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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 JAMES C. SELL, as Receiver for American
12 National Mortgage Partners, L.L.C., and
13 Related Entities, and as Assignee of
14 Creditors, Investors, Shareholders,
15 Members, Partners and Trusts of the
16 Receivership Entities,

17 Plaintiff,

18 v.

19 ZIONS FIRST NATIONAL BANK (UTAH
20 AND IDAHO), a national banking
21 association, aka ZIONS FIRST NATIONAL
22 BANK, dba ZIONS BANK; ZIONS
23 NATIONAL BANK, a national banking
24 association, dba ZIONS BANK;
25 NATIONAL BANK OF ARIZONA, a
26 national banking association; WESTERN
27 SECURITY BANK, an Arizona corporation;
28 LARRY DUNNING and SHEILA
DUNNING, husband and wife; FRANK
CASPARE and GAIL CASPARE, husband
and wife; ROBERT REHM and JANE DOE
REHM, husband and wife; GREGORY
HARRINGTON and JANE DOE
HARRINGTON, husband and wife; PAUL
MEKA and CAROL MEKA, husband and
wife; PHILIP VIGARINO and TRICIA
VIGARINO, husband and wife; ERIC
STRASSER and JANE DOE STRASSER,
husband and wife; DARYL COULTER and
PAMELA COULTER, husband and wife;
MARK KESSLER and JANE DOE
KESSLER, husband and wife; MARSHALL
BOYCE and JANE DOE BOYCE, husband
and wife; HELEN HARTZE and JON DOE
HARTZE, husband and wife; RANDY
KIESEL and JANE DOE KIESEL, husband
and wife, RANDY C. KIESEL, CPA, P.C.,

Case No:

COMPLAINT

1 an Arizona professional corporation;
2 DAVID B. STOCKER and JANE DOE
3 STOCKER, husband and wife; and DAVID
4 B. STOCKER, LTD., an Arizona
5 professional corporation,

6 Defendants.

7 Plaintiff James C. Sell, as Receiver for American National Mortgage Partners,
8 L.L.C., and Related Entities (collectively, the “Receivership Entities¹”, and as Assignee of
9 Creditors, Investors, Shareholders, Members, Partners and Trusts of the Receivership
10 Entities (the “Receiver”) alleges for his Complaint as follows:

11 **NATURE OF THIS ACTION**

12 1. The Receiver is the duly appointed and acting Receiver for the Receivership
13 Entities pursuant to that certain First Amended Order Appointing Receiver, filed May 15,
14 2003, in Maricopa County Superior Court, State of Arizona, Case No. CV2003-005724
15 (the “Receivership Order”), a copy of which is attached hereto as Exhibit “B.”

16 2. The Receiver has the authority to commence this action on behalf of the
17 Receivership Entities and the non-insider creditors, investors, shareholders, members,
18 partners and trusts of the Receivership Entities (collectively, the “Investors”) as assignee
19 and pursuant to the Receivership Order and Order Granting Receiver Authority to
20 Commence Certain Actions, dated March 1, 2005, a copy of which is attached hereto as
21 Exhibit “C.”

22 3. The Receiver brings this Action on behalf of the Receivership Entities and
23 the Investors against the financial institutions, individuals, and professionals that bear
24 substantial responsibility for the demise of the Receivership Entities and the losses
25 suffered by the Investors. Without limiting the foregoing, the Receiver brings this Action
26 against the Defendants on behalf of those Investors who are Employee Benefit Plans (“the
27 “Plans”) for damages resulting from Defendants’ fraud and breaches of fiduciary duties.

28 ¹ A list of the Receivership Entities is set forth on Exhibit “A” attached hereto.

1 4. Defendants Zions First National Bank (Utah and Idaho) aka Zions First
2 National Bank, Zions National Bank, National Bank of Arizona, Western Security Bank,
3 Daryl Coulter and Marshall Boyce (collectively, the “Bank Defendants”); Larry Dunning,
4 Sheila Dunning, Frank Caspare, Robert Rehm, Gregory Harrington, Paul Meka, Philip
5 Vigarino, Eric Strasser, Mark Kessler and Helen Hartze (the “Insider Defendants”);
6 Randy C. Kiesel, Randy C. Kiesel, CPA, P.C. David B. Stocker and David B. Stocker (the
7 “Professional Defendants”) and other individuals and entities conspired and participated
8 in a multi-year conspiracy to dominate, control and use the Receivership Entities,
9 themselves financial institutions, as an enterprise to facilitate a multi-level fraud in the
10 form of a sophisticated Ponzi scheme.

11 5. The central purpose of the scheme was to fraudulently obtain monies from
12 the Investors, including the Plans, for the benefit of the Insider Defendants and others.

13 6. To further the Ponzi scheme, the Insider Defendants systematically
14 manipulated the Receivership Entities’ financial statements and misstated their financial
15 condition, commingled assets and liabilities in disregard of their purported separate
16 identities, and otherwise dominated and controlled the Receivership Entities to use them
17 as a vehicle to knowingly and willfully induce the Investors to “invest” money with the
18 Receivership Entities by means of false and fraudulent representations.

19 7. These false representations were made on countless occasions by
20 Defendants, during the period from approximately 1999 through 2003, via correspondence
21 placed in the custody of the United States Postal Service, through e-mails, faxes,
22 telephone calls and in person.

23 8. The false representations made by the Insider Defendants focused on
24 misleading the Investors into believing that their investments would be produce a high
25 rate of return while also being essentially risk-free.

26 9. The false representations by the Insider Defendants included (a) that the
27 Receivership entities were engaged in a bona fide mortgage lending business, (b) that the
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1 Investors' investments would be secured by first position liens against real property, and
2 (c) that the investments were protected or guaranteed by Illinois Land Trusts.

3 10. The most egregious misrepresentation made by the Insider Defendants to the
4 Investors was the repeated mantra that the monies paid to some of the creditors and
5 investors came from the various investments made by the Receivership Entities, when in
6 fact, these monies came from new funds received from new investors, who themselves
7 were misled by the Insider Defendants to believe that the funds were being invested in
8 other Receivership Entities.

9 11. To further the fraudulent scheme, the Insider Defendants conspired with the
10 Bank Defendants to use the reputation of the Bank Defendants to further induce more
11 investors and creditors to invest their monies with the Receivership Entities.

12 12. The false representations made by the Bank Defendants, through their
13 employees and agents, included that investments in the Receivership Entities were prudent
14 and risk-free and involved loans secured by first position liens against real property.

15 13. The false representations made by the Bank Defendants included that certain
16 transactions satisfied the generally accepted criterion for lending, when in fact they did
17 not.

18 14. To further the Ponzi scheme, the Insider Defendants conspired with the
19 Professional Defendants, who made misrepresentations regarding the financial viability of
20 the Receivership Entities themselves, as well as the legal sufficiency and viability of
21 specific investments.

22 15. In sum, the Defendants transformed the Receivership Entities into a mere
23 vehicle for furthering their fraudulent Ponzi scheme.

24 16. The foregoing acts and omissions constitute, among other things, predicate
25 acts giving rise to Plaintiff's claims against the Defendants under Title IX of the
26 Organized Crime Control Act of 1970, 18 U.S.C. §§1961-1968, known as the Racketeer
27 Influenced and Corrupt Organization Act (the "RICO Act").
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1 affairs from within the district; and pursuant to 18 U.S.C. §1965(b) in that, with respect to
2 the allegations made, the ends of justice require that all Defendants be brought before this
3 Court.

4 **PARTIES**

5 25. The Receiver is a resident of the State of Arizona and is the duly appointed
6 Receiver for the Receivership Entities.

7 26. Upon information and belief, Zions First National Bank (Utah and Idaho)
8 aka Zions First National Bank and Zions National Bank (collectively, “Zions”) are and at
9 all time relevant have been national banking association doing business in the State of
10 Arizona under the name “Zions Bank.”

11 27. National Bank of Arizona (“NBA”) is and at all times relevant has been a
12 national banking association doing business in the State of Arizona.

13 28. Darrell Coulter (“Coulter”) and Jane Doe Coulter are and at all times
14 relevant have been husband and wife and residents of Maricopa County, Arizona. During
15 the relevant period Coulter was an employee of NBA and/or Zions.

16 29. Western Security Bank (“Western Security”) is an Arizona corporation
17 doing business in the State of Arizona.

18 30. Marshall Boyce (“Boyce”) and Jane Doe Boyce are and at all times relevant
19 have been husband and wife and residents of Maricopa County, Arizona. During portions
20 of the relevant period, Boyce was an employee of Western Security.

21 31. Larry Dunning (“Dunning”) and Sheila Dunning are and at all times
22 relevant have been husband and wife and residents of Maricopa County, State of Arizona.
23 During the relevant period, Dunning and Sheila Dunning acted in varying capacities as an
24 employee, agent, officer, director, member and controlling person of the Receivership
25 Entities.

26 32. Frank Caspare (“Caspare”) and Gail Caspare are and at all times relevant
27 have been husband and wife and residents of the State of New York. During the relevant
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1 period, Caspare acted in varying capacities as an employee, agent, officer, director,
2 member and controlling person of the Receivership Entities.

3 33. Robert Rehm (“Rehm”) and Jane Doe Rehm are and at all times relevant
4 have been husband and wife and residents of Maricopa County, Arizona. During the
5 relevant period, Rehm acted in varying capacities as an employee, agent, officer, director,
6 member and controlling person of the Receivership Entities.

7 34. Gregory Harrington and Jane Doe Harrington are and at all times relevant
8 have been husband and wife and residents of Maricopa County, Arizona. During the
9 relevant period, Harrington acted in varying capacities as an employee, agent, officer,
10 director, member and controlling person of the Receivership Entities.

11 35. Helen Hartze (“Hartze”) and John Doe Hartze are and at all times relevant
12 have been husband and wife and residents of Maricopa County, Arizona. During the
13 relevant period, Hartze acted in varying capacities as an employee, agent officer, director,
14 member and controlling person of the Receivership Entities.

15 36. Paul J. Meka (“Meka”) and Carol Meka are and at all times relevant have
16 been husband and wife and residents of Maricopa County, Arizona. Meka acted as Trustee
17 on various real-estate transactions for the Receivership Entities.

18 37. Philip Vigarino (“Vigarino”) and Tricia Vigarino are and at all times
19 relevant have been husband and wife and residents of Maricopa County, Arizona. During
20 the relevant period, Vigarino acted in varying capacities as an employee, agent officer and
21 salesperson of the Receivership Entities.

22 38. Eric Strasser (“Strasser”) and Jane Doe Strasser are and at all times relevant
23 have been husband and wife and residents of Maricopa County, Arizona. During the
24 relevant period, Strasser acted in varying capacities as an employee, agent and controlling
25 person of the Receivership Entities.

26 39. Mark Kessler (“Kessler”) and Jane Doe Kessler are and at all times relevant
27 have been husband and wife and residents of Maricopa County, Arizona. During the
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1 relevant period, Kessler acted, in the capacity of an employee and agent, as a salesperson
2 for the Receivership Entities.

3 40. Randy C. Kiesel (“Kiesel”) and Jane Doe Kiesel are and at all times relevant
4 have been husband and wife and residents of Maricopa County, Arizona, and. Kiesel at all
5 relevant times has been a Certified Public Accountant licensed to practice in the State of
6 Arizona. All acts of Kiesel alleged herein were performed on his own behalf and on behalf
7 of Kiesel PC as an employee and agent acting within the scope of his authority, actual or
8 apparent.

9 41. David B. Stocker (Stocker”) and Jane Doe Stocker are and at all times
10 relevant have been husband and wife and residents of Maricopa County, Arizona and
11 David B. Stocker, Ltd. (“Stocker Ltd.”) is and at all times relevant has been an Arizona
12 professional corporation doing business in the State of Arizona. Stocker at all relevant
13 times has been an attorney and member of the State Bar of Arizona. All acts of Stocker
14 alleged herein were performed on his own behalf and on behalf of Stocker PC as an
15 employee and agent acting within the scope of his authority, actual or apparent.

16 42. All acts of any married individual Defendant alleged herein were performed
17 on the acting individual’s own behalf and on behalf of his or her marital community.

18 43. All acts of any individual or entity Defendant were performed on the acting
19 Defendant’s behalf and on behalf of each and every other Defendant as joint venturer, co-
20 conspirator, employee or agent, acting within the scope of his, her or its authority, actual
21 or apparent.

22 44. Defendants, and each of them, have caused event to occur in the State of
23 Arizona out of which Plaintiff’s claims arose.

24 GENERAL ALLEGATIONS

25 45. The Receiver repeats and realleges all of the prior allegations as if set forth
26 at in full.

27 46. At all relevant times, Defendants, individually, and collectively, made
28 fraudulent material misrepresentations to the Investors, with the intent that such

1 misrepresentations be relied upon, so as to entice the Investors to invest funds in the
2 Receivership Entities.

3 47. Specifically, in order to induce the Investors to invest their monies with the
4 Receivership Entities, Defendants made, *inter alia*, the following material
5 misrepresentations to the Investors, via personal meetings, phone, facsimile, e-mail and
6 correspondence placed into the custody of the United States Postal Service for Delivery:

7 A. Receivership Entity American National Mortgage Partners, L.L.C.
8 (“ANMP”) was licensed as a mortgage broker by the Arizona State Banking Department
9 and, as a result thereof, its business and transactions were approved by the State of
10 Arizona.

11 B. Investments in the Receivership Entities were secure and essentially risk-
12 free;

13 C. The Receivership Entities could generate a greater than average return
14 because they were servicing a niche market, left vacant after the demise of the savings and
15 loan industry;

16 D. All loans made by the Receivership Entities were and would be secured
17 by first position liens in real property;

18 E. The Investors would be fully protected through the use of the purported
19 security device known as an “Illinois Land Trust.”

20 F. Additional security would be provided, at no cost to the Investor, in the
21 form of a loan guarantee from Guaranteed Performance, Inc. (“GPI”)

22 G. Investors would be paid with proceeds generated by the specific real-
23 estate transactions they were induced to invest in;

24 H. The Receivership Entities had never failed, and would not fail, to make a
25 scheduled payment to an Investor;

26 I. The Receivership Entities had never failed, and would not fail, to pay an
27 Investor its promised rate of return.
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1 48. The foregoing representations were false and were or should have been known
2 to Defendants to be false, in that:

3 A. ANMP initially was not a licensed mortgage broker and was precluded
4 from obtaining a mortgage broker's license by virtue of the prior felony loan fraud
5 conviction of Dunning, its founder and controlling party and, in any event, the existence
6 of a banking license does not entail any approval by the banking department.

7 B. The Receivership Entities did not intend to invest the monies in secure,
8 risk-free investments, but, to the contrary, intended to invest the monies, if at all, in high-
9 risk loans involving little or no collateral, inadequate financial capacity on the part of the
10 borrowers and other substantial risk factors;

11 C. The niche market claimed to be served was in fact already occupied by
12 larger, more established and more experienced "hard money" lenders, and to the extent
13 that the Receivership Entities were able to provide a greater than average return, they
14 were able to do so only by (1) making distributions to Investors with funds obtained from
15 other Investors through the Ponzi scheme described above and (2) making loans involving
16 extraordinary risk factors such as those described above;

17 D. All or some of the loans made by the Receivership Entities were
18 unsecured, defectively secured or secured by subordinate liens;

19 E. The "Illinois Land Trust" device used by the Receivership Entities
20 provided little or no protection to the Investors and, to the contrary, was in many cases
21 used to disguise that loans represented as secured by first position liens were in fact
22 wholly unsecured;

23 F. GPI was not a bona fide loan insurance company, but to the contrary was
24 an affiliate of ANMP that had neither the assets nor the financial capacity to perform
25 under its purported "guaranties."

26 G. Investors in many instances were paid either with funds obtained from
27 other Investors through the Ponzi scheme described above or with proceeds generated
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1 from loans other than the specific real-estate transactions the Investors were induced to
2 invest in;

3 H. The Receivership Entities were able to make scheduled payments to
4 Investors only by their fraudulent conduct in making payment out of funds obtained from
5 other Investors through the Ponzi scheme described above or with proceeds generated
6 from loans other than the specific real-estate transactions the Investors were induced to
7 invest in;

8 I. The Receivership Entities were able to pay Investors their promised rate
9 of return only by their fraudulent conduct in making payment out of funds obtained from
10 other Investors through the Ponzi scheme described above or with proceeds generated
11 from loans other than the specific real-estate transactions the Investors were induced to
12 invest in.

13 49. On information and belief, the Defendants were aware that the Plans were
14 investing monies which constituted employee benefits.

15 50. Further, Defendants made material omissions of fact, in order to induce the
16 Investors to invest their monies with the Receivership Entities in that, *inter alia*,
17 Defendants failed to disclose that:

18 A. Certain of the Insiders, including Dunning, Harrington and Strasser had
19 been convicted of felonies involving loan fraud, embezzlement or other financial
20 wrongdoing;

21 B. Many of the loans made by the Receivership Entities involved “side
22 deals” in the form of agreements between the borrower and Defendants or the
23 Receivership Entities, which agreements were inconsistent with, and detrimental to, the
24 interests of the Investors;

25 C. The various Receivership Entities were not *bona fide* independent
26 companies but were, in fact, operated by the Insiders and others as a common enterprise;

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1 D. In many instances, the substance of transactions entered into by the
2 Receivership Entities purportedly on behalf of Investors differed substantially from the
3 form as represented to the Investors.

4 51. These fraudulent misrepresentations and material omissions were made in
5 connection with, and for the purpose of furthering, a classic Ponzi scheme whereby
6 Defendants induced the Investors to invest money into the Receivership Entities through
7 promises and representations of a legitimate return and the appearance of a *bona fide*
8 investment vehicle in the form of a real estate lending program, but in fact made
9 distributions to the Investors in the form of funds generated, wholly or in part, by cash
10 from newer Investors.

11 52. The Insider Defendants furthered the Ponzi scheme by forging and/or
12 materially altering documents.

13 53. Upon information and belief, Defendants never intended to use the
14 Investors' monies for purposes of investment as represented, but instead intended to
15 convert the Investors' monies and use them for Defendants' their own goals and benefit.

16 54. Many of the Investors were living on fixed incomes or with impaired
17 earning capacity due to retirement, age or medical condition, and were thus particularly
18 susceptible to manipulation and pressure in the form of Defendants' campaign of false
19 promises, misrepresentations and material omissions.

20 55. Upon information and belief, Insider Defendants Dunning, Caspare,
21 Vigarino and Hartze (the "Planners") initiated the fraudulent scheme and conceived of the
22 plan to use the Receivership Entities as vehicles for perpetuating a fraud on the Investors.

23 56. Upon information and belief, the Planners enlisted the aid of, and conspired
24 with additional participants in the fraudulent scheme, including the Bank Defendants; the
25 remaining Insider Defendants, including Sheila Dunning, Rehm, Harrington, Meka,
26 Strasser and Kessler; and the Professional Defendants.

27 57. Upon information and belief, the role and participation of the various
28 Defendants in the scheme was as follows:

1 A. The Insider Defendants and the Professional Defendants acted and
2 conspired together to carry on the apparent business of ANMP and the other Receivership
3 Entities, thereby creating the illusion of a legitimate mortgage lending operation and
4 lending credibility to Defendants in their efforts to obtain money from Investors. Without
5 limiting the foregoing:

6 (1) Caspare acted as figurehead principal of certain of the
7 Receivership Entities for the purpose, in part of disguising the role of Dunning and
8 evading the effect of Dunning’s prior felony conviction;

9 (2) Hartze acted as designated broker for certain of the
10 Receivership Entities for the purpose, in part of disguising the role of Dunning and
11 evading the effect of Dunning’s prior felony conviction; and

12 (3) Strasser acted as controller for the Receivership Entities.

13 B. The Insider Defendants, the Bank Defendants and the Professional
14 Defendants conspired and acted together to structure and carry out fraudulent transactions,
15 as described above.

16 C. Vigarino, Rehm, Kessler and Meka (collectively, the “Salespersons”)
17 were employed to, and did, act as sales persons to solicit Investors on behalf of the
18 Receivership Entities; in connection with their activities as such, the Salespersons made
19 fraudulent representations and material omissions as set forth above.

20 D. Upon information and belief, Meka and Strasser (collectively, the
21 “Trustees”) were appointed to, and did, act as trustees of entities set up purportedly to act
22 as lending entities on behalf and for the benefit of Investors as beneficiaries. Despite their
23 fiduciary duties as such, the Trustees at the instruction and for the benefit of the Planners
24 or others of the Insider Defendants refrained from recording, and/or delayed recording
25 deeds of trust securing loans made be the respective trusts, so as to allow Defendants to
26 subsequently re-collateralize the purported trust properties to the detriment of the
27 Investors and the Receivership Entities.
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1 E. In order to provide the further appearance of legitimacy and to facilitate
2 the obtaining of investments from Investors, the Insider Defendants agreed and conspired
3 with other parties, including Rehm, to act as “straw” borrowers, who purported to act as
4 borrowers but in fact had neither the intention nor the ability to repay the loans.

5 F. Upon information and belief, to satisfy the need to provide various
6 Investors with references regarding the viability of the Receivership Entities, and to obtain
7 more money from Investors, the Bank Defendants, at the request and for the benefit of the
8 Insider Defendants, undertook to, and did act as follows:

9 (1) Zions and NBA, through their employee and agent, Coulter,
10 furthered the fraudulent scheme by, *inter alia*, acting as a reference for the Receivership
11 Entities and establishing a loan program for Investors seeking capital to invest in the
12 Receivership Entities (the “Loan Program”);

13 (2) Zions and NBA, through their employee and agent, Coulter, in
14 addition furthered the fraudulent scheme by fraudulently representing to Investors that
15 they could profit on the interest spread between the rates charged by the Loan Program
16 and the return promised by the Receivership Entities; relaxing their normal lending
17 requirements; and making the fraudulent representations and material omissions as and
18 the manner set forth above.

19 (3) Western, through its agent and employee, Boyce, furthered the
20 fraudulent scheme by, *inter alia*, ignoring and/or relaxing its loan procedures and due
21 diligence in order to facilitate transactions conducted by the Insider Defendants in
22 pursuance of the fraudulent scheme.

23 G. Stocker and Stocker Ltd., undertook to review the various transactions
24 purportedly as attorneys for the Receivership Entities, thereby creating the illusion that the
25 transactions, and in particular, the use of the “Illinois Land Trust” had been reviewed and
26 approved by an attorney as to their lawfulness and security, but in fact Stocker and
27 Stocker Ltd. fraudulently abdicated any and all responsibilities with regard to reviewing
28 the transactions.

1 58. Upon information and belief, to satisfy the need to provide various Investors
2 with financial statements, and with knowledge that such financial statements would be
3 relied upon by Investors in making investments with the Receivership Entities, Kiesel and
4 Kiesel, P.C. undertook to, and did, provide the Receivership Entities with false and
5 misleading financial statements, thereby creating the illusion that the Receivership
6 Entities were solvent and profitable, and transmitted these false financial statements via
7 U.S. Mail and facsimile.

8 59. Upon information and belief, Defendants converted the Investor's monies
9 and made payments to Investors, wholly or in part, not with proceeds of the loans for
10 which such monies were invested, but with monies obtained from newer Investors and
11 other sources.

12 60. As an example of a transaction perpetrated by Defendants in pursuance of
13 the fraudulent scheme:

14 A. On or about October 7, 2002, Herbert Fisher ("Fisher") applied with one
15 of the Receivership Entities for a loan in the amount of \$353,800.00;

16 B. On or about November 6, 2002, Fisher signed a purported promissory
17 note, in the amount of \$353,800.00, to ANMP.

18 C. In order to purportedly fund the loan, the Insider Defendants solicited
19 and obtained from Investors (the "Fisher Loan Investors"), investments including:
20 \$40,000.00 from Roxanne Rudick, \$50,000.00 from Terrence Wood, \$5,000.00 from
21 Annette Melton, and \$50,000.00 from Joel Martinez;

22 D. It was represented to the Fisher Loan Investors by the Insider Defendants
23 that the Fisher Investors' investments would be used to fund a loan secured by a first
24 position lien on 12 townhouses to be built on property at 2725 East Thomas Road,
25 Phoenix, Arizona, and that the Fisher Loan Investors would be paid with the proceeds
26 from loan on this property;

1 E. Despite the purported identity of Herbert Fisher as the borrower, the
2 proposed borrowing entity, Thomas Townhouses, LLC, was formed by the Insider
3 Defendants with ANMP designated as its statutory agent;

4 F. On December 5, 2002, the Insider Defendants caused \$40,000.00,
5 representing the purported loan deposit, to be placed in escrow by ANMP;

6 G. Thereafter, the escrow was cancelled and the \$40,000.00 initial deposit
7 was returned to ANMP and commingled with other funds of the Receivership Entities;

8 H. No loan was ever made to Herbert Fisher or Thomas Townhouses, LLC,
9 and no town homes were ever constructed;

10 I. Instead, the monies contributed by the Fisher Loan Investors were co-
11 mingled with those of other Investors and converted to the use and benefit of the Insider
12 Defendants;

13 J. The Insider Defendants further made material omissions in, *inter alia*,
14 failing to inform the Investors, including specifically Joel Martinez, that no loan had been
15 made to Fisher and that the loan escrow had been cancelled.

16 K. The Insider Defendants knew or should have known that the foregoing
17 representations were false and misleading when made in that, among other things, the
18 escrow company holding funds had refused to accept partial contributions and escrow had
19 been cancelled;

20 L. On December 10, 2002, January 9, 2003, and February 6, 2003, the
21 Receivership Entities nevertheless made alleged “interest” payments to the Fisher Loan
22 Investors with monies obtained fraudulently from other Investors for other transactions.

23 61. As a further example of a transaction perpetrated by Defendants in
24 pursuance of the fraudulent scheme:

25 A. On April 15, 2002, Investor Luther Durant applied for such a loan from
26 NBA for the purpose of making an investment with the Receivership Entities.

27 B. At the time, Durant had liquid assets of only \$3,700.00.
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1 C. Nevertheless, or about June 5, 2002, NBA, in violation, upon
2 information and belief, of prudent lending standards and its own internal rules and
3 procedures, loaned Durant the sum of \$100,000.00 to invest in the Receivership Entities.

4 D. Upon information and belief, NBA, through its agent and employee
5 Coulter, furthered the fraudulent scheme by relaxing its lending criterion and by failing to
6 properly follow its due diligence procedure, without any valid business justification, in
7 agreeing to and making the above loan.

8 E. Durant used the proceeds of the loan to make an investment with the
9 Receivership Entities, which investment was not repaid, causing Durant to be unable to
10 repay his purported obligation to NBA;

11 F. Durant thereby sustained injury in the form of claimed liability to NBA
12 and otherwise.

13 62. As a further example of a transaction perpetrated by Defendants in
14 pursuance of the fraudulent scheme:

15 A. Western Security furthered the fraudulent scheme by ignoring and/or
16 relaxing its loan procedures and due diligence with regard to a loan transaction involving
17 that certain real property located at 300 Acacia Drive, Sedona, Arizona (the “Sedona
18 Property”);

19 B. On or about July 28, 2000, Western Security issued a cashier's check in
20 the amount of \$400,000 (the “Cashier’s Check”) on the account of one of the
21 Receivership Entities;

22 C. Upon information and belief, there were insufficient funds in the account
23 to cover the Cashier’s Check;

24 D. Upon information and belief, Western Security issued the Cashier’s
25 Check to aid the Receivership Entities to fraudulently obtain a loan to acquire the Sedona
26 Property, even though they did not have the financial ability to do so;

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1 E. The Cashier's Check was further fraudulently used as a "down payment"
2 in connection with a loan application placed with Zions to be secured by the Sedona
3 Property;

4 F. Zions thereby furthered the Ponzi Scheme by also relaxing its lending
5 due-diligence procedures in approving the loan on the Sedona Property, thereby
6 deepening the insolvency of the Receivership Entities.

7 **COUNT ONE**
8 **BY THE RECEIVER ON**
9 **BEHALF OF THE INVESTORS**
10 **AS AGAINST ALL DEFENDANTS**
11 **(18 U.S.C. § 1964(c))**

12 63. The Receiver repeats and realleges all of the prior allegations as if set forth
13 at length.

14 64. The Receiver and each of the Investors is a "person" within the meaning of
15 18 U.S.C. § 1961(3) and 18 U.S.C. § 1964(c) and the Receiver brings this action
16 pursuant to 18 U.S.C. § 1964(c).

17 65. Each of the Defendants named in this Count (collectively, the "RICO
18 Defendants") is a "person" within the meaning of 18 U.S.C. § 1961(3).

19 66. The Receivership Entities constitute an "enterprise" within the meaning of
20 18 U.S.C. § 1951 (4) (the "Enterprise").

21 67. During all relevant times, the Enterprise engaged in, or its activities
22 affected, interstate and/or foreign commerce.

23 68. During all relevant times, the RICO Defendants were employed by or
24 associated with the Enterprise.

25 69. During all relevant times, the RICO Defendants conducted and participated,
26 directly and indirectly, in the racketeering activity complained of herein.

27 70. The racketeering activity consisted of two or more incidents of racketeering
28 conduct engaged in by the RICO Defendants.

71. The racketeering activity, as described in 18 U.S.C. § 1961(1), includes but
is not limited to:

1 suffered damages, in the form of the loss of their investments, loss of return, loss of
2 business opportunity and otherwise, in an amount to be proven at trial.

3 98. The acts and omissions of the Fraud Defendants were performed willfully
4 and with an “evil mind” so as to entitle the Investors to an award of punitive damages.

5
6 **COUNT SIX**
7 **BY THE RECEIVER ON**
8 **BEHALF OF THE INVESTORS**
9 **AS AGAINST ALL DEFENDANTS**

10 **(NEGLIGENT MISREPRESENTATION)**

11 99. The Receiver repeats and realleges all of the prior allegations as if set forth at
12 length.

13 100. The Defendants named in this Count are collectively referenced as the
14 “Fraud Defendants.”

15 101. The Fraud Defendants owed the Investors and the Receivership Entities a
16 duty of reasonable care.

17 102. Each of the Fraud Defendants breached the duty of care by making the
18 misrepresentations and material omissions as set forth above.

19 103. Each Fraud Defendant knew or should have known that the Investors would
20 rely on the misrepresentations and material omissions.

21 104. The Investors were ignorant that each respective misrepresentation and
22 omissions was false, when made, and reasonably relied upon the truth thereof in making
23 investments with the Receivership Entities and otherwise.

24 105. The Investors had a right to rely upon the truth of the respective statements
25 by virtue of the appearance of legitimacy created and fostered by the Fraud Defendants
26 through advertising, the participation of the Bank Defendants and the Professional
27 Defendants, and otherwise.

28 106. As a direct and proximate result of the negligent acts and omissions of the
Fraud Defendants, and the Investors’ reliance thereon, the Investors suffered damages, in

1 the form of the loss of their investments, loss of return, loss of business opportunity and
2 otherwise, in an amount to be proven at trial.

3 107. The acts and omissions of the Fraud Defendants were performed willfully
4 and with an “evil mind” so as to entitle the Receiver to an award of punitive damages.

5
6 **COUNT SEVEN**
7 **BY THE RECEIVER ON**
8 **BEHALF OF THE INVESTORS**
9 **AS AGAINST THE INSIDER DEFENDANTS**

10 **(CONVERSION)**

11 108. The Receiver repeats and realleges all of the prior allegations as if set forth
12 at length.

13 109. The Investors delivered monies to the Insider Defendants for the express
14 purpose of investment in specifically identified loans and related entities.

15 110. The Investor Defendants failed to invest the monies in accordance with the
16 express understanding and instructions of the Investors.

17 111. Instead, upon information and belief, the Insider Defendants wrongfully
18 retained and converted some or all of the Investors’ monies, or the proceeds thereof, for
19 their own use and benefit.

20 112. The Investors were thereby directly injured by the Insider Defendants’
21 actions in an amount to be proven at trial.

22 113. The acts and omissions of the insider Defendants were performed willfully
23 and with an “evil mind” so as to entitle the Receiver to an award of punitive damages.

24 **COUNT EIGHT**
25 **BY THE RECEIVER ON**
26 **BEHALF OF THE INVESTORS**
27 **and THE RECEIVERSHIP ENTITIES AGAINST**
28 **THE INSIDER DEFENDANTS**

(BREACH OF FIDUCIARY DUTY)

114. The Receiver repeats and realleges all of the prior allegations as if set forth
at length herein

1 155. By virtue of such increase in the debt structure, each such act and omissions
2 directly contributed to the insolvency of the Receivership Entities.

3 156. By virtue of such increases in the debt structure, the Receivership Entities
4 are now insolvent.

5 157. The Investors and the Receivership Entities were thereby directly injured by
6 the acts and omissions of Defendants in an amount to be proven at trial.

7 **COUNT FIFTEEN**
8 **BY THE RECEIVER**
9 **ON BEHALF OF THE INVESTORS and the**
10 **RECEIVERSHIP ENTITIES AGAINST ZIONS and NBA**
11 **(NEGLIGENT SUPERVISION)**

12 158. The Receiver repeats and realleges all of the prior allegations as if set forth
13 at length.

14 159. At all relevant times, Coulter was an employee of NBA and/or Zions.

15 160. At all relevant times, Coulter was acting within the scope of his authority as
16 an employee of NBA and/or Zions.

17 161. NBA and Zions have a duty to supervise their employees.

18 162. NBA and Zions breached this duty by failing to supervise Coulter and
19 allowing him to commit the above acts and omissions in the scope of his employment.

20 163. The Investors and the Receivership Entities were thereby directly injured by
21 NBA and Zions' negligent supervision in an amount to be proven at trial.

22 **COUNT SIXTEEN**
23 **BY THE RECEIVER**
24 **ON BEHALF OF THE INVESTORS and the**
25 **RECEIVERSHIP ENTITIES AGAINST WESTERN**
26 **(NEGLIGENT SUPERVISION)**

27 164. Plaintiff repeats and realleges all of the prior allegations as if set forth at
28 length herein.

165. At some relevant times, Boyce was an employee of Western.

166. During such times, Boyce was acting within the scope of his authority as an
employee of Western.

1 167. Western has a duty to supervise its employees.

2 168. Western breached this duty by failing to supervise Boyce and allowing him
3 to commit the above acts and omissions in the scope of his employment.

4 169. Plaintiff was thereby directly injured by Western's negligent supervision in
5 an amount to be proven at trial.

6 **JURY DEMAND**

7 170. The Receiver demands trial by jury of all matters set forth herein.

8
9 WHEREFORE, the Receiver requests judgment as follows:

10 A. On Count One, against all Defendants, jointly and severally, for three
11 times the amount of actual damages resulting from the Defendants' violations of 18
12 U.S.C. § 1964(c);

13 B. On Count Two, against all Defendants, jointly and severally, for three
14 times the amount of actual damages resulting from the Defendants' violations of 18
15 U.S.C. § 1962(a);

16 C. On Count Three, against all Defendants, jointly and severally, for three
17 times the amount of actual damages resulting from the Defendants' violations of 18
18 U.S.C. § 1962(d);

19 D. On Count Four, against all Defendants, jointly and severally, for three
20 times the amount of actual damages resulting from the Defendants' violations of 29
21 U.S.C. § 1451;

22 E. On Count Five, against all Defendants, jointly and severally, for
23 damages resulting from Defendants' Fraud, in an amount to be proved at trial, together
24 with punitive damages in an amount sufficient to punish Defendants for their wrongful
25 misconduct and to deter such conduct in the future;

26 F. On Count Six, against all Defendants, jointly and severally, for damages
27 resulting from Defendants' acts and omissions, in an amount to be proved at trial, together
28

1 with punitive damages in an amount sufficient to punish Defendants for their wrongful
2 misconduct and to deter such conduct in the future;

3 G. On Count Seven, against Defendants Larry Dunning and Sheila
4 Dunning, Frank Caspare and Gail Caspare, Robert Rehm and Jane Doe Rehm, Gregory
5 Harrington and Jane Doe Harrington, Helen Hartze and Jon Doe Hatrze, Paul Meka and
6 Carol Meka, Philip Vigarino and Tricia Vigarino, Eric Strasser and Jane Doe Strasser, and
7 Mark Kessler and Jane Doe Kessler, jointly and severally, for damages resulting from
8 Defendants' conversion of the Investors' property, in an amount to be proved at trial,
9 together with punitive damages in an amount sufficient to punish those Defendants for
10 their wrongful misconduct and to deter such conduct in the future;

11 H. On Count Eight, against Defendants Larry Dunning and Sheila Dunning,
12 Frank Caspare and Gail Caspare, Robert Rehm and Jane Doe Rehm, Gregory Harrington
13 and Jane Doe Harrington, Helen Hartze and Jon Doe Hatrze, Paul Meka and Carol Meka,
14 Philip Vigarino and Tricia Vigarino, Eric Strasser and Jane Doe Strasser, and Mark
15 Kessler and Jane Doe Kessler, jointly and severally, for damages resulting from
16 Defendants' breaches of fiduciary duty, in an amount to be proved at trial, together with
17 punitive damages in an amount sufficient to punish those Defendants for their wrongful
18 misconduct and to deter such conduct in the future;

19 I. On Count Nine, against Defendants Philip Vigarino, Robert Rehm, Mark
20 Kessler and Paul Meka for damages resulting from Defendants' breaches of fiduciary duty
21 in an amount to be proved at trial, together with punitive damages in an amount sufficient
22 to punish those Defendants for their wrongful misconduct and to deter such conduct in the
23 future;

24 J. On Count Ten, against Defendants Randy C. Kiesel and Jane Doe
25 Kiesel, and Randy C. Kiesel, P.C., for damages resulting from Defendants' Breach of
26 Fiduciary Duty, in an amount to be proved at trial in an amount to be proved at trial,
27 together with punitive damages in an amount sufficient to punish those Defendants for
28 their wrongful misconduct and to deter such conduct in the future;

1 K. On Count Eleven, against Defendants David B. Stocker and Jane Doe
2 Stocker, and David N. Stocker, Ltd., jointly and severally, for damages resulting from
3 Defendants' Breach of Fiduciary Duty, in an amount to be proved at trial, together with
4 punitive damages in an amount sufficient to punish those Defendants for their wrongful
5 misconduct and to deter such conduct in the future;

6 L. On Count Twelve, against Defendants Randy C. Kiesel and Jane Doe
7 Kiesel, and Randy C. Kiesel, P.C., jointly and severally, for damages resulting from
8 Defendants' Professional Negligence, in an amount to be proved at trial;

9 M. On Count Thirteen, against David B. Stocker and Jane Doe Stocker, and
10 David N. Stocker, Ltd., jointly and severally, for damages resulting from Defendants'
11 Professional Negligence, in an amount to be proved at trial;

12 N. On Count Fourteen, against all Defendants, jointly and severally, for
13 damages resulting from the Receivership Entities' insolvency;

14 O. On Count Fifteen, against Defendants Zions First National Bank (Utah
15 and Idaho) aka Zions First National Bank, Zions National Bank and National Bank of
16 Arizona, jointly and severally, for damages resulting from Defendants' negligent
17 supervision of their employees, in an amount to be proved at trial;

18 P. On Count Sixteen, against Western Security Bank, for damages resulting
19 from its negligent supervision of its employees, in an amount to be proved at trial;

20 Q. For interest on the foregoing amounts at the highest legal rate from the
21 date due until paid in full;

22 R. For costs; and

23 S. For such other and further relief as is proper and just.

24 DATED this _____ day of March, 2005.

25 **JABURG & WILK, P.C.**

26 _____
27 Roger L. Cohen
28 Lawrence E. Wilk
Scott J. Richardson
Attorneys for Plaintiff