

Count 42

(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Koon, and Shellem Related to the Underwriting, Administration, Extension and Modification of a Loan to Drake Development, LLC for the Moreno Valley Ranchos Project)

487. Plaintiff incorporates by reference and re-alleges each of the allegations in paragraphs 1 through 486 of this complaint, as though fully set forth herein.

488. Van Dellen, Shellem, and Koon approved a loan to Drake Development, LLC for a project known as Moreno Valley Ranchos. This loan was entered into on June 9, 2006, and refinanced a construction loan provided by Comerica Bank. The Comerica loan was expiring on June 22, 2006, and had a loan balance totaling \$1,808,727. The Comerica loan paid for site acquisition, engineering, architectural, and various fees. The project consisted of 56 lots in Moreno Valley, California. The property's gross land area totaled just over 20 acres. The property had a tentative map approved, and a final map was expected by September 1, 2006. HBD cross-collateralized the loan with the Northpark 19 loan. This loan had an 18-month term, and the loan commitment totaled \$21,625,000. The losses on this loan are estimated at approximately \$4,000,000.

489. The primary source of repayment of this loan was to be the sale of the units in the project. The secondary source of repayment of this loan was stated to be the financial support from Drake Development and the guarantor, Zaccaglin.

490. On May 4, 2007, HBD approved a 60-day waiver of the (1) final map date; (2) sales starting date; and (3) closing date. The project was impacted by construction delays. In addition, the builder lost one unit because it was needed for a permanent retention.

491. On July 2, 2007, a loan modification memorandum was submitted. At that time, the overall asset score dropped to Pass 4, and the market had degraded to Pass 5. As of August 15, 2008, the unpaid loan balance was \$4,824,456, and the property had an "as-is" appraised value of \$890,000.

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

4 a. The loan-to-value ratio was set at the policy maximum of 85%, and
5 the loan-to-cost ratio was set very close to the policy maximum of 90%. These
6 high advance rates provided far less insulation to the Bank in the event of a
7 downturn in real estate values. This was particularly risky given the weak
8 financial condition of the sponsorship.

9 b. The CAM noted that a \$4,000,000 participation was to be arranged
10 after the loan closed. Van Dellen's, Shellem's, and Koon's decision to approve
11 this loan without making the participation a condition of closing was an
12 unnecessary risk. HBD was ultimately unable to sell a participation, which reflects
13 on the soundness of the credit.

14 c. Van Dellen, Koon, and Shellem agreed to refinance a loan provided
15 by Comerica. The borrower was experiencing project delays while Comerica was
16 the lender. Van Dellen, Koon, and Shellem also approved this loan despite the
17 borrower not yet having any project performance on the Northpark 19 project. It
18 was inherently risky for Van Dellen, Koon, and Shellem, particularly in June of
19 2006, to issue a second loan to a borrower in such short proximity in time. HBD's
20 decision to rush into a second loan with the borrower substantially increased its
21 risk.

22 d. The credit review memorandum for this loan notes that the units were
23 a high price point for Riverside, which further increased risk.

24 e. Zaccaglin had a large interest in Cal Prop Homebuilding, which had a
25 very poor financial condition. Cal Prop had been a publicly traded corporation that
26 went private because of its financial problems. In order to mitigate the risk
27 associated with Zaccaglin's interest in Cal Prop, HBD simply eliminated Cal
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1 Prop's poor financials from consideration. But a Dun & Bradstreet report from
2 2005 for Cal Prop noted a moderate to high risk of severe delinquency over the
3 next six months. Van Dellen's, Shellem's, and Koon's decision to approve this
4 loan while having HBD "stick its head in the ground" and pretend that Zaccaglin's
5 financial condition may not be impacted by Cal Prop was contrary to prudent
6 underwriting practices.

7 f. Van Dellen, Shellem, and Koon approved this loan without
8 performing a detailed analysis of the borrower's and guarantor's financial
9 statements. There is no indication in the CAM as to contingent liabilities. HBD's
10 decision to approve this loan "in the dark" was irresponsible.

11 g. The borrower and guarantor were permitted to provide only annual
12 financial statements. In addition, Van Dellen, Shellem, and Koon did not require a
13 minimum-tangible-net-worth covenant. This was risky given the weak financial
14 support they provided.

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

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

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

26 c. Causing or allowing a loan to be made with inadequate or inaccurate
27 financial information regarding the creditworthiness of the borrower and/or
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1 guarantor, and the prospective source of repayment, and the security provided for
2 the loans.

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

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

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

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

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

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

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

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

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

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

6 **S. Count Based on Allegations Related to the Loan Made By HBD in the**
7 **Villa Development, LLC Borrower Relationship.**

8 **Count 43**

9 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
10 **Koon Related to the Underwriting and Administration of a Loan to LB/L Villa**
11 **Racquet Club, LLC for the Racquet Club Villas Project)**

12 498. Plaintiff incorporates by reference and re-alleges each of the allegations in
13 paragraphs 1 through 497 of this complaint, as though fully set forth herein.

14 499. Van Dellen, Shellem, and Koon approved a loan to LB/L Villa Racquet
15 Club, LLC for a project known as Racquet Club Villas. This loan was entered into on
16 June 8, 2006. The loan involved the acquisition, development and new construction of
17 38 luxury townhomes in Thousand Oaks, California by LB/L Villa Racquet Club, LLC.
18 The borrower was indirectly managed and controlled by Villa Development, LLC and its
19 principal, Mark Ross. The loan commitment exceeded \$19 million and had an 18-month
20 term. Losses on this loan exceed \$2.3 million.

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

24 a. Significantly slowing sales of homes in California (e.g. nearly 25%
25 drop in sales activity year over year).

26 b. Cash equity from the borrower was only 3.48%, well below the HBD
27 policy minimum of 10%, and this risk was compounded by a lack of evidence of
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1 any exceptionally strong market demand for the project.

2 c. The loan-to-cost ratio of 97% exceeded the HBD policy maximum of
3 90%, resulting in greater risk that increased costs and slower sales could lead to
4 borrower default.

5 d. The borrower's creditworthiness, financial strength and liquidity were
6 very weak as measured by HBD's credit scoring system, so guarantor financial
7 support was especially critical. Yet, the guarantors' liquidity and financial strength
8 were also minimal and weak.

9 e. The principal guarantor's debt-to-worth ratio as initially computed by
10 HBD was nearly five times lower than the correct ratio because it relied on
11 incomplete (and arguably false) personal financial statements which excluded \$2.9
12 million of real estate debt appearing on the guarantor's credit report. Further, HBD
13 appears to have disregarded the guarantor's potential contingent liabilities of \$100
14 million relating to projects in New Mexico.

15 f. Although IndyMac had a right to draw on a \$1,250,000 re-margining
16 agreement due to events of default under the loan agreement, IndyMac never
17 exercised those rights. With the project stalled and no viable guarantor, it was
18 critical that this source of repayment be accessed.

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

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

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

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

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

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

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

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

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

25 505. With respect to all of their actions and inactions in managing and
26 administering the affairs of IndyMac, Van Dellen, Shellem, and Koon pursued a common
27 plan or design with each other, and therefore are jointly and severally liable for all losses.
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1 a. This loan involved a Pass 5 market and an overall credit score of Pass
2 4. Thus, this loan should not have been approved under HBD's underwriting
3 policies.

4 b. The project had a profit margin of only 3.06%, which left the
5 borrower little room to lower prices in an already deteriorating market.

6 c. This loan's term was 24 months versus a 12-month-policy limit for
7 A&D loans. This lengthy term was particularly risky in a declining market.

8 d. The CAM indicated that it would require 27.15 months to sell the
9 units for the project. This, combined with the term of the A&D loan, made this
10 loan very speculative. Nonetheless, the primary source of repayment on this loan
11 was an anticipated construction loan from IndyMac. But this loan was not
12 underwritten as a construction loan, and information on the viability of
13 construction and subsequent sellout was simply not considered during the
14 underwriting of this loan.

15 e. No senior manager site visit was performed as required by policy for
16 loans that exceeded \$10 million. This was especially risky because both the
17 borrower and the market were new for IndyMac.

18 f. HBD approved this loan despite knowing that the market was an
19 inferior market with absorption slowing and total months of supply in the project's
20 submarket at 31.69 months.

21 g. Lafferty Homes was overextended as it had 15 active projects at the
22 time of the Lafferty Visalia and Lafferty Sanger applications.

23 h. Credit officer Krcmarik suggested adding a net worth covenant of \$5
24 million for the borrower and guarantors on the Lafferty Visalia loan and also
25 suggested obtaining more complete financial information. Krcmarik noted on his
26 credit review memo that neither of these items were done. Krcmarik did not know
27 why there was no minimum-tangible-net-worth covenant and he would have
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1 expected one. Similarly, Rothman was surprised that there was no net-worth
2 covenant.

3 i. HBD exacerbated the risk of the borrower's condition by requiring
4 only annual financial statements instead of quarterly statements.

5 j. The CAM presented significant data related to slowing market
6 absorption; this weakness was supposedly mitigated by the statement that the
7 Fresno/Visalia regional housing market had enjoyed a strong price appreciation
8 and record breaking home starts over the last several years. Krcmarik stated that
9 no reasonable person would conclude that prior market performance mitigated the
10 market decline.

11 k. The finished average housing prices for the project was estimated to
12 be to be \$458,686. Homes in Visalia were selling at only \$189,400 in 2005.
13 Visalia is a 41-mile drive from Fresno.

14 l. Lafferty's personal financial statement did not provide information
15 about his contingent liabilities. Krcmarik stated that he would have expected to
16 see that information. Van Dellen, Koon, and Shellem did not appear to have
17 considered the guarantor's contingent liabilities before approving this loan.

18 m. Van Dellen, Koon, and Shellem approved this loan with high loan-to-
19 value and loan-to-cost ratios, which further increased risk.

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

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

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

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

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

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

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

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

13 **Count 45**

14 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
15 **Rothman Related to the Underwriting, Administration, Extension and Modification**
16 **of a Loan to Lafferty Sanger I, LLC for the Olive Glen Project)**

17 516. Plaintiff incorporates by reference and re-alleges each of the allegations in
18 paragraphs 1 through 515 of this complaint, as though fully set forth herein.

19 517. Van Dellen, Shellem, and Rothman approved a loan to Lafferty Sanger I,
20 LLC for a project known as Olive Glen. This loan was entered into on October 10, 2006,
21 and was described as a "land loan" that would "be paid off from a construction loan for
22 production units provided by IndyMac Bank." However, the Lafferty Sanger CAM does
23 not contain the detailed construction information necessary for an AD&C loan. The
24 project was generally located in the Fresno market, but Lafferty Sanger was described as
25 "a small rural community that is located on the outskirts of the city of Fresno" and where
26 the majority of the residents are involved in agriculture. This loan had a 6-month term,
27 and the loan commitment totaled \$5,953,000. The losses on this loan are estimated to
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1 exceed \$1.7 million.

2 518. The primary source of repayment of this loan was to be a construction loan
3 from IndyMac. The secondary source of repayment of this loan was stated to be the
4 financial capacity of the guarantors and borrower. Lafferty provided a full recourse
5 guarantee as did Lafferty Homes, Inc.

6 519. A neighboring project financed by Central Pacific Bank resulted in Lafferty
7 Sanger getting a construction loan on that project for four models and 11 production
8 units. However, IndyMac's portion of the project did not obtain construction financing
9 and was ultimately foreclosed.

10 520. Van Dellen, Shellem, and Rothman approved, renewed and/or extended this
11 loan despite substantial known risks and or risks that should have been known in the
12 exercise of due diligence. These risks include, but are not limited, to the following:

13 a. This loan involved a Pass 5 market and an overall credit score of Pass
14 5. Thus, this loan should not have been made under HBD's underwriting policies.

15 b. This project was a new market for IndyMac and was only the second
16 HBD loan for Lafferty.

17 c. This loan brought more competition and more units into the same
18 overall market as the earlier Lafferty Visalia loan. Moreover, Lafferty had other
19 projects with other lenders in the same market. Lafferty was highly exposed to a
20 single market.

21 d. The CAM for this loan described the market as having price declines
22 and slowing market absorption, with the relevant submarket having two years
23 worth of supply.

24 e. Rothman noted that one of the weaknesses of this loan was that
25 IndyMac was refinancing a Pomona First Federal loan.

26 f. Rothman did not visit the property until after this loan was approved.
27 After his visit, he described the property as not being in an infill market but rather
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1 as being on the outskirts of Visalia. The CAM described the market as a small
2 community three miles south of Fresno, but it is actually 14 miles away. The
3 average finished housing prices for the project was to be \$327,500. Notably,
4 Homes in Sanger were selling for only \$170,500 in 2006.

5 g. The CAM did not show a senior management visit to the site of the
6 project before this loan was made as required by HBD policy. Rothman admitted
7 that after he visited the project subsequent to loan approval, he learned that there
8 was a lot more work to be done on the lots than they had been led to believe in the
9 loan committee. He called it “rural and remote.”

10 h. Lafferty’s personal financial statement did not provide information
11 about his contingent liabilities.

12 i. The project had a profit margin of only 9.17%, which potentially left
13 little room to lower prices in an already deteriorating market.

14 j. This loan was made as a land loan but the source of repayment was
15 anticipated to be a construction loan by IndyMac.

16 k. As a member of the Junior Loan Committee on this loan, Rothman
17 acknowledged that information was available to the committee showing that the
18 cash and cash equivalents position of the borrower had dropped from \$11.1 million
19 when Lafferty Visalia was approved, to \$7.7 million when Lafferty Sanger was
20 approved eight months later. Van Dellen, Shellem, and Rothman apparently did
21 not consider or question this decline.

22 l. There was no minimum-tangible-net-worth covenant and no quarterly
23 financial reporting requirement for this loan. This was true despite the fact that the
24 credit officer recommended a net-worth and leverage covenant to Van Dellen,
25 Shellem, and Rothman.

26 521. Van Dellen, Shellem, and Rothman knew, or in the exercise of due diligence
27 should have known, that their practices and the practices of IndyMac’s employees who
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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 Rothman 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 outside the normal and prudent
25 trade areas of the Bank.

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

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

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

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

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

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

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

20 **U. Count Based on Allegations Related to the Loan Made By HBD in the**
21 **Pacer Communities, Inc. Borrower Relationship.**

22 **Count 46**

23 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
24 **Koon Related to the Underwriting and Administration of a Loan to LB/L Pacer**
25 **College Park PA 2, LLC for the College Park Project)**

26 526. Plaintiff incorporates by reference and re-alleges each of the allegations in
27 paragraphs 1 through 525 of this complaint, as though fully set forth herein.

1 527. Van Dellen, Shellem, and Koon approved a loan to LB/L Pacer College Park
2 PA 2, LLC for a project known as College Park. This loan was entered into on June 27,
3 2006. The loan involved the acquisition, development, and construction of 70 detached
4 condominium units and 68 finished lots in the College Park master plan community in
5 Chino, California. The borrower was indirectly managed and controlled by Pacer
6 Communities, Inc. and its principal, Randy Poag, each of whom were also guarantors of
7 this loan. The loan commitment was \$31,685,000 and had a 24-month term. Losses on
8 this loan are nearly \$3.6 million.

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

12 a. The profit margin was only 3.96%, well below the HBD policy
13 minimum of 10%, potentially leaving the borrower with little room to lower prices
14 in a slowing market.

15 b. Significant and intense competition existed from public builders in the
16 subject master plan, potentially further eroding the already low profit margin.

17 c. The borrower was a single-purpose entity, so guarantor financial
18 support was critical. Yet one of the two principal guarantors had minimal liquidity
19 to provide secondary financial support for repayment of the loan.

20 d. The guarantors' assets could only partly satisfy repayment of this
21 loan.

22 529. Van Dellen, Shellem, and Koon 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, Shellem, and Koon in regard to this loan include, but are not limited to, the
27 following:

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 where one or more of the
7 sources of repayment of the loan were not likely to be sufficient to fully retire the
8 debt.

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

12 e. Causing or allowing a loan to be made, renewed, and/or extended
13 despite poor and deteriorating market conditions.

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

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

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

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

1 modify the \$60,000,000 borrowing base. The borrower was seeking a 12-month renewal.
2 A \$15,000,000 participation was contemplated by the proposed renewal. The CAM
3 noted that recent disruptions in the credit markets could have an effect on Adams Homes'
4 ability to operate in the future because Adams Homes emphasized entry-level housing
5 where borrowers may have difficulty obtaining or qualifying for mortgage financing. At
6 this time, the borrower's outstanding debt with other lenders increased from \$226 million
7 in 2006 to \$348 million. The CAM noted that Adams Homes was not immune to the
8 market slowdowns, as they had 2,000 sales fall out in 2006. Despite market slowdowns,
9 Adams Homes continued to acquire lots and held in excess of a two-year supply. The
10 combined credit rating dropped to a Pass 4, and the market scored only 5.00 points,
11 which translated to a Pass 5 classification.

12 539. On September 13, 2007, Van Dellen and Shellem approved the renewal.
13 The loan proceeded to the Senior Loan Committee on September 21, 2007, where it was
14 not approved.

15 540. On December 26, 2007, a 45-day extension was approved in order to
16 develop a plan to liquidate the credit line in an orderly fashion. At that time, \$39,771,989
17 was outstanding. HBD noted that the borrower's cash on its balance sheet dated
18 September 30, 2007, was insufficient to repay the outstanding balance. The workout plan
19 was to extend the line of credit by nine months with a \$5 million principal repayment by
20 March 1, 2008; \$25 million was due June 30, 2008, and monthly payments of \$5 million
21 were due thereafter. On January 22, 2008, a nine-month extension was approved by Van
22 Dellen and Rothman in accordance with the workout plan.

23 541. On June 23, 2008, HBD reported an unpaid balance totaling \$18,301,491.
24 On July 11, 2008, the unpaid balance was reduced to \$17,952,875.

25 542. On March 31, 2009, the FDIC sold the note to LNV Corporation for
26 \$2,085,006.59. The FDIC loan balance was reported to be \$14,892,904.19.

27 543. Defendants approved, renewed and/or extended this loan despite substantial
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1 known risks and or risks that should have been known in the exercise of due diligence.

2 These risks include, but are not limited, to the following:

3 a. The 2006 CAM noted that several of the markets where Adams
4 Homes was active had experienced slowdowns in sales as interest rates had risen
5 and investors had dropped out of the market. 75% of Adams Homes' business was
6 in Florida markets, which collectively averaged 17.5 months of supply. HBD rated
7 the market as a Pass 4. The CAM noted that 2006 was expected to show a decline
8 in the level of sales and backlog. Up to \$20 million or one third of the facility
9 could be used for lot acquisition in markets that had experienced tremendous
10 growth.

11 b. Adams Homes had to maintain a large supply of lots in order to
12 maintain its pace of operations. Thus, there was a danger that cash flow could be
13 negatively impacted by the holding costs if the pace of sales slowed. There was no
14 cash equity contributed by the borrower.

15 c. The size of this loan exposed HBD to far greater risk, and would
16 render it difficult for the borrower to close out the loan in the event HBD decided
17 to not renew the loan. This exposed HBD to substantial risk in the event the non-
18 renewal was due to deteriorating market conditions.

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

24 a. Causing or allowing a loan to be made to a borrower 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 borrower and/or
4 guarantor, and the prospective source of repayment, and the security provided for
5 the loans.

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

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

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

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

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

20 i. 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 j. 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.

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

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

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

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

12 **W. Count Based on Allegations Related to the Loan Made By HBD in the**
13 **Maisel Presley Borrower Relationship.**

14 **Count 48**

15 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
16 **Rothman Related to the Underwriting, Administration, Extension and Modification**
17 **of a Loan to 26th 305 & D 2420, LLC for the National City Condos Project)**

18 549. Plaintiff incorporates by reference and re-alleges each of the allegations in
19 paragraphs 1 through 548 of this complaint, as though fully set forth herein.

20 550. Van Dellen, Shellem, and Rothman approved a loan to 26th 305 & D 2420,
21 LLC for a project known as National City Condos (also known as City Grove). This loan
22 was entered into on August 16, 2006, and refinanced an existing HBD loan for the
23 acquisition and conversion of a 72-unit-apartment project into for-sale condominiums
24 located in National City, California. The project was 15% complete at the time of
25 renewal. The project itself was made up of two buildings, with one building containing
26 48 one-bedroom units, and the other building containing 24 two-bedroom units. This
27 loan had an 18-month term, and the loan commitment totaled \$13,145,000. The losses on
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1 this loan are estimated to exceed \$5.6 million.

2 551. The primary source of repayment of this loan was to be the sale of the units
3 in the project. The CAM noted that the borrower and guarantors were unlikely sources to
4 repay the loan due to the sluggish market and their high leverage and low liquidity. Thus,
5 foreclosure and sale of the collateral and collection of any shortfall from the guarantors
6 were identified as “possible” sources of repayment.

7 552. In August 2005, HBD approved the original loan to the borrowers with a
8 loan commitment totaling \$12,477,000. Account officer Terwilliger believed this was a
9 “semi-good” loan at the time it was made.

10 553. On March 24, 2006, vandals apparently entered the 24-unit building with the
11 intent to steal copper wire. This apparently caused a short in the electrical system that
12 resulted in a fire. An insurance company paid nearly \$480,000 for the resulting damages,
13 which the borrower believed was more than the actual cost to restore the building to its
14 pre-fire state.

15 554. On August 18, 2006, HBD approved the subject 18-month renewal loan. On
16 October 13, 2006, Terwilliger met with the borrower and learned that the borrower had
17 severe cash flow problems over the past year due to the lack of available loan funds to
18 cover overhead on their condominium projects. It was subsequently discovered that the
19 borrower’s last draw from HBD totaling \$276,017 was not used to pay for work on the
20 project, but instead was used for the borrower’s overhead.

21 555. On October 25, 2006, HBD sent a notice of default and reservation of rights
22 letter to the borrower. On November 14, 2006, Van Dellen, Shellem, and Rothman
23 approved the continuation of funding for 60 days via the reservation of rights letter sent
24 on October 25, 2006.

25 556. On January 12, 2007, a notice of default was filed. On February 17, 2007,
26 sales opened on the first building. As of March 15, 2007, the outstanding balance was
27 \$11,348,163 with \$1,796,836.55 not yet disbursed, the interest reserve was depleted, and
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1 \$32,204.32 in interest was due on March 20, 2007. The first building was approximately
2 88% completed and the second building was approximately 20% completed. As of May
3 31, 2008, there were only eight closings, and one sale in escrow.

4 557. On June 19, 2008, HBD executed an agreement to sell its note to Floit
5 Properties, Inc. for \$5,750,000. At that time, the unpaid balance was \$11,376,818, which
6 resulted in a loss of \$5,626,818. Terwilliger stated that the note sale under the
7 circumstances was the best possible result for the Bank.

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

11 a. Van Dellen, Shellem, and Rothman approved this loan despite the
12 CAM describing a dramatic slowdown in the San Diego condominium market
13 since late summer 2005. The absorption rate dropped from a high of 10 to 20 units
14 per month to 1 to 5 units. This was attributed to rising supply of condominium
15 units, slowing sales, rising interest rates, rising prices affecting affordability, and
16 other events. Van Dellen's, Shellem's, and Rothman's decision to renew this loan
17 at an increased commitment level in the face of obvious market softening was
18 irresponsible.

19 b. The original appraisal report for this project estimated an absorption
20 rate of six sales per month. An updated appraisal projected only two sales per
21 month. The CAM noted that the San Diego market had 19.3 months of supply as
22 of the first quarter of 2006 due to slowing sales and rising inventory. In addition,
23 the San Diego resale market had approximately 21,000 units listed versus
24 approximately 6,600 units two years earlier. This was further evidence of a
25 declining market that Van Dellen, Shellem, and Rothman should not have ignored.
26 The market value of the collateral property "as-is" declined \$430,000 from June
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1 30, 2005 to August 3, 2005. Thus, HBD's collateral value was deteriorating at the
2 time it approved the renewal.

3 c. The 112-unit project had a market value "as-is" condominiums of
4 \$21,840,000 versus a purchase price of \$21,800,000. In addition, the market value
5 as a post-renovation apartment building was \$19,100,000. Under an income
6 approach, the project had a value of \$15,626,180. These figures indicated that any
7 softening in the real estate market would render the purchase price higher than the
8 property's value under any analysis. In addition, the DCR as an apartment was
9 well below 1.0. In fact, the project had a DCR of only 0.57:1.00 versus a policy
10 requirement of 1 to 1. There was no mitigant provided for this policy exception.
11 These factors naturally presented substantial risks to HBD if the builder was
12 unable to complete the conversion.

13 d. Despite an appraisal setting forth an absorption rate of two units per
14 month, the borrower believed it could average four to five units per month based
15 on the nearby comparables and their sales prices. Thus, the borrower believed it
16 could sell the units and repay this loan within 18 months. Van Dellen's, Shellem's,
17 and Rothman's decision to follow the borrower's projections and utilize a 4-unit-
18 per-month-absorption rate was particularly risky given the market trends, and it
19 created a situation where this loan was not likely to be repaid during the 18-month
20 term. Van Dellen, Shellem, and Rothman attempted to protect against slowing
21 absorption by imposing a release rate of net proceeds or 133% of par, whichever
22 was higher. If the net proceeds were less than 133%, the borrower would need to
23 make up the difference out of pocket. This strategy appeared risky given the
24 borrower's rapidly deteriorating financial condition. In addition, the borrower's
25 liquidity crisis would be exacerbated by its inability to derive cash flow from the
26 sale of units from this project.

1 e. The initial loan advance at closing of the renewal (outstanding
2 \$8,862,542) was higher than the market value “as-is” apartments of \$8,600,000,
3 and the projected market value post conversion stabilized for rental property of
4 \$7,200,000. This was a policy exception for which no meaningful mitigant was
5 provided.

6 f. The project had a profit margin of 8.97% versus a 10% policy
7 requirement.

8 g. The interest reserve was not fully packed. HBD’s policy required
9 fully packed interest with a 2% rate shock. The mitigant states that this loan had
10 enough interest up to January of 2007, at which time interest reserve would be
11 funded out of unit closings. This, of course, presumed there would be unit closings
12 in January. In fact, the CAM noted that it may take up to nine months to get
13 approval permits for the 24-unit building. Thus, Van Dellen, Shellem, and
14 Rothman appear to have taken a gamble given the borrower’s poor past
15 performance on this project.

16 h. The CAM noted that the financial strength of the borrower and
17 guarantors declined significantly over the prior six months. This was attributed to
18 a number of factors, including a slow down in the San Diego condominium market
19 resulting in decreased profits. This trend was troubling, as the borrower
20 maintained a portfolio of 25 condominium projects totaling 1,550 units, of which
21 1,042 were unsold or unreleased. Due to a slow down in sales leading to a high
22 level of standing inventory, construction delays, and other issues, the aggregate
23 interest reserve for the 25 projects was just over \$1 million. Thus, the borrower
24 was paying interest for some of its projects out of pocket, or repacking interest
25 reserve. Thus, it was questionable whether the borrower had the financial capacity
26 to complete the project being financed by HBD.

1 i. The borrower was only able to contribute approximately \$200,000 in
2 cash equity to the renewal due to its high leverage, limited liquidity, and the need
3 to “repack” the depleting interest reserves and/or pay interest out of pocket for its
4 other projects.

5 j. The CAM noted that the sponsors had total contingent liabilities of
6 \$275.8 million, debt to worth of 8.0 to 1.0, and liquidity to debt of 0.01 to 1.00.
7 Thus, Van Dellen, Shellem, and Rothman approved this loan without a secondary
8 source of repayment. The CAM stated that the borrowers and guarantors were
9 unlikely sources to repay this loan due to the sluggish market and their high
10 leverage and low liquidity. The best that HBD could hope for was that foreclosure
11 and sale of the collateral and collection of any shortfall from the guarantors were
12 “possible” sources of repayment. Van Dellen, Shellem, and Rothman irresponsibly
13 placed all of HBD’s prospects for repayment in the sale of units in a sluggish
14 market.

15 k. Maisel had an average FICO score of 650, and Presley had an average
16 FICO score of 645, below the minimum score set by HBD policy.

17 l. The project scored a Pass 5 on the combined credit risk rating, and yet
18 was approved by Van Dellen, Shellem, and Rothman.

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

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

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

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

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

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

20 i. 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 j. 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 k. 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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1 560. Van Dellen, Shellem, and Rothman as officers, owed IndyMac the
2 obligation to exercise the degree of care, skill and diligence that ordinarily prudent
3 persons in like positions would use under similar circumstances in the management,
4 supervision and conduct of IndyMac's business and financial affairs.

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

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

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

15 **X. Count Based on Allegations Related to the Loan Made By HBD in the**
16 **Integral Partners Borrower Relationship.**

17 **Count 49**

18 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem and**
19 **Rothman Related to the Underwriting, Administration and Renewal of a Loan to**
20 **Integral Communities I for the MacArthur Place Project)**

21 564. Plaintiff incorporates by reference and re-alleges each of the allegations in
22 paragraphs 1 through 563 of this complaint, as though fully set forth herein.

23 565. Van Dellen, Shellem, and Rothman approved a loan to Integral
24 Communities I for a project known as MacArthur Place. This loan was entered into on
25 August 29, 2006 and later renewed by Van Dellen and Rothman on March 7, 2008. The
26 loan involved the extension of financing initially provided to the borrower in August
27 2005 to acquire and develop a four-acre site in Santa Ana, California, to be cleared and
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1 entitled for 276 condominium units located throughout a series of five-story buildings.
2 The original loan commitment was \$17,930,000 and had an 18-month term, and the
3 renewal slightly reduced the loan commitment to \$17,200,000 with a new, 12-month
4 term. Losses on this loan total nearly \$4 million.

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

8 a. Development of 276 units exceeded the HBD policy maximum of 125
9 units.

10 b. The borrower had no intention of building the 276 condominium units
11 and instead intended to repay the loan by selling the entitled four-acre site to a
12 builder, in contravention of HBD policy requiring a construction loan subsequent
13 to the subject acquisition and development loan.

14 c. Even during a time when the overall real estate market was thriving,
15 two previous borrower attempts to sell the project site had already failed.

16 d. The loan-to-cost ratio of 86% exceeded the HBD policy maximum of
17 75%.

18 e. The loan term of 18 months was longer than the first 12-month term
19 covering the initial financing, evidencing a slower-developing project with a
20 greater risk of additional delay.

21 f. At the time of loan renewal in March 2008, the profit margin was
22 projected to be negative 13.91%, in contravention of HBD policy requiring a
23 minimum of a 10% profit margin. This was particularly troubling given that by
24 Spring 2008, the real estate market was significantly weak.

25 g. The borrower was a single-purpose entity, so guarantor financial
26 support was critical. Yet the guarantees were only full payment guarantees upon
27 the occurrence of certain conditions subsequent. Further, some of the reported
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1 financial information for one of the two guarantors was not clearly documented,
2 and this guarantor's exact cash position was unknown. Finally, although HBD
3 policy required a liquidity analysis less than 90 days before loan approval, such an
4 analysis was not performed within this timeframe for the guarantor.

5 567. Van Dellen, Shellem, and Rothman knew, or in the exercise of due diligence
6 should have known, that their practices and the practices of IndyMac's employees who
7 reported to them and over whom they exercised supervisory control, were improper,
8 imprudent, and harmful to IndyMac. The negligence and breaches of duty by Van
9 Dellen, Shellem, and Rothman in regard to this loan include, but are not limited to, the
10 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 where one or more of the
21 sources of repayment of the loan were not likely to be sufficient to fully retire the
22 debt.

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

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

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

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

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

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

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

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

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

1 Rogelio was also agriculturally zoned.

2 576. In April of 2005, the borrower submitted an application for (1) rezoning the
3 property to RE-10 to accommodate 40 lots; (2) planned development; (3) early
4 cancellation of the Williams Act contract; and (4) a tentative tract map. On June 6, 2006,
5 the planning commission recommended approval of the applications relating to
6 environmental, zoning, and development. The City Council was to hear and act upon the
7 applications on June 27, 2006. The CAM identified a number of additional pending
8 project approvals, including Regional Water Quality Control Board certification,
9 improvement plans, grading plans, final map, request for planned growth allocations, and
10 development of architectural plans. HBD projected that the build out of the project
11 would occur within the two-year-loan term.

12 577. On January 26, 2007, HBD approved a request to move (1) the construction
13 start date from January 14, 2007 to May 14, 2007; (2) the sales start date from March 14,
14 2007 to July 14, 2007; (3) the final map date from March 14, 2007 to July 14, 2007; and
15 (4) the closing start date from September 14, 2007 to January 14, 2008. This was
16 necessitated by delays in the approval of improvement plans and the final tract map. The
17 account officer noted a cumbersome approval process with the City of Vacaville, which
18 would not issue any more than 300 building permits per year.

19 578. On August 13, 2007, credit officer Krcmarik approved a 90-day waiver of
20 the sales start date of July 14, 2007. The account officer again noted that the project had
21 been delayed due to difficulties obtaining development approval from the City of
22 Vacaville.

23 579. On October 8, 2007, the account officer requested that all disbursements on
24 this loan be stopped until further notice. He again pointed to the delay in the start of
25 construction. On October 17, 2007, HBD discovered that the borrower and guarantors
26 failed to satisfy the \$1 million liquidity covenant. As of October 1, 2007, the projected
27 market value upon completed construction had dropped to under \$53 million. Thus, the
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1 collateral value was roughly equal to the commitment amount. The “as-is” value was just
2 over \$8 million. The unpaid balance at that point exceeded \$10.1 million.

3 580. A notice of default was filed during the week of April 7, 2008, and a
4 guarantor suit was initiated the same week. As of March 25, 2008, the “as-is” value of
5 the property had dropped to \$2.92 million.

6 581. 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. Van Dellen, Shellem, and Koon approved this loan without having
10 sufficient due diligence to understand the City of Vacaville’s entitlement process.
11 Six months after the CAM was submitted, the account officer discovered that the
12 City of Vacaville only issued 300 building permits per year. This information
13 would have shed substantial light on whether it was realistic to expect this loan to
14 payoff within its two-year term.

15 b. HBD projected that the build out of the project would occur within the
16 two-year-loan term. While the CAM suggested that this loan would be repaid with
17 the sale of the 67th home, and that the 67th home was projected to sell in the 24th
18 month, that conclusion was overly ambitious. The appraiser noted that the units
19 would sell at a rate of 4 per month. Thus, it would take 17 months to sell 67
20 homes. This left only seven months to clear substantial development hurdles,
21 including obtaining a final map on Knoll Creek and a tentative map and final map
22 on Rancho Rogelio. Thus, Van Dellen, Koon, and Shellem appear to have
23 contemplated extending this loan irrespective of any potential development delays.
24 The added time associated with completing this project would likely have extended
25 it to at least 2009, which increased the risks associated with a downturn in the
26 market. Moreover, Van Dellen, Shellem, and Koon approved this loan as an
27 AD&C loan despite the fact that Rancho Rogelio was not yet tentatively mapped,
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1 which was a violation of HBD policy. HBD believed a tentative map would be
2 approved within three weeks. It appears Van Dellen, Shellem, and Koon took an
3 unnecessary risk to approve this loan instead of waiting the three weeks for
4 tentative map approval.

5 c. The CAM noted that sales had slowed in most projects from 7-15
6 units per month to 3-11 units per month. In addition, the CAM noted 23.50
7 months of supply in the project's submarket, and 36.17 months of supply at the
8 project's price point and submarket. Thus, the market was clearly trending
9 downward, and should have caused Van Dellen, Koon, and Shellem to be very
10 cautious before approving a loan that would likely require more than two years to
11 repay.

12 d. The CAM noted that a Phase I Environmental Site Assessment
13 revealed a copper arsenate spill on Rancho Rogelio. This spill was noted to have
14 resulted in surface staining only, but there was no indication as to what the
15 remediation would involve. The environmental clean up ultimately cost at least
16 \$300,000. Van Dellen, Koon, and Shellem appear to have approved this loan
17 without requiring sufficient due diligence relative to the magnitude of the
18 contamination.

19 e. The loan-to-cost ratio for this loan was 90%. HBD's policy required a
20 maximum loan-to-cost ratio of 85% when the average price exceeded 125% of the
21 comparable market average ("CMA"). There was no mitigant for this policy
22 exception, and thus nothing to adequately address the increased risk.

23 f. Van Dellen, Koon, and Shellem permitted the borrower to utilize
24 \$4,843,000 in appraised equity despite having controlled (not owned) Knoll Creek
25 for only 13 1/2 months, and despite having owned Rancho Rogelio for 20 months.
26 HBD credit policy required two years control and three years ownership. The
27 remaining equity consisted of cash totaling \$1,147,000, of which a substantial
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1 portion was financed by a subordinated equity partner who would record a second
2 trust deed. Thus, Van Dellen, Koon, and Shellem approved a loan to a borrower
3 that was highly leveraged, and engaging in virtually 100% financing. This created
4 a more speculative development, and was particularly risky where the development
5 hurdles were substantial.

6 g. The borrower was not required to provide quarterly or annual
7 financial statements. The guarantor was permitted to provide only annual financial
8 statements.

9 582. Van Dellen, Shellem, and Koon 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 Defendants
13 in regard to this loan include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **Z. Counts Based on Allegations Related to the Loans Made By HBD in the**
3 **MWH Development Corp. Borrower Relationship.**

4 **Count 51**

5 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
6 **Rothman Related to the Underwriting, Administration, Extension and Modification**
7 **of a Loan to Dickerson Manor, LLC for the Dickerson Manor Project)**

8 587. Plaintiff incorporates by reference and re-alleges each of the allegations in
9 paragraphs 1 through 586 of this complaint, as though fully set forth herein.

10 588. Van Dellen, Shellem, and Rothman approved a loan to Dickerson Manor,
11 LLC for a project known as Dickerson Manor. This loan was entered into on September
12 22, 2006, and provided financing for the construction of a 20-unit-condominium project
13 in Toluca Lake, California. The site consisted of four parcels that were construction
14 ready. The project involved a single phase of construction. The borrower anticipated
15 beginning construction by mid-August 2006 with a final map recordation date of
16 September 15, 2006. Construction was projected to be completed by December 30, 2007.
17 This loan had an 18-month term, and the loan commitment totaled \$8,700,000. The
18 losses on this loan are estimated to exceed \$1 million.

19 589. The primary source of repayment of this loan was to be the sale of the units
20 in the project. The secondary source of repayment was identified as the borrower and
21 guarantors Mark Handel (“Handel”), Scott Adler (“Adler”), and the Handel Family Trust.

22 590. In February 2008, the borrower advised HBD that the company’s financial
23 condition had deteriorated significantly, and that several of its projects were in various
24 stages of foreclosure with other lenders. The borrower did not have the ability to re-
25 margin any of its three existing HBD loans.

26 591. On May 15, 2008, a loan modification was approved that authorized HBD to
27 execute a forbearance agreement that would expire on June 30, 2009. In addition, a
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1 quarterly curtailment schedule of \$2,175,000 per quarter was established, and HBD was
2 to collect net sales proceeds from unit closings with a minimum release price of 115% of
3 par. The loan modification application noted that this loan had matured and HBD had not
4 been able to observe project performance. In addition, this loan was on non-accrual and
5 the borrower was unable to financially support this loan. Finally, the market was noted to
6 have slowed. The outstanding principal at that time totaled \$7,639,704.

7 592. On October 31, 2008, a Notice of Default was recorded. On December 16,
8 2008, HBD noted that past due interest totaled \$560,378.93. At that time, seven units had
9 closed, and 13 unit remained. The unpaid principal balance totaled \$5,230,091 versus a
10 value of \$5,837,000, and a disposition value of \$4,669,600. On December 30, 2008,
11 HBD noted an as-is value of \$4,900,000 versus an unpaid balance of \$5,230,091. On
12 February 23, 2009, HBD noted that three more units were about to close, which would
13 leave eight units. At that time, the “as-is” value was \$4,164,154, the disposition value
14 was \$3,706,154, and the unpaid balance was \$4,380,197.23. The unpaid interest totaled
15 \$869,228.92.

16 593. Van Dellen, Shellem, and Rothman 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. Van Dellen, Shellem and Rothman approved this loan despite the fact
20 that the borrower provided no cash equity for the project, and instead relied upon a
21 mezzanine lender to provide 100% of the equity. Thus, the borrower was
22 permitted to engage in a speculative 100% financed transaction, which increased
23 risk to HBD.

24 b. This loan contained a combined minimum liquidity covenant of only
25 \$850,000. This covenant amount was inadequate for a single-phase, condominium
26 loan with an \$8.7 million commitment. The amount of the minimum liquidity
27 covenant likely represented the available combined liquidity of the borrower and
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1 guarantors and should have signaled a warning to Van Dellen, Shellem, and
2 Rothman regarding the financial capacity of the borrower and guarantors.

3 c. The CAM noted that Handel had only \$768,878 in liquidity and
4 \$155,000 in income for 2004. Similarly, the CAM noted that Adler had only
5 \$1,293,874 in liquidity, and \$221,000 in income for 2004. The guarantors'
6 liquidity and income was insignificant in relation to the \$8.7 million loan
7 commitment. The CAM characterized both guarantors as offering limited
8 secondary support to this loan. While the CAM did not specifically address
9 contingent liabilities, based on the borrower's and guarantors' other projects, it
10 appears they had combined contingent liabilities of nearly \$130 million, and actual
11 outstanding debt of over \$100 million. Van Dellen, Shellem, and Rothman did not
12 appreciate the potential impact this degree of leverage would have on the
13 borrower's and guarantors' ability to repay this loan. In fact, it appears Van
14 Dellen, Shellem, and Rothman approved this loan despite the fact that HBD did not
15 even obtain financial statements from three of the four owners of the borrower
16 entity. Thus, Van Dellen, Shellem, and Rothman approved this loan with no viable
17 secondary source of repayment, and essentially gambled that the market would
18 remain strong and the project economically viable.

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

25 a. Causing or allowing a loan to be made to a borrower and guarantors
26 who were or should have been known to be not creditworthy and/or in financial
27 difficulty.
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1 b. Causing or allowing a loan to be made in violation of applicable laws,
2 regulations, and/or HBD's internal policies.

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

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

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

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, and/or extended
20 despite the Bank having a high geographic concentration of loans in the same
21 market.

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

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

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

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

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

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

14 **Count 52**

15 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen and**
16 **Rothman Related to the Underwriting, Administration, Extension and Modification**
17 **of a Loan to MS Foothill LP for the Foothill 200 Project)**

18 599. Plaintiff incorporates by reference and re-alleges each of the allegations in
19 paragraphs 1 through 598 of this complaint, as though fully set forth herein.

20 600. Van Dellen and Rothman approved a loan to MS Foothill LP for a project
21 known as Foothill 200. This loan was entered into on April 12, 2007, and provided
22 financing for the acquisition, development, and construction of 200 lots in Sylmar,
23 California. The project would consist of 74 townhomes and 126 raw lots. The property
24 was situated on just over nine acres and consisted of nine parcels. The project called for
25 three phases of construction. This loan refinanced an existing loan with Comerica Bank.
26 The property had an approved tentative map, and final map approval was expected by the
27 end of May 2007. This loan had an 18-month term, and the loan commitment totaled
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1 \$25,825,000. The losses on this loan are estimated to exceed \$4.8 million.

2 601. The primary source of repayment of this loan was to be the sale of the units
3 in the project. A residual balance of \$1,906,580 in month 18 was secured by the 126 raw
4 lots aggregately valued at \$11.34 million, which was intended to be paid off with future
5 phased HBD construction loans based on demand and satisfactory performance. The
6 CAM indicated that the borrower and guarantors offered limited financial sponsorship to
7 provide secondary support to this loan. The account officer conceded that there was
8 really no secondary source of repayment for this loan.

9 602. On September 27, 2007, HBD agreed to waive the construction date and
10 final map approval covenant due to ongoing delays. On December 17, 2007, an updated
11 appraisal indicated nearly a 34% decline in value, which revealed a principal impairment.
12 The interest reserve was frozen and this loan was placed on non-accrual. As of
13 December 31, 2007, there was still no site work commenced, as the grading permit had
14 not yet been pulled, and the final map was still not recorded.

15 603. In February 2008, the borrower and guarantors advised HBD that the
16 company's financial condition had deteriorated significantly, and that several of their
17 projects were in various stages of foreclosure with other lenders. The borrower did not
18 have the ability to re-margin any of their three HBD loans.

19 604. HBD stopped disbursements on this loan effective April 1, 2008. On May
20 14, 2008, a Notice of Default was recorded. According to the account officer, the
21 borrower never started work on the project. HBD subsequently foreclosed on the
22 property. The unpaid balance at the time of foreclosure was \$13,353,436, and the
23 foreclosure bid was \$3,639,693. Thus, the charge off was \$9,713,743. HBD's share net
24 of the participation was \$4,856,872.

25 605. Van Dellen and Rothman approved, renewed and/or extended this loan
26 despite substantial known risks and or risks that should have been known in the exercise
27 of due diligence. These risks include, but are not limited, to the following:
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1 a. HBD utilized an absorption rate of 4 units per month. Thus, it would
2 take nearly 15 months to sell all 74 units. The CAM identified over 20 months of
3 supply in the applicable submarket. The real estate market was clearly softening
4 by March of 2007. In fact, the CAM noted that there had been a recent decline in
5 overall pricing within the marketplace, and inventory was staying on the market
6 longer. Given these market conditions, Van Dellen's and Rothman's decision to
7 approve an 18-month construction loan without substantial financial sponsorship
8 was imprudent.

9 b. This project would result in a residual balance of \$1,906,580 in month
10 18. The CAM stated that the residual balance would be secured by the 126 raw
11 lots aggregately valued at \$11,340,000, which was intended to be paid off in the
12 future with phased HBD construction loans based on demand and satisfactory
13 performance. This structure added risk to the Bank because raw land values tend
14 to drop sharply in down markets. It was imprudent for Van Dellen and Rothman to
15 approve a loan whose structure did not have a more certain repayment plan.

16 c. The borrower was already experiencing delays on another project that
17 was being financed by HBD through PBG. That loan was known as MS San Jose
18 6, and was in negotiation for a 12-month extension due to construction delays.
19 Van Dellen's and Rothman's decision to approve a 200-unit, \$25 million loan to a
20 borrower that was having performance problems on another project was careless
21 and unduly risky.

22 d. The borrower provided no cash equity for the project, and instead
23 relied upon a mezzanine lender to provide 100% of the equity. Thus, the borrower
24 was engaged in a speculative 100% financed transaction, which increased risk to
25 HBD. This was particularly true given the guarantors' contingent liability profile
26 and limited liquidity due to the numerous MWH Development projects in process
27 at the time of loan origination.
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1 e. The CAM noted that MWH Development had only \$44,300 in cash as
2 of December 31, 2006. The company had seen a steady decline in accounts
3 receivable over the three years prior. It had total assets of \$2,449,600 versus
4 liabilities of \$4,364,000. While the company's net worth was \$13.3 million, its
5 year-end 2006 working capital was negative \$1,915,000. The company was
6 essentially illiquid. The CAM showed Mark Handel as having \$1,172,000 in
7 assets and \$2,922,000 in liabilities, including \$2,094,000 in estimated taxes. Mr.
8 Handel was illiquid, and a bank-prepared pro forma cash flow after tax was
9 negative \$21,000. The CAM showed Scott Adler as having \$2,644,000 in assets
10 and \$81,000 in liabilities. A bank-prepared pro forma cash flow was negative
11 \$155,000. Combined, the borrower and guarantors had total liquid assets of
12 \$3,511,000, but were essentially illiquid. In addition, they had approximately \$100
13 million in contingent liabilities, though the CAM did not identify their specific
14 contingent liabilities. The account officer stated that he called out to the Junior
15 Loan Committee the fact that the guarantors personally guaranteed all of MWH
16 Development's loans.

17 f. Notably, the account officer indicated that the guarantors Mark
18 Handel, Scott Adler and MWH Development Corp. were weak financially, and that
19 if the primary source of repayment failed to repay this loan, the guarantors would
20 not be able to either. The account officer included the weakness of the guarantors
21 in the CAM because he wanted to make sure Van Dellen and Rothman knew that
22 the primary source of repayment was probably the only source of repayment on the
23 deal. Irrespective of this fact, Van Dellen and Rothman approved the loan.

24 g. The account officer noted that since the Dickerson Manor CAM was
25 prepared in June of 2006, the borrower took on an additional \$77 million in debt.
26 The account officer characterized this as a significant increase in debt being carried
27 by the borrower.

1 h. The account officer stated that the CAM noted that MWH had a large
2 number of projects under development, and that if Van Dellen and Rothman had
3 questions about them, he could identify the changes, including the increase in
4 leverage from debt totaling \$20 million to \$70 million.

5 i. Given the increased debt carried by the borrower, the account officer
6 believed the credit risk rating should change. The account officer further explained
7 that it remained a Pass 3 because IndyMac insisted on more equity to offset the
8 risk. But he conceded that the equity contribution of 16.83% was not put in by the
9 developer because it was a 100% financed project.

10 j. The account officer stated that Van Dellen and Rothman based their
11 decision to approve this loan on the borrower being able to build the project, finish
12 it, sell the units, and pay this loan off. They did not necessarily consider the
13 borrower not being able to overcome some obstacles. The account officer also
14 indicated that the borrower's assets were heavily tied to real estate, and thus,
15 particularly susceptible to fluctuations in real estate values.

16 k. The Handel Family Trust owned 49.5% of the borrower entity, and
17 yet Van Dellen and Rothman approved this loan despite HBD not reviewing any
18 financial statements for the Trust. In addition, Van Dellen and Rothman did not
19 require a guarantee from the Handel Family Trust, which violated credit policy.
20 This was especially risky given the weak sponsorship and the declining state of the
21 market.

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

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

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

24 i. 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 j. 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.

2 607. Van Dellen and Rothman 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.

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

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

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

15 **Count 53**

16 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen and Shellem**
17 **Related to the Underwriting, Administration, Extension and Modification of a Loan**
18 **to MS San Jose 6, LP for the San Jose 6 Project)**

19 611. Plaintiff incorporates by reference and re-alleges each of the allegations in
20 paragraphs 1 through 610 of this complaint, as though fully set forth herein.

21 612. Van Dellen and Shellem approved a loan to MS San Jose 6, LP for a project
22 known as San Jose 6. This loan was a PBG loan that was entered into on April 27, 2006,
23 and provided financing for the acquisition, development, and construction of six two-
24 level-townhouse-style condominiums and 13 on-site-parking spaces in San Jose,
25 California. This loan had a 12-month term, and the loan commitment totaled \$2,750,000.
26 The losses on this loan are in an amount to be established at trial.

27 613. The primary source of repayment of this loan was to be the sale of the units
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1 in the project. The secondary source of repayment was stated in the CAM to be
2 guarantees from Mark Handel, Scott Adler, Calabasas 2000, LLC, MWH Development
3 Corporation, and the Handel Family Trust.

4 614. In April 2007, the maturity was extended 12 months to facilitate completion
5 of the project. Default letters were sent out on April 9, 2008.

6 615. A June 30, 2008 CAR and a July 30, 2008 workout memorandum noted that
7 the project experienced various construction-related delays and the loan matured on April
8 25, 2008 without full repayment or full completion, and with no unit sales having been
9 consummated. The borrower had a large portfolio of other projects with few revenue-
10 producing projects and very limited liquidity. The borrower reported that several of these
11 ongoing projects were in various states of foreclosure with other lenders. The interest
12 reserve for this loan was depleted, and the borrower and guarantors were unable to make
13 interest and/or principal payments out of pocket. MWH Development Corporation was
14 insolvent and Mark Handel and Scott Adler were likely to declare personal bankruptcy.
15 The borrower incurred \$361,000 in cost overruns that were not included within the loan
16 budget, and the borrower could not pay that cost out of pocket. The outstanding balance
17 on the loan was \$2,668,321.

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

21 a. The CAM clearly identified red flags as to the large number of
22 ongoing residential development projects owned and managed by MWH
23 Development Corporation, the MWH Group of Companies, and guaranteed by
24 Mark Handel and Scott Adler. Van Dellen and Shellem failed to comprehend the
25 magnitude of the risk, instead emphasizing past performance over the future
26 ramifications of a large volume of contingent liabilities. The total debt
27 commitment for the MWH entities was nearly \$130 million while the outstanding
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1 debt was over \$100 million. The CAM contained very little analysis of the
2 borrower's and guarantors' contingent liabilities. As such, Van Dellen and
3 Shellem approved this loan without knowing the exact volume and timing of the
4 contingent liabilities, and the degree of overall relationship risk was never fully
5 identified or analyzed.

6 b. The borrower and guarantors provided outdated financial statements,
7 and no financial statements were obtained for the Handel Family Trust. These
8 exceptions to Bank policy were not addressed.

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

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

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

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

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

24 e. 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 f. Causing or allowing a loan to be made without taking proper and
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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 g. 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 h. Causing or allowing a loan to be made, renewed, and/or extended
8 despite poor and deteriorating market conditions.

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.

11 618. Van Dellen 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.

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

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

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

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

4 a. No personal guarantees were obtained from Mountain View Bravo’s
5 principals. This violated HBD’s credit policy, and was especially risky for a land
6 acquisition loan where no project was being constructed through the loan.

7 b. The profit margin on this loan was shown as negative. This was
8 purportedly mitigated by the borrower’s significantly lower cost basis on the land.

9 c. This loan was for a 36-month term, which violated the maximum term
10 of 24 months for land loans allowable under HBD policy. Van Dellen, Shellem,
11 and Rothman were already aware that the real estate market, particularly in the
12 California Central Valley, was in decline. Accordingly, their decision to approve a
13 land loan that would not mature until October of 2009 was irresponsible.

14 d. The land loan was made with no defined plans for land development
15 or build out, and therefore was entirely speculative.

16 e. The Bakersfield market and a north submarket were a Pass 5 market at
17 the time of loan origination, and had a reported 19 months of inventory. The CAM
18 acknowledged “continued weakness in the resale market [which] will eventually
19 take a toll on new home sales.” The CAM also acknowledged that builders were
20 adopting a “wait and see” attitude with respect to land purchases.

21 f. This loan was a Pass 3 credit in a Pass 5 market in violation of HBD
22 policy.

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

1 limited to, the following:

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

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

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

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

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

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

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

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

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

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

3 k. Causing or allowing a loan to be made, renewed or extended where
4 there was very little likelihood of the loan repaying within the term of the loan.

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

9 630. By their actions and inactions, as generally and specifically described above,
10 Van Dellen, Shellem, and Rothman failed and neglected to perform their duties properly
11 as officers of IndyMac and breached their fiduciary duties of care to IndyMac.

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

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

19 **Count 55**

20 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen, Shellem, and**
21 **Rothman Related to the Underwriting, Administration, Extension and Modification**
22 **of a Loan to S&J Alfalfa for the Section 19 Project)**

23 633. Plaintiff incorporates by reference and re-alleges each of the allegations in
24 paragraphs 1 through 632 of this complaint, as though fully set forth herein.

25 634. Van Dellen, Shellem, and Rothman approved a loan to S&J Alfalfa, Inc. for
26 a project known as Section 19. This land acquisition loan was entered into on November
27 28, 2006, and replaced an existing HBD raw land loan that was scheduled to mature in
28

1 February 2007. The new loan was to be a land loan secured by Section 19 which was
2 approximately 591 net acres of land located in northeast Bakersfield. The Section 19
3 loan and previously financed loans to the borrower, and entities related to the borrower,
4 resulted in HBD having 26.4% of the 23,866 lots contained in the Bakersfield market. As
5 a result, HBD was financing about 1.21 years of inventory. This loan had a 36-month
6 term, and the loan commitment totaled \$19,865,248. The losses on this loan are
7 estimated to exceed \$4.5 million.

8 635. The primary source of repayment of this loan was to be via refinancing of
9 the loan to facilitate site development. The secondary source of repayment was identified
10 as support from the borrower and its affiliates. However, no personal guarantees were
11 obtained.

12 636. Prior to this loan's maturity, the Bakersfield market unsurprisingly
13 continued to deteriorate. Subsequent appraisals valued the project at significantly less
14 than the appraisal used during loan origination. As noted in a CAR from June 30, 2008,
15 the borrower had "significant exposure in the Bakersfield area and marginal liquidity and
16 financial strength."

17 637. In early November 2007, an appraisal showed that the value of the collateral
18 had fallen to \$12 million such that the loan-to-value ratio increased to 124%. On May
19 14, 2008, the commitment on the Section 19 land loan, as well as other commitments to
20 Mountain View Bravo, were collapsed to their outstanding balances. The land loan for
21 Section 19, along with the land loan for Section 21, was in the note sale pool and had a
22 potential buyer. But on June 24, 2008, the borrower cancelled the purchase agreement
23 due to issues discovered in the due diligence process.

24 638. The note for the Section 19 land loan was finally sold on March 31, 2009.
25 The unpaid balance at the time of sale was \$9,474,906. The note sale proceeds were
26 \$396,337. The resulting total loss was \$9,078,569 or \$4,539,285 net of a 50%
27 participation.

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

4 a. No personal guarantees were obtained from Mountain View Bravo's
5 principals. This violated HBD's credit policy, and was especially risky for a land
6 acquisition loan where no project was being constructed through the loan.

7 b. The profit margin on this loan was 6.22%, which violated HBD's
8 credit policy.

9 c. This loan resulted in HBD having 26.4% of the lots in the Bakersfield
10 market. The appraisal submitted with the CAM identified market saturation,
11 decreasing absorption rates, and declining sales. This loan resulted in significant
12 overexposure by HBD in late 2006 to the deteriorating Pass 5 Bakersfield market.
13 In fact, Van Dellen, Shellem, and Rothman had approved another land loan to the
14 same borrower relationship in the same market only one month earlier. Their
15 decision to compound risk to HBD through this loan is astounding.

16 d. This loan was for a 36-month term, which violated the maximum term
17 of 24 months for land loans allowable under HBD policy. Van Dellen, Shellem,
18 and Rothman were already aware that the real estate market, particularly in the
19 California Central Valley, was in decline. Accordingly, their decision to approve a
20 land loan that would not mature until November of 2009 was irresponsible.

21 e. This land loan was made with no defined plans for land development
22 or build out, and therefore was entirely speculative.

23 f. The appraisers assumed that the 46 active and abandoned oil wells on
24 the site would not interfere with a proposed development. This was an unrealistic
25 assumption that was clearly called out to Van Dellen, Shellem, and Rothman in
26 HBD's appraisal review.

1 g. The appraisal review acknowledged that Bakersfield was attempting
2 to shift development to the northeast, where Section 19 was located, but the area
3 was a new area for development having absorbed only a few hundred homes over
4 the prior 10 years and “some sections have soil issues.”

5 h. The appraiser reported that overall market conditions were slowing
6 down, especially in resales where inventory had ballooned and price cutting was
7 occurring. Nonetheless, “the appraised values [did] not take into consideration any
8 deterioration in the current market.” This was also an unrealistic assumption that
9 was clearly called out to Van Dellen, Shellem, and Rothman in HBD’s appraisal
10 review.

11 i. This loan was a Pass 3 credit in a Pass 5 market in violation of HBD
12 policy.

13 j. The workout officer assigned to address the Mountain View Bravo
14 relationship candidly acknowledged that both the Section 19 and Section 21 land
15 loans were risky and that he likely would not have recommended them because he
16 was a bit more conservative in regard to lending than simply taking a section of
17 land in Bakersfield.

18 640. Van Dellen, Shellem, and Rothman 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, Shellem, and Rothman 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 a borrower 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 borrower and/or
4 guarantor, 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, extended, and/or renewed 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, renewed, and/or extended
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.

2 641. Van Dellen, Shellem and Rothman as officers, owed IndyMac the obligation
3 to 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.

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

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

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

16 **Count 56**

17 **(Claim for Negligence and Breach of Duty of Care Against Van Dellen and**
18 **Rothman Related to the Underwriting, Administration, Extension and Modification**
19 **of a Loan to Sycamore Villas Development, LLC for the Summer Moon II Project)**

20 645. Plaintiff incorporates by reference and re-alleges each of the allegations in
21 paragraphs 1 through 644 of this complaint, as though fully set forth herein.

22 646. Van Dellen and Rothman approved a loan to Sycamore Villas Development,
23 LLC for a project known as Summer Moon II. This loan was an interim construction
24 loan to facilitate the construction of 80-detached-single-family residences with price
25 points between \$215,000 and \$316,000 located in Arvin, Kern County, California in the
26 Bakersfield area. This loan was entered into on January 10, 2007, and had an 18-month
27 term, and the loan commitment totaled \$17,909,040. The losses on this loan are
28

1 estimated to exceed \$917,000.

2 647. The primary source of repayment of this loan was to the sale of completed
3 homes to end buyers. The secondary source of repayment was identified as support from
4 the guarantor. However, as with the other loans in the Mountain View Bravo borrower
5 relationship, no personal guarantee was obtained from the principal, Philippe Laik.

6 648. Mountain View Bravo commitments were collapsed to their outstanding
7 balances on May 14, 2008. This loan was downgraded to Special Mention 1 in early
8 December 2007 and to Substandard 1 on December 27, 2007.

9 649. The note on this loan was sold on March 31, 2009. Prior to sale, the unpaid
10 balance on this loan was \$1,915,517. The note sold for \$79,681, which resulted in a loss
11 of \$1,835,836 of which HBD's share was \$917,918.

12 650. Van Dellen and Rothman approved, renewed and/or extended this loan
13 despite substantial known risks and or risks that should have been known in the exercise
14 of due diligence. These risks include, but are not limited, to the following:

- 15 a. No personal guarantees were obtained from Mountain View Bravo's
16 principals. This violated HBD's credit policy.
- 17 b. The profit margin on this loan was 3.4%, which violated HBD's credit
18 policy.
- 19 c. This loan was part of a number of loans in the latter half of 2006 and
20 into 2007 that increased HBD's exposure to the Bakersfield market. This loan
21 caused HBD to exceed its geographic concentration limitation for the Central
22 Valley. Van Dellen, Shellem, and Rothman had approved two others loan in the
23 same borrower relationship in the same market only one month earlier. Van
24 Dellen's and Rothman's decision to compound risk to HBD through this loan is
25 astounding.
- 26 d. The Bakersfield market had a 20-month supply of inventory as of the
27 fourth quarter of 2006.

1 e. The Bakersfield market was continuing to deteriorate. This loan was
2 a Pass 4 credit in a Pass 5 market in violation of HBD policy.

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

18 e. 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 f. 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 g. 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.
28

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

3 i. 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 j. 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 k. 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.

11 652. Van Dellen and Rothman 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.

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

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

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