

Count 11

(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and Koon Related to the Underwriting and Administration of an Acquisition & Development Loan to Corinthian Homes (Williams), L.P. for the Valley Ranch Project)

167. Plaintiff incorporates by reference and re-alleges each of the allegations in paragraphs 1 through 166 of this complaint, as though fully set forth herein.

168. Van Dellen, Shellem, and Koon approved a loan to Corinthian Homes (Williams), L.P. for a project known as the Valley Ranch Project. This loan was entered into on December 27, 2005. The loan involved the acquisition and development of 152 single-family-residence lots in Williams, California, located in Colusa County about 54 miles north of Sacramento. The lots were to be used to construct 152 single-family residences for eventual sale. The loan commitment totaled over \$14.2 million and had a 24-month term. Losses on this loan exceed \$6.6 million.

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

a. The Sacramento, California market was extremely overheated, with prices having increased nearly 70% over a four-year period, and there was recent data at the time of the loan approval that sales had slowed by nearly 50%.

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

c. Williams was an outlying, commuter-based community located approximately 54 miles outside of downtown Sacramento and thus extremely susceptible to a slowing market.

d. The total amount of IndyMac loans to the principals and guarantors of the borrower had grown to approximately \$143 million, nearly double the HBD

1 policy limit.

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

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

16 g. The combined liquidity covenant of \$2 million was extremely low
17 given the size of this loan, and the significant obligations of the guarantors, which
18 only six months after loan approval included contingent liabilities of over \$250
19 million for one guarantor and combined liabilities of over \$500 million. Further,
20 the principal guarantor's liquidity had dropped to nearly 0% of his total assets.

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

27 a. Causing or allowing a loan to be made to a borrower and guarantors
28

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 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 f. Causing or allowing a loan to be made outside the normal and prudent
16 trade areas of the Bank.

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

19 h. Causing or allowing a loan to be made, renewed or extended despite
20 the borrower having a high geographic concentration of property in the same
21 market.

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

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

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

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

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

10 **Count 12**

11 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
12 **Koon Related to the Underwriting and Administration of Two Construction Loans**
13 **to Corinthian Homes (Edgewater), L.P. for the Edgewater Project)**

14 175. Plaintiff incorporates by reference and re-alleges each of the allegations in
15 paragraphs 1 through 174 of this complaint, as though fully set forth herein.

16 176. Van Dellen, Shellem, and Koon approved two loans to Corinthian Homes
17 (Edgewater), L.P. for a project known as the Edgewater Project. These loans were
18 entered into on May 31, 2006 and December 7, 2006. The loans involved the
19 construction of 55 single-family residences in Linda, California, located in Yuba County
20 nearly an hour away from Sacramento. The loan commitment for both loans totaled over
21 \$14.3 million, and each loan had a 24-month term. Total losses on these loans exceed
22 \$1.9 million.

23 177. Van Dellen, Shellem, and Koon approved these loans despite substantial
24 known risks and/or risks that should have been known in the exercise of due diligence,
25 including, but not limited to, the following:

- 26 a. The Sacramento, California market was extremely overheated, with
27 prices having increased nearly 70% over a four-year period, and there was recent
28

1 data at the time of each loan approval that sales had slowed by nearly 50%.

2 b. Linda was an outlying community located nearly one hour outside of
3 downtown Sacramento and thus extremely susceptible to a slowing market.

4 c. Another substantial client of IndyMac, namely Reynen & Bardis
5 (whose principal, Christo Bardis, was also a principal of many Corinthian
6 borrowers and a major guarantor of Corinthian loans), was also building single-
7 family residences in the Edgewater community, creating a scenario where two
8 HBD clients were competing against each other.

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

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

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

26 178. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
27 should have known, that their practices and the practices of IndyMac's employees who
28

1 reported to them and over whom they exercised supervisory control, were improper,
2 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
3 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
4 following:

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

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

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

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

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

20 f. Causing or allowing a loan to be made outside the normal and prudent
21 trade areas of the Bank.

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

24 h. 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 i. Causing or allowing a loan to be made, renewed or extended where there
28

1 was very little likelihood of the loan repaying within the term of the loan.

2 179. Van Dellen, Shellem, and Koon, 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.

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

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

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

15 **Count 13**

16 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
17 **Rothman Related to the Underwriting and Administration of Three Construction**
18 **Loans to Corinthian Homes (Williams), L.P. for the Valley Ranch Project)**

19 183. Plaintiff incorporates by reference and re-alleges each of the allegations in
20 paragraphs 1 through 182 of this complaint, as though fully set forth herein.

21 184. Van Dellen, Shellem, and Rothman approved three construction revolver
22 loans to Corinthian Homes (Williams), L.P. for a project known as the Valley Ranch
23 Project. These loans were entered into on August 23, 2006, December 7, 2006, and
24 January 30, 2007. The loans involved the construction of 152 single-family residences in
25 Williams, California, located in Colusa County about 54 miles north of Sacramento. The
26 loan commitment for the three loans totaled \$6.7 million and had a 24-month term.
27 Losses on these three loans total approximately \$2.1 million.

1 185. Van Dellen, Shellem, and Rothman approved these loans 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 each loan approval that sales had slowed by nearly 50%.

7 b. Profit margin on the loans was less than the 10% HBD policy
8 minimum.

9 c. Williams was an outlying, commuter-based community located
10 approximately 54 miles outside of downtown Sacramento, and thus extremely
11 susceptible to a slowing market.

12 d. The total amount of IndyMac loans to the principals and guarantors of
13 the borrower had grown to approximately \$143 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 inter-related 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
26 demonstrated market slow down. The guarantors combined liquidity was only
27 two percent of their total debt, much less than an ideal number of 10% of total debt
28

1 as conceded by the account officer for this loan.

2 g. The combined liquidity covenant of \$2 million was extremely low
3 given the size of the loans, and the significant obligations of the guarantors, which
4 only six months after loan approval included contingent liabilities of over \$250
5 million for one guarantor and combined liabilities of over \$500 million. Further,
6 the principal guarantor's liquidity had dropped to nearly 0% of his total assets.

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

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

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

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

22 d. 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 e. Causing or allowing a loan to be made without taking proper and
26 reasonable steps to insure that the loan proceeds would be used in accordance with
27 the loan application and failing to control the disbursement of loan proceeds.
28

1 f. Causing or allowing a loan to be made outside the normal and prudent
2 trade areas of the Bank.

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

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

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

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

14 188. By their actions and inactions, as generally and specifically described above,
15 Van Dellen, Shellem, and Rothman failed and neglected to perform their duties properly
16 as officers of IndyMac and breached their fiduciary duties of care to IndyMac.

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

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

1 c. Loan term of 24 months was double the HBD policy maximum for
2 acquisition and development loans, creating a greater risk that the extended term
3 would expose the Bank to a downturn in the real estate market

4 d. Loan guarantors had a low liquidity to debt ratio of 0.04:1, creating a
5 substantial risk that this secondary source of repayment would not be sufficient to
6 pay off this loan.

7 e. Two previous loans to another borrower within the Christopherson
8 Homes borrower relationship, namely Villa La Michele, L.P., had also been made
9 for a project in an extremely remote area of Northern California. This project
10 involved the acquisition, development and construction of 151 single family
11 residence lots in Orland, California, which is located 107 miles north of
12 Sacramento. Orland was a very small, rural community with a population barely
13 over 6,000 and a high unemployment rate, and was located in one of the smallest
14 counties in all of California. The A&D loan was entered into on January 31, 2005
15 with a 24-month loan term that was double the HBD policy maximum, and had a
16 total commitment of over \$7.9 million. The loan relied on the same guarantors as a
17 second source of repayment, and inappropriately valued the guarantors' assets by
18 including the projected market value upon completion of the very projects that
19 were being financed by the Bank instead of the as-is value. The loan had fallen
20 behind schedule by up to 60 days. The construction revolver loan was entered into
21 on November 21, 2005 with an approximately 12-month loan term and a total
22 commitment of \$9 million. The absorption rate for the project had dropped by
23 25% since the A&D loan had been booked, resulting in a delayed payoff of the
24 loan.

25 194. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
26 should have known, that their practices and the practices of IndyMac's employees who
27 reported to them and over whom they exercised supervisory control, were improper,
28

1 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
2 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
3 following:

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

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

9 c. 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 d. 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 e. Causing or allowing a loan to be made, renewed, and/or extended
16 despite poor and deteriorating market conditions.

17 f. Causing or allowing a loan to be made, renewed or extended where
18 there was very little likelihood of the loan repaying within the term of the loan.

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

23 196. By their actions and inactions, as generally and specifically described above,
24 Van Dellen, Shellem, and Koon failed and neglected to perform their duties properly as
25 officers of IndyMac and breached their fiduciary duties of care to IndyMac.

26 197. As a direct and proximate result of the negligence and breach of fiduciary
27 duties of Van Dellen, Shellem, and Koon, Plaintiff has suffered losses and other
28

1 compensatory and consequential damages, in amounts to be established at trial.

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

5 **H. Counts Based on Allegations Related to the Loans Made By HBD in the**
6 **Dr. Gansean Visvabharathy (“Dr. Vish”) Borrower Relationship.**

7 **Count 15**

8 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
9 **Koon Related to the Underwriting and Administration of a Loan to Villas**
10 **Development Corp. and TBD LLC for the Bluff House/Anastasia Shores Project)**

11 199. Plaintiff incorporates by reference and re-alleges each of the allegations in
12 paragraphs 1 through 198 of this complaint, as though fully set forth herein.

13 200. Van Dellen, Shellem, and Koon approved a loan to Villas Development
14 Corp. and TBD LLC for a project known as the Bluff House/Anastasia Shores Project.
15 This loan was entered into on July 28, 2005. The loan involved a condominium
16 conversion of two existing apartment developments: (a) the Bluff House apartment
17 project consisting of 292 units in 30 buildings, 20 miles inland on a bluff just off the St.
18 Johns River in Orange Park, Florida; and (b) the Anastasia Shores project consisting of
19 164 two-bedroom-apartment units in 41 buildings with 4 units per building located on
20 13.5 acres of land one block west of the Atlantic Ocean in St. Augustine Beach, Florida.
21 The loan commitment was \$46,850,000 and had a 21-month term. Losses on this loan
22 exceed \$13 million.

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

26 a. The South Florida real estate market was extremely overheated and
27 very susceptible to a significant downturn.

1 b. The principal of the borrower was new to the South Florida
2 condominium conversion market and new to IndyMac. HBD also lacked recent
3 experience in the South Florida market.

4 c. Very marginal cash investment by the borrower and marginal
5 profitability, leaving little capability to absorb any downward movement in the
6 market.

7 d. The loan anticipated an absorption period of nearly three years, and
8 the profitability projections required annual price appreciation of 3.8% for the
9 years 2005-2008.

10 e. Investor sales were anticipated to be as high as 20-30% of the sales, a
11 very risky proposition given that investors could pull out and drive the sale prices
12 down.

13 f. The Bluff House and Anastasia Shores projects were combined to
14 evade the loan-to-value limits set forth in HBD policies governing condominium
15 conversions.

16 g. Together with another South Florida condominium conversion project
17 (discussed below), the two deals represented a high dollar concentration with a
18 single borrower.

19 h. Perry was opposed to the loan but was pushed by HBD management
20 to proceed forward with it. Perry expressed that there was a disturbing lack of
21 management judgment and discipline regarding the loan.

22 i. The initial loan advance for the acquisition of Bluff House and
23 Anastasia Shores was 115% of their appraised “as-is” values as apartments, in
24 contravention of HBD’s credit policy limit of 100% of appraised apartment “as-is”
25 value.

26 j. No reasonable steps were taken to assure the strength of the personal
27 guarantee, including a failure to analyze the guarantor’s contingent liabilities and
28

1 the financial strength of the guarantor's wife, who turned out to actually be the sole
2 titleholder of many of the assets shown on the guarantor's financial statement. The
3 guarantor's wife was never asked to co-sign the guarantee.

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

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

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

15 c. Causing or allowing a loan to 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 d. Causing or allowing a loan to be made where one or more of the
20 sources of repayment of the loan were not likely to be sufficient to fully retire the
21 debt.

22 e. 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 f. Causing or allowing a loan to be made outside the normal and prudent
26 trade areas of the Bank.

27 g. Causing or allowing a loan to be made, renewed, and/or extended
28

1 despite poor and deteriorating market conditions.

2 h. 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 i. 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.

7 203. 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.

11 204. 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.

14 205. 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.

17 206. 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 16**

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 Villas**
23 **Development Corp. and TBD LLC for the Hawthorne Grande Project)**

24 207. Plaintiff incorporates by reference and re-alleges each of the allegations in
25 paragraphs 1 through 206 of this complaint, as though fully set forth herein.

26 208. Van Dellen, Shellem, and Koon approved a loan to Villas Development
27 Corp. and TBD LLC for a project known as Hawthorne Grande. This loan was entered
28

1 into on May 6, 2006. The loan involved a condominium conversion of an apartment
2 project previously known as the Alta Grande apartments, consisting of 306 one, two and
3 three bedroom units located in Orlando, Florida. The loan commitment was \$46,295,000
4 and had a 24-month term. Losses on this loan are nearly \$9 million.

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

8 a. The Florida real estate market was extremely overheated and very
9 susceptible to a significant downturn.

10 b. The principal of the borrower was new to the Florida condominium
11 conversion market and new to IndyMac. HBD also lacked recent experience in the
12 South Florida market.

13 c. Very marginal cash investment by the borrower and marginal
14 profitability, leaving little capability to absorb any downward movement in the
15 market.

16 d. The existing poor performance of the Bluff House/Anastasia project
17 (discussed above), which was selling at only about 50% of the expected rate, was
18 ignored at the time this loan was approved. There is an indication that the loan for
19 the Bluff House/Anastasia project was in technical default at the time the loan for
20 Hawthorne Grande was approved.

21 e. Lenders on central Florida condominium conversions were tightening
22 some requirements while being more selective about borrowers and projects,
23 contrary to HBD's decision-making in approving this loan.

24 f. The equity for the project relied primarily upon third party equity
25 from Dutch Capital Partners, LLC, which would have significant control over the
26 project but at the same time provided no guarantee on this loan. Much of the
27 remaining equity was to be provided by a mezzanine loan.

1 g. The 306-unit project violated HBD's policy governing the maximum
2 number of units to be developed, resulting in an increased risk that it would take
3 longer to sell out the entire project and thus pay off the loan.

4 h. Investor sales were anticipated to be as high as 20-30% of the sales, a
5 very risky proposition given that investors could pull out and drive the sale prices
6 down.

7 i. Together with the Bluff House/Anastasia Shores project (discussed
8 above), the two deals represented a high dollar concentration with a single
9 borrower.

10 j. Perry was opposed to the loan but was pushed by HBD management
11 to proceed forward with the loan. Perry expressed that there was a disturbing lack
12 of management judgment and discipline regarding the loan.

13 k. The loan had extensive variations from the original term sheet
14 disclosed as part of the loan approval process, some of which appeared to be
15 adjustments made to make an otherwise marginal loan meet underwriting
16 requirements. For example, cash flows assumed an increase in net operating
17 income from the rental of unsold units from the \$802 assumption in the term sheet
18 to \$1,011. Indirect costs were assumed to have decreased from \$813,200 to
19 \$323,500. Taxes, insurance, bonds and miscellaneous were assumed to have
20 decreased from \$1,086,075 to \$660,391. The changes from the term sheet
21 reflected changes that were less conservative and increased risk to the Bank.

22 l. No reasonable steps were taken to assure the strength of the personal
23 guarantee, including a failure to analyze the guarantor's contingent liabilities and
24 the financial strength of the guarantor's wife, who turned out to actually be the sole
25 titleholder of many of the assets shown on the guarantor's financial statement. The
26 guarantor's wife was never asked to co-sign the guarantee.

27 210. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
28

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

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

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

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

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

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

21 f. Causing or allowing a loan to be made outside the normal and prudent
22 trade areas of the Bank.

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

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

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

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

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

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

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

16 **I. Counts Based on Allegations Related to the Loans Made By HBD in the**
17 **Cambridge Homes Borrower Relationship.**

18 **Count 17**

19 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
20 **Koon Related to the Underwriting, Administration, Extension and Modification of a**
21 **Loan to Cambridge Homes, Inc. for the Vineyards Project)**

22 215. Plaintiff incorporates by reference and re-alleges each of the allegations in
23 paragraphs 1 through 214 of this complaint, as though fully set forth herein.

24 216. Van Dellen, Shellem, and Koon approved a loan to Cambridge Homes, Inc.
25 for a project known as The Vineyards. This loan was entered into on September 16,
26 2005, and provided financing for site development and construction of 63 single-family
27 homes in Apple Valley, California. Phases 1 through 7 were financed by Union Bank.

1 HBD provided financing for phases 8 through 10. This loan was to finance phases 11
2 through 13. The project had tentative map approval, and a covenant for final map
3 approval was set for 90 days after funding. The loan commitment totaled \$13,350,000
4 and had a 12-month term. Losses on this loan are estimated at \$400,000.

5 217. The primary source of repayment of this loan was stated to be unit closings
6 in the project. While the CAM identifies the financial capacity of the borrower and
7 guarantors as a secondary source of repayment, it also states that this loan was based on
8 the quality of the transaction and not the financial strength of the borrower and
9 guarantors.

10 218. On January 31, 2006, HBD authorized a hard cost disbursement totaling
11 nearly \$85,000 through waiver of a covenant requiring an approved final tract map. On
12 February 15, 2006, HBD authorized another hard cost disbursement totaling nearly
13 \$116,000 despite not having a recorded final tract map. HBD subsequently approved a
14 number of draw requests despite the borrower not being in compliance with a minimum
15 insurance requirement. The insurance was inadequate because the borrower continued to
16 build homes despite slow absorption, which resulted in too many completed and unsold
17 homes. In May 2006, there was standing inventory of 18 units despite a 10-unit
18 maximum under a loan covenant. On August 15, 2006 and August 29, 2006, HBD
19 authorized draw requests despite the borrower not providing verification of compliance
20 with the sales covenant.

21 219. On September 18, 2006, HBD approved a six-month extension and reduced
22 the sales covenant from five units per month to two units. The loan modification
23 memorandum noted slowing market conditions.

24 220. On October 13, 2006 and October 31, 2006, HBD funded draw requests
25 totaling approximately \$685,000 despite the borrower being in noncompliance with the
26 new sales covenant.

27 221. On March 15, 2007, HBD approved a three-month extension to allow time
28

1 for a new appraisal, and new price reductions and incentives to produce more sales. The
2 loan modification noted that the project was completed, but was not selling as projected.
3 The borrower was to pay interest out of pocket. At that time, 22 closings were still
4 required to repay this loan.

5 222. As of March 27, 2007, the “as-is” value of the property was \$10,560,000.
6 On September 28, 2007, HBD waived the borrower’s inability to comply with the \$2
7 million minimum liquidity requirement; the borrower’s liquidity had dropped to
8 \$914,000.

9 223. On June 28, 2007, Van Dellen approved a 12-month extension at a reduced
10 commitment of \$5,754,000. There were 30 units remaining to be closed. The extension
11 increased the size of this loan by \$317,815 to fund the loan fee and interest reserve. HBD
12 reduced the minimum liquidity covenant from \$2 million to \$1 million. There were
13 nearly 30 months of supply in the submarket at the subject price point. As of November
14 30, 2007, the “as-is” value was \$6.88 million. On July 11, 2008, HBD foreclosed on the
15 property.

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

19 a. The CAM notes that the Apple Valley was a commuter market. In
20 addition, the CAM notes that the area was hit hard during the last recession, and
21 that “history sometimes repeats itself.” The CAM specifically notes that land and
22 homes were not easy to sell during the last downturn.

23 b. The borrower had very little cash in this transaction (2.23%), and was
24 permitted to use appraised/appreciated equity despite having controlled the land for
25 only two years. HBD’s credit policy required three years of control. Despite using
26 appraised equity, the borrower and guarantors were still unable to provide the
27 minimum 10% equity required under policy. Van Dellen’s, Koon’s, and Shellem’s
28

1 decision to approve a loan with very little cash equity, insufficient overall equity,
2 and a weak sponsorship resulted in a gamble that the project would be successful.

3 c. The CAM notes that the borrower had built its phases ahead of
4 closings. In addition, this project was priced higher than comparable sales in the
5 market. Thus, there was a potential for absorption to be adversely impacted.

6 d. Van Dellen's, Koon's, and Shellem's approval of this loan exceeded
7 HBD's geographic concentration limit by nearly \$85 million, and thus, exposed
8 HBD to greater risk through lack of diversification.

9 e. The net worth covenant required the guarantors to maintain a
10 combined minimum net worth of \$10 million. This covenant was too low given
11 the fact that the combined net worth of the borrower and guarantors was \$28.7
12 million. In other words, the borrower and guarantors could not only lose two-
13 thirds of their net worth, but they could permit their net worth to decline below the
14 loan commitment amount. HBD's decision to approve a loan with an insufficient
15 net worth covenant significantly impaired the beneficial impact of having the
16 covenant.

17 f. The combined liquidity of the borrower and guarantors was \$2.76
18 million. However, \$2,385,289 of that amount was established through lines of
19 credit. The CAM stated bluntly that "support for this deal is based on the success
20 of the previous phases and the current sales rate of the subject's phases, not the
21 financial support of the borrower/guarantors." HBD's approval of this loan to a
22 borrower and guarantors who possessed virtually no cash liquidity was incredibly
23 risky. Van Dellen, Koon, and Shellem appear to have placed sole reliance on past
24 project performance, and showed no concern for a change in market conditions.

25 g. HBD approved this transaction despite missing K-1s from the
26 guarantors. Thus, HBD performed inadequate due diligence in assessing the
27 financial capacity of the sponsorship. As a mitigant, the CAM stated that the
28

1 commitment was “based on the quality of the transaction not the financial strength
2 of the borrower/guarantors.” This was evident as both guarantors had FICO scores
3 below 700, and had a history of numerous tax liens and delinquencies. In addition,
4 there was no real analysis performed of the borrower’s or guarantors’ contingent
5 liabilities.

6 225. Van Dellen, Koon, and Shellem 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, Koon, and Shellem 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 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 e. Causing or allowing a loan to be renewed or extended to borrowers
25 who were not creditworthy or were known to be in financial difficulty and without
26 any reduction in principal and without taking proper steps to obtain security or
27 otherwise protect the Bank’s interests.

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

3 g. Causing or allowing a loan to be made, renewed, and/or extended
4 despite the Bank having a high geographic concentration of loans in the same
5 market.

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

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

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

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

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

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

Count 18

(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and Koon Related to the Underwriting, Administration, Extension and Modification of a Loan to Cambridge Homes, Inc. for the Mira Monte Project)

230. Plaintiff incorporates by reference and re-alleges each of the allegations in paragraphs 1 through 229 of this complaint, as though fully set forth herein.

231. Van Dellen, Shellem, and Koon approved a loan to Cambridge Homes, Inc. for a project known as Mira Monte. This AD&C loan was entered into on June 15, 2006, and provided financing for site development and construction of 84 single-family homes in Apple Valley, California. The loan commitment totaled \$23,700,000 and had an 18-month term. The loan was projected to be fully repaid by December 2007. Losses on this loan are estimated to exceed \$5.5 million.

232. The primary source of repayment of this loan was stated to be unit closings in the project. While the CAM identifies the financial capacity of the borrower and guarantors as a secondary source of repayment, it also states that this loan was based on the quality of the transaction and not the financial strength of the borrower and guarantors. Thus, this was essentially a project-only loan.

233. At the time this loan was approved, the borrower had already required waivers of its covenant for a final tract map in the Cambridge Vineyards loan with HBD. The borrower also had more standing inventory than permitted, which rendered insurance on that project insufficient. In May 2006, there was standing inventory of 18 units despite a 10 unit maximum under a loan covenant. Thus, this borrower was already not performing to expectations.

234. On February 2, 2007, HBD authorized Cambridge to start ten production homes and move the requirement related to funding a CFD to July 15, 2007. A condition of this loan was to fund the Apple Valley CFD.

235. In April 2007, the project was experiencing cost overruns requiring

1 adjustments to the construction budget. This loan was ultimately over disbursed in
2 several areas.

3 236. As of June 15, 2007, the borrower and guarantors were past due in
4 producing their tax returns, minimum liquidity reports, and unit closings.

5 237. On June 26, 2007, HBD waived the closing requirement of 110 homes on
6 the Vineyards project, as 99 of those homes had closed. The borrower was allowed to
7 start construction on 10 additional production homes for a total of 20 production homes,
8 and four models in the Mira Monte project.

9 238. On June 29, 2007, HBD approved a draw of \$113,000 despite this loan not
10 being in compliance with a sales covenant. There were numerous waivers of loan
11 covenants that occurred subsequent to this date where additional draws were authorized.
12 HBD also did not obtain updated appraisals expeditiously.

13 239. In August 2007, HBD decided to reduce the number of homes in the project
14 from 84 to 24. This decision occurred too late, as loan maturity was only 60 days away.

15 240. On September 6, 2007, HBD discussed the borrower's delinquent taxes,
16 which appeared related to payroll. This evidences HBD's failure to engage in adequate
17 due diligence over the borrower's and guarantors' financials, including K-1 statements.

18 241. On October 30, 2007, HBD account officer Shamlian finally concluded that
19 "to continue with the vertical construction may not be a smart move at this time."

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

- 23 a. The CAM notes that it would take 73 closings to repay the loan. As
24 the 73rd closing was to occur in the last month of the loan, any delay in closings
25 would prevent this loan from paying off timely. Accordingly, Van Dellen, Koon,
26 and Shellem gave HBD a six-month option to extend. The decision to approve a
27
28

1 loan that could commit HBD to two years of market exposure was unduly risky
2 given the borrower's performance on existing loans with HBD.

3 b. The CAM notes that absorption in San Bernardino County was
4 showing signs of slowing. In addition, the borrower was selling an inventory of
5 competing homes only two miles away. This competition could adversely impact
6 absorption. In addition, the property was located in an outlying market, which
7 rendered it more susceptible to a softening market.

8 c. The borrower had very little cash in this transaction. Van Dellen's,
9 Koon's, and Shellem's decision to approve a loan with very little cash equity,
10 insufficient overall equity, and a weak sponsorship resulted in a gamble that the
11 project would be successful.

12 d. The advance rates for this loan were fairly high given the illiquid
13 borrower and guarantors. As Van Dellen, Koon, and Shellem were essentially
14 wagering that the market would remain strong, they should have taken steps to
15 create a bigger cushion for market declines.

16 e. Van Dellen, Koon, and Shellem knew the borrower's Vineyards
17 project (financed by HBD) was having difficulties, and yet agreed to fund this
18 loan.

19 f. Van Dellen, Koon, and Shellem approved this loan despite the
20 borrower's and guarantors' weak financial condition. In addition, Van Dellen,
21 Koon, and Shellem did not require a guarantee from Dave Faylor, who was a one-
22 third owner of the borrower entity.

23 g. The net worth covenant required the guarantors to maintain a
24 combined minimum net worth of \$10 million. This covenant was too low given
25 the fact that the combined net worth of the borrower and guarantors was \$48.9
26 million. In other words, the borrower and guarantors could not only lose 80% of
27 their net worth, but they could permit their net worth to decline below the loan
28

1 commitment amount. Van Dellen's, Koon's, and Shellem's decision to approve a
2 loan with an insufficient net worth covenant significantly impaired the beneficial
3 impact of having the covenant.

4 h. The combined liquidity of the borrower and guarantors was weak.
5 The CAM stated bluntly that "support for this deal is based on the success of the
6 previous phases and the current sales rate of the subject's phases, not the financial
7 support of the borrower/guarantor." HBD's approval of this loan to a borrower
8 and guarantors who possessed virtually no cash liquidity was incredibly risky. Van
9 Dellen, Koon, and Shellem appear to have placed sole reliance on past project
10 performance, and showed no concern for a change in market conditions.

11 i. Van Dellen, Koon, and Shellem approved this transaction despite
12 missing K-1s from the guarantors. This is particularly shocking as they also did so
13 with the prior Vineyard loan that was approved months earlier. Van Dellen's,
14 Koon's, and Shellem's failure to insist on obtaining these financials before
15 approving this loan is inexplicable. The due diligence was woefully inadequate in
16 assessing the financial capacity of the sponsorship. As a mitigant, the CAM stated
17 that the commitment was "based on the quality of the transaction not the financial
18 strength of the borrower/guarantors." This was evident as both guarantors had
19 FICO scores below 700, and had a history of numerous tax liens and delinquencies.
20 In addition, there was no real analysis performed of the borrower's or guarantors'
21 contingent liabilities.

22 243. Van Dellen, Koon, and Shellem knew, or in the exercise of due diligence
23 should have known, that their practices and the practices of IndyMac's employees who
24 reported to them and over whom they exercised supervisory control, were improper,
25 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
26 Dellen, Koon, and Shellem in regard to this loan include, but are not limited to, the
27 following:
28

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

16 **Count 19**

17 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
18 **Rothman Related to the Underwriting, Administration, Extension and Modification**
19 **of a Loan to Lancaster-33rd Street L.P. for the Jamestown Project)**

20 248. Plaintiff incorporates by reference and re-alleges each of the allegations in
21 paragraphs 1 through 247 of this complaint, as though fully set forth herein.

22 249. Van Dellen, Shellem, and Rothman approved a loan to Lancaster-33rd
23 Street, L.P. for a project known as Jamestown. This AD&C loan was entered into on
24 September 15, 2006, and provided financing for 18 single-family homes in Lancaster,
25 California. A tentative map was in place, which was projected to be final within two
26 months of loan recordation. The loan commitment totaled \$4,640,000 and had an 18-
27 month term. Losses on this loan are estimated to exceed \$750,000.

1 250. The primary source of repayment of this loan was stated to be unit closings
2 in the project. The secondary source of repayment of this loan was stated to be the
3 financial capacity of the borrower and guarantors.

4 251. At the time this loan was approved, the borrower had already required
5 waivers of its covenant for a final tract map in the Cambridge Vineyards loan with HBD.
6 The borrower also had more standing inventory than permitted, which rendered insurance
7 on that project insufficient. In May 2006, there was standing inventory of 18 units
8 despite a 10-unit maximum under a loan covenant.

9 252. As of February 27, 2007, the borrower and guarantors were 58 days past due
10 on their minimum net worth requirement; vertical construction was two months past due;
11 and sales start date was already past due.

12 253. As of July 16, 2007, HBD noted that the final map was recorded and sales
13 had started. Vertical construction was to finally commence. On August 14, 2007, HBD
14 approved a reduction of the minimum liquidity covenant from \$2 million to \$1 million.
15 On August 14, 2007, the “as-is” value for the property was \$1,557,121.

16 254. This loan had numerous instances of default. Specifically, it defaulted on
17 liquidity on September 10, 2007; net worth on December 31, 2007; past due interest on
18 November 30, 2007; tax returns on November 15, 2007; and unit closings on February
19 2008.

20 255. As of April 3, 2008, the project was 65% complete. The timeline on the
21 project was pushed out due to a 9-month delay in recording the final map. A receiver
22 was in place. The “as-is” value was \$1,843,000, and the outstanding amount was
23 \$1,570,702.

24 256. Van Dellen, Shellem, and Rothman approved, renewed and/or extended this
25 loan despite substantial known risks and or risks that should have been known in the
26 exercise of due diligence. These risks include, but are not limited, to the following:
27
28

1 a. The CAM quotes from an appraisal report dated August 11, 2006.
2 Specifically, it notes that absorption levels had slowed, and that there was
3 downward pressure on pricing in the Antelope Valley. The report states an opinion
4 that absorption would remain at or below an average of 4.0 units per month, and
5 that there would continue to be pressure on pricing with price decreases likely in
6 many of the projects.

7 b. The CAM notes that the project was located in an outlying market,
8 which could impact absorption and pricing if market conditions continued to
9 soften.

10 c. At the time this loan was approved, Van Dellen, Shellem, and
11 Rothman knew that the borrower had three other projects that were performing
12 more slowly than expected. Van Dellen, Shellem, and Rothman did not appreciate
13 the risks associated with these underperforming projects. This was true despite the
14 CAM noting that one of the earlier projects had 19 unsold units and an absorption
15 rate that was only 50% of projections. This was particularly risky because HBD
16 acknowledged that these loan approvals were based on the strength of the projects
17 and not on the strength of the guarantors.

18 d. The credit officer for this transaction observed that two other HBD
19 projects with the borrower were not meeting absorption projections. In addition,
20 the credit officer noted that two other unrelated projects to other borrowers that
21 were funded by HBD in the same market were not meeting absorption projections.
22 Despite all of these warnings through first-hand experience, and the warning
23 presented in the appraisal, Van Dellen, Shellem, and Rothman chose to issue a loan
24 where there was little financial backing to constitute a meaningful secondary
25 source of repayment.

26 e. The credit officer's review memo states "Based on the borrower's
27 existing two projects with IndyMac not meeting the absorption projections,
28

1 absorption and pricing pressures in the subject's market, and low liquidity of the
2 guarantors, approval is not recommended based on the way the transaction is
3 currently structured. Account officer to consider tying the start date of vertical
4 construction of the subject project to some minimum number of closings in the
5 existing two projects." Van Dellen, Shellem, and Rothman disregarded the credit
6 officer's suggestion and approved the loan.

7 f. The borrower had very little cash in this transaction. Van Dellen's,
8 Shellem's, and Rothman's decision to approve a loan with very little cash equity,
9 insufficient overall equity, and a weak sponsorship resulted in a gamble that the
10 project would be successful.

11 g. Van Dellen, Shellem, and Rothman approved this loan despite the
12 borrower's and guarantors' weak financial condition. In addition, Van Dellen,
13 Shellem, and Rothman did not require a guarantee from Dave Faylor, who was a
14 one-third owner of the borrower entity.

15 h. The net worth covenant required the guarantors to maintain a
16 combined minimum net worth of \$10 million. This covenant was too low given
17 the fact that the combined net worth of the borrower and guarantors was \$33.3
18 million. In other words, the borrower and guarantors could lose one third of their
19 net worth. Van Dellen's, Shellem's, and Rothman's decision to approve a loan
20 with an insufficient net worth covenant greatly limited any beneficial impact of
21 having the covenant.

22 i. The borrower's and guarantors' combined net worth had declined
23 approximately \$15 million since HBD approved the Cambridge Mira Monte loan
24 in June of 2006. Van Dellen, Shellem, and Rothman did not demonstrate the
25 requisite concern for this financial condition given the deteriorating market
26 conditions, and the poor performance on the existing loans.

1 j. The combined liquidity of the borrower and guarantors was weak.
2 Van Dellen's, Shellem's, and Rothman's approval of this loan to a borrower and
3 guarantors who possessed low liquidity was incredibly risky. Van Dellen,
4 Shellem, and Rothman appear to have placed sole reliance on past project
5 performance, and showed no concern for a declining market conditions.

6 k. Van Dellen, Shellem, and Rothman did not engage in sufficient due
7 diligence to assess the borrower's and guarantors' contingent liabilities, which
8 greatly increased risks in a down market.

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

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

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

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

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

27 e. Causing or allowing a loan to be made without taking proper and
28

1 reasonable steps to insure that the loan proceeds would be used in accordance with
2 the loan application and failing to control the disbursement of loan proceeds.

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

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

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

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

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

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

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

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

27 261. With respect to all of their actions and inactions in managing and
28

1 administering the affairs of IndyMac, Van Dellen, Rothman, and Shellem pursued a
2 common plan or design with each other, and therefore are jointly and severally liable for
3 all losses.

4 **J. Counts Based on Allegations Related to the Loans Made By HBD in the**
5 **McComic Consolidated, Inc. Borrower Relationship.**

6 **Count 20**

7 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
8 **Koon Related to the Underwriting, Administration, Extension and Modification of a**
9 **Loan to Darby Road 19, LLC for the Darby Road Project)**

10 262. Plaintiff incorporates by reference and re-alleges each of the allegations in
11 paragraphs 1 through 261 of this complaint, as though fully set forth herein.

12 263. Van Dellen, Shellem, and Koon approved a loan to Darby Road 19, LLC for
13 a project known as Darby Road. This loan was entered into on November 3, 2005, and
14 provided financing for the acquisition, development, and construction of 19 homes (16
15 production and 3 models) situated on 4.77 acres in the unincorporated community of
16 Bermuda Dunes, which was in the sphere of influence of the City of La Quinta. The loan
17 commitment totaled \$9,155,000 and had a 19-month term. Losses on this loan are
18 estimated at \$300,000.

19 264. The primary source of repayment of this loan was stated to be unit closings
20 in the project. The secondary source of repayment of this loan was stated to be a full
21 recourse guarantee from R. Barry McComic (“McComic”).

22 265. On May 23, 2007, this loan was extended 90 days to September 1, 2007. A
23 final tract map had not yet been approved.

24 266. On September 24, 2007, a new CAM was submitted by account officer
25 Terwilliger to extend this loan an additional three months. On October 11, 2007, the 90-
26 day extension was approved, but all future disbursements apart from interest payments
27 were suspended. In addition, this loan’s debt-to-equity covenant and reporting
28

1 requirements became more stringent. On December 27, 2007, this loan was collapsed to
2 the unpaid balance. On February 1, 2008, a notice of default was filed.

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

6 a. The project had a number of hurdles to development that created
7 uncertainty and risk. For example, a final tract map could not be approved until
8 annexation into the City of La Quinta, and the borrower intended to seek a zone
9 change from R1-12,000 to R-L in order to reduce the minimum lot size.

10 b. At the time of underwriting, the borrower's improvement plans and
11 final budget for the project were a few months away from completion. In fact, the
12 improvement infrastructure and home plans were not completed at the time this
13 loan closed, and everything was based on estimates. The appraisal of the homes
14 would not be completed until after annexation and after the improvement plans
15 were completed. There was a possibility that the budget would have to be revised.
16 Thus, the CAM notes that this loan may need to be rebalanced to maintain a loan
17 amount of the lesser of 85% loan-to-cost or 85% loan-to-value. This uncertainty
18 carried additional risk. Nonetheless, Van Dellen, Koon, and Shellem committed to
19 a construction loan well in advance of home construction, and prior to receiving
20 final plans and a final budget.

21 c. The profit margin for the project was 7% versus a 10% policy
22 requirement. This left little room for the borrower to cut prices in order to respond
23 to potential market declines.

24 d. This loan contemplated a single phase consisting of all 19 homes,
25 which resulted in greater risk to HBD due to potential absorption difficulties and
26 greater exposure of loan funds.

1 e. Terwilliger acknowledged that the loan per unit of \$481,842 was high
2 and may not have been that high anywhere else in Riverside County.

3 f. McComic and McComic Consolidated had total adjusted assets of
4 \$200.5 million, and net worth of \$60.2 million. But they had total contingent
5 liabilities of approximately \$253.3 million, and current outstanding balances of
6 \$87.4 million. In addition, the majority of their debt was for projects that were in
7 the early phases of development. Thus, the guarantors were heavily leveraged, and
8 may not have offered a meaningful secondary source of repayment. In fact
9 Terwilliger acknowledged that the contingent liabilities of \$234 million and the
10 level of liquidity rendered the guarantors unable to repay this loan given a market
11 decline.

12 g. Van Dellen, Koon, and Shellem established a minimum net worth
13 covenant of \$7.5 million, which was low given the stated net worth of the
14 borrower/guarantor at underwriting totaling \$60.2 million. In fact, the assigned
15 credit officer noted this concern, but Van Dellen, Koon, and Shellem approved this
16 loan nonetheless.

17 h. The borrower had to rely on The Price Group to provide 90% of the
18 cash equity required for the project. The Price Group secured its investment with a
19 second trust deed. Thus, the borrower had very little of its own cash in the
20 transaction, which increased risk.

21 i. The borrower was heavily concentrated in the Riverside Desert
22 submarket, which increased risk to the Bank. The financial analyst on this loan
23 noted that HBD was aware of McComic's high concentration in the submarket at
24 the time this loan was originated. That market area would later experience
25 substantial market declines.

26 268. Van Dellen, Shellem, and Koon knew, or in the exercise of due diligence
27 should have known, that their practices and the practices of IndyMac's employees who
28

1 reported to them and over whom they exercised supervisory control, were improper,
2 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
3 Dellen, Shellem, and Koon in regard to this loan include, but are not limited to, the
4 following:

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

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

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

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

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

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

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

26 h. Causing or allowing a loan to be made, renewed, and/or extended
27 despite the Bank having a high geographic concentration of loans in the same
28

1 market.

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.

7 269. Van Dellen, Koon, and Shellem 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.

11 270. 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.

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

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

20 **Count 21**

21 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Koon, and**
22 **Shellem Related to the Underwriting, Administration, Extension and Modification**
23 **of a Loan to Apple Valley Homes 26, LLC for the Apple Valley 26 Project)**

24 273. Plaintiff incorporates by reference and re-alleges each of the allegations in
25 paragraphs 1 through 272 of this complaint, as though fully set forth herein.

26 274. Van Dellen, Shellem, and Koon approved a loan to Apple Valley Homes 26,
27 LLC for a project known as Apple Valley 26. This loan was entered into on March 7,
28

1 2006, and provided financing for the acquisition, development, and construction of 26
2 homes on approximately 15 acres in Apple Valley, California. This project was located
3 adjacent to the borrower's 130-lot project known as Apple Valley 130. The loan
4 commitment totaled \$8,762,000 and had an 18-month term with one six-month extension
5 at HBD's option. Losses on this loan are estimated to exceed \$310,000.

6 275. The primary source of repayment of this loan was stated to be unit closings
7 in the project. The secondary source of repayment of this loan was stated to be financial
8 support by the guarantors.

9 276. The project had two separate parcel maps that were expected to be
10 consolidated into one final map. The borrower planned to build all 26 production homes
11 in one phase that would range in size from 2,412 square feet to 3,422 square feet, and
12 would be priced between \$435,000 and \$535,000. The property had an approved
13 tentative map, and the borrower anticipated receiving a final map and complete
14 improvement plans by September 31, 2006, at which time it would start site and lot
15 improvements. Vertical construction was planned to commence around January 2007,
16 and sales would open in February 2007.

17 277. As of September 17, 2007, the borrower had not yet received a final map.
18 HBD noted that it would likely convert Apple Valley 26 to an A&D loan because the
19 borrower was no longer likely to build out the homes. Thus, HBD approved removing
20 the sales and closing covenants and agreed to extend the covenant to receive a final map
21 from July 31, 2007 to January 31, 2009.

22 278. On October 11, 2007, a first letter agreement extended the maturity date
23 from September 6, 2007 to December 6, 2007. In addition, no further disbursements
24 would be made except for interest payments that would be paid from the interest reserve.
25 The CAM requesting this extension noted that the Riverside Desert submarket and San
26 Bernardino High Desert submarket were both experiencing a significant correction in
27 home prices, demand, and absorption. This caused supply to rise, high levels of builder
28

1 incentives, and weak absorption. The San Bernardino Desert had over 46 months of
2 supply. The CAM further noted that the borrower and guarantors had only about \$4.5
3 million of cash and approximately \$218 million in liabilities.

4 279. HBD filed a Notice of Default on February 1, 2008. At that time, the
5 property had not yet received final tract maps, and was still raw land.

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

9 a. The borrower's final map, improvement plans, and final budget for
10 the project were a few months away from completion when this loan was
11 approved. There was a possibility that the budget would have to be revised
12 following a cost review. Thus, the CAM noted that this loan may need to be
13 rebalanced to maintain a loan amount of the lesser of 85% loan to cost or 80% loan
14 to value. This uncertainty carried additional risk.

15 b. The CAM noted that there were a total of 543 lots/units that were
16 unsold, unreleased, or would be developed and sold over the next two to three
17 years in Apple Valley and Hesperia. That sum included the 130-unit project being
18 developed by McComic. These units would have constituted competition for the
19 Apple Valley 26 project, which would have had an adverse effect on absorption
20 and pricing. Account officer Terwilliger acknowledged that this project being
21 located adjacent to Apple Valley 130 was a weakness because there were two
22 competing projects in the same area.

23 c. The property had an approved tentative map, and the borrower
24 anticipated receiving a final map and completed improvement plans by September
25 31, 2006, at which time it would start site and lot improvements. Vertical
26 construction was planned to commence around January 2007, and sales would
27
28

1 open in February 2007. Thus, vertical construction was not scheduled to
2 commence until nine months after this loan was approved.

3 d. This loan contemplated a single phase consisting of all 26 homes,
4 which resulted in greater risk to HBD due to potential absorption difficulties and a
5 greater exposure of loan funds.

6 e. The project was located in a commuter market, and thus, would have
7 been one of the first markets to be adversely impacted in a down market.

8 f. McComic and McComic Consolidated had 1,091 units in their
9 portfolio, including 655 lots. Including this loan, and the 15 existing projects in
10 McComic's portfolio, McComic had remaining commitments of approximately
11 \$260.7 million, with approximately \$122.3 million outstanding. Of the \$260.7
12 million, \$226.9 million had recourse to McComic. The borrower's and guarantor's
13 total assets were \$231.7 million, total liabilities were \$142.1 million, and net worth
14 was \$89.6 million. Thus, the sponsorship was heavily leveraged, and did not offer
15 a meaningful secondary source of repayment.

16 g. The borrower had to rely on The Price Group to provide 90% of the
17 cash equity required for the project. The Price Group secured its investment with a
18 second trust deed. Thus, the borrower had very little of its own cash in the
19 transaction, which increased risk.

20 h. The CAM noted that of the combined net worth of \$82.7 million for
21 the borrower and guarantors, the investors' share was \$37.6 million, which
22 understated leverage if the investors' share was treated as liabilities.

23 i. Van Dellen, Shellem, and Koon established a minimum-net-worth
24 covenant of \$7.5 million, which was low given the stated net worth of the
25 borrower/guarantor at underwriting totaling \$82.7 million.

26 j. The borrower was heavily concentrated in the Riverside Desert
27 submarket, which increased risk to the Bank. The financial analyst for this loan
28

1 acknowledged that HBD was aware of McComic's high concentration in the
2 submarket at the time this loan was approved.

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

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

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

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

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

21 e. Causing or allowing a loan to 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 and failing to control the disbursement of loan proceeds.

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

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

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

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

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

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

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

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

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