, LLC; DN Simpson Mapleton Holdings, LLC; The Preserve at Mapleton Development Company, LLC; Pheasant Meadows, LLC; Carnesecca Orchard Estates, LLC; Spanish Vista Plat I, LLC; Landmark Homes of Utah, LLC; David Nemelka; Chad Carlson; 2 Brothers Communications; Allen Hakes; Lonestar Gutters, LLC; Dallas Hakes;

Lonestar Builders, LLC; Michael Marx; and Michael Aviano (collectively, the “Mapleton Development Defendants”).

13. Similar to the fraud claims concerning the Hawaii Development, Plaintiffs allege Dolezsar communicated a number of misrepresentations to Plaintiff Mower concerning the Mapleton Development. Again, Plaintiffs allege that Dolezsar communicated all of the alleged misrepresentations directly to Mower, after allegedly hearing such misrepresentations from David Simpson and Nathan Simpson, and that he did so “as part of a conspiracy with the Simpsons.” (Complaint ¶¶ 721, 731, 734, 739, 757-758, 434, and 975.)

14. Plaintiffs do not allege that the Mapleton Development Defendants made any misrepresentations directly to Mower. (Complaint ¶¶ 717-814.)

15. As part of the claims related to the Mapleton Development, Plaintiffs assert claims on behalf of Magnet Bank, which claims Plaintiffs appear to allege were acquired by Plaintiff Navona, LC in February 2008. (Complaint ¶ 793.)

16. In the Magnet Bank fraud-based claims (Claim Nos. 11, 14, 15, 16, and 20.), Plaintiffs allege that the Mapleton Development Defendants made misrepresentations and material omissions to Magnet Bank in connection with a loan extended by Magnet Bank for the Mapleton Development. (*See generally* Complaint ¶¶ 766 – 811.)

17. In Claim Nos. 21-25, Plaintiffs allege claims for fraud, negligent misrepresentation, breach of fiduciary duty, fraudulent nondisclosure, and conspiracy arising from Mower’s purchase of approximately 30 acres of real property in Springville, Utah (the “Springville Property”). Plaintiffs assert these claims against David Simpson, Nathan Simpson, Wood Springs, and Pheasant Meadows (collectively, the “Springville Property Defendants”).

18. As in the claims related to the Hawaii Development and the Mapleton Development, Plaintiffs allege that Dolezsar, “whether duped by *or complicitous with the Simpsons*,” communicated a number of alleged misrepresentations to Mower with respect to the Springville Property. (Complaint ¶¶ 434, and 1014.)

19. Plaintiffs do not allege that the Springville Property Defendants made any misrepresentations directly to Mower. (Complaint ¶¶ 435, 435, and 1007-1035.)

20. In Claim Nos. 26-30, Plaintiffs allege claims for fraud, negligent misrepresentation, breach of fiduciary duty, fraudulent nondisclosure, and conspiracy against David Simpson and Nathan Simpson, claiming the Simpsons made misrepresentations to Mower through her “representatives” concerning Mapleton Development’s share of costs for the construction of a water tank by Maple Mountain Water Tank Development Company in connection with the Mapleton Development (the “Maple Mountain Water Project”). (*See generally* Complaint ¶¶ 1094-1107.)

21. In Claim Nos. 31-32, Plaintiffs allege claims for breach of fiduciary duty and fraudulent nondisclosure against David Simpson, claiming Simpson failed to disclose to Mower that he used funds from Plaintiff LD III to purchase water shares from a company named Double T Ranch (the “Double T Water Purchase”).

ARGUMENT

I. PLAINTIFFS HAVE AGAIN FAILED TO PLEAD THEIR CLAIMS ACCORDING TO THE PLEADING STANDARDS OF THE UTAH RULES OF CIVIL PROCEDURE.

Under the notice pleading requirements espoused by the Utah Rules of Civil Procedure, plaintiffs are required to set forth their claims for relief in “a short and plain statement . . .

showing that the pleader is entitled to relief.” Utah R. Civ. P. 8(a). Where fraud is at issue, “the circumstances constituting fraud or mistake shall be stated with particularity.” Utah R. Civ. P. 9(a). Together, the purpose of these pleading Rules is “to require that the essential facts upon which redress is sought be set forth with *simplicity, brevity, clarity and certainty* so that it can be determined whether there exists a legal basis for the relief claimed.” *Heathman v. Hatch*, 372 P.2d 990, 992 (Utah 1962) (emphasis added).

As set forth in the Court’s January 22, 2010 Order, Rule 9(b) requires that Plaintiffs allege “who in particular said or represented what to whom in particular, when, where, and how such representations occurred, the specific terminology used, why reliance was reasonable and what particular damages were caused by each discrete action.” (January 22, 2010 Order ¶ 2.) These requirements apply not only to “allegations of common-law fraud,” but extend to “all circumstances where the pleader alleges the kind of misrepresentations, omissions, or other deceptions covered by the term ‘fraud’ in its broadest dimension.” *Williams v. State Farm Ins. Co.*, 656 P.2d 966 (Utah 1982). Thus, Rule 9(b)’s pleading requirements apply to Plaintiffs’ common law fraud claims as well as their claims for aiding and abetting fraud, conspiracy, and violation of the Utah Pattern of Unlawful Practices Act, insofar as they are based on circumstances of fraud.

Despite having now filed three complaints, along with a lengthy “notice of errata,” Plaintiffs have yet again failed to plead their fraud-based claims with the particularity required by Rule 9(b). Rather than providing the necessary particularity, Plaintiffs have merely lengthened their Complaint (which now totals 361 pages and contains 1,362 paragraphs) by an additional 145 pages. For example, Plaintiffs fill 20 pages of their Complaint with “unnecessary detail, if

not minutia”¹ from credit card statements to claim that Defendants David and Nathan Simpson allegedly breached fiduciary duties to Plaintiff LD SQ by authorizing LD SQ to pay for personal expenses. (Complaint ¶¶ 179-198.)

Yet, Plaintiffs routinely fail to provide the necessary particularity with respect to their fraud claims. For example, as part of the fraud claims related to the Mapleton Development, Plaintiffs make the following allegation:

737. David Simpson, Nathan Simpson, and Ken Dolezsar also represented to [Mower] that the \$6,800,000.00 would be specifically used to fund development work at The Preserve at Mapleton development project, that she would receive a first position deed of trust securing a promissory note and that they would record the deed of trust in the office of the Utah County Recorder.

(Complaint ¶ 737.) Plaintiffs do not specify who in particular made the alleged representations or when they were made. These alleged misrepresentations are among several others claimed with respect to the Mapleton Development. As outlined below, Plaintiffs allege that all of the other claimed misrepresentations made to Mower concerning the Mapleton Development were communicated by Dolezsar after he allegedly received information from the Simpsons. (See Complaint ¶¶ 721, 731, 734, and 739.) Without the specifics as to “who in particular said or represented what to whom in particular, when, where, and how such representations occurred” with respect to the alleged misrepresentations in paragraph 737 (see January 22, 2010 Order), the Mapleton Development Defendants are left to guess as to “the substance of the acts constituting the alleged wrong.” *Williams v. State Farm Ins. Co.*, 656 P.2d 966, 971-72 (Utah 1982) .

This example, and those that follow, illustrate that Plaintiffs’ Complaint is “much too long and involved” and merely “dumps upon the trial court . . . the burden of sifting through the

¹ See *Coroles v. Sabey*, 2003 UT App 339, ¶ 23 n.11, 79 P.3d 974. Digitized by the Howard W. Hunter Law Library, Reuben Clark Law School, BYU. Machine-generated OCR, may contain errors.

hundreds of paragraphs of alleged facts to ascertain whether Plaintiffs have allege[d] . . . the facts necessary to make all their elements of fraud.” *Coroles v. Sabey*, 2003 UT App 339, ¶¶ 23, 27, 79 P.3d 974 (internal quotations omitted). As Plaintiffs have now failed to properly plead their claims on their third attempt, the Court should dismiss Plaintiffs’ fraud claims without leave to amend. *U.S. ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161, 1166 (10th Cir. 2009) (denial of leave to amend appropriate after “repeated failure to cure deficiencies by amendments previously allowed”). At a minimum, the Court should dismiss the fraud claims related to Magnet Bank (part of Claim Nos. 11, 14, 15, 16, and 20), the Double T Water Purchase (Claim No. 32), and the Maple Mountain Water Project (Claim Nos. 26, 27, 29, and 30).

A. Plaintiffs Fail to Plead the Fraud Claims of Magnet Bank With the Particularly Required Under Rule 9(b) and the Court’s January 22, 2010 Order.

For example, Plaintiffs allege that David and Nathan Simpson somehow duped an appraiser into using allegedly fraudulent “pre-sales” — which the appraisal itself clarifies were offers — to arrive at the valuation of the Mapleton Development submitted to Magnet Bank in connection with a loan application. (Complaint ¶ 787.) However, Plaintiffs do not plead any allegations to explain what in particular about these offers made them fraudulent. They merely allege, “on information and belief” and without *any* supporting detail, that each of the approximately 15 offers were somehow “contrived sham transactions.” (Complaint ¶¶ 304, 298-303.) Merely labeling the offers as “sham transactions” does not make them so. Plaintiffs do not provide any explanation as to how or when the offers were “contrived.” These conclusory allegations carry no weight under Rule 9(b).

Plaintiffs also conclusorily allege that the Simpsons submitted false financial statements to Magnet Bank in connection with the loan application. (Complaint ¶¶ 766-777.) Without making any attempt to explain how, Plaintiffs merely allege that David Simpson and Nathan Simpson's financial statements overstated their assets and understated their liabilities. (Complaint ¶¶ 352, 353, 355, 771-773.) Plaintiffs fail to specify which of the several assets listed in the statements in particular was overvalued, by how much each such asset was overvalued, or why each such asset was otherwise improperly included. Plaintiffs further fail to specify what liabilities in particular were understated or otherwise not included, and the amount of each such liability. Plaintiffs conclusorily allege that the financial statements did not reflect unspecified money allegedly owed by the Simpsons to Mower, but provide no explanation as to what debt they refer, how much money was owed, or how the money was owed — such as money possibly owed through one of the several entities listed in the financial statements. (Complaint ¶ 774.) Rule 9(b) requires that this detail be pleaded “so that there will be a clearly defined foundation upon which further proceedings . . . can go forward in an orderly manner.” *Heathman*, 372 P.2d at 992.

Plaintiffs further allege the Simpsons and Defendant Aviano falsely represented to Magnet Bank that the sales price for Aviano's purchase of Lot 76 in the Mapleton Development was \$900,000. (Complaint ¶¶ 794-811.) Even though they admit that Magnet Bank actually received \$900,000 from the sale, Plaintiffs allege that the sales price was misrepresented because Aviano allegedly only paid \$575,000 and the Simpsons allegedly paid the rest. (Complaint ¶¶ 802-03.) However, Plaintiffs fail to explain how Magnet Bank's position changed as a result. As Magnet Bank had already funded the loan with respect to the Mapleton Development prior to

the Aviano sale, Plaintiffs cannot claim that Magnet Bank somehow relied on the Aviano sale to fund the loan. Furthermore, Plaintiffs make no attempt to allege “what particular damages were caused” by the Aviano sale. (See January 22, 2010 Order ¶ 2.) These allegations do not meet the requirements in Rule 9(b) or the Court’s Order.

In short, the Magnet Bank claims have not been pleaded with particularity and must be dismissed.

B. Plaintiffs Also Fail to Plead Their Fraud Claims With Respect to the Double T Ranch Water Purchase With Rule 9(b) Particularity.

Plaintiffs allege that David Simpson fraudulently failed to disclose a number of alleged material facts to Mower concerning his alleged purchase of Double T Ranch’s water shares. (Complaint ¶¶ 1175-79.) However, Plaintiffs completely fail to allege how such nondisclosures resulted in any damage. Instead, Plaintiffs merely allege without any detail that they were somehow damaged in the amount of \$300,125.00. (Complaint ¶¶ 1182-83.) This does not comply with Rule 9(b) or the Court’s January 22, 2010 Order.

C. Plaintiffs Have Not Pleaded With Particularity Their Fraud Claims Concerning the Maple Mountain Water Project.

A final example of Plaintiffs’ failure to plead required details is found in the fraud claims related to the Maple Mountain Water Project. Plaintiffs generally allege that “[b]etween November 15, 2007 and April 23, 2008, David Simpson and Nathan Simpson repeatedly solicited [Mower] and her representatives claiming [the] Simpsons needed funds to pay due and past due bills of the Preserve” and that Mower provided money in response to these solicitations, which money Plaintiffs claim was used for unauthorized purposes. (Complaint ¶¶ 485, 1099, and 1103.) This allegation is obviously lacking the detail required by Rule 9(b). Plaintiffs

cryptically attempt to bolster this general allegation by alleging that on two occasions the Simpsons falsely told Mower's son that the Mapleton Development needed funds to satisfy its share of the costs for the Maple Mountain Water Project, which alleged false statements were related to Mower. (Complaint ¶¶ 1094-1096.) However, Plaintiffs fail to allege what specific actions were taken in reliance on the alleged misrepresentations, when those actions were taken, and "what particular damages were caused by each [of these] discrete action[s]." (January 22, 2010 Order ¶ 2.) Thus, the Court and the defendants are left to guess what Mower did in response to these alleged misrepresentations and how it damaged her.

As illustrated by the foregoing, Plaintiffs' 361-page Complaint remains deficient and should be dismissed without leave to amend.

II. PLAINTIFFS' FRAUD-BASED CLAIMS RELATED TO KEN DOLEZSAR MUST BE DISMISSED UNDER RULE 19(b) FOR FAILURE TO JOIN DOLEZSAR'S ESTATE.

The allegations in the Complaint demonstrate that Dolezsar is the central figure in this case. Plaintiffs affirmatively plead that Mower received all of her information regarding the Hawaii Development, the Mapleton Development, and the Springville Property from Dolezsar, her late ex-husband. Indeed, each of the representations of which Plaintiffs complain with respect to these projects was made by Dolezsar as a member of some alleged conspiracy to defraud her.

Yet, Dolezsar is not a party to this case. Plaintiffs allege that Dolezsar was murdered in Sandy, Utah on November 15, 2007. (Complaint ¶ 400.) This case was filed in October 2009, long after the expiration of the one year statute of limitations for claims against Dolezsar's estate. See Utah Code Ann. § 75-3-803(a). Thus, Plaintiffs did not, and cannot, join Dolezsar's estate

to this case, preventing the other defendants from asserting their claims against Dolezsar and from otherwise requiring Dolezsar to account for his alleged actions by way of deposition or trial testimony. Under these circumstances, the fraud-based claims related to the Hawaii Development (Claim Nos. 1, 4-6, 9, and 10), the Mapleton Development (Claim Nos. 11, 14-16, 19, and 20), and the Springville Property (Claim Nos. 21, 22, 24, and 25) cannot proceed in equity and good conscience in Dolezsar's absence. Such claims must therefore be dismissed under Rule 19.

Rule 19 of the Utah Rules of Civil Procedure requires joinder of "necessary" parties where feasible, and dismissal of the action in the absence of "indispensable" parties. Utah R. Civ. P. 19(a)-(b); *Turville v. J&J Props., L.C.*, 2006 UT App 305, ¶¶ 36-37, 145 P.3d 1146. Analysis under Rule 19 proceeds in two steps: First, the Court must determine whether an absent party is necessary to the "just adjudication" of the action. Second, where an absent party is found to be necessary to the action, but cannot feasibly be joined, the Court must determine whether such party is indispensable such that the action must be dismissed in his absence. *Turville*, 2006 UT App 305, at ¶¶ 36-37.

A. Dolezsar Is Necessary to This Action Because Complete Relief Cannot Be Accorded the Parties in His Absence.

A party is necessary to an action if "in [the party's] absence complete relief cannot be accorded among those already parties." Utah R. Civ. P. 19(a). Complete relief is not possible in the absence of a party who was primarily involved in the alleged conduct that caused the plaintiff's damages. *Turville*, 2006 UT App 305, ¶ 40. For example, in the case of *Turville v. J&J Properties, L.C.*, the plaintiff brought contract, fraud, conspiracy, and other claims against a

company and its members related to a dispute concerning two real estate transactions. *Id.* at ¶¶ 2-8. One of the defendants, named Clark, died before he was served with the complaint. *Id.* at ¶¶ 9-10. After the plaintiff failed to join Clark's estate into the case, the other defendants moved the court to dismiss the complaint for failure to join Clark's estate as a necessary and indispensable party. *Id.* at ¶¶ 10, 17. Clark was the person with whom the plaintiff had primarily dealt. *Id.* at ¶¶ 3-6. Noting his "pivotal representative role . . . in the transactions at issue," the trial court found that Clark was a necessary party to the case. *Id.* at ¶ 9. The Utah Court of Appeals affirmed, holding that Clark was a necessary party because he was primarily involved in the conduct that led to the plaintiff's alleged damages and, therefore, complete relief could not be accorded among the parties in his absence. *Id.* at ¶ 40.

Dolezsar is a necessary party to this action as complete relief cannot be accorded to the parties in his absence. As did Clark in the *Turville* case, Dolezsar is alleged to have played a "pivotal representative role" in the misrepresentations alleged by Plaintiffs. Plaintiffs have affirmatively pleaded that all of the alleged misrepresentations related to the Hawaii Development, the Mapleton Development, and the Springville Property were made to Mower directly by Dolezsar, who Plaintiffs allege was a coconspirator with the Simpsons. (Complaint ¶ 975.) For example, with respect to the Hawaii Development, Plaintiffs allege that Dolezsar made the misrepresentations of which Plaintiffs complain to Mower, after hearing them from the Simpsons, either "in ignorance of the falsity of the representations *or as part of a conspiracy*." (Complaint ¶ 543 (emphasis added).) Nowhere in the fraud allegations associated with the Hawaii Development do Plaintiffs allege that the Hawaii Development Defendants made any representations directly to Mower. (Complaint ¶¶ 538-559.) All of the alleged

misrepresentations with respect to the Hawaii Development were communicated to Mower by Dolezsar. (*Id.*) At most, Plaintiffs allege that the Hawaii Development Defendants instructed Dolezsar to make the misrepresentations to Mower. (Complaint ¶ 542.) Accordingly, Plaintiffs' allegations establish that Dolezsar was the nexus for all of the conduct that Plaintiffs allege caused them damage.

The same is true for the fraud claims related to the Mapleton Development and the Springville Property. With respect to the Mapleton Development, Plaintiffs again allege that Dolezsar made all of the alleged misrepresentations to Mower "as part of a conspiracy with the Simpsons." (Complaint ¶¶ 721, 731, 734, 739, 757-758, and 434.)² Plaintiffs do not allege that the Mapleton Development Defendants made any misrepresentations directly to Mower. (Complaint ¶¶ 717-814.) Likewise, Plaintiffs allege that Dolezsar, "whether duped by *or complicitous with the Simpsons*," made the alleged misrepresentations to Mower with respect to the Springville Property. (Complaint ¶¶ 434, 435, 1014.) Plaintiffs do not allege that the Springville Property Defendants made any misrepresentations directly to Mower. (Complaint ¶¶ 435, 435, 1007-1035.)

Scrutiny of Plaintiffs' Complaint thus shows that Dolezsar is alleged to be the primary perpetrator of Plaintiffs' claimed wrongs. Surely, had Dolezsar been alive when Plaintiffs filed this case, they would have named and served him as a defendant. However, Dolezsar's untimely death left Plaintiffs looking for other sources of recovery, leading to the 361-page Complaint before the Court, which is completely devoid of any alleged misrepresentations made to Mower

² As noted in Part I.A above, Magnet Bank's fraud claims related to the Mapleton Development have not been pleaded with particularity and must be dismissed.

by anyone other than Dolezsar. Plaintiffs apparently base their allegations that the other defendants were somehow involved in the alleged fraud solely on Dolezsar's statements to Mower. However, the parties will not be able to question Dolezsar concerning the origin of his alleged statements due to his untimely death. Moreover, none of the other defendants in this case may proceed with their claims against Dolezsar's estate because Plaintiffs failed to bring this case until after the applicable probate statute of limitations had run. Therefore, as the party primarily responsible for the damages claimed by Plaintiffs, Dolezsar's absence will prevent the Court from according complete relief among the other parties in this case. Consequently, as was Clark's estate in the *Turville* case, the estate of Dolezsar is a necessary party to this action under Rule 19(a).

B. Dolezsar Is Indispensable Because This Action Cannot Proceed In Equity And Good Conscience Without Him.

Where a necessary party cannot be feasibly joined, and the action cannot proceed "in equity and good conscience" in his absence, the party is deemed "indispensable," and the action "should be dismissed." Utah R. Civ. P. 19(b). Rule 19(b) instructs the Court to consider the following factors in deciding whether equity and good conscience require dismissal:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to him *or those already parties*; second the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Utah R. Civ. P. 19(b) (emphasis added).

Applying these factors, the *Turville* court held that Clark's estate was an indispensable party and, therefore, the case was properly dismissed in its absence. *Turville*, 2006 UT App 305,

at ¶¶ 41-42. Clark's estate could no longer be joined to the action because the probate statute of limitations had already run. *Id.* at ¶ 41. Because Clark was the "major" party responsible for the alleged damages, the court concluded that "'a judgment rendered in [the Estate of Mr. Clark's] absence w[ould] prejudice . . . those already parties' to the action" and "would be less than adequate." *Id.* at ¶ 42. Additionally, as all claims against Clark's estate, whether those of the plaintiff or those of the other defendants, were barred by the statute of limitations, "protective judgment provisions would not ameliorate [the] prejudice." *Id.* Accordingly, the court held that allowing the case to proceed despite the nonjoinder of Clark's estate "would violate the principles of 'equity and good conscience.'" *Id.* (quoting Utah R. Civ. P. 19(b)). Accordingly, the court affirmed the dismissal of the case. *Id.*

As in the *Turville* case, the principles of equity and good conscience mandate that Plaintiffs' fraud-based claims relating to the Hawaii Development, the Mapleton Development, and the Springville Property be dismissed in Dolezsar's absence. Due to his untimely death, Dolezsar cannot be joined to this action. Dolezsar's estate also cannot be joined because Plaintiffs failed to bring this lawsuit within the period of limitations set forth in the Utah Uniform Probate Code. *See* Utah Code Ann. § 75-3-803(a).

1. Any Judgment Rendered in Dolezsar's Absence Will Result in Unavoidable Prejudice to the Other Defendants in This Case.

Dolezsar is the central figure with respect to the fraud-based claims involving the Hawaii Development, the Mapleton Development, and the Springville Property. Plaintiffs have specifically alleged that *all* of the claimed misrepresentations made to Mower were communicated to her by Dolezsar. Thus, as was Clark in *Turville*, Dolezsar is the "major" party

responsible for the damages alleged in the Complaint. To the extent Plaintiffs attempt to somehow impute any of Dolezsar's alleged misrepresentations to the other defendants, they do so based solely on hearsay statements made by Dolezsar. As a result of his death, the other defendants will be unable to require Dolezsar to account for his alleged conduct at a deposition or a trial in this matter. There are no protective provisions or other measures to remedy this problem. Consequently, this action cannot proceed to a judgment in Dolezsar's absence without resulting in unfair prejudice to the other defendants.

2. Any Judgment Rendered in Dolezsar's Absence Will Be Inadequate.

Plaintiffs failed to bring this lawsuit before the statute of limitations expired with respect to claims against Dolezsar's estate. As a result, neither Plaintiffs nor any of the defendants can bring their related claims against Dolezsar's estate. Of course, the Hawaii Development Defendants, the Mapleton Development Defendants, and the Springville Property Defendants vigorously dispute that they made any misrepresentations to Dolezsar. To the extent liability could somehow be imputed to them based on Dolezsar's alleged misrepresentations, these defendants would seek to assert cross-claims against Dolezsar's estate. However, because Plaintiffs delayed in bringing this lawsuit until after the statute of limitations had run, any such cross-claims would likely be barred. Accordingly, any judgment on the fraud-claims related to the Hawaii Development, the Mapleton Development, or the Springville Property will be inadequate.

3. Plaintiffs Will Retain Adequate Remedies After Dismissal of the Dolezsar Fraud Claims.

Plaintiffs have asserted 48 causes of action in this case, including claims for breach of contract, quasi contract, fiduciary duty, conversion, and unjust enrichment in addition to their fraud-based claims. These claims provide an adequate remedy for the wrongs alleged by Plaintiffs in their Complaint. Moreover, any possible deficiency is the result of Plaintiffs' failure to bring the fraud-based claims within the limitations period. Plaintiffs should not be allowed to wait until after the central figure in the case can no longer be joined to seek recovery from others who are alleged only to have acted in concert with him.

Accordingly, applying the factors outlined in Rule 19(b), the principles of equity and good conscience dictate that Plaintiffs' fraud based claims related to the Hawaii Development, the Mapleton Development, and the Springville Property be dismissed in the absence of Dolezsar and his estate, both indispensable parties to this action.

III. PLAINTIFFS' FRAUDULENT NONDISCLOSURE CLAIM CONCERNING THE DOUBLE T RANCH WATER PURCHASE MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.

"A party is liable for fraudulent nondisclosure if he 'omi[ts] . . . a material fact when there is a duty to disclose, for the purpose of inducing action on the part of the other party, *with actual, justifiable reliance resulting in damage to that party.*" *Barber Bros. Ford, Inc. v. Foianini*, 2008 UT App 463, ¶ 2 (emphasis added).

In Plaintiffs' fraudulent nondisclosure claim related to the Double T Ranch Water Purchase, Plaintiffs allege that David Simpson fraudulently failed to disclose to Mower that he had used money from Plaintiff LD III to purchase water shares in the name of Defendant Wood

Springs, as well as other alleged happenings subsequent to the alleged purchase. (Complaint ¶¶ 1176-79.) However, Plaintiffs fail to allege Mower relied on these alleged fraudulent nondisclosures, or for that matter, how Mower could possibly have relied on these nondisclosures — each of which allegedly took place after the purchase of the Double T Ranch water shares — to her detriment. (Complaint ¶¶ 1176-79.) Instead, Plaintiffs simply allege that Simpson's failure to disclose somehow damaged Mower and LD III in the amount of \$300,125.00. (Complaint ¶ 1182.)

Having failed to plead justifiable reliance resulting in damages, Plaintiffs' fraudulent disclosure claim with respect to the Double T Ranch water shares fails as a matter of law. This claim is nothing more than Plaintiffs' attempt to turn an alleged breach of fiduciary duty into a fraud claim.

IV. PLAINTIFFS' AIDING AND ABETTING CLAIMS HAVE NOT BEEN RECOGNIZED AS VALID CLAIMS UNDER UTAH LAW AND SHOULD BE DISMISSED ACCORDINGLY.

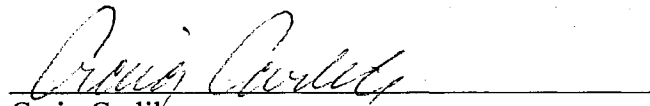
In Claim Nos. 3, 5, 13, and 15, Plaintiffs purport to allege claims for aiding and abetting breach of fiduciary duty and aiding and abetting fraudulent nondisclosure. However, claims for aiding and abetting have not been recognized by Utah Courts. *See Coroles v. Sabey*, 2003 UT App 339, 79 P.3d 974 (declining to decide whether claims for aiding and abetting breach of fiduciary duty and fraud are cognizable under Utah law). To the extent Plaintiffs wish to broaden their net with respect to claims for breach of fiduciary duty and fraud, they should be required to prove their claims for conspiracy and violation of the Utah Pattern of Unlawful Activity Act, which have been recognized as valid causes of action under Utah law.

CONCLUSION

For all of the reasons set forth above, Plaintiffs' fraud-based claims should be dismissed for failure to plead with particularity as required by Rule 9(b) and failure to join an indispensable party under Rule 19(b). Additionally, Plaintiffs' fraud claims with respect to the alleged purchase of water shares from Double T Ranch, as well as their "aiding and abetting" claims, should be dismissed for failure to state a claim under Utah law.

DATED this 13th day of April, 2010.

RAY QUINNEY & NEBEKER P.C.



Craig Carlile
Caleb J. Frischknecht
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS** was mailed by First Class U.S. Mail, postage prepaid,
on this 13 day of April, 2010 to the following:

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A handwritten signature in cursive script, reading "Rhonda Barndomeir", is written over a horizontal line.

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RAY, QUINNEY & NEBEKER

FEB 01 2010

PROVO

FILED

JAN 25 2010

9 4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

LESLIE D. MOWER, et al., Plaintiffs,	RULING GRANTING IN PART THE VARIOUS DEFENDANTS' MOTIONS TO DISMISS
vs. DAVID R. SIMPSON, et al., Defendants.	Civil No. 090403844 Judge SAMUEL D. MCVEY

The Court has reviewed the First Amended Complaint in light of common claims of insufficiency made by the numerous defendants in this case. The claims which can be addressed without the need for oral argument are those disputing the private rights of action pled under different Utah criminal statutes and those claiming a failure to plead fraud with particularity. The Court grants the Motions to Dismiss in part by dismissing Claims I, II, III, IV, V and VI of the First Amended Complaint. The Court acknowledges plaintiffs now state they did not seek to set forth causes of action under criminal statutes, but only meant to plead predicate facts for their Pattern of Unlawful Activity Claim (UPUA). Since each violation of criminal statute is identified as a "CLAIM," the Court assumes plaintiffs mispleaded and do not object to dismissing those claims and moving the facts alleged in them to the UPUA claim..

The Court further dismisses the fraud allegations arising throughout the Amended Complaint since they do not contain the required level of particularity—who in particular said or represented what to whom in particular, when, where, and how such representations occurred, the specific terminology used, why reliance was reasonable and what particular damages were caused by each discrete action. Defendants are entitled to know the precise events on which plaintiffs rely without having to infer what happened through assembling pieces of a puzzle contained throughout a voluminous complaint. Plaintiffs are granted a chance to plead fraud within 20 days hereof and do it concisely and with particularity.

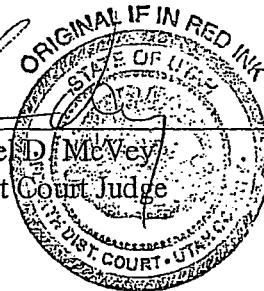
All other facets of the motions, as well as plaintiffs' Rule 56(f) motions for additional time in which to conduct discovery, are reserved for resolution after oral argument. Counsel wishing to participate should contact the clerk to set an oral argument. Defendants should attempt to identify their common arguments to allow them to be addressed together. To the extent any defendants have unique arguments, such as Mr. Nemelkas,' they can be heard after the common arguments. Given the fact the file is going on 7 volumes, the Court would appreciate courtesy copies five days before any hearing. Each party need present only its own pleadings as courtesy copies.

WHEREFORE IT IS ORDERED:

Claims I through VI of the First Amended Complaint are dismissed but the facts alleged therein and not already stated in Claim VII may be used to support the sufficiency of other claims. The fraud allegations throughout the First Amended Complaint are dismissed with leave to amend within 20 days hereof.

Dated this 22nd day of January 2010


Samuel D. McVey
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 090403844 by the method and on the date specified.

MAIL: BART J BAILEY 584 S STATE ST OREM, UT 84058

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CITY UT 84145-0898

Date: 1-28-10

Calli Steph
Deputy Court Clerk

Tab G

4TH DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

2010 DEC -3 P 2:12

Leslie D. Mower, et al.,

Plaintiffs,

vs.

David R. Simpson, et al.,

Defendants.

)
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)
)
) Case No. 090403844
) Appellate No. 20100532
)
)
)
)

BEFORE THE HONORABLE SAMUEL McVEY

Provo, Utah
May 13, 2010
9:08 a.m.

ORAL ARGUMENTS

Transcribed By:
Matthew B. Rose, RPR

ORIGINAL

1 that will be fine.

2 MR. JENNINGS: And again, I feel I should get the
3 opportunity to reply to the argument that 9(b) is the
4 standard, I'm not saying it's not. But 9(b) interplays with
5 12(b) which interplays with 8.

6 THE COURT: Well, okay. Well, I understand your
7 argument on that. I understand what you're saying.

8 MR. JENNINGS: Thank you, Your Honor.

9 THE COURT: But I am inclined to agree with
10 Mr. Carlile. Fraud is -- fraud and a mutual mistake are
11 peculiar animals, and they have to be pled with
12 particularity. You get a lot more inferences under Rule
13 12(b) then you do under 9(b). Okay? That's my position.
14 So okay. All right.

15 The Court's prepared to rule in this case. I
16 appreciate the memoranda that have been submitted and the
17 arguments of counsel. I have read all of those. I have
18 read through the Second Amended Complaint. And let me state
19 -- let me first go through the items addressed by
20 Mr. Carlile.

21 The Court is going to grant the motion to dismiss
22 the fraud-based claims, and I will do that -- I won't stay
23 here -- I don't want to go -- rehash all of those reasons,
24 but in addition to what Mr. Carlile said, there's another
25 reason.

1 The plaintiff in this case, the live breathing
2 plaintiff, Ms. Mower, was directly privy to what was said to
3 her. She has all of that information in her knowledge. She
4 was -- she was there. I mean, she knows where that should
5 have occurred, when it would have occurred, what words were
6 used, who else was present, all those types of things that
7 the Court indicated in its prior rulings. Those things were
8 not included in the Complaint, and that would be an
9 additional reason for finding that there was no
10 particularity.

11 Also, I do believe that this Complaint was a big
12 huge improvement over the last one, but still there are
13 circumstances where there were not references to earlier
14 facts that were pleaded, and I do not believe that counsel
15 and the Court should have to guess where those facts are
16 coming from or go back and research where those facts are
17 coming from. Those should be identified and included in the
18 cause of action, but that's just redundant. That's
19 something that Mr. Carlile had already addressed.

20 With respect to the Double T claim, I would also
21 note that there is a failure to state a claim in that there
22 was no alleged reliance, or action, or inaction, change of
23 position based on what was allegedly conferred.

24 And with respect to the Rule 19(b), I'm going to
25 actually reserve ruling on that. I want to look at that

1 some more. I did read through the memoranda. I did read
2 the Turville case and so forth, but I would like to review
3 further and make a determination on that.

4 Let's see, the aiding and abetting claims are
5 dismissed. The Court is not going to create a new cause of
6 action; that is not the Court's province. I don't know what
7 the supreme court would do in this circumstance, maybe they
8 would follow the 56 percent of the states that are doing
9 that, maybe they wouldn't, it's very difficult to say. But
10 that would not be something I would be inclined to go
11 forward on.

12 Let's see --

13 UNIDENTIFIED SPEAKER: Is that with prejudice, Your
14 Honor?

15 THE COURT: I'm getting there, okay, I'm getting
16 there. It's without legal amend, let me say that. So I
17 think those cover the arguments by Mr. Carlile. Okay.

18 Now, let's turn over to Mr. Nemelka here. Find my
19 notes. Okay. The fraud claims against Mr. Nemelka are not
20 pled with particularity for the reasons that have been
21 stated; however, with respect to the conspiracy and
22 injunction matter, again, injunction is a remedy but it's
23 pled as a cause of action. So it's pled. I don't weigh --
24 I don't weigh the evidence on a motion to dismiss and say,
25 yeah, there's grounds for an injunction here or not. All I

1 With respect to Mr. Aviano, the fraud claim is not
2 properly plead. It's not pled with particularity. I am --
3 in addition to what was stated in counsel's briefs, today we
4 find out outside the Complaint that we do know who this
5 deputy assessor is. We were introduced to him, but that
6 information's not included. So it's things like that that
7 would create the -- create the issue here.

8 I recognize plaintiffs' concern with not being able
9 to put everything in here because they don't know yet. I
10 mean, they don't know all that yet. The fact is the things
11 that they do know they don't put in the Complaint, at least
12 to the extent that they know them. So that's the concern of
13 the Court.

14 But again, with Mr. Aviano, I believe that the
15 conspiracy, the UPUA and the negligent misrepresentation
16 claims have been adequately pled and would survive in this
17 case. Again, not passing judgment on the how strong those
18 claims are or anything of that nature, but merely stating
19 that they've set out a claim in the Complaint.

20 So there will not be leave to amend in this case,
21 this would be going on our third -- well, as Mr. Carlile
22 says we'd be down the road on this quite a ways. We need to
23 get going on this case.

24 So plaintiff will be allowed to try and prove their
25 causes of action for the things such as conversion, and I

1 right.

2 MR. SNUFFER: Correct, correct, and that -- and
3 that, in fact, one of the comments you made in your colloquy
4 with counsel and in the reasoning that you gave to support
5 the dismissal was that later elements of the causes of
6 action had failed to point out earlier general allegation
7 paragraphs, which had it been done would have justified the
8 fraud claim, all of which goes not to --

9 THE COURT: Yeah, it may not have justified it, but
10 at least would have gotten over that hurdle, right.

11 MR. SNUFFER: Correct, and so what we're left with
12 here when we're trying to decide a Rule 11 motion is, not
13 what is the balancing and the argument point, counterpoint,
14 but with respect to the interests of the client and the
15 adequacy of the attorneys' conduct in representing them in
16 the inquiry that the attorney had made in protecting the
17 interest, did the attorney bring things that in a claim for
18 relief for an injured party that they represented, and
19 considering the clients that -- the client's interest that
20 he's called upon to represent, did he do something that was
21 reasonable? And I submit that that's really -- that's
22 really the test, and Mr. Bailey passes that test.

23 And the final point I'd make is that -- I'm doing
24 the same thing the other attorney did, and that is
25 addressing you on fraud because at the time the motion --

1 that Complaint. I don't think you can just contrive a
2 theory, which is what they did, without any supporting
3 factual basis and then meet the Rule 11 standard under that
4 case, Your Honor.

5 THE COURT: Thank you. Anything else? Okay.

6 The Court is going to deny the motions for Rule 11
7 sanctions. Here's why: It would appear to the Court that
8 counsel did a reasonable inquiry before filing the Complaint
9 based on all of the exhibits that were filed with the
10 Complaint; based on the facts that were pled in the
11 Complaint.

12 And the Court did not -- the Court did not dismiss
13 the Complaint because there were -- there was a total lack
14 of factual basis or something like that. The Court
15 dismissed those sections that it did dismiss because they
16 weren't properly pled.

17 And I could see sitting down and pleading these in
18 a different manner and just -- and then adding in a few more
19 things and being able to survive a motion to dismiss, a few
20 more things within the plaintiff's knowledge. But I don't
21 think that would rise to a Rule 11 -- a breach of Rule 11.

22 Also, I should note that plaintiffs are not bound
23 to obey an affidavit or to accept an affidavit as -- to
24 dismiss their case. They're still allowed to go forward.

25 They can dispute that affidavit and they can