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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 FEDERAL DEPOSIT INSURANCE
16 CORPORATION, AS RECEIVER FOR
17 INDYMAC BANK, F.S.B.

18 Plaintiff,

19 v.

20 SCOTT VAN DELLEN, RICHARD
21 KOON, KENNETH SHELLEM, AND
22 WILLIAM ROTHMAN,

23 Defendants.

Case No.: **CV 10 4915** RSWL
(S+L)

COMPLAINT

JURY TRIAL DEMANDED.

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1 **COMPLAINT**

2 Plaintiff, Federal Deposit Insurance Corporation (“Plaintiff” or “FDIC”) as
3 Receiver for IndyMac Bank, F.S.B. (“IndyMac” or “The Bank”) as and for its complaint
4 against Defendants alleges as follows:

5 **I. BACKGROUND FACTS.**

6 1. This action is brought by the FDIC in its capacity as Receiver for IndyMac.
7 Pursuant to 12 U.S.C. § 1821(d)(2), the FDIC is the successor to all claims originally
8 held by IndyMac, and of any stockholder, member, accountholder, depositor, officer, or
9 director of such institution with respect to the institution and the assets of the institution.

10 2. This action asserts only claims against former officers of IndyMac arising
11 out of the operations of the Bank’s Homebuilder Division (“HBD”).

12 3. IndyMac first became involved in homebuilder lending with the formation
13 of Construction Lending Corporation of America (“CLCA”) in 1994 when the Bank was
14 a real estate investment trust (“REIT”). IndyMac was chartered as a bank on or about
15 July 1, 2000. CLCA continued as a division of the Bank and was renamed HBD in or
16 about mid 2002.

17 4. HBD provided land, acquisition and development (“A&D”), construction
18 and combined acquisition, development and construction (“AD&C”) loans to
19 homebuilders in selected markets throughout the United States. HBD’s primary focus
20 was on non-public regional builders.

21 5. HBD’s total commitments grew from approximately \$1.1 billion at year-end
22 2003 to \$2 billion at year-end 2006. HBD’s management continued to push for growth
23 until new production was halted in October 2007. The Bank was seized on July 11, 2008.
24 At that time, the outstanding balance on HBD’s portfolio was \$898,573,743. IndyMac’s
25 losses on HBD’s portfolio are estimated to exceed at least \$500 million.

26 6. The Bank’s losses from the operation of HBD stem from two significant
27
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1 departures from safe and sound banking practices. First, HBD's management repeatedly
2 disregarded HBD's credit policies and approved loans to borrowers who were not credit
3 worthy and/or for projects that provided insufficient collateral. HBD's compensation
4 plans for its management and account officers encouraged them to push for growth in
5 loan production volume with little regard for credit quality. Second, HBD's management
6 continued to follow a strategy of growth at the tail-end of the longest appreciating real
7 estate market in over four decades. HBD's management pushed to grow loan production
8 despite their awareness that a significant downturn in the market was imminent and
9 despite warnings from IndyMac's upper management about the likelihood of a market
10 decline. Indeed, HBD's management unwisely continued operations in homebuilder
11 lending in deteriorating markets even after becoming aware of the market decline.

12 7. This action seeks damages against key members of HBD's management
13 team based upon negligence and breach of fiduciary duties.

14 8. The actions and omissions which give rise to the Defendants' liability
15 include, among other things, negligently approving loans with deficient collateral;
16 negligently approving loans where one or more of the sources of repayment of the loan
17 were not likely to be sufficient to fully retire the debt; negligently approving loans that
18 violated applicable laws and regulations and/or the Bank's internal policies; negligently
19 approving loans to borrowers who were or should have been known to be not
20 creditworthy and/or in financial difficulty; negligently approving loans with inadequate
21 or inaccurate financial information regarding the creditworthiness of the borrower and/or
22 guarantors; negligently approving loans with inadequate appraisals; negligently
23 permitting loans to be made without taking proper and reasonable steps to insure that the
24 loan proceeds would be used in accordance with the loan application and failing to
25 control the disbursement of loan proceeds; negligently permitting loans to be renewed or
26 extended to borrowers who were not creditworthy or were known to be in financial
27 difficulty and without any reduction in principal and without taking proper steps to obtain
28

1 security or otherwise protect the Bank’s interests; negligently approving loans to be made
2 outside the normal and prudent trade areas of the Bank; negligently continuing and even
3 expanding HBD’s homebuilder lending despite knowledge of deteriorating market
4 conditions; negligently approving loans despite the Bank having a high geographic
5 concentration of loans in the same market; negligently approving loans despite the
6 borrower having a high geographic concentration of property in the same market; and
7 negligently approving loans where there was very little likelihood of the loan repaying
8 within the term of the loan..

9 **II. JURISDICTION AND VENUE.**

10 9. This is an action arising under the laws of the United States of America,
11 specifically including 12 U.S.C. § 1821(d)(2) and (k) and 12 U.S.C. § 1819(a). This
12 Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345. This Court
13 also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

14 10. The venue of this action is proper pursuant to 28 U.S.C. § 1391(b), because
15 the claims and causes of action asserted herein arose within the Central District of
16 California.

17 **III. PARTIES.**

18 **A. Plaintiff.**

19 11. Plaintiff is acting in its capacity as Receiver for IndyMac, and is authorized
20 to sue pursuant to 12 U.S.C. § 1821(d)(2) and (k).

21 12. In accordance with 12 U.S.C. § 1821(d)(2), FDIC as Receiver of IndyMac,
22 and as successor to all claims of IndyMac, and of any stockholder, member,
23 accountholder, depositor, officer, or director of such institution with respect to the
24 institution and the assets of the institution, is a real party in interest to this action and is
25 entitled to recover damages for any injuries sustained, including those set forth below.

26 **B. Defendants.**

27 13. Scott Van Dellen (“Van Dellen”) is a resident of the State of California and
28

1 of the Central District of California. Van Dellen joined IndyMac in 2001 and served as
2 the President and Chief Executive Officer (“CEO”) of HBD from September 16, 2002
3 until the seizure of the Bank on July 11, 2008. He also served as interim Chief Credit
4 Officer (“CCO”) of HBD from late 2006 until the seizure of the Bank. Van Dellen was a
5 voting member of HBD’s Management Loan Committee (sometimes also known as the
6 “Junior Loan Committee”) and its Executive Loan Committee (sometimes also known as
7 the “Senior Loan Committee”) during his entire tenure at HBD. Van Dellen approved all
8 of the loans which are the subject of this Action.

9 14. Richard Koon (“Koon”) is a resident of the State of California and of the
10 Central District of California. Koon joined the Bank as HBD’s Chief Lending Officer
11 (“CLO”) in July 2001 and remained in that position until he left HBD on July 15, 2006.
12 Koon remained an employee of the Bank outside of HBD until he was laid off in January
13 2008. Koon was a member of the Junior Loan Committee during his entire tenure at
14 HBD and was involved in approvals relating to at least 40 of the residential construction
15 loans which are the subject of this action. Koon was replaced as CLO by William
16 Rothman.

17 15. Kenneth Shellem (“Shellem”) is a resident of the State of California and of
18 the Central District of California. Shellem joined IndyMac in March 2000 and performed
19 work in internal audit review until he was assigned the position of the Bank’s corporate
20 CCO in June or July of 2000. Shellem was reassigned from the corporate office to work
21 as CCO of HBD starting in March 2002. Shellem ceased serving as CCO of HBD on or
22 about November 15, 2006. He remained an employee of the Bank outside of HBD until
23 his termination on March 31, 2007. Shellem was a voting member of the Junior Loan
24 Committee throughout his tenure as CCO of HBD from March 2002 until November
25 2006. Shellem was involved in approvals relating to at least 57 of the residential
26 construction loans which are the subject of this action.

27 16. William Rothman (“Rothman”) is a resident of the State of California and of
28

1 the Central District of California. Rothman joined IndyMac in October 2004 as a
2 regional manager of HBD. Rothman became the CLO of HBD in July 2006 and
3 remained in that position until the seizure of IndyMac. Throughout his time as CLO of
4 HBD, Rothman was a voting member of the Junior Loan Committee. Rothman was
5 involved in approvals relating to at least 34 of the residential construction loans at issue
6 in this action.

7 **IV. GENERAL ALLEGATIONS OF FACTS RELATING TO CLAIMS FOR**
8 **RELIEF.**

9 **A. Background of IndyMac Bank, F.S.B. and Its Collapse.**

10 17. IndyMac was formed when the First Federal Savings and Loan Association
11 of San Gabriel Valley became a wholly-owned subsidiary of IndyMac Bancorp., Inc.
12 (“Bancorp”). The thrift was renamed IndyMac Bank, F.S.B. and became a federally
13 chartered thrift under a charter from the Office of Thrift Supervision (“OTS”). IndyMac
14 was a wholly-owned subsidiary of IndyMac Intermediate Holdings, Inc., which in turn
15 was a wholly-owned subsidiary of Bancorp.

16 18. The precursor to Bancorp and IndyMac was IndyMac Mortgage Holding
17 Company, Inc. (ultimately assuming the name IndyMac Bancorp, Inc.), a passive real
18 estate investment trust (“REIT”) founded in 1985. IndyMac Mortgage Holding
19 Company, Inc. terminated its REIT status effective January 1, 2000 and converted to a
20 fully taxable entity on July 1, 2000.

21 19. IndyMac commenced operations with \$5.1 billion in total assets and eight
22 retail branch offices on July 1, 2000. The Bank originated residential loans for sale,
23 securitization, and for investment. Residential mortgage lending and mortgage bank
24 activity was its primary focus.

25 20. The Bank grew to become the seventh largest savings association and ninth
26 largest servicer of mortgages in the United States. From June 2005 to March 2008,
27 IndyMac grew from approximately \$18.3 billion to \$32 billion in assets. Growth was due
28

1 largely to an aggressive growth strategy that was pursued in many of its business units,
2 including HBD. IndyMac operated in 50 states. At its peak, the Bank had 33 retail
3 branches located in Southern California and 182 loan production offices throughout the
4 country.

5 21. Between 2000 and 2006, loan production increased from approximately \$10
6 billion to almost \$92 billion. Production decreased to approximately \$77 billion in 2007
7 and \$10 billion in 2008.

8 22. IndyMac qualified for and received deposit insurance from the FDIC and
9 was thereby obligated to conform to the rules and regulations issued by the FDIC
10 regarding its lending policies, management, financial policies, capitalization and loan
11 reserves. In addition, because IndyMac was a federally chartered thrift under a charter
12 from the OTS, the Bank was also obligated to follow OTS policies, rules and regulations.
13 Such rules and regulations were designed by the regulatory agencies to prevent loss of the
14 depositor's funds due to imprudent actions by the insured institutions and to protect the
15 FDIC insurance fund.

16 23. On July 11, 2008, IndyMac was closed by the OTS with \$28 billion in
17 assets. On July 17, 2008, the OTS appointed the FDIC as receiver of the Bank. Bancorp
18 filed a Chapter 7 bankruptcy petition on July 31, 2008. The estimated losses to the FDIC
19 stemming from IndyMac's collapse are currently \$12.75 billion. The portion of these
20 losses stemming from the operation of HBD exceeds \$500 million.

21 **B. The Organizational History of HBD.**

22 24. HBD was the successor by name change of CLCA. Van Dellen assumed
23 responsibility for HBD in 2002 when he was appointed head of the Specialty Products
24 Division, of which HBD was a part. On September 16, 2002, Van Dellen assumed direct
25 responsibility for HBD becoming president and CEO of the division. Ken Shellem
26 became CCO of HBD at the same time. Koon arrived at HBD no later than July 1, 2001
27 and was already CLO when Van Dellen arrived.

1 25. When Van Dellen arrived at HBD in 2002, his first year or so involved crisis
2 management. Among other things, HBD had received poor OTS and internal asset and
3 audit reviews. The function of credit officers was not separate from the function of
4 production groups, and appraisals were not being properly obtained.

5 26. From 2001 to 2002, new loan volume at HBD had declined from a little over
6 \$1 billion to approximately \$520 million. The decline was a part of HBD's crisis
7 management strategy that ended a mezzanine lending (subordinate loans) and equity
8 program carried over from when HBD was part of a REIT. In addition, lending on
9 income property, lending for pure land acquisition, and lending in 23 "noncore" lending
10 markets was halted by HBD. HBD began efforts to revise its credit policies and
11 procedures. The strategy implemented prior to Van Dellen's arrival to shrink HBD in the
12 face of losses was part of a "Castor Oil" strategy devised by Michael Perry ("Perry"),
13 Chairman and CEO of the Bank and Bancorp. The goal of that strategy was to lower
14 HBD's risk profile in the face of anticipated market declines, to enhance its return on
15 equity ("ROE"), and to use construction lending to developers as a means of obtaining
16 more residential mortgage business. The strategy sought a temporary reduction in
17 construction lending that would be followed by growth in HBD.

18 27. The Castor Oil strategy of 2002, and HBD's decision to decrease new
19 business at that time, reflected management's awareness, as expressed by Perry, that
20 "Every prudent bank has to 'pull in the reins' (sic) from time to time." It was for this
21 reason that the Bank "deliberately reduced this business' [HBD's] size" after 1999.

22 28. Van Dellen's leadership of HBD provided only nominal separation of the
23 credit department from loan production. Van Dellen did little to provide a strong and
24 independent credit department. Production officers remained on the Junior Loan
25 Committee and the credit department ultimately lost its veto authority on that committee.
26 During Van Dellen's tenure, HBD's credit officers received no formal training, had
27 considerably less experience and received significantly lower compensation than HBD's
28

1 production or “account” officers. In sum, HBD’s credit officers and credit department
2 appear to have had little authority other than to require that information be placed in the
3 credit approval memorandum (“CAM”).

4 29. HBD was significantly reorganized in the middle of 2006. On July 15,
5 2006, Koon retired from HBD. He was replaced by Rothman who had been acting as a
6 co-CLO with Koon starting in January 2006. In the latter part of 2006, Van Dellen
7 created the Major Builders Group (“MBG”) as a counterpart to the Professional Builders
8 Group (“PBG”), which had been in existence for at least one year. MBG targeted larger
9 builders that built projects of at least 25 units and which required loans in excess of \$5
10 million. PBG typically lent to builders of projects totaling up to 25 units, with a loan of
11 no more than \$5 million on any one project.

12 30. The 2006 reorganization of HBD also resulted in the removal of Shellem as
13 a Junior Loan Committee member. Van Dellen replaced Shellem on the Junior Loan
14 Committee with a credit administrator, Todd Camp (“Camp”), who reported directly to
15 Rothman. Van Dellen proposed that Shellem remain as CCO for HBD without voting
16 authority on the Junior Loan Committee and without credit officers reporting to him.
17 Shellem refused and ultimately left HBD.

18 31. Prior to the reorganization of HBD in 2006, Shellem had the power to object
19 to a loan being approved by the Junior Loan Committee. Shellem’s objection would then
20 force the Senior Loan Committee (consisting of Van Dellen and, for most of the time,
21 IndyMac’s President Richard Wohl (“Wohl”)) to consider a loan which did not otherwise
22 require Senior Loan Committee approval. After the reorganization, Shellem’s nominal
23 replacement on the Junior Loan Committee, Camp, was never appointed CCO and never
24 attained the authority that Shellem previously had. Effectively, with Shellem’s departure,
25 HBD ceased to have a CCO. Although Van Dellen claimed to be acting as CCO, he
26 lacked the experience to do so. Van Dellen also directed credit officers to report to a
27 single head credit administrator, Camp, who in turn was reporting to the CLO and lead
28

1 production officer, Rothman. This reorganization of HBD created the very blurring
2 between credit and production functions that existed when Van Dellen first arrived at
3 HBD in 2002, and about which regulatory agencies had previously complained. Both
4 Koon and Shellem described Van Dellen's reorganization as having created a serious
5 conflict of interest.

6 32. Late in 2007, HBD finally began to decrease loan production, and began
7 layoffs of personnel. At least three account officers accepted offers of voluntary buyouts
8 in place of layoffs. All loan production was discontinued at HBD on October 22, 2007.
9 At that same time, the production side of HBD, as well as the credit side, were
10 reorganized into workout assignments to deal with HBD's troubled portfolio.

11 **C. HBD Followed A High Risk Growth Strategy.**

12 33. Shortly after assuming command of HBD, Van Dellen announced a plan to
13 grow HBD. Production goals increased for account officers every year under Van Dellen
14 until the latter part of 2007. This was true despite a broad consensus amongst HBD
15 production officers that production targets needed to be lowered. Account officers who
16 did not meet their annual production targets were often terminated or encouraged to
17 leave. Van Dellen continued to push for growth and took no steps to reduce or end
18 production. In November 2004, Van Dellen, Koon and Shellem, as HBD's top
19 management, identified residential construction lending as involving "increasing
20 competition, current customers getting bigger and demanding lower returns." Their
21 response was to "grow geographically and by moving downstream to smaller, less price
22 competitive builders." At the same time, HBD's management projected 100% growth in
23 HBD's net commitments over a five-year term projected through the end of 2008. The
24 growth was to come from a strategy that targeted medium and small builders as opposed
25 to large public builders. HBD attempted to offset the risks associated with its borrowers
26 by demanding higher returns on its equity.

27 34. In the fall of 2005, Van Dellen, Shellem and Koon were being warned by
28

1 IndyMac's upper management of deteriorating conditions for home builder lending. In
2 September 2005, Perry suspended mezzanine lending and equity investments through one
3 of Bancorp's subsidiaries that had been used to assist HBD's borrowers. Responding to
4 complaints by an HBD account officer, Perry explained that "construction lending is
5 always going to be perceived by any financial institution and its regulators as risky . . .
6 especially in this environment . . . therefore construction lending cannot go 'business as
7 usual' in all markets . . . every prudent bank has to 'pull in the reins' (sic) from time to
8 time."

9 35. Perry frequently forwarded news articles warning of deteriorating conditions
10 in the home builder market and cautioning Van Dellen to "be careful." In particular,
11 Perry forwarded articles to Van Dellen such as the following:

12 a. March 3, 2006 article in The Wall Street Journal. Perry underlined
13 portions of this article that discussed reduced sales in single-family homes and the
14 highest level of unsold new homes in nearly a decade. Perry made a handwritten
15 note on the article stating "Be careful, especially on our new construction
16 projects."

17 b. July 26, 2006 article in MBA NewsLink. Perry forwarded this article
18 noting Weyerhaeuser's plans to scale back its home builder unit. Perry cautioned
19 Van Dellen to "err on the side of being 'safe' . . . as it is not a time to stretch for
20 volume."

21 c. September 11, 2006 article in the Los Angeles Business Journal.
22 Perry sent this article to highlight declining sales rates. He circled a portion of the
23 article that addressed a steep 32% decline in sales from the same month of the prior
24 year.

25 d. October 2, 2006 article in Outfront. The first paragraph in the article
26 states that the "bad news keeps on coming from the home front." The article notes
27 that KB Home slashed earnings forecasts for the second time since June, and that
28

1 shares had fallen 40% over the past year. Perry made a handwritten note on the
2 article stating “I am in the middle of this one... I definitely think the economy will
3 slow due to home prices abating.”

4 e. November 8, 2006 article from an unknown publication. The article
5 came from Bloomberg News and discussed declining sales experienced by home
6 builders Toll Bros, Inc. and Beazer Homes USA, Inc. Once again, Perry made a
7 handwritten note on the article stating “Be careful.”

8 f. May 4, 2007 article in US Economics Analyst. Perry circled a portion
9 of the article that warned that a housing downturn in Florida was likely to cause an
10 outright recession. Perry also wrote a note on the article stating “Sell Florida.
11 Your first loss is your best loss.”

12 36. Koon and Shellem also warned Van Dellen of the deteriorating market of
13 which they were well aware beginning in 2005. In early 2005, CLO Koon warned
14 against the creation of PBG and its lending to smaller borrowers based entirely on the
15 strength of the project rather than the credit worthiness of the borrower. Koon was
16 opposed to such “project based” lending. He also warned against HBD’s creation of a
17 mezzanine lending and equity program in early 2005. Koon warned that the then-current
18 up cycle in the market was the longest in the last four decades and it was too late in the
19 cycle to take risks on smaller “project based” borrowers and on mezzanine loans.

20 37. On September 15, 2005, an article entitled “Banks’ Capacity To Withstand
21 Housing Bubble Burst; So Far So Good” discussed a stress test of financial institutions
22 conducted by Standard & Poor’s. The article concluded that IndyMac would suffer the
23 largest loss because of its sizable residential construction loan portfolio. The article also
24 noted that construction loans financing real estate development and loans to home
25 builders carried the greatest exposure to credit losses should housing prices trend
26 downward.

27 38. As early as 2005, HBD’s management indicated repeatedly to the Bank’s
28

1 board, the regulators, and outside consultants that it was taking steps to tighten
2 underwriting, even though, as discussed following, it was not in practice doing so.
3 HBD's management even acknowledged "bubble-related concerns." HBD's
4 management's statements at least showed its awareness of deteriorating market
5 conditions.

6 39. On April 6, 2006, CCO Shellem sent an e-mail to all HBD personnel
7 warning about concessions being offered by builders which he believed could mask a
8 softening market. Shellem encouraged HBD personnel to do a better job of looking at the
9 borrower's entire financial picture as opposed to just a single project. Shellem suggested
10 detailed questions to borrowers designed to learn about the progress of a borrower's
11 others projects, the borrower's overall financial condition, and the condition of the
12 markets in which the borrowers operated. Shellem's suggestions evidence HBD's failure
13 to ask these "detailed questions" at least up to this point in time. Shellem summed up his
14 advice as follows: "I guess, in short, we need to think more like credit lenders than
15 project lenders. It may be fine if the borrower has one project and it is with us, but if the
16 borrower has multiple projects and other investments that require attention, cash and
17 capital, we need to totally understand the borrower's situation."

18 40. On June 30, 2006, CLO Koon wrote a memorandum to all HBD account
19 officers about changing market conditions sounding a clear alarm. Koon noted:

20 It's time for us to proactively deal with the changing housing market. Many
21 of the loans recorded over the last year will not be able to live up to their
22 expectations for sales and closings.

23 I'm asking every account officer to have a face-to-face meeting with each
24 borrower within the next 30 days, during your 2nd quarter status reviews, to
25 discuss their revised plan for each loan.

26 You are about to have the toughest conversation you've had with the
27 borrower in the last 11 years. This is the time where we find out whether the
28 borrower has integrity and how good your negotiation skills are. Anyone
can make a loan – relationships are in fact made or broken in difficult times.
(Emphasis in original.)

1 41. Koon and Shellem were not the only HBD officers sounding an alarm in
2 2006. Account officer Geoffrey Ramirez (“Ramirez”) had discussions with Van Dellen
3 and Rothman in 2006 regarding declines in real estate values. Senior account officer
4 Douglas Koerber (“Koerber”) noted that, toward the latter part of 2006, he approached
5 prospective borrowers to discuss new loans only to have the borrowers indicate that they
6 were not interested in any new deals because of market conditions. Koerber shared these
7 comments with HBD’s Junior Loan Committee members Rothman and Van Dellen.
8 Other account officers also were recognizing that the housing market was beginning to
9 slow. Account officer Cressa Cruzan stated that it was “insane” for HBD to keep
10 growing year after year when the real estate cycle was already at its peak. Financial
11 analyst David Cannon also observed the real estate market beginning to soften in the
12 Inland Empire area of California during the summer of 2006.

13 42. Despite the warnings detailed above, Van Dellen continued to push for
14 growth, announcing his strategic initiative for 2007 in an October 20, 2006 e-mail. Van
15 Dellen asserted that HBD needed to “grow, expand and diversify faster to keep up with
16 the bank and leverage our very solid platform. Our competitors may be retreating or
17 exiting. Now is the time to pounce. . . .” Among other things, Van Dellen called for
18 “quick, informative and flexible loan structuring and servicing [and] creative solutions.”
19 He suggested that HBD “[p]ut as many decisions as possible in the hands of account
20 officers and even borrowers.”

21 43. Only five weeks later, on November 30, 2006 at a meeting of the Bank’s
22 senior managers, which included Van Dellen, corporate management warned of the
23 declining market, describing among other things, a decline of 9.7% in the median price of
24 new homes since September 2005 and mentioning that home builder volumes and
25 margins were “under pressure.” The presentation was entitled the “wall of worry.”
26 Nonetheless, Van Dellen continued, as late as the first quarter of 2007, to push for HBD
27 to “grow production at double digit rates over the next five years.”
28

1 **D. HBD Followed A High Risk Underwriting Strategy.**

2 **1. HBD violated its own credit policies.**

3 44. HBD disregarded many of its own internal credit policies and regulatory
4 guidance in approving loans. At least in theory, HBD’s written credit policies were
5 designed to “maintain the integrity of the Bank’s loan origination process and . . . ensure
6 the quality of its loan portfolio.” HBD considered its written credit policy “critical to its
7 success in providing a specialized lending product.” Despite this, the vast majority of
8 loans at issue in this action involved at least one significant credit policy exception. On
9 information and belief, FDIC alleges that less than 1% of the loans approved by HBD
10 were approved without a credit policy exception.

11 45. Policies designed to reduce the Bank’s overall risk exposure were often
12 ignored. For example, HBD had a minimum equity policy requiring the borrower to
13 provide minimum cash equity of 10% of total project costs at or prior to closing. For
14 condominium projects, not less than 15% of total project costs was required as borrower
15 equity. Yet, in many cases, this “cash” equity requirement was satisfied with mezzanine
16 loans, third party equity investments, and deferred equity contributions (to be paid after
17 loan closing by the borrower). Of particular significance in a rising market, borrowers
18 were often allowed to rely upon “market equity.” HBD’s policy indicated that market
19 equity would be allowed if the borrower owned the property for more than two years or
20 controlled the property for more than three years. Nonetheless, market equity was
21 frequently allowed without the time requirement having been satisfied. With land
22 development or construction loans, HBD’s decision to permit a borrower to use market
23 equity resulted in a higher loan-to-value (“LTV”) ratio, because the borrower no longer
24 had to contribute cash to the project. Moreover, in a rising market, the use of short-term
25 market equity was particularly risky, since the equity that was a result of recent run-ups
26 in prices was the very equity most likely to vanish when the market turned. Third party
27 equity was also risky and was only to be allowed where projects were less speculative
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1 (meaning more pre-sales). It was, however, often allowed in other circumstances.

2 46. A second internal policy closely tied to borrower equity was HBD's
3 requirement of a minimum profit margin. HBD required a profit margin of 10% or
4 greater based upon the budget set forth in the CAM. Where a lower profit margin was
5 accepted, a higher amount of equity was to be required. This requirement too was
6 frequently waived in circumstances where waiver was not warranted.

7 47. To limit its exposure on any given loan commitment, HBD set the maximum
8 number of dwelling units at 125 for any loan commitment. A cap on the maximum
9 number of units, particularly in the case of condominium developments, limited HBD's
10 exposure if sales rates slowed. For larger projects, this requirement could compel a
11 borrower to seek multiple construction loans, limiting the Bank's exposure and requiring
12 careful underwriting of each phase of the project. This requirement too was frequently
13 waived.

14 48. HBD's policy recognized condominium financing as exceptionally risky. Its
15 policy provided that the initial loan advance for purchase could not exceed 100% of
16 appraised apartment "as-is" value based on a 1.0 debt coverage ratio ("DCR"). If
17 enforced, this policy meant that the rental stream from the apartment building would
18 service the debt on the condominium conversion loan if the conversion failed. The policy
19 further specified that condominium conversion loans must include re-margining
20 requirements *at origination* if the DCR (excluding construction or rehabilitation costs)
21 was less than 1.0. This policy also was frequently waived.

22 49. HBD's policies placed importance on the strength of the borrower and its
23 guarantors as well as on market conditions and the project. In particular, full recourse
24 guarantees were generally required for all transactions. Full recourse included personal
25 guarantees from controlling parties of the borrowing entity. Exceptions were considered
26 on a case-by-case basis. Personal guarantees from the borrower's principals, like
27 requirements of cash equity, required the borrower to have some downside risk, giving
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1 HBD a better assurance of repayment. The guarantees policy was frequently waived,
2 however, even in the face of weak market conditions and even for marginal projects.

3 50. HBD also ignored regulatory guidance in its underwriting as much as it
4 ignored its own internal credit policies. The handbook of the Office of the Comptroller
5 of the Currency (“OCC”) entitled “Commercial Real Estate and Construction Lending”
6 (March 1998) lists warning signs for problem real estate loans, many of which were
7 apparent at the outset of borrowers’ applications and were described in CAMs presented
8 to HBD loan committees. These warning signs include:

9 a. An excess of similar projects under construction are completed
10 and not leased/sold.

11 b. A pattern of increasing the marketing period or, increasing
12 concessions and declining effective rents for similar projects.

13 c. Construction delays or other events that could lead to cost
14 overruns that may require renegotiation of loan terms.

15 d. A feasibility study or analysis that fails to reflect current and
16 reasonably anticipated market conditions.

17 e. Slow leasing, the lack of sustained sales activity, or sale
18 cancellations that could reduce a project’s income potential, thereby leading
19 to protracted repayment or default on the loan.

20 f. Land values that assume future rezoning or road improvements.

21 51. The OCC described other warning signs for problem real estate loans as
22 being common in loans that “were originated on an unsound or liberal basis.” These
23 other warnings include:

24 a. Loans with no or minimal borrower equity.

25 b. Loans on speculative, undeveloped property where the
26 borrower’s only source of repayment is the sale of the property.

27 c. Loans based on land values that have been inflated by rapid
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1 turnover of ownership without any corresponding improvements to the
2 property or supportable income projections to justify an increase in value
3 (commonly referred to as “land flips”).

4 d. Additional advances to service an existing loan that lacks
5 credible support for full repayment from reliable sources.

6 e. Loans to borrowers with no development plans, or development
7 plans that are outdated or no longer viable.

8 f. Renewals, extensions and refinancings that lack credible
9 support for full repayment from reliable sources and that do not have a
10 reasonable repayment schedule.

11 52. Each of the “warning signs” detailed above summarize problems commonly
12 found in most of the loans at issue in this action.

13 **2. HBD’s consideration of loan applications was superficial and**
14 **hasty.**

15 53. Throughout Van Dellen’s management of HBD, the CAM was supposed to
16 contain all information relevant to the consideration of a loan application. Draft CAMs
17 were submitted to the credit department which prepared credit review memoranda noting
18 questions and concerns about the CAMs. Once a CAM was revised in response to the
19 credit review memorandum, the CAM would be transmitted to the Junior Loan
20 Committee. CAMs are lengthy documents averaging about 80 pages of single-spaced
21 type in small fonts. Loan committee members received the CAMs only a day or two
22 before committee meetings. On occasion, Van Dellen’s initial reading of a CAM
23 occurred during the Junior Loan Committee meeting.

24 54. One of IndyMac’s “core values” was that “speed rules at IndyMac.” This
25 was a firmly ingrained culture at IndyMac and, for example, was implemented by Perry
26 through his “Flamingo Rule” requiring employees seeking his guidance to “pop in my
27 office, quickly present the issue (in the amount of time you can ‘stand on one leg!’) and
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1 get my feedback.” Van Dellen implemented a similar arbitrary rule limiting discussions
2 of loans in the loan committee to 20 minutes. At one point, Van Dellen even attempted
3 to implement a policy abolishing loan approval memoranda altogether.

4 55. Hasty loan committee meetings left committee members little time to
5 properly discuss complicated multi-million dollar transactions or thoroughly question
6 account officers and credit officers about the details of the transactions.

7 **3. HBD’s credit matrix led to poor underwriting decisions.**

8 56. HBD substituted a rigid and formulaic approach toward underwriting
9 residential construction loans in place of careful subjective consideration of the merits of
10 each loan. Central to its underwriting practices, which were designed to speed
11 consideration of loan applications, HBD, under Van Dellen’s leadership and Shellem’s
12 input, developed a “credit risk matrix.” In late 2003 or early 2004, HBD implemented
13 this credit risk matrix scoring methodology. It replaced a previous methodology that was
14 qualitative in nature with one that was quantitative in nature. A single numerical score
15 was assigned to each credit risk which then controlled loan underwriting and loan pricing.
16 The credit risk matrix assumed a linear relationship between an asset classification
17 category and the loss potential on the loan, with “Pass 5” assets assigned five times the
18 loss potential of “Pass 1” and “watch” assigned five times the loss potential of Pass 5.
19 The assumed loss levels were arbitrary.

20 57. The credit risk matrix was developed to score each loan and each loan
21 application. The attributes of a loan or proposed loan were divided into project,
22 borrower, and market. Each attribute was further divided into various types of statistical
23 data relating to the project, the borrower, or the market. Each item of data was assigned a
24 numerical score and a weighting that led to an overall score for the asset or proposed
25 loan. The score resulted in a grade (Pass 1, 2, 3, 4 or 5) being assigned. The matrix
26 imposed no minimum score for loan approval. Instead, the very lowest category of loans
27 was classified as Pass 5 regardless of how low the score. At a score of “25” or Pass 4, the
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1 credit was considered a “good” credit and represented the highest risk tolerance allowed
2 by HBD policy. Also at various points in time, explanations of the credit risk matrix
3 suggest that Pass 4 or 5 credits required better market gradings (such as Pass 1 or 2) to be
4 approved.

5 58. The scores on the credit risk matrix were designed to determine the
6 acceptability of a credit, or so HBD management represented. HBD assured the OTS that
7 the credit risk matrix was “strictly” applied for approval decisions at least for some of
8 HBD’s loans.

9 59. From the time that it was first implemented in CAMs, through the end of
10 loan production at HBD in 2007, the credit risk matrix was used to assign credit scores
11 and grades to loan applications. A resulting grade of Pass 1, 2, 3, 4 or 5 dictated
12 benchmark ROE, which then determined the pricing of the loan. Over time, HBD
13 continually increased its ROE targets. Koon noted that this priced HBD out of the market
14 for lower risk borrowers. Nonetheless, HBD kept increasing its ROE targets throughout
15 its existence despite Koon’s concerns.

16 60. The application of the credit risk matrix was rigidly formulaic such that a
17 weakness in a key area would often end up being only a minor factor in grading the loan
18 and therefore not have much impact on how the loan was considered in underwriting.
19 For example, a borrower could have no liquidity but could still get a loan approved if
20 everything else on the credit risk matrix scored well. Thus, high scores on the credit risk
21 matrix became an excuse to approve loans with critical weaknesses, while low scores
22 were disregarded despite weaknesses by using supposed “mitigants” that excused policy
23 exceptions. HBD’s credit risk matrix was little more than window dressing for what in
24 reality were very risky and poorly managed underwriting practices.

25 **4. HBD’s compensation of officers encouraged risky loans.**

26 61. HBD’s compensation of its account officers rewarded risk taking and
27 encouraged production without regard for loan quality. Taken together with HBD’s other
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1 underwriting practices, HBD's compensation of its account officers further worsened its
2 situation. In essence, HBD encouraged "adverse selection" through underwriting and
3 loan pricing practices and compensation of its account officers that rewarded account
4 officers who brought the riskiest loans to HBD, and made it possible for those loans to be
5 approved as long as customers were willing to pay a higher price. Of course, only
6 customers rejected by other banks were willing to pay HBD's prices.

7 62. HBD's compensation plan for its account officers was designed to advance
8 its strategy of increasing production of higher risk, higher return loans. Account officers
9 received a significant portion of their compensation based upon the projected profitability
10 of loans. The commission payments consisted of both a "front-end payout" and a "back-
11 end payout" and were set forth in annual compensation plans for the account officers.
12 Although some compensation plans purported to "claw back" some of the commission
13 payments for loans that became nonperforming, these claw back provisions were only
14 rarely enforced. As a result, account officers received their front-end payout, typically
15 50% of the anticipated commission on the loan, regardless of the performance of the loan.
16 If the loan performed well, account officers also had the prospect of a back-end payout.

17 63. Account officers' commission plans also were administered in a way that
18 encouraged them to take additional risks. For example, account officers received an
19 additional 1% of the net income after tax for loans that produced ROEs of 24% or more.
20 Higher ROEs were typically available on riskier loans with lower credit scores.

21 64. Similarly, account officers were encouraged through increased
22 compensation to extend or modify loans. Loans that were extended or modified resulted
23 in increased interest income, which in turn increased account officers' compensation.
24 Moreover, if an account officer failed to timely obtain extensions or modifications such
25 that a loan appeared on the 30-day-past-due-loan report, the account officer was subject
26 to a 10% reduction in all incentives paid in that quarter. HBD's compensation system
27 thus encouraged extending non-performing loans. This proved detrimental to HBD's
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1 collateral values after the real estate market was in decline.

2 **5. IndyMac recognized HBD's flaws.**

3 65. IndyMac's upper management discussed serious problems in HBD, albeit
4 not until early 2008 after HBD had ended new loan production. In February 2008,
5 IndyMac commissioned an internal asset review report of examination ("IAR Report").
6 The IAR Report reviewed 10 problem loans originated by HBD, nine of which are among
7 the loans which are the subject of this action. An outside consultant subsequently
8 reviewed the report and summarized his conclusions to Perry. "Of the ten loans
9 [criticized in the IAR Report], I looked at four [that] were condo conversions, which are a
10 higher risk segment of the housing market. Two of these were in Florida, a long
11 recognized overheated market. Mezzanine financing was part of one of the deals.
12 Together the two deals represent a high dollar concentration with the single borrower.
13 Two deals represented an IndyMac refinance of another lender. In one instance, the
14 previous lender took a second back. These deals deteriorated quickly." The consultant
15 also commented that the weaknesses in the loans "were present at the origination of these
16 deals. *I don't think I'm using hindsight here.*" (Emphasis added.)

17 66. Perry responded with an indictment of HBD's management: "That is good
18 feedback. . . . I was aware of the condo deals (and was opposed to them . . . but the
19 management in this unit [HBD] kept pushing and pushing) and also on the concentration
20 limits (again . . . pushing . . . and we cut these way back last year). To me, it shows you
21 can't be in this business . . . because you are always getting screwed every down cycle
22 and losing all your profits for years . . . because the management and loan officers are too
23 'in bed' with the builders and always will be. I was not aware of the other issues and
24 they represent a disturbing lack of management, judgment and discipline in a business
25 that was supposed to be all about credit risk management (unlike mortgage banking) and
26 in a business that was not core and not supposed to be stretching for growth . . .
27 especially at the peak of the market. The refinances of other lenders . . . where they
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1 carried back paper is especially disturbing.” A few months later on May 7, 2008, Perry
2 wrote a note to Wohl and Van Dellen attaching a copy of Koon’s June 30, 2006
3 memorandum on “changing market conditions.” Perry told Wohl and Van Dellen that
4 Koon’s departure and his memorandum “should have been the signal we needed to batten
5 down the hatches and stop production.”

6 **6. Summary.**

7 67. HBD pursued both a negligent growth strategy and negligent underwriting
8 practices from the time of Van Dellen’s arrival in 2002 until production at HBD was
9 ultimately halted on October 22, 2007. HBD’s overall strategy reflected a conscious
10 effort to move “downstream” to higher risk credits to grow loan production and increase
11 management and account officer compensation. HBD rewarded imprudent risk taking to
12 fuel growth. HBD’s management felt that it could expand market share even though
13 HBD could not compete on price because of IndyMac’s higher cost of funds. HBD did
14 this by accommodating borrowers with higher loan advances as a percentage of collateral
15 value and looser underwriting standards reflecting its “creative” and “flexible” approach
16 designed to minimize restrictions imposed by HBD’s credit policies. HBD’s high risk
17 growth strategy and careless underwriting continued despite signals from Perry and
18 others that HBD should take a more cautious approach and despite HBD management’s
19 growing awareness of the decaying housing market from 2005 onward. These practices
20 resulted in losses exceeding \$300 million, and only a handful of performing loans out of
21 roughly 220 loans in HBD’s portfolio at the time of IndyMac’s seizure.

22 **V. DEFENDANTS’ DUTIES TO INDYMAC.**

23 68. The individual Defendants, as officers of IndyMac, owed a duty to IndyMac
24 to carry out their responsibilities by exercising the degree of care, skill, and diligence that
25 ordinarily prudent persons in like positions would use under similar circumstances. The
26 individual Defendants breached their duties to the Bank. These duties encompass certain
27 fiduciary, statutory, and common law duties, including, but not limited to, the following:
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1 a. To conduct the business of IndyMac in compliance with all applicable
2 state and federal laws and regulations, and to abide by its own internal policies,
3 including but not limited to loan policies and lending limitations;

4 b. To establish, enforce and follow careful, reasonable, prudent, and
5 non-negligent lending policies and sound business judgment and candor;

6 c. To ensure the careful, reasonable, prudent and non-negligent
7 underwriting and administration of IndyMac's loans;

8 d. To ensure that IndyMac did not engage in unsafe, unsound,
9 unreasonable and imprudent practices;

10 e. Upon receiving notice of an unsafe or unsound practice, to make a
11 reasonable investigation thereof and to exercise reasonable business judgment with
12 respect to all facts which a reasonable investigation would have disclosed;

13 f. To ensure that loans not be made to non-creditworthy borrowers
14 and/or borrowers in financial difficulty.

15 g. To ensure that loans not be made with inadequate or inaccurate
16 financial information regarding the creditworthiness of the borrower and/or
17 guarantor, and the prospective source of repayment, and the security provided for
18 the loans.

19 h. To ensure that loans not be made on the basis of inadequate or non-
20 existent appraisals.

21 i. To ensure that loans not be made without taking proper and
22 reasonable steps to insure that the loan proceeds would be used in accordance with
23 the loan application.

24 j. To ensure that loans not be renewed or extended without taking
25 proper steps to obtain security or otherwise protect the Bank's interests.

26 k. To ensure that loans not be made outside the normal and prudent trade
27 areas of the Bank.

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1 l. To ensure that loans not be made where there was very little
2 likelihood of the loan repaying within the term of the loan.

3 m. To properly inform themselves and each other about the true nature
4 and condition of the Bank's loan portfolio, and to adequately review and inquire
5 into the Bank's loan transaction.

6 n. To recognize problem assets and to establish adequate loss reserves
7 therefore;

8 o. To carefully review reports of examinations conducted by, and other
9 directives of, regulatory agencies, to carry out the instructions and orders contained
10 therein, to investigate and cure problems and deficiencies noted therein, and to
11 prevent any repetition of such problems and deficiencies; and

12 p. To otherwise pursue financial policies that are reasonable, safe and
13 consistent with the purposes of the insurance of IndyMac's accounts.

14 **VI. CLAIMS FOR RELIEF.**

15 **A. Count Based on Allegations That Loan Production at HBD Should Have**
16 **Been Reduced or Eliminated No Later Than Early 2006.**

17 **Count 1**

18 **(Claim for Negligence and Breach of Duty of Care Against All Defendants)**

19 69. Plaintiff incorporates by reference and re-alleges each of the allegations in
20 paragraphs 1 through 68 of this complaint, as though fully set forth herein.

21 70. Each of the Defendants, as officers, owed IndyMac the obligation to exercise
22 the degree of care, skill and diligence that ordinarily prudent persons in like positions
23 would use under similar circumstances in the management, supervision and conduct of
24 IndyMac's business and financial affairs.

25 71. By their actions and inactions, as generally and specifically described above,
26 the Defendants failed and neglected to perform their duties properly as officers of
27 IndyMac and breached their fiduciary duties of care to IndyMac.

1 72. Defendants knew, or in the exercise of due diligence should have known,
2 that their practices and the practices of IndyMac’s employees who reported to them and
3 over whom they exercised supervisory control, were improper, imprudent, and harmful to
4 IndyMac. In particular, Defendants were being warned by IndyMac’s upper management
5 as early as 2005 of deteriorating conditions for home builder lending. Defendants were
6 well aware beginning in 2005 of deteriorating market conditions for home builder
7 lending. Defendants were also aware of the perils of “project-based” lending as early as
8 2005. In 2005, there was also a growing consensus amongst HBD’s account officers
9 regarding declines in real estate values; these concerns were shared with the Defendants.
10 Loan production in HBD from 2006 onward should have been substantially limited or
11 eliminated altogether. Despite this knowledge, and even despite written warnings and
12 acknowledgements by Koon and Shellem of an impending market decline and a need to
13 tighten credit standards, all of the Defendants continued to underwrite and approve risky,
14 speculative, and “project-based” loans into mid-2007. HBD’s strategic initiative for 2007
15 asserted that HBD needed to “grow, expand and diversify faster to keep up with the bank
16 and leverage our very solid platform. Our competitors may be retreating or exiting. Now
17 is the time to pounce. . . .”

18 73. As a direct and proximate result of the negligence and breach of fiduciary
19 duties of Defendants, Plaintiff has suffered losses and other compensatory and
20 consequential damages, in amounts to be established at trial.

21 74. With respect to all of their actions and inactions in managing and
22 administering the affairs of IndyMac, the Defendants pursued a common plan or design
23 with each other, and therefore are jointly and severally liable for all losses.
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1 who were or should have been known to be not creditworthy and/or in financial
2 difficulty.

3 b. Causing or allowing a loan to be made in violation of applicable laws,
4 regulations, and/or HBD's internal policies.

5 c. Causing or allowing a loan to be made with inadequate or inaccurate
6 financial information regarding the creditworthiness of the borrower and/or
7 guarantor, and the prospective source of repayment, and the security provided for
8 the loans.

9 d. Causing or allowing a loan to be made where one or more of the
10 sources of repayment of the loan were not likely to be sufficient to fully retire the
11 debt.

12 e. Causing or allowing a loan to be made, renewed, and/or extended with
13 inadequate or problematic appraisals.

14 f. Causing or allowing a loan to be renewed or extended to borrowers
15 who were not creditworthy or were known to be in financial difficulty and without
16 any reduction in principal and without taking proper steps to obtain security or
17 otherwise protect the Bank's interests.

18 g. Causing or allowing a loan to be made, renewed, and/or extended
19 despite poor and deteriorating market conditions.

20 h. Causing or allowing a loan to be made, renewed, and/or extended
21 despite the Bank having a high geographic concentration of loans in the same
22 market.

23 i. Causing or allowing a loan to be made, renewed or extended despite
24 the borrower having a high geographic concentration of property in the same
25 market.

26 j. Causing or allowing a loan to be made, renewed or extended where
27 there was very little likelihood of the loan repaying within the term of the loan.
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1 not owned or controlled by the borrower. Thus, HBD recorded priority liens on two
2 pieces of land: (1) 106 tentatively mapped lots at Country View Estates that were owned
3 free and clear by Fiesta Development, Inc., and (2) the “Friedman Property” which was
4 owned by R&D Investors, LLC (an affiliate of Fiesta Development, Inc.) and consisted of
5 114 acres that had 217 tentatively mapped lots with an additional 210 lots projected to be
6 tentatively mapped within a couple of months. HBD had a land loan on the Friedman
7 Property totaling \$13.2 million, which was rolled into the ADP loan. In addition, the
8 loan budget included \$4.25 million in contingency funds to account for possible cost
9 increases. The balance of the loan funds related to interest and costs. Fiesta
10 Development and R&D Investors, LLC were co-borrowers on this loan, which was
11 subject to a maximum loan to value of 65% based on the “as-is” value of the land
12 collateral purportedly totaling over \$60 million.

13 85. The borrowers were members of Homeland Romoland, Inc., a California
14 corporation comprised of landowners in the area who pooled resources to construct flood
15 control improvements needed in the Riverside County Flood Control and Water
16 Conservation District Master Drainage Plans and Area Drainage Plan. The borrowers
17 were required by the corporation to provide a Standby Letter of Credit in an amount
18 equal to its share of the flood control improvements, i.e. \$19.925 million (39.57%),
19 which was established based on the percentage of land ownership impacted by the flood
20 control improvements. HBD provided the Standby Letter of Credit using the land set
21 forth above as collateral. The cost of the flood control improvements were to be repaid
22 through a to-be-created Community Facilities District (“CFD”), and the residual balance
23 on HBD’s loan was to be paid through subsequent development financing. Proceeds
24 from the CFD would not be disbursed until the flood control improvements were
25 operational, as determined by the Riverside County Flood Control and Water
26 Conservation District. This loan was cross-paid with HBD loan number 52-883000,
27 which was a construction loan relating to Country View Estates. The cross-pay provision
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1 only afforded a principal curtailment payment of \$3.3 million if the CFD was not formed
2 by April 1, 2007, and was to be rescinded upon formation of the CFD.

3 86. The primary source of repayment on this loan was stated to be proceeds
4 from the CFD, which were to repay the portion of this loan that was financing flood
5 control improvements. The balance of this loan was to be repaid through the sale or
6 development of the land collateral. HBD anticipated financing the development and
7 construction of the 106 lots in Country View Estates. HBD had not decided whether it
8 would finance the Friedman lots, but had a first right of refusal if the borrowers decided
9 to develop them.

10 87. The secondary source of repayment on this loan was stated to be guarantees
11 by Richard Ashby (“Ashby”) and Lawrence Redman (“Redman”). The CAM stated that
12 the guarantors had a combined liquidity of \$19 million, an unused line of credit totaling
13 \$1.5 million (not reflected in their liquidity), extensive car collections valued at over \$2.5
14 million, and interest income from tax increment revenue bonds from the Fontana
15 Redevelopment Agency generating \$1.8 million per year. Redman and Ashby had
16 contingent liabilities totaling \$62,464,000 and \$44,354,000, respectively. The combined
17 debt to worth of the borrowers and guarantors was 209.99%.

18 88. On July 13, 2007, HBD Regional Manager Bruce Beck sent an e-mail to
19 Rothman and Camp noting that the collateral value dropped as follows: \$62,780,000 at
20 underwriting to \$50,224,000 as of May 22, 2007, and an estimated \$25,580,000 as of July
21 13, 2007. This reflected a loan to value of 159.36% on the land collateral, and 89.58% if
22 the CFD provided \$19,925,000 in reimbursement proceeds. The new account officer,
23 Greg Shamlian (“Shamlian”), reported on July 16, 2007, that \$24 million was required to
24 re-margin this loan back to its original loan to value of 65%.

25 89. On August 15, 2007, HBD workout officer John Terwilliger (“Terwilliger”)
26 learned that periodic payments through the CFD were improbable and that CFD
27 formation was going to take longer than anticipated. Terwilliger prepared a Classified
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1 Asset Report (“CAR”) for the related Country View Estates production loan and model
2 loan on January 31, 2008. The report noted that the borrowers were unwilling to
3 rebalance the ADP loan or pay interest out of pocket. Terwilliger also noted that the
4 guarantors’ liquidity and secondary support had deteriorated.

5 90. On March 27, 2008, the collateral value had deteriorated to \$12,330,000.
6 On March 31, 2008, HBD collapsed this loan to the current outstanding sum of
7 \$26,374,602, and a notice of default was filed. HBD initiated a guarantor lawsuit against
8 Redman and Ashby on April 1, 2008. Terwilliger subsequently discovered that there was
9 a significant change in the guarantors’ cash flow, as the guarantors pledged the interest
10 receivable on a tax increment bond issued by the Fontana Redevelopment Agency to
11 another lender. The cash flow had been \$1.88 million per year. HBD agreed to
12 underwrite this loan without asking the guarantors to pledge the bonds, or at least conduct
13 sufficient due diligence to ensure that they had not already been pledged.

14 91. On April 25, 2008, HBD learned that Downey Savings had foreclosed on a
15 portion of the land that was attached to the borrower’s interest in the CFD, and that it
16 may have reduced the borrower’s interest to proceeds from the CFD from nearly 40% to
17 approximately 12%. On May 20, 2008, counsel for Homeland/Romoland ADP, Inc. sent
18 HBD a letter stating that proceeds from the CFD would be disbursed based on the shares
19 of stock owned by each member of the corporation. Shares of stock were distributed in
20 accordance with the percentage ownership of land upon which flood control
21 improvements were constructed. Thus, the letter implied that the ADP executive
22 committee would distribute funds in accordance with the goals, intent, spirit, and
23 language of the Shareholders Operating Agreement dated January 1, 2006. Put simply,
24 there was a real possibility that HBD’s share of the CFD, which was its primary source of
25 repayment on this loan, had decreased from just over 39% to roughly 12%, as the
26 borrower may have been forced to turn over a percentage of the shares of stock to
27 Downey Savings as the new property owner. This discovery resulted in HBD seeking a
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1 temporary restraining order to prevent the borrowers from transferring any portion their
2 shares of Homeland/Romoland ADP, Inc. to Downey Savings or anyone else. Within
3 hours before the hearing, the borrowers agreed to give HBD all 39.57% of the shares with
4 HBD's stipulation that it would not negotiate the shares without an additional judicial
5 hearing. The borrowers also agreed to give HBD 24 hours notice of deciding to vacate
6 the project to enable HBD to get a receiver in place. Finally, HBD agreed to pay the
7 borrowers \$5,000 in marketing costs and \$3,300 in sales commissions on future home
8 sales in the County View Estate project. It is very questionable whether HBD will realize
9 all 39.57% of the proceeds from the CFD, as the future judicial hearing has uncertain
10 results. Moreover, the CFD has had difficulty selling bonds due to deteriorated market
11 conditions. Thus, it is very uncertain whether there will be any proceeds from the CFD.

12 92. On June 4, 2008, counsel for Redman sent Terwilliger a letter requesting a
13 meeting to discuss resolution of IndyMac's claims against Redman relating to his
14 guarantee of the various HBD loans. Redman was noted to have over \$160 million in
15 guarantees to IndyMac and numerous other lenders. A meeting took place on June 17,
16 2008, during which Redman offered roughly five cents on the dollar for the deficiency.

17 93. Van Dellen, Koon, and Shellem approved and/or extended this loan despite
18 substantial known risks and or risks that should have been known in the exercise of due
19 diligence. These risks include, but are not limited, to the following:

20 a. Van Dellen, Koon and Shellem failed to discover that the appraisal
21 report for the Friedman property did not consider the impact of a CFD assessment.
22 Van Dellen, Koon and Shellem were in possession of the appraisal report, and the
23 CFD was not a mystery as it was an integral component to this loan's primary
24 source of repayment. HBD simply did not communicate the existence of the CFD
25 to its appraiser, who indicated plainly in his report that his opinion of value
26 assumed there was no CFD-related assessments. HBD's failure to identify this
27 incorrect appraisal assumption resulted in a collateral value that, according to the
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1 appraiser for this loan, was overstated by \$10 million to \$15 million. In addition,
2 the sale of the Friedman property for \$4 million less than two years prior to its
3 underwriting value of over \$50 million was not properly considered -- particularly
4 where the property was still not entitled for development. HBD was unable to
5 offer any cogent explanation for the prior sale price. This further reduced HBD's
6 collateral value. This loan would not have been approved by Van Dellen, Koon,
7 and Shellem if they had discovered these appraisal errors, as the LTV ratio for this
8 loan was at the 65% regulatory and policy limit for a land loan. In fact, it appears
9 HBD originated this loan at an actual LTV of at least 90%. The losses incurred on
10 this loan would not have been suffered had Van Dellen, Koon, and Shellem
11 properly evaluated the appraisal and decided against approving the loan.

12 b. Van Dellen, Koon and Shellem failed to acknowledge HBD's
13 limitations and the limitations of its underwriting staff. In fact, the financial
14 analyst on this loan conceded that he and the account officer were both
15 inexperienced. There is widespread consensus amongst HBD officers and analysts
16 that this loan was simply too complicated, and that HBD lacked the qualifications
17 to make it. Indeed, HBD failed to understand the complexities with the primary
18 source of repayment for this loan, and did not consider the possibility that the
19 borrowers' interest in the CFD proceeds could diminish by virtue of actions taken
20 by other lenders.

21 c. Van Dellen, Koon and Shellem had unrealistic expectations as to the
22 borrowers' ability to overcome the numerous entitlement/development hurdles
23 within the 18-month-loan term. HBD already had widespread warning that the
24 project was located in a market that was at its peak, and potentially in decline.
25 HBD took an undue gamble that the market would remain viable into 2009 and
26 2010.

27 d. The borrowers were heavily concentrated in the Inland Empire, and
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1 owned or controlled nearly 20,000 lots in at least 12 projects. HBD failed to
2 adequately consider the substantial risks associated with making a \$40 million loan
3 to borrowers who had a large volume of land holdings in a largely commuter
4 market. This was particularly true given that the borrowers and guarantors were
5 highly leveraged and had combined adjusted and contingent liabilities that
6 exceeded their combined adjusted equity by over \$125 million. Thus, Van Dellen,
7 Koon and Shellem were negligent and breached their duty of care by approving a
8 loan that had no viable secondary source of repayment, particularly when the
9 primary source of repayment was inundated with uncertainty. This issue was
10 compounded when they approved this loan without reasonable safeguards such as
11 requiring a minimum-net-worth covenant or a maximum-debt-to-worth covenant.

12 e. Van Dellen, Koon and Shellem failed to engage in sufficient due
13 diligence to ensure that the income generated from the guarantors' interest in the
14 Fontana tax increment bonds would be available as a secondary source of
15 repayment. While this is simply another example of HBD's failure to secure a
16 viable secondary source or repayment, the failure to ask the guarantors to pledge
17 the bonds or otherwise safeguard HBD's entitlement to the assets was negligent.

18 94. Van Dellen, Koon and Shellem knew, or in the exercise of due diligence
19 should have known, that their practices and the practices of IndyMac's employees who
20 reported to them and over whom they exercised supervisory control, were improper,
21 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
22 Dellen, Koon and Shellem in regard to this loan include, but are not limited to, the
23 following:

24 a. Causing or allowing a loan to be made to borrowers and guarantors
25 who were or should have been known to be not creditworthy and/or in financial
26 difficulty.

27 b. Causing or allowing a loan to be made in violation of applicable laws,
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1 regulations, and/or HBD's internal policies.

2 c. Causing or allowing a loan to be made with inadequate or inaccurate
3 financial information regarding the creditworthiness of the borrowers and/or
4 guarantors, and the prospective source of repayment, and the security provided for
5 the loans.

6 d. Causing or allowing a loan to be made with deficient collateral;

7 e. Causing or allowing a loan to be made where one or more of the
8 sources of repayment of the loan were not likely to be sufficient to fully retire the
9 debt.

10 f. Causing or allowing a loan to be made, renewed, and/or extended with
11 inadequate or problematic appraisals.

12 g. Causing or allowing a loan to be made without taking proper and
13 reasonable steps to insure that the loan proceeds would be used in accordance with
14 the loan application and failing to control the disbursement of loan proceeds.

15 h. Causing or allowing a loan to be renewed or extended to borrowers
16 who were not creditworthy or were known to be in financial difficulty and without
17 any reduction in principal and without taking proper steps to obtain security or
18 otherwise protect the Bank's interests.

19 i. Causing or allowing a loan to be made, renewed, and/or extended
20 despite poor and deteriorating market conditions.

21 j. Causing or allowing a loan to be made, extended, and/or renewed
22 despite the Bank having a high geographic concentration of loans in the same
23 market.

24 k. Causing or allowing a loan to be made, renewed or extended despite
25 the borrower having a high geographic concentration of property in the same
26 market.

27 l. Causing or allowing a loan to be made, renewed or extended where
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1 there was very little likelihood of the loan repaying within the term of the loan.

2 95. Van Dellen, Koon, and Shellem, as officers, owed IndyMac the obligation to
3 exercise the degree of care, skill and diligence that ordinarily prudent persons in like
4 positions would use under similar circumstances in the management, supervision and
5 conduct of IndyMac's business and financial affairs.

6 96. By their actions and inactions, as generally and specifically described above,
7 Van Dellen, Koon, and Shellem failed and neglected to perform their duties properly as
8 officers of IndyMac and breached their fiduciary duties of care to IndyMac.

9 97. As a direct and proximate result of the negligence and breach of fiduciary
10 duties of Van Dellen, Koon, and Shellem, Plaintiff has suffered losses and other
11 compensatory and consequential damages, in amounts to be established at trial.

12 98. With respect to all of their actions and inactions in managing and
13 administering the affairs of IndyMac, Van Dellen, Koon, and Shellem pursued a common
14 plan or design with each other, and therefore are jointly and severally liable for all losses.

15 **Count 4**

16 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
17 **Rothman Related to the Underwriting, Administration, Extension and Modification**
18 **of a Loan to Fiesta Development, Inc. for Country View Estates – Phases 6&7)**

19 99. Plaintiff incorporates by reference and re-alleges each of the allegations in
20 paragraphs 1 through 98 of this complaint, as though fully set forth herein.

21 100. Van Dellen, Shellem, and Rothman approved a loan to Fiesta Development,
22 Inc. for a project known as Country View Estates – Phases 6&7. This loan was entered
23 into on September 18, 2006, and was an AD&C loan for the development of 59 single-
24 family-residential units. The loan commitment totaled \$16,832,500 and had a 12-month
25 term. Losses on this loan are estimated to exceed \$1.5 million.

26 101. This loan replaced an existing HBD loan and had additional costs related to
27 site development, permits/fees, and developer overhead. Country View Estates was a
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1 318-unit single-family-detached-residential-housing tract that was divided into seven
2 phases.

3 102. The primary source of repayment of this loan was stated to be unit closings
4 in the project. The secondary source of repayment was the personal guarantees of
5 Redman and Ashby.

6 103. This loan matured on September 17, 2007, and was in violation of covenants
7 limiting the number of finished spec units allowed in the project. A default letter was
8 sent to the borrower and guarantors on November 29, 2007. On March 31, 2008, HBD
9 collapsed this loan to its then-current-outstanding balance of \$5,910,543.54. A notice of
10 default was filed the same day, and guarantor suits were initiated on April 1, 2008. HBD
11 subsequently agreed to pay the borrowers \$5,000 in marketing costs and \$3,300 in sales
12 commissions on future home sales in the County View Estate project in exchange for the
13 borrowers agreeing to give HBD 24 hours notice of deciding to vacate the project.

14 104. On June 4, 2008, counsel for Redman sent Terwilliger a letter requesting a
15 meeting to discuss resolution of IndyMac's claims against Redman relating to his
16 guarantee of the various HBD loans. Redman was noted to have over \$160 million in
17 guarantees to IndyMac and numerous other lenders. These settlement discussions
18 resulted in a preliminary settlement under which HBD would have received \$500,000 at
19 settlement closing, and \$500,000 four months later. The second payment was to be
20 secured by a lien on Redman's ranch and by a life insurance policy. Redman, however,
21 was forced into involuntary bankruptcy by his other creditors. As a result, HBD
22 discontinued its negotiations with Redman. An effort to sell the units was undertaken
23 with the borrower until it abandoned the project in September 2008.

24 105. Van Dellen, Rothman, and Shellem approved and/or extended this loan
25 despite substantial known risks and or risks that should have been known in the exercise
26 of due diligence. These risks include, but are not limited, to the following:
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1 a. There were deteriorating market conditions where the total months of
2 supply in the greater market area and submarket increased by roughly three months
3 since the CAM for Fiesta ADP had been submitted roughly three months earlier.
4 The CAM notes that overall inventory levels in West Riverside County increased
5 in the first quarter of 2006 by 6% to 17,818 units, and that 2,642 of those units
6 were offered and unsold reflecting a 12% increase from the prior quarter. In
7 addition, net sales were down 16% from the fourth quarter of 2004 and down 10%
8 from 2005.

9 b. The borrower owned or controlled nearly 20,000 lots in at least 12
10 projects throughout Riverside and San Bernardino Counties, which reflected added
11 risk due to the concentration of assets within the same market area. The CAM also
12 notes that the borrower and guarantors were heavily weighted in land inventory at
13 a time when the market was slowing and land values were dropping.

14 c. The CAM reflects a drop of nearly \$100 million in adjusted assets for
15 Ashby as compared to the CAM for Fiesta ADP, which was drafted approximately
16 three months earlier. Liabilities appear to have dropped a similar amount, which
17 resulted in a similar adjusted equity value. But there was no explanation provided
18 in the CAM for what appears to be a conspicuous accounting change. Notably,
19 both Redman's and Ashby's cash positions declined substantially. There was no
20 mention of this in the CAM. These changes were reflective of a weakening
21 borrower and guarantors.

22 d. The borrower and guarantors had in excess of \$275 million in other
23 loan commitments with over \$200 million outstanding. In addition, Ashby had
24 contingent liabilities totaling over \$44 million, and Redman had contingent
25 liabilities totaling over \$62 million.
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1 e. HBD did not require a minimum-tangible-net-worth covenant or a
2 maximum-debt-to-worth covenant, which created greater risk given the leverage of
3 the borrower and guarantors.

4 f. Ashby had a FICO score of 692 which was below the policy limit of
5 700. There was no explanation for this provided in the CAM.

6 106. Van Dellen, Shellem, and Rothman knew, or in the exercise of due diligence
7 should have known, that their practices and the practices of IndyMac's employees who
8 reported to them and over whom they exercised supervisory control, were improper,
9 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
10 Dellen, Shellem, and Rothman in regard to this loan include, but are not limited to, the
11 following:

12 a. Causing or allowing a loan to be made to a borrower and guarantors
13 who were or should have been known to be not creditworthy and/or in financial
14 difficulty.

15 b. Causing or allowing a loan to be made in violation of applicable laws,
16 regulations, and/or HBD's internal policies.

17 c. Causing or allowing a loan to be made with inadequate or inaccurate
18 financial information regarding the creditworthiness of the borrower and/or
19 guarantor, and the prospective source of repayment, and the security provided for
20 the loans.

21 d. Causing or allowing a loan to be made with deficient collateral.

22 e. Causing or allowing a loan to be made where one or more of the
23 sources of repayment of the loan were not likely to be sufficient to fully retire the
24 debt.

25 f. Causing or allowing a loan to be made with inadequate or problematic
26 appraisals.

27 g. Causing or allowing a loan to be renewed or extended with inadequate
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1 or problematic appraisals.

2 h. Causing or allowing a loan to be renewed or extended to borrowers
3 who were not creditworthy or were known to be in financial difficulty and without
4 any reduction in principal and without taking proper steps to obtain security or
5 otherwise protect the Bank's interests.

6 i. Causing or allowing a loan to be made, renewed, or extended despite
7 poor and deteriorating market conditions.

8 j. Causing or allowing a loan to be made, renewed, or extended despite
9 the Bank having a high geographic concentration of loans in the same market.

10 k. Causing or allowing a loan to be made, renewed or extended despite
11 the borrower having a high geographic concentration of property in the same
12 market.

13 l. Causing or allowing a loan to be made, renewed or extended where
14 there was very little likelihood of the loan repaying within the term of the loan.

15 107. Van Dellen, Rothman, and Shellem, as officers, owed IndyMac the
16 obligation to exercise the degree of care, skill and diligence that ordinarily prudent
17 persons in like positions would use under similar circumstances in the management,
18 supervision and conduct of IndyMac's business and financial affairs.

19 108. By their actions and inactions, as generally and specifically described above,
20 Van Dellen, Rothman, and Shellem failed and neglected to perform their duties properly
21 as officers of IndyMac and breached their fiduciary duties of care to IndyMac.

22 109. As a direct and proximate result of the negligence and breach of fiduciary
23 duties of Van Dellen, Rothman, and Shellem, Plaintiff has suffered losses and other
24 compensatory and consequential damages, in amounts to be established at trial.

25 110. With respect to all of their actions and inactions in managing and
26 administering the affairs of IndyMac, Van Dellen, Rothman, and Shellem pursued a
27 common plan or design with each other, and therefore are jointly and severally liable for
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1 all losses.

2 **C. Count Based on Allegations Related to the Loan Made By HBD in the**
3 **Main Street Partners, Inc. Borrower Relationship.**

4 **Count 5**

5 **(Claim for Negligence and Breach of Duty of Care Against All Defendants Related**
6 **to the Underwriting, Administration, Extension and Modification of a Loan to Lake**
7 **Mathews Venture, LLC for the Lake Mathews Golf and Country Club Project)**

8 111. Plaintiff incorporates by reference and re-alleges each of the allegations in
9 paragraphs 1 through 110 of this complaint, as though fully set forth herein.

10 112. Van Dellen, Shellem, and Koon approved a loan to Lake Mathews Venture,
11 LLC for a project known as the Lake Mathews Golf and Country Club Project. This loan
12 was entered into on September 8, 2004, with extensions approved by Van Dellen,
13 Shellem, and Koon in March 2006, Van Dellen, Shellem, and Rothman in October 2006,
14 and Van Dellen and Rothman in December 2007. The loan involved the acquisition and
15 final entitlement of 362 acres in Riverside, California for eventual development of 295
16 lots and a proposed 18-hole-public golf course. The initial loan commitment totaled
17 \$8,550,000 and had an 18-month term. Subsequent extensions and a modification of the
18 loan increased the loan commitment to \$11,100,000 and extended the term a total of 30
19 months. Losses on this loan approximate \$7.3 million.

20 113. Defendants approved, extended and/or modified this loan despite substantial
21 known risks and/or risks that should have been known in the exercise of due diligence,
22 including, but not limited to, the following:

23 a. Numerous entitlements and governmental approvals remained to be
24 obtained before the borrower could effectively market the land for sale because the
25 borrower had no intention of building on the property.

26 b. The borrower (and its principal investor) had no prior experience in
27 land development or construction.

- 1 c. Deteriorating market conditions.
- 2 d. Deteriorating creditworthiness and financial strength of the borrower
- 3 and guarantors.
- 4 e. One guarantor that lacked the liquidity to completely repay the loan.
- 5 f. There was a significant decrease in the appraised value of the land.

6 114. Defendants knew, or in the exercise of due diligence should have known,
7 that their practices and the practices of IndyMac's employees who reported to them and
8 over whom they exercised supervisory control, were improper, imprudent, and harmful to
9 IndyMac. The negligence and breaches of duty by Defendants in regard to this loan
10 include, but are not limited to, the following:

- 11 a. Causing or allowing a loan to be made to a borrower and guarantors
- 12 who were or should have been known to be not creditworthy and/or in financial
- 13 difficulty.
- 14 b. Causing or allowing a loan to be made in violation of applicable laws,
- 15 regulations, and/or HBD's internal policies.
- 16 c. Causing or allowing a loan to be made with inadequate or inaccurate
- 17 financial information regarding the creditworthiness of the borrower and/or
- 18 guarantor, and the prospective source of repayment, and the security provided for
- 19 the loans.
- 20 d. Causing or allowing a loan to be made with deficient collateral;
- 21 e. Causing or allowing a loan to be made where one or more of the
- 22 sources of repayment of the loan were not likely to be sufficient to fully retire the
- 23 debt.
- 24 f. Causing or allowing a loan to be made without taking proper and
- 25 reasonable steps to insure that the loan proceeds would be used in accordance with
- 26 the loan application and failing to control the disbursement of loan proceeds.
- 27 g. Causing or allowing a loan to be renewed or extended to borrowers
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1 who were not creditworthy or were known to be in financial difficulty and without
2 any reduction in principal and without taking proper steps to obtain security or
3 otherwise protect the Bank's interests.

4 h. Causing or allowing a loan to be made outside the normal and prudent
5 trade areas of the Bank.

6 i. Causing or allowing a loan to be made, renewed, and/or extended
7 despite poor and deteriorating market conditions.

8 j. Causing or allowing a loan to be made, renewed or extended where
9 there was very little likelihood of the loan repaying within the term of the loan.

10 115. Defendants, as officers, owed IndyMac the obligation to exercise the degree
11 of care, skill and diligence that ordinarily prudent persons in like positions would use
12 under similar circumstances in the management, supervision and conduct of IndyMac's
13 business and financial affairs.

14 116. By their actions and inactions, as generally and specifically described above,
15 the Defendants failed and neglected to perform their duties properly as officers of
16 IndyMac and breached their fiduciary duties of care to IndyMac.

17 117. As a direct and proximate result of the negligence and breach of fiduciary
18 duties of the Defendants, Plaintiff has suffered losses and other compensatory and
19 consequential damages, in amounts to be established at trial.

20 118. With respect to all of their actions and inactions in managing and
21 administering the affairs of IndyMac, the Defendants pursued a common plan or design
22 with each other, and therefore are jointly and severally liable for all losses.
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1 guarantors.

2 d. Delays in obtaining final entitlements and other governmental
3 approvals.

4 e. Deteriorating market conditions, particularly at the time of the May
5 2008 loan extension and modification.

6 f. A high concentration of HBD's portfolio in Northern California that
7 had exceeded the HBD policy maximum as of May 2008.

8 g. Relaxing of borrower and guarantor financial reporting requirements
9 in violation of HBD policy.

10 h. Failure to obtain additional guarantees to compensate for the reduced
11 liquidity of the existing guarantors.

12 122. Defendants knew, or in the exercise of due diligence should have known,
13 that their practices and the practices of IndyMac's employees who reported to them and
14 over whom they exercised supervisory control, were improper, imprudent, and harmful to
15 IndyMac. The negligence and breaches of duty by Defendants in regard to this loan
16 include, but are not limited to, the following:

17 a. Causing or allowing a loan to be made to a borrower and guarantors
18 who were or should have been known to be not creditworthy and/or in financial
19 difficulty.

20 b. Causing or allowing a loan to be made in violation of applicable laws,
21 regulations, and/or HBD's internal policies.

22 c. Causing or allowing a loan to be made with inadequate or inaccurate
23 financial information regarding the creditworthiness of the borrower and/or
24 guarantor, and the prospective source of repayment, and the security provided for
25 the loans.

26 d. Causing or allowing a loan to be made where one or more of the
27 sources of repayment of the loan were not likely to be sufficient to fully retire the
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1 debt.

2 e. Causing or allowing a loan to be made without taking proper and
3 reasonable steps to insure that the loan proceeds would be used in accordance with
4 the loan application and failing to control the disbursement of loan proceeds.

5 f. Causing or allowing a loan to be renewed or extended to borrowers
6 who were not creditworthy or were known to be in financial difficulty and without
7 any reduction in principal and without taking proper steps to obtain security or
8 otherwise protect the Bank's interests.

9 g. Causing or allowing a loan to be made, renewed, and/or extended
10 despite poor and deteriorating market conditions.

11 h. Causing or allowing a loan to be renewed or extended despite the
12 Bank having a high geographic concentration of loans in the same market.

13 i. Causing or allowing a loan to be made, renewed or extended where
14 there was very little likelihood of the loan repaying within the term of the loan.

15 123. Defendants, as officers, owed IndyMac the obligation to exercise the degree
16 of care, skill and diligence that ordinarily prudent persons in like positions would use
17 under similar circumstances in the management, supervision and conduct of IndyMac's
18 business and financial affairs.

19 124. By their actions and inactions, as generally and specifically described above,
20 the Defendants failed and neglected to perform their duties properly as officers of
21 IndyMac and breached their fiduciary duties of care to IndyMac.

22 125. As a direct and proximate result of the negligence and breach of fiduciary
23 duties of the Defendants, Plaintiff has suffered losses and other compensatory and
24 consequential damages, in amounts to be established at trial.

25 126. With respect to all of their actions and inactions in managing and
26 administering the affairs of IndyMac, the Defendants pursued a common plan or design
27 with each other, and therefore are jointly and severally liable for all losses.

1 Count 7

2 (Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and
3 Koon Related to the Underwriting and Administration of a Loan to Bay Colony
4 Investors II, Inc. for the Portola Road Project)

5 127. Plaintiff incorporates by reference and re-alleges each of the allegations in
6 paragraphs 1 through 126 of this complaint, as though fully set forth herein.

7 128. Van Dellen, Shellem, and Koon approved a loan to Bay Colony Investors II,
8 Inc. for a project known as the Portola Road Project. This loan was entered into on
9 September 4, 2006. The loan was issued to provide the borrower with funds for the
10 acquisition, development and construction of 70 townhomes in the Portola subdivision in
11 Livermore, California (Alameda County). The loan commitment totaled approximately
12 \$30.4 million and had a 24-month term. Losses on this loan total approximately
13 \$250,000.

14 129. Van Dellen, Shellem, and Koon approved this loan despite substantial
15 known risks and/or risks that should have been known in the exercise of due diligence,
16 including, but not limited to, the following:

17 a. A loan term that was seven months shorter than needed to pay off this
18 loan based on cash flow projections at the time of approval.

19 b. Cash equity and expected profit margin below HBD policy limits,
20 creating a higher risk that a project already facing market challenges would not be
21 able to effectively react to those challenges and reduce sales prices.

22 c. Inadequate verification of the liquidity of the two guarantors, together
23 with evidence at the time of loan approval that their liquidity was declining
24 rapidly.

25 d. Many of the guarantors' assets were held in trusts, and access to these
26 assets was limited by the trust agreements.

27 e. Deteriorating market conditions.

1 130. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
2 should have known, that their practices and the practices of IndyMac's employees who
3 reported to them and over whom they exercised supervisory control, were improper,
4 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
5 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
6 following:

7 a. Causing or allowing a loan to be made to a borrower and guarantors
8 who were or should have been known to be not creditworthy and/or in financial
9 difficulty.

10 b. Causing or allowing a loan to be made in violation of applicable laws,
11 regulations, and/or HBD's internal policies.

12 c. Causing or allowing a loan to be made with inadequate or inaccurate
13 financial information regarding the creditworthiness of the borrower and/or
14 guarantor, and the prospective source of repayment, and the security provided for
15 the loans.

16 d. Causing or allowing a loan to be made where one or more of the
17 sources of repayment of the loan were not likely to be sufficient to fully retire the
18 debt.

19 e. Causing or allowing a loan to be made without taking proper and
20 reasonable steps to insure that the loan proceeds would be used in accordance with
21 the loan application and failing to control the disbursement of loan proceeds.

22 f. Causing or allowing a loan to be made, renewed, and/or extended
23 despite poor and deteriorating market conditions.

24 g. Causing or allowing a loan to be made, renewed or extended where
25 there was very little likelihood of the loan repaying within the term of the loan.

26 131. Van Dellen, Shellem, and Koon, as officers, owed IndyMac the obligation to
27 exercise the degree of care, skill and diligence that ordinarily prudent persons in like
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1 positions would use under similar circumstances in the management, supervision and
2 conduct of IndyMac's business and financial affairs.

3 132. By their actions and inactions, as generally and specifically described above,
4 Van Dellen, Shellem, and Koon failed and neglected to perform their duties properly as
5 officers of IndyMac and breached their fiduciary duties of care to IndyMac.

6 133. As a direct and proximate result of the negligence and breach of fiduciary
7 duties of Van Dellen, Shellem, and Koon, Plaintiff has suffered losses and other
8 compensatory and consequential damages, in amounts to be established at trial.

9 134. With respect to all of their actions and inactions in managing and
10 administering the affairs of IndyMac, Van Dellen, Shellem, and Koon pursued a common
11 plan or design with each other, and therefore are jointly and severally liable for all losses.

12 **E. Count Based on Allegations Related to the Loan Made By HBD in the**
13 **Ralph Giannella Borrower Relationship.**

14 **Count 8**

15 **(Claim for Negligence and Breach of Duty of Care Against All Defendants Related**
16 **to the Underwriting, Administration, Renewal, Extension and Modification of a**
17 **Loan to North Coastal, LLC for the Woodland Townhomes (Phase 2) Project)**

18 135. Plaintiff incorporates by reference and re-alleges each of the allegations in
19 paragraphs 1 through 134 of this complaint, as though fully set forth herein.

20 136. Van Dellen and Koon approved a loan to North Coastal, LLC for a project
21 known as Woodland Townhomes (Phase 2). This loan was entered into on April 26,
22 2005, and was a condominium conversion loan for the development of 65 condominium
23 units. Shellem withheld approval of the original loan. The loan commitment totaled
24 \$14,705,000 and had a 13-month term along with two three-month extensions. It was
25 renewed by approval of Van Dellen, Shellem, and Koon on June 8, 2006. The LTV ratio
26 at original underwriting was nearly 80% and the loan to cost ratio was 85%. Losses on
27 this loan are estimated at \$600,000.

1 137. This loan provided financing for the second phase of a 112-unit
2 condominium conversion project located in Escondido, California in northern San Diego
3 County, 30 miles north of San Diego. Phase 1's borrower was Broadway Coastal, LLC,
4 and the project consisted of 47 units. Phase 2's borrower was North Coastal, and the
5 project consisted of 65 units. The 47 units in Phase 1 were made up of 10 two-story
6 buildings situated on approximately 3.7 acres of land. The 65 units in Phase 2 were made
7 up of 13 two-story buildings situated on approximately 4.4 acres of land.

8 138. Phase 1 was scheduled to commence conversion approximately 60 days after
9 closing, while Phase 2 would commence in October 2005 depending on how well the
10 units in Phase 1 had sold. Phase 2 was to be converted in two phases -- 40 units in the
11 first, and 25 units in the second.

12 139. The borrower requested two separate loans. The first loan provided
13 financing for Phase 1, and involved a \$10,750,000 commitment. The second loan was
14 the subject loan, and involved a \$14,705,000 commitment. The two loans, which were
15 approved concurrently, were cross-defaulted, but were not cross-paid or cross-
16 collateralized. Both loans were originally financed by a second trust deed loan provided
17 by Bancorp totaling \$1,897,287 and \$2,664,357 for Phases 1 and 2, respectively.

18 140. The primary source of repayment of this loan was stated to be unit closings
19 in the project. There was no identified secondary source of repayment.

20 141. On May 31, 2006, a CAM requesting a 12-month extension for Phase 2 was
21 submitted. The CAM indicates that the loan for Phase 1 was paid off in mid-May of
22 2006. The extension for Phase 2 was requested due to slower than expected sales. Phase
23 1 averaged 5.5 units per month versus the appraiser's original estimate of 10 units per
24 month. The borrower requested an increased commitment amount to \$16,079,000 to
25 cover additional finance costs and some hard cost increases. The increased commitment
26 was also funding the interest reserve on the second trust deed loan issued by Bancorp.

27 142. On June 6, 2007, the maturity date on the renewal loan was extended from
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1 June 7, 2007 to August 1, 2007, to coincide with the maturity of the second trust deed
2 loan. The extension was requested to allow the borrower time to sell the remaining units
3 to retail buyers. At this time, HBD noted that Ralph Giannella (“Giannella”) was still a
4 strong guarantor with \$44 million in net worth and \$6.8 million in liquidity. But it
5 appears to have virtually ignored the fact that his contingent liabilities had swelled to
6 over \$84 million. In addition, the Escondido market continued to be impacted by the
7 level of supply and slowing sales. On July 30, 2007, the borrower informed HBD that he
8 did not have any available cash to support the subject project or his other three projects.

9 143. On August 3, 2007, HBD’s regional manager, account officer, and financial
10 analyst met with the borrower and discovered that he had spent the majority of his \$7
11 million in cash on his four remaining projects. Giannella’s liquidity had dropped to
12 essentially zero. HBD concluded that Giannella’s only way out of his remaining four
13 condo projects was to determine a price that would sell at a pace of more than three units
14 per month.

15 144. On September 13, 2007, Van Dellen and Rothman approved another 90-day
16 extension of the first and second trust deed loans. The first trust deed loan involved
17 \$487,281 of additional funds for interest reserve, a loan fee, and to pay off outstanding
18 accounts payable. It also included an additional \$507,948 for costs going forward
19 (property taxes, sales and marketing, overhead, HOA dues).

20 145. Defendants approved, renewed and/or extended this loan despite substantial
21 known risks and or risks that should have been known in the exercise of due diligence.
22 These risks include, but are not limited, to the following:

- 23 a. The borrower was permitted to keep all profits associated with the
24 nine additional sales closed in Phase 1 after repayment of the first loan. This
25 would net the borrower \$1.8 million after repayment of the second trust deed loan.
26 HBD’s decision to underwrite two separate loans for the same project without a
27 cross-payment agreement permitted the borrower to net all profits associated with
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1 the sale of Phase 1, which transferred risk to HBD. HBD's decision to do so
2 effectively prolonged its exposure on this transaction, and increased the number of
3 units the borrower needed to sell in Phase 2 to retire the debt. Shellem was in
4 favor of requiring the borrower to use Phase 1 proceeds to devote against the Phase
5 2 loan. In fact, Shellem withheld his approval on this transaction. Van Dellen and
6 Koon decided to approve this loan over Shellem's objections. It is likely that no
7 loss would have occurred had the two loans contained a cross-pay provision.

8 b. The CAM for the renewal loan indicates that there were 16 months of
9 supply of condo conversion units in the subject submarket. It also notes that there
10 were 13 months of supply for the subject project. This was an increase of 7
11 months from the original loan, and exceeded the 12-month term of the renewal.
12 While this loan was projected to payoff prior to the sale of the last unit, there was
13 substantial risk that this loan would not pay off by the end of the term if there were
14 further declines in absorption.

15 c. The 112-unit project had an "as-is" market value as condominiums of
16 \$21,840,000 versus a purchase price of \$21,800,000. In addition, the market value
17 in use as post-renovation apartments was \$19,100,000. Under an income
18 approach, the project had a value of \$15,626,180. These figures indicated that any
19 softening in the real estate market would render the purchase price higher than the
20 property's value under any analysis. In addition, the DCR as an apartment was
21 well below 1.0. These factors naturally presented substantial risk to HBD if the
22 builder was unable to complete the conversion.

23 d. At the time of the renewal of this loan for Phase 2, the absorption rate
24 had dropped from 10 units per month to 5 units per month. HBD's decision to
25 renew this loan at an increased commitment level in the face of obvious market
26 softening was irresponsible. HBD placed emphasis on the fact that the appraiser
27 concluded that there was a price increase in the units at the time of renewal. HBD
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1 also took comfort in the borrower's decision to price the units over the appraised
2 value. But the slowing absorption and other market indicators in the summer of
3 2006 should have caused HBD to view the price increases with caution.

4 e. The borrower had to rely on a second trust deed loan from Bancorp
5 for both loans. The borrower only put up 10% of the required cash equity for both
6 loans, and relied on Bancorp to come up of with the balance. Thus, the borrower
7 was engaged in virtually 100% financing, and the loan to cost for both loans
8 exceeded 97%. The loan to cost without considering the second trust deed loan
9 was still 85%, which was at the policy limit.

10 f. The CAM for the original loan notes that there were potentially 438
11 units under conversion and starting sales at the same time in the subject market. In
12 addition, this project exceeded HBD's policy limit for speculative units. These
13 factors evidenced a risk that absorption would be negatively impacted. In fact, the
14 CAM for the renewal loan notes that sales were impacted by the supply of
15 condominium/townhome conversion units available for sale in the market area.

16 g. The borrower and guarantor had five other condominium conversion
17 projects ongoing in the San Diego area. This evidenced a lack of diversification by
18 the borrower in terms of geography and product type, which resulted in greater risk
19 that the borrower would encounter difficulties if the condominium market in San
20 Diego softened.

21 146. Defendants knew, or in the exercise of due diligence should have known,
22 that their practices and the practices of IndyMac's employees who reported to them and
23 over whom they exercised supervisory control, were improper, imprudent, and harmful to
24 IndyMac. The negligence and breaches of duty by Defendants in regard to this loan
25 include, but are not limited to, the following:

26 a. Causing or allowing a loan to be made to a borrower and guarantors
27 who were or should have been known to be not creditworthy and/or in financial
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1 difficulty.

2 b. Causing or allowing a loan to be made in violation of applicable laws,
3 regulations, and/or HBD's internal policies.

4 c. Causing or allowing a loan to be made with inadequate or inaccurate
5 financial information regarding the creditworthiness of the borrower and/or
6 guarantor, and the prospective source of repayment, and the security provided for
7 the loans.

8 d. Causing or allowing a loan to be made where one or more of the
9 sources of repayment of the loan were not likely to be sufficient to fully retire the
10 debt.

11 e. Causing or allowing a loan to be made without taking proper and
12 reasonable steps to insure that the loan proceeds would be used in accordance with
13 the loan application and failing to control the disbursement of loan proceeds.

14 f. Causing or allowing a loan to be renewed or extended to borrowers
15 who were not creditworthy or were known to be in financial difficulty and without
16 any reduction in principal and without taking proper steps to obtain security or
17 otherwise protect the Bank's interests.

18 g. Causing or allowing a loan to be made, renewed, and/or extended
19 despite poor and deteriorating market conditions.

20 h. Causing or allowing a loan to be made, renewed, and/or extended
21 despite the Bank having a high geographic concentration of loans in the same
22 market.

23 i. Causing or allowing a loan to be made, renewed or extended despite
24 the borrower having a high geographic concentration of property in the same
25 market.

26 j. Causing or allowing a loan to be made, renewed or extended where
27 there was very little likelihood of the loan repaying within the term of the loan.
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1 147. Defendants as officers, owed IndyMac the obligation to exercise the degree
2 of care, skill and diligence that ordinarily prudent persons in like positions would use
3 under similar circumstances in the management, supervision and conduct of IndyMac's
4 business and financial affairs.

5 148. By their actions and inactions, as generally and specifically described above,
6 Defendants failed and neglected to perform their duties properly as officers of IndyMac
7 and breached their fiduciary duties of care to IndyMac.

8 149. As a direct and proximate result of the negligence and breach of fiduciary
9 duties of Defendants, Plaintiff has suffered losses and other compensatory and
10 consequential damages, in amounts to be established at trial.

11 150. With respect to all of their actions and inactions in managing and
12 administering the affairs of IndyMac, Defendants pursued a common plan or design with
13 each other, and therefore are jointly and severally liable for all losses.

14 **F. Counts Based on Allegations Related to the Loans Made By HBD in the**
15 **Corinthian Homes Borrower Relationship.**

16 **Count 9**

17 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
18 **Koon Related to the Underwriting and Administration of a Loan to RKB**
19 **Communities (The Greens), L.P. for the Crest & Greens Project)**

20 151. Plaintiff incorporates by reference and re-alleges each of the allegations in
21 paragraphs 1 through 150 of this complaint, as though fully set forth herein.

22 152. Van Dellen, Shellem, and Koon approved a loan to RKB Communities (The
23 Greens), L.P. for a project known as the Crest & Greens Project. This loan was entered
24 into on June 22, 2005. The loan involved the construction of 87 single-family homes in
25 Rancho Murieta, California, located in Sacramento County about 25 miles east of
26 Sacramento. The loan commitment totaled \$9,500,000 and had a 12-month term. Losses
27 on this loan exceed \$76,000.

1 153. Van Dellen, Shellem, and Koon approved this loan despite substantial
2 known risks and/or risks that should have been known in the exercise of due diligence,
3 including, but not limited to, the following:

4 a. The Sacramento, California market was extremely overheated, with
5 prices having increased nearly 70% over a four-year period, and there were clear
6 signs at the time of the loan approval that sales were slowing.

7 b. Rancho Murieta was a rural community located more than 25 miles
8 outside of downtown Sacramento and thus more susceptible to a slowing market.

9 c. The land appraisal relied on only one comparable sale from Rancho
10 Murieta because it was such a small community, with the remainder of comparable
11 sales coming from the City of Elk Grove, located over thirty minutes away.

12 d. The total amount of IndyMac loans to the principals and guarantors of
13 the borrower had grown to approximately \$160 million, nearly double the HBD
14 policy limit.

15 e. Financial information for the two guarantors was not consolidated and
16 was comprised of many interrelated partnerships and limited liability companies,
17 making it difficult to accurately evaluate the guarantors' true financial strength and
18 liquidity. The contingent liabilities of the guarantors' various companies were
19 not carefully considered in evaluating the guarantors' financial strength, meaning
20 their reported debt-to-worth ratios were understated. One of the guarantor's
21 already had a debt-to-worth ratio of 1.74 to 1 as of June 2004, while the other had a
22 ratio of 1.32 to 1.

23 f. The principal guarantor had extremely low liquidity and was heavily
24 invested in land throughout Sacramento and its surrounding areas, including riskier
25 raw and unentitled land assets, leaving him particularly susceptible to a market
26 slow down. The guarantors combined liquidity was only two percent of their total
27 debt, much less than an ideal number of 10% of total debt as conceded by the
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1 account officer for this loan.

2 154. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
3 should have known, that their practices and the practices of IndyMac's employees who
4 reported to them and over whom they exercised supervisory control, were improper,
5 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
6 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
7 following:

8 a. Causing or allowing a loan to be made to a borrower and guarantors
9 who were or should have been known to be not creditworthy and/or in financial
10 difficulty.

11 b. Causing or allowing a loan to be made in violation of applicable laws,
12 regulations, and/or HBD's internal policies.

13 c. Causing or allowing a loan to be made with inadequate or inaccurate
14 financial information regarding the creditworthiness of the borrower and/or
15 guarantor, and the prospective source of repayment, and the security provided for
16 the loans.

17 d. Causing or allowing a loan to be made where one or more of the
18 sources of repayment of the loan were not likely to be sufficient to fully retire the
19 debt.

20 e. Causing or allowing a loan to be made, extended, and/or renewed with
21 inadequate or problematic appraisals.

22 f. Causing or allowing a loan to be made without taking proper and
23 reasonable steps to insure that the loan proceeds would be used in accordance with
24 the loan application and failing to control the disbursement of loan proceeds.

25 g. Causing or allowing a loan to be made outside the normal and prudent
26 trade areas of the Bank.

27 h. Causing or allowing a loan to be made, renewed, and/or extended
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1 despite poor and deteriorating market conditions.

2 i. Causing or allowing a loan to be made, renewed or extended despite
3 the borrower having a high geographic concentration of property in the same
4 market.

5 j. Causing or allowing a loan to be made, renewed or extended where
6 there was very little likelihood of the loan repaying within the term of the loan.

7 155. Van Dellen, Shellem, and Koon, as officers, owed IndyMac the obligation to
8 exercise the degree of care, skill and diligence that ordinarily prudent persons in like
9 positions would use under similar circumstances in the management, supervision and
10 conduct of IndyMac's business and financial affairs.

11 156. By their actions and inactions, as generally and specifically described above,
12 Van Dellen, Shellem, and Koon failed and neglected to perform their duties properly as
13 officers of IndyMac and breached their fiduciary duties of care to IndyMac.

14 157. As a direct and proximate result of the negligence and breach of fiduciary
15 duties of Van Dellen, Shellem, and Koon, Plaintiff has suffered losses and other
16 compensatory and consequential damages, in amounts to be established at trial.

17 158. With respect to all of their actions and inactions in managing and
18 administering the affairs of IndyMac, Van Dellen, Shellem, and Koon pursued a common
19 plan or design with each other, and therefore are jointly and severally liable for all losses.

20 **Count 10**

21 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
22 **Koon Related to the Underwriting and Administration of a Loan to Corinthian**
23 **Homes (Anatolia), L.P. for the Anatolia Project)**

24 159. Plaintiff incorporates by reference and re-alleges each of the allegations in
25 paragraphs 1 through 158 of this complaint, as though fully set forth herein.

26 160. Van Dellen, Shellem, and Koon approved a loan to Corinthian Homes
27 (Anatolia), L.P. for a project known as the Anatolia Project. This loan was entered into
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1 on November 16, 2005. The loan involved the acquisition and development of 75 single-
2 family-residence lots in Rancho Cordova, California, about nine miles east of
3 Sacramento. The lots were to be used to construct 75 single-family residences for
4 eventual sale. The loan commitment totaled \$10,350,000 and had a 24-month term.
5 Losses on this loan exceed \$5.8 million.

6 161. Van Dellen, Shellem, and Koon approved this loan despite substantial
7 known risks and/or risks that should have been known in the exercise of due diligence,
8 including, but not limited to, the following:

9 a. The Sacramento, California market was extremely overheated, with
10 prices having increased nearly 70% over a four-year period, and there were clear
11 signs at the time of the loan approval that sales were slowing.

12 b. Profit margin on the loan was less than the 10% HBD policy
13 minimum.

14 c. Significant competition existed from six other builders in the Anatolia
15 master planned community, and the appraiser believed that the borrower's pricing
16 was higher than the competition.

17 d. Groundwater contamination near the project site had caused a plume
18 under most of the project site, and a rendering plant was located close to the site
19 causing bad odors, each of which created a substantial hurdle for development, and
20 constituted potential sources of cost increases and absorption problems.

21 e. The total amount of IndyMac loans to the principals and guarantors of
22 the borrower had grown to approximately \$155 million, nearly double the HBD
23 policy limit.

24 f. Financial information for the two guarantors was not consolidated and
25 was comprised of many inter-related partnerships and limited liability companies,
26 making it difficult to accurately evaluate the guarantors' true financial strength and
27 liquidity. The contingent liabilities of the guarantors' various companies were
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1 not carefully considered in evaluating the guarantors' financial strength, meaning
2 their reported debt-to-worth ratios were understated. One of the guarantor's
3 already had a debt-to-worth ratio of 1.74 to 1 as of June 2004, while the other had a
4 ratio of 1.32 to 1.

5 g. The principal guarantor had extremely low liquidity and was heavily
6 invested in land throughout Sacramento and its surrounding areas, including riskier
7 raw, unentitled land assets, leaving him particularly susceptible to a demonstrated
8 market slow down. The guarantors combined liquidity was only two percent of
9 their total debt, much less than an ideal number of 10% of total debt as conceded
10 by the account officer for this loan.

11 162. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
12 should have known, that their practices and the practices of IndyMac's employees who
13 reported to them and over whom they exercised supervisory control, were improper,
14 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
15 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
16 following:

17 a. Causing or allowing a loan to be made to a borrower and guarantors
18 who were or should have been known to be not creditworthy and/or in financial
19 difficulty.

20 b. Causing or allowing a loan to be made in violation of applicable laws,
21 regulations, and/or HBD's internal policies.

22 c. Causing or allowing a loan to be made with inadequate or inaccurate
23 financial information regarding the creditworthiness of the borrower and/or
24 guarantor, and the prospective source of repayment, and the security provided for
25 the loans.

26 d. Causing or allowing a loan to be made where one or more of the
27 sources of repayment of the loan were not likely to be sufficient to fully retire the
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1 debt.

2 e. Causing or allowing a loan to be made without taking proper and
3 reasonable steps to insure that the loan proceeds would be used in accordance with
4 the loan application and failing to control the disbursement of loan proceeds.

5 f. Causing or allowing a loan to be made, renewed, and/or extended
6 despite poor and deteriorating market conditions.

7 g. Causing or allowing a loan to be made, renewed or extended despite
8 the borrower having a high geographic concentration of property in the same
9 market.

10 h. Causing or allowing a loan to be made, renewed or extended where
11 there was very little likelihood of the loan repaying within the term of the loan.

12 163. Van Dellen, Shellem, and Koon, as officers, owed IndyMac the obligation to
13 exercise the degree of care, skill and diligence that ordinarily prudent persons in like
14 positions would use under similar circumstances in the management, supervision and
15 conduct of IndyMac's business and financial affairs.

16 164. By their actions and inactions, as generally and specifically described above,
17 Van Dellen, Shellem, and Koon failed and neglected to perform their duties properly as
18 officers of IndyMac and breached their fiduciary duties of care to IndyMac.

19 165. As a direct and proximate result of the negligence and breach of fiduciary
20 duties of Van Dellen, Shellem, and Koon, Plaintiff has suffered losses and other
21 compensatory and consequential damages, in amounts to be established at trial.

22 166. With respect to all of their actions and inactions in managing and
23 administering the affairs of IndyMac, Van Dellen, Shellem, and Koon pursued a common
24 plan or design with each other, and therefore are jointly and severally liable for all losses.