Schuyler G. Carroll (*Admitted Pro Hac Vice*)
David F. Olsky (*Admitted Pro Hac Vice*)
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, New York 10112-0015
Phone: 212.262.6900
Fax: 212.977.1635
E-mail: scarroll@perkinscoie.com
dolsky@perkinscoie.com

Attorneys for Defendants Jeff Austin, Keith Green and William Grundy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

AXIS SURPLUS INSURANCE COMPANY, Plaintiff, v. ROBERT D. GERINGER; KIRBY D. COCHRAN; ROBERT CLAWSON; DOUGLAS W. CHILD; JEFF AUSTIN; WILLIAM H. DAVIDSON; WILLIAM K. WARWICK; WILLIAM GRUNDY; and KEITH GREEN, Defendants.	**RESPONSE OF JEFF AUSTIN, KEITH GREEN, AND WILLIAM GRUNDY TO LIQUIDATING TRUSTEE'S MOTION FOR ENTRY OF A CONTRIBUTION BAR ORDER FOR SETTLEMENT AGREEMENT WITH WILLIAM WARWICK;** Civil Case No. 2:14-cv-00244-DAK Judge Dale A. Kimball

Defendants Jeff Austin, Keith Green, and William Grundy (the "Moving Defendants") respectfully submit this Response to the Liquidating Trustee's Motion for Entry of a Contribution Bar Order For Settlement Agreement With William Warwick (the "Motion" or "Mot.").

PRELIMINARY STATEMENT

The Moving Defendants agree that the Court should enter a contribution bar order and judgment credit provision. However, the contribution bar order and judgment credit provision

submitted by the Trustee violates the basic principle of mutuality between those provisions and should be summarily rejected. Specifically, the Trustee proposes a contribution bar order that provides a broad release to Mr. Warwick but provides no proportionate relief in the judgment credit provision to the Moving Defendants for the claims that they give up against Mr. Warwick.

The Trustee's proposed bar order also is specifically designed to permit the Trustee impermissible multiple recoveries from a single alleged common injury. The Trustee has alleged that Mr. Warwick and the Moving Defendants caused a common injury relating to sales of Castle Arch securities, but the bar and judgment credit provision would allow the Trustee to recover for that injury from multiple parties (including multiple times from the Moving Defendants) by carving out particular litigations from the judgment credit provision. This is gamesmanship and similar attempts have been rejected by other Courts.

The Moving Defendants provide the Court with an appropriate bar order that takes these issues into consideration. It will provide mutual comfort to Mr. Warwick and the Moving Defendants concerning contribution claims, while simultaneously preventing the Trustee from receiving more than one recovery from common damages. The Court should enter the Moving Defendants' contributory bar order and judgment credit provision.

ADDITIONAL BACKGROUND

1. In October 2013, the Trustee sent a Draft Complaint to all of the Defendants in this case, including the Moving Defendants and Mr. Warwick. The Draft Complaint is attached as Exhibit 1 to this Response.

2. The Draft Complaint identified numerous causes of action against the Moving Defendants and Mr. Warwick, including claims against all Moving Defendants (including Mr.

Green and Mr. Grundy) under the Securities Exchange Act of 1934 and the Securities Act of 1933.

3. On April 2, 2014, the insurer that issued coverage for the Moving Defendants and Mr. Warwick, AXIS Surplus Insurance Company, filed the present interpleader action after the Trustee and the various individuals identified in the Draft Complaint were unable to settle the claims in the Draft Complaint.

4. Shortly after the filing of the interpleader, the Trustee reached a resolution with Mr. Warwick. On May 30, 2014, the Trustee filed a motion in the United States Bankruptcy Court for the District of Utah to approve the Settlement.

5. The Settlement contained a contributory bar order and judgment credit provision. The reference to the Bankruptcy Court was subsequently withdrawn and the motion to approve the settlement agreement was then consolidated with the Interpleader action before this Court. The reason for the withdrawal of the reference was the Moving Defendants' objection to the Bankruptcy Court's jurisdiction to enter the contributory bar order and judgment credit provision.

6. Six months later, on October 30, 2014, the Trustee filed separate complaints against each of the Moving Defendants. The complaints against Mr. Grundy and Mr. Green were filed as separate adversary proceedings in the Bankruptcy Court. The Trustee filed a complaint against Mr. Austin and others in the United States District Court for the District of Utah in a case captioned, *Strong v. Cochran*, No. 14-00788 (D. Utah) ("*Strong v. Cochran*").

7. The Complaint against Mr. Austin in *Strong v. Cochran* has been compelled to arbitration, with the Trustee's consent. No live case remains, but it has not been closed.

8. The Trustee continues to litigate against Mr. Grundy and Mr. Green. Although they do not contain claims under the federal securities laws, the complaints against Mr. Grundy and Mr. Green contain state securities laws claims with substantively similar allegations to *Strong v. Cochran*.

9. Absent the entry of a contributory bar order and corresponding judgment credit provision, Mr. Grundy and Mr. Green have the right to sue Mr. Warwick for contribution for any monies that they may be required to pay in judgment on the state securities law claims, among others. *See* Utah Code § 61-1-22(4) ("every partner, officer, or director" of the seller of securities" is also liable jointly and severally, and pursuant to § 61-1-22 (4)(b), "there is contribution as in cases of contract among the several persons so liable").

10. Although he asserts state law claims against Mr. Green and Mr. Grundy, the injury alleged by the Trustee arises from the same facts and circumstances (Castle Arch's sale of securities) as in the Draft Complaint and in *Strong v. Cochran* that form the basis for his federal securities law claims. Moreover, nothing prevents the Trustee from amending the complaints against Mr. Green and Mr. Grundy to include federal securities law claims.

11. The Moving Defendants crafted a contributory bar order and judgment credit provision that addressed these issues and included a mutual contributory bar order and judgment credit provision as to all cases "related to the Legacy Debtors". That is, Mr. Warwick is absolved from liability for contribution and indemnification in all such cases, while there is a corresponding judgment credit provision that provides defendants with the compensation required for giving up the right to sue Mr. Warwick for contribution.

12. While the Moving Defendants appreciate concerns about providing a narrower range of claims to be released -- and propose such a provision below -- the Trustee's

counterproposal (consistent with his other actions in this matter) is an attempt to use a contributory bar order to harm the remaining defendants and to obtain multiple recoveries from the same injury. He proposes a non-mutual provision that absolves Mr. Warwick of contribution liability, but gives nothing in return. It also ignores that Mr. Green and Mr. Grundy were included on the initial Draft Complaint that formed the basis for his settlement with Mr. Warwick.

13. This places the Moving Defendants in a particularly difficult position because Mr. Warwick, as the Trustee has acknowledged, may be the only solvent defendant in this proceeding. Mr. Green and Mr. Grundy were lower level employees of Castle Arch working at the direction of Mr. Warwick and others; taking away their right to sue Mr. Warwick for contribution is highly prejudicial.

14. Specifically, the contributory bar provision proposed by the Trustee requires that all other individuals give up their rights to sue Mr. Warwick for contribution or indemnification for any claim "***arising out of or relating to*** claims asserted in *Strong v. Cochran*." (emphasis added.) This provides a release not only for *Strong v. Cochran* or even actions brought by the Trustee, but for *any* claim brought by *any* person that has *any* connection to the claims asserted in *Strong v. Cochran*.

15. In return, the judgment credit provision provides nothing to individuals for giving up their claims against Mr. Warwick. Rather, the judgment credit provision proposed by the Trustee *only* is granted to the non-settling defendants in *Strong v. Cochran* and *only* as to the specific claims in that action. That case is no more, having been compelled to arbitration.

16. The judgment credit provision proposed by the Trustee thus actually provides *nothing* in return for the release to Mr. Warwick. The non-settling defendants in *Strong v.*

Cochran get nothing because that case is completed and they are no longer defendants. Lower level employees sued by the Trustee for actions directed or endorsed by Mr. Warwick, such as Mr. Grundy and Mr. Green, also get nothing for their considerable sacrifice because they were never named in that (now completed) lawsuit.

17. The Trustee also does not address that the Warwick settlement is about the allegations in the Draft Complaint, not the complaints that he filed after he moved for approval of the Warwick settlement. Mr. Green and Mr. Grundy were named defendants in the Draft Complaint and should be afforded the same protections as other defendants regardless of the Trustee's attempted gamesmanship in filing separate complaints.

18. The result from the Trustee's proposal is that Mr. Warwick receives a windfall, and all other defendants or potential defendants receive nothing.

19. The Trustee's proposal presents another issue: multiple recoveries from common damages concerning the same alleged injury. For example, the Trustee asserted in the Draft Complaint that Mr. Warwick breached his fiduciary duties to the Legacy Debtors and their investors by overseeing and conspiring with others with respect to the purportedly inappropriate sales of Castle Arch securities. The Trustee simultaneously seeks damages from Mr. Green and Mr. Grundy for the very same alleged injury (*i.e.*, the allegedly inappropriate sale of securities). The Trustee also seeks the same damages again in the *Strong v. Cochran*.

20. Under the Trustee's proposed bar order and judgment credit provision, he will be allowed to recover multiple times for the same alleged injury arising out of the same allegedly inappropriate sales of securities. The Trustee allows himself to recover once from Mr. Warwick through the Warwick Settlement in the guise of a breach of fiduciary duty claim (among others), and then again through possible judgments against Mr. Green, Mr. Grundy, the defendants in the

Strong v. Cochran action, and any other lower level employee that engaged in the sale of securities.

21. The Trustee's proposal has an additional issue: it is not limited to the amount of settlement ($400,000), but rather the amount that the Trustee "recovers".

22. The Moving Defendants' proposal to the Court is below. It provides a judgment credit provision that is proportionate to the contribution rights given up by non-settling defendants. It also prevents the Trustee from obtaining more than one recovery for the same alleged injury (*e.g.*, the sale of securities by Castle Arch):

> No person may file, commence, institute, prosecute or maintain any claim, counterclaim, cross-claim, third- party claim or other action for contribution or indemnification against William Warwick arising out of or relating to claims asserted in *Strong v. Cochran*, No. 14-00788 (D. Utah) and related arbitration (collectively, "*Strong v. Cochran*"). Mr. Warwick shall not file, commence, institute, prosecute or maintain either directly any claim, counterclaim, cross-claim, third- party claim or other action for contribution or indemnification against any other person that arises out of or relates to claims asserted in *Strong v. Cochran*.
>
> Any Verdict, Judgment or Award that arises out of or relates to claims asserted in *Strong v. Cochran*, shall be reduced by the greater of (i) an amount that corresponds to the percentage of responsibility ascribed to Mr. Warwick for such claims; or (ii) $400,000.

ARGUMENT

There are two fundamental rules that a Court must follow in entering a contributory bar order and judgment credit provision: (1) the contributory bar order and judgment credit provision must be proportionate to each other, and (2) the plaintiff may only obtain only one satisfaction for a common injury. With respect to the first rule, a contributory bar order may only be approved by the Court if it preserves the right of the non-settling parties to an appropriate judgment credit. *See, e.g.*, *In re Refco Sec. Litig.*, No. 05 Civ. 8626 (GEL), 2007 WL 57872, at *2-*3 (S.D.N.Y. Jan. 9, 2007) (unpublished). With respect to federal securities laws,

the PSLRA provides that non-settling parties are entitled to a judgment credit provision as follows:

> If a covered person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—
>
> (i) an amount that corresponds to the percentage of responsibility of that covered person; or
>
> (ii) the amount paid to the plaintiff by that covered person.

15 U.S.C. § 78u-4(f)(7)(B).

The "one satisfaction" rule is closely related: "The fundamental principle on which the law in this area rests is the 'one satisfaction' rule, which provides that a plaintiff is entitled to only one satisfaction for each injury." *In re Refco Sec. Litig.*, 2007 WL 57872, at *2. This rule "requires that nonsettling defendants receive credit for settling defendants' share of common damages, that is, damages for which both the settling and nonsettling defendants are responsible." *Id.* Further, "[a] judgment credit must give nonsettling defendants credit for at least the amount of the settlement for common damages, because if it did not, plaintiffs could recover from both the settling and nonsettling defendants for the same damages." *Id.* Judgment credit provisions thus must provide relief to the non-settling defendants proportionate to the claims that are barred by the contribution bar. *See TBG, Inc. v. Bendis*, 36 F.3d 916, 929 (10th Cir. 1994) (non-PSLRA contribution bar against party only permitted for "claims for which the court provided adequate compensation through a judgment credit or other means").

This rule involves not just PSLRA-related claims, but *all* claims that have a common injury with PSLRA-related claims: "Even if a single injury is deemed a violation of two entirely separate laws, as many injuries are" -- as they are here -- "it would be fundamentally unfair for plaintiffs to recover twice for it. The one satisfaction rule allows, and in some situations requires,

the result that Lead Plaintiffs fear, because it provides that a judgment must be reduced in the amount of any common damages, even if those damages are attributable to violations of entirely different laws." *In re Refco Sec. Litig.*, 2007 WL 57872, at *4. Thus, as in *Refco*, the PSLRA requires that a contributory bar and judgment credit provision cover *all* claims (including those based on state laws) with damages common to the injury that allegedly arises from the violations of federal securities laws. *Id.* (one satisfaction rule "require[s] an analysis based on the underlying injury, not the pleadings that categorize it or the statutes under which liability is found.").

Here, the contribution bar and judgment credit provision proposed by the Moving Defendants satisfies the rules of proportionality and "one satisfaction". They provide proportional relief to Mr. Warwick *and* to non-settling defendants for all claims "arising out of or related to" *Strong v. Cochran* and its related arbitration. They also follow the "one satisfaction" rule: the Trustee will only be permitted to recover once on the same injury, regardless of the theory under which he seeks damages.

By contrast, the Trustee's proposed contributory bar order and judgment credit provisions violate both principles. *First*, the Trustee's contributory bar order provides broad relief to Mr. Warwick by granting him relief from any contribution and indemnification suits brought by any defendants to a suit "arising out of or relating to" the claims in *Strong v. Cochran*. However, the Trustee's proposed order only identifies the non-settling defendants in *Strong v. Cochran* as the beneficiaries of the judgment credit provision -- and that case has been compelled to arbitration. The Trustee's proposed order also provides no relief to any other individual who has given up a claim against Mr. Warwick (and does not provide any relief to Mr. Grundy and Mr. Green).

Second, the Trustee's proposed order violates the "one satisfaction" rule because the proposed judgment credit provision allows the Trustee to recover multiple times on the same injury. The Trustee's proposal allows the Trustee to recover from Mr. Warwick for the injury relating to the alleged sale of securities and then again from Mr. Green and Mr. Grundy for the same injury.

To the extent that adopting the Moving Defendants' proposal may reduce the value of the claims against Mr. Green and Mr. Grundy, such is the natural result of the Trustee's strategy. The Trustee has filed claims against individuals in purported management positions at Castle Arch for injuries allegedly arising from the sales of Castle Arch securities. The Trustee has also filed claims against the lower level employees (such as Mr. Green and Mr. Grundy) that "management" may have supervised in selling those very same securities. The Trustee only gets one satisfaction for an injury relating to those sales, whether it comes from purported "management" or from lower level employees. Having obtained satisfaction from Mr. Warwick, the Trustee is barred from seeking recovery from that same injury against any other individual regardless of the nature of the "claim" asserted or who it is asserted against. The Trustee cannot avoid this rule by suing Mr. Grundy and Mr. Green in separate adversary proceedings and using different legal theories to obtain the same common damages. *All* of the claims asserted by the Trustee involve the *same* alleged injury regardless of the particular legal theory asserted by the Trustee, and a contributory bar order and judgment credit provision must cover them.

CONCLUSION

For the reasons stated herein, the Court should adopt the contributory bar order and judgment credit provisions proposed by the Moving Defendants.

Dated: November 6, 2015

Respectfully submitted,

/s/David F. Olsky
Schuyler Carroll (*pro hac vice*)
David F. Olsky (*pro hac vice*)
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112
PHONE: 212.262.6905
FAX: 212.977.1636
E-Mail: scarroll@perkinscoie.com,
dolsky@perkinscoie.com

Attorneys for Defendants Jeff Austin, William Grundy and Keith Green

CERTIFICATE OF SERVICE

I hereby certify that on this date, November 6, 2015, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF electronic filing system, which will send an electronic copy of this filing to the counsel of record.

/s/David F. Olsky

EXHIBIT 1

Milo Steven Marsden (Utah State Bar No. 4879)
Peggy Hunt (Utah State Bar No. 6060)
Jennie B. Garner (Utah State Bar No. 5486)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
marsden.steve@dorsey.com
garner.jennie@dorsey.com

Attorneys for D. Ray Strong, Liquidating Trustee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

D. RAY STRONG, Liquidating Trustee of the Liquidating Trust for the Consolidated Legacy Debtors, the Liquidating Trust for Castle Arch Opportunity Partners I, LLC, and the Liquidating Trust for Castle Arch Opportunity Partners II, LLC, Plaintiff, v. ROBERT D. GERINGER, an individual; KIRBY D. COCHRAN, an individual; ROBERT CLAWSON, an individual; DOUGLAS W. CHILD, an individual; JEFF AUSTIN, an individual; WILLIAM H. DAVIDSON, an individual; WILLIAM WARWICK, an individual; WILLIAM GRUNDY, an individual; KEITH GREEN, an individual; CHILD, VAN WAGONER & ASSOCIATES, PLLC, fka CHILD, SULLIVAN & ASSOCIATES; fka CHILD, VAN WAGONER & ASSOCIATES, LLC, fka CHILD VAN WAGONER & BRADSHAW, PLLC, a professional limited liability company; and JOHN DOES 1-50; Defendants.	COMPLAINT CASE NO. ___________________ JUDGE ______________________

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Plaintiff D. Ray Strong, as the duly-appointed Liquidating Trustee (the "Trustee"), of the Liquidating Trusts, each created by Order of the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court") for the Chapter 11 Debtors known collectively as the "Consolidated Legacy Debtors" – Castle Arch Real Estate Investment Company ("CAREIC" or "the Company"), CAOP Managers, LLC ("CAOP Managers"), Castle Arch Kingman, LLC ("CAK"), Castle Arch Secured Development Fund, LLC ("CASDF"), Castle Arch Smyrna, LLC ("CAS") and Castle Arch Star Valley, LLC ("CASV") — as well Chapter 11 Debtors Castle Arch Opportunity Partners I, LLC ("CAOP I") and Castle Arch Opportunity Partners II ("CAOP II") (collectively all entities are the "Debtors"), by and through his undersigned counsel, alleges as follows:

I. NATURE OF THE CASE

1. This is a case brought by the Trustee on behalf of the Debtors seeking to recover the tens of millions of dollars that investors and creditors have lost because of the Defendants' unlawful conduct and operation of these entities.

2. While they controlled the Debtors, which the Defendants managed and operated as a single enterprise through the parent company CAREIC, Defendants raised over $73 million from investors through a long series of violations of the federal and state securities laws, and through a series of material misrepresentations and omissions that were designed to entice investors to invest in the Debtors.

3. In their securities offering documents, their sales materials, and their public securities filings, the Defendants represented to investors that an investment in Debtors was

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safe – "structured to minimize risk." As CAREIC's Chief Executive Officer, Defendant Kirby Cochran ("Cochran") said in the Company's promotional literature,

> My vision was to design a program that my 85 year-old father could put his money in and be able to sleep at night. He would never have to worry about it, and neither would I. The investment would truly be solid, lucrative, and secure.

4. The Defendants initially, and for several years, represented that the Company's principal business activity was real estate entitlement and development, and that it had a long and successful track record of real estate development:

> Our experienced management team continues to extend its track record of success, utilizing a unique business model and investor-friendly structure in applying the power of the capital markets to raw land and other underdeveloped real estate opportunities offering the most lucrative and stable areas of real estate investment.

5. The Defendants represented that they had 100+ years of experience in real estate development, fund management, and investment experience.

6. The Defendants represented that the Debtors provided "full transparency and accountability," because the Company was a "publicly reporting company registered with the Securities Exchange Commission (SEC)."

7. The Defendants represented that money invested in one of the Company's project-specific, or investment-opportunity specific affiliates (*i.e.,* CAK, CAS, CAOP I, CAOP II), would in fact be used by that company to achieve its stated business objectives.

8. In fact, none of this was true. The Debtors were not designed to be safe investments. To the contrary, the securities that the Defendants sold to investors have many

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features that placed investors at risk, and the way the Defendants operated the Debtors assured that the investors' investment would be lost.

9. While the Consolidated Legacy Debtors did purchase a few pieces of real property, the principal focus of their business was not real estate development, but rather *fundraising itself*. Indeed, as has been determined by the Bankruptcy Court, twenty-five percent (25%) of all funds raised by the Defendants were used in further fundraising efforts. Defendant Robert G. Geringer ("Geringer") testified in the Bankruptcy Court that he thought that this amount, which was based on the Liquidating Trustee's analysis of the Debtors' books and records, was in fact vastly understated. The funds were spent on finders' fees and broker commissions, executive compensation and related expenses. The Consolidated Legacy Debtors had far more personnel engaged in fundraising activities than in its stated business – real estate development. In fact, real estate development was the principal task of only two of the Consolidated Legacy Debtors' employees.

10. Not surprisingly, the Consolidated Legacy Debtors were not successful in developing real estate. The Consolidated Legacy Debtors had no track record of real estate development at all, much less a record of success. They had no dynamic process of entitlement, no history of development of raw land. In truth, Geringer was the only executive with any real experience in real estate development.

11. By the time that Chapter 11 bankruptcy petitions were filed for the Debtors – after approximately seven years of fundraising – the Defendants had no entitlements in place, they had only managed to develop a small parcel of one of the pieces of raw land, and they had transitioned the Consolidated Legacy Debtors' real estate development model to a "distressed

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property" model operated through CAOP I and CAOP II, investing in pools of distressed properties, which again the Defendants had little if any experience in managing.

12. The Debtors were not "transparent." Their financial statements and public reports were prepared on a "consolidated" basis to be just the opposite. Reporting results on a consolidated basis allowed the Defendants to achieve one principal objective already established in the Bankruptcy Court: hiding from investors, creditors, and the public, the fact that the Defendants were using cash invested in one of the Debtors "indiscriminately," and at their whim, as if from a single commingled "piggy bank" to fund whatever entity had cash needs at the time. Based on this fact, as well as numerous others, the Bankruptcy Court has already determined that the Consolidated Legacy Debtors were being operated as alter egos.

13. While they controlled the Debtors, the Defendants consistently breached their fiduciary duties. The Company's officers and directors failed to competently execute their basic duties in operating and managing the Debtors.

14. Although they paid themselves handsomely for their work, the officers and directors treated their responsibilities at the Debtors as if it were a part time job. For instance, Cochran, while functioning as the Company's Chief Executive Officer ("CEO") was involved in nearly a dozen other companies, and was devoting most of his time to those companies, not the Debtors.

15. The Company's Board of Directors failed to competently oversee the activities of management, or to implement and enforce the most basic policies of corporate oversight, organization and control. As a result, the Debtors illegally sold their securities through unlicensed broker dealers, a statutorily banned person was deeply involved in the company and

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its fundraising, the Consolidated Legacy Debtors were operated as alter egos, and one executive – Geringer – operated with almost unchecked power to pursue projects, purchase and sell real estate, and bind the Debtors, without any input from the Board.

16. Geringer grossly mismanaged the Consolidated Legacy Debtors' real estate activities. He routinely ignored his duty of loyalty to the Debtors. Large amounts of money were wasted pursuing projects that were uneconomical. And projects were, even according the Defendants' own description, grossly understaffed if they were ever to be successfully developed.

17. Despite spending tens of millions in purchasing and attempting to develop raw land, as noted above, with the exception of one small piece, almost all of the real properties that the Consolidated Legacy Debtors purchased and currently own remain undeveloped, and there are no entitlements currently in place.

18. While the Debtors were under the domination and control of the Defendants, these facts were concealed from the investors and creditors. Under the Defendants' management, the Debtors eventually were forced to enter bankruptcy.

19. In bankruptcy proceedings prior to the filing of this Complaint, many of the facts alleged herein have already been conclusively adjudicated *against the Defendants* by the Bankruptcy Court.

II. PRIOR PROCEEDINGS

20. On October 17, 2011, a court-appointed receiver filed a petition in the Bankruptcy Court for CAREIC seeking relief under Chapter 11 of the Bankruptcy Code, 11

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U.S.C. § 101 *et. seq*.[1] On October 20, 2011, the receiver also filed Chapter 11 petitions for some of CAREIC's affiliates—CAOP Managers, CAK, CASDF, CAS, CAOP I and CAOP II (collectively, these dates are referred to as the "Petition Date").[2]

21. Shortly after the Petition Date, the Debtors' creditors filed a motion requesting that a Chapter 11 trustee be appointed[3] alleging, among other things, that "cause" existed for this extraordinary measure as a result of the Debtors' mismanagement.[4] After the commencement of an evidentiary hearing, the Debtors stipulated to the appointment of a Chapter 11 trustee in CAREIC's bankruptcy case.

22. The Plaintiff was appointed by the Bankruptcy Court as the Chapter 11 Trustee for CAREIC pursuant to an *Order* entered on May 3, 2012,[5] and as part of his statutory duties,[6] the Trustee, a forensic accountant[7]with more than 18 years of experience providing investigative accounting, bankruptcy and litigation services, including significant experience serving as a fiduciary, commenced an intensive, independent investigation of the Debtors and the business that they engaged in both prior to and after the filing of the Bankruptcy cases.

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[1] Bankr. Case No. 11-35082.

[2] Bankr. Case Nos. __________________ (these bankruptcy cases are being jointly administered with or are substantively consolidated with CAREIC's bankruptcy case in Case No. 11-35082).

[3] Bankruptcy Court Docket in Consolidated Case No. 11-35082 (hereafter "Docket") No. 58.

[4] *See* 11 U.S.C. § 1104(a) (Chapter 11 trustee shall be appointed for cause, including fraud, dishonesty, incompetence, or gross mismanagement either before or after the commencement of the case, or if such appointment is the interests of creditors or equity security holders).

[5] Docket No. 215 (Order of Appointment).

[6] *See* 11 U.S.C. § 1106.

[7] The Trustee is a Certified Public Accountant, Certified Fraud Examiner, and Certified Insolvency and Restructuring Advisor.

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23. As part of this investigation, the Trustee determined that the Consolidated Legacy Debtors, were alter egos for many reasons, and thus filed a *Motion to Substantively Consolidate* the Consolidated Legacy Debtors.[8] After serving notice of an evidentiary hearing on the Motion to Substantively Consolidate to all parties in interest,[9] including the Defendants herein, and the admission of significant evidence in support of the Motion,[10] the Bankruptcy Court entered an *Order* substantively consolidating these entities[11] as well is detailed *Findings of Fact and Conclusions of Law* in support thereto, a copy of which is attached hereto as **Exhibit 1** (the "Consolidation Findings and Conclusions")[12] concluding that the Consolidated Legacy Debtors were alter egos.

24. The Bankruptcy Court's Consolidation Findings and Conclusions are detailed and based on significant citations to the record. For present purposes at least the following findings should be noted:

a. The Consolidated Legacy Debtors were all managed by CAREIC's management team – the Defendants herein – on a consolidated basis and they had no corporate existence outside of the CAREIC corporate family.[13]

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[8] Docket Nos. 537-538 (Motion and Memorandum in Support).

[9] Docket No. 544 (Notice of Hearing and Certificate of Service).

[10] *See* Docket Nos. 578 (Declaration of Trustee in Support of Substantive Consolidation) & 579 (Declaration of Trustee re Admission of Exhibits in Support of Consolidation).

[11] Docket No. 590.

[12] Docket No. 591.

[13] *See* Exh. 1 (Consolidation Findings and Conclusions, ¶¶ 17-32, & ¶ 107(c) – (f)).

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b. Bank accounts opened for the Consolidated Legacy Debtors were controlled by CAREIC's management team.[14]

c. The primary source of the Debtors' cash was, not operations, but the total of $73.6 million in cash raised from its investors, net of redemptions, through a series of public offerings summarized on a Timeline attached as Exhibit E to the Consolidation Findings and Conclusions.[15]

d. The raising of cash fit a pattern—as cash was consumed and additional cash was needed, CAREIC caused new securities offerings to be made, initially through CAREIC alone, and then later through the other Debtors that CAREIC caused to be formed.[16] Thus, the formation of the Debtors was "a vehicle by which to obtain additional investor funds[.]"[17]

e. Cash raised from investors of each of the Consolidated Legacy Debtors was "used indiscriminately by the Debtors to fund whatever entity was in need of cash at any given time."[18] Cash was used "as if part of one big 'piggy bank,' with

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[14] *Id.* ¶ 25 *see also id*. ¶¶47- 59 (discussing bank accounts and intermingling of cash).

[15] *See id.* ¶¶ 33-34 ("With the exception of relatively limited revenues from the sale of certain property holdings, neither CAREIC nor any of the Legacy Debtors had any operating revenue."), ¶ 46 (Consolidated Legacy Debtors "had relatively little revenues generated from operations, but rather operating costs . . . were funded by monies raised from the sale of securities to investors."), & Consolidation Findings and Conclusions Exh B (Timeline of Castle Arch Entity Formations and Investment Offerings).

[16] *Id.* ¶ 35; *see id* ¶¶ 36-39 (providing detail of this pattern), ¶107(d), & Consolidation Findings and Conclusions, Bankruptcy Docket No. 591, Exhs. E-G (showing use of cash and public offerings).

[17] *Id.* ¶ 107(d).

[18] *Id.* ¶ 25; *see also id*. ¶¶ 46-59 & ¶107(b).

funds from the account of whichever entity had cash on deposit being transferred, commingled, and used by the entity in need of cash at any given time."[19]

f. The Consolidated Legacy Debtors' "assets and affairs are hopelessly commingled." "[I]t was not uncommon for funds obtained from investors in one of the Legacy Debtors to be deposited into a bank account of another one of the Legacy Debtors[,]"[20]for commingling to occur, and the spawning of multiple intercompany transactions.[21] Furthermore, "it was not uncommon for one Legacy Debtor's cash to be used to directly pay the expenses of another Legacy Debtor[,]" including with regard to purchases of real properties, the servicing of debt, and in payments to investors.[22] Finally, "in addition to significant commingling and intercompany transfers of cash . . . assets were purchased as part of very convoluted intercompany transactions.[23]

g. Although real property was purchased by the Debtors, "a large portion of the Legacy Debtors' business focused on fundraising[,]"[24] with approximately 25% of all funds raised by the Debtors being used for executive compensation and

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[19] *Id.* ¶ 58.

[20] *Id.* ¶ 50.

[21] *Id.* ¶ 49-59.

[22] *Id.* ¶ 53.

[23] *Id.* ¶ 61; *see id.* ¶¶ 64-91 (providing examples).

[24] *Id.* ¶ 41; *see id.* ¶¶40-45.

related expenses and fundraising expenses, such as finders' fees and commissions.[25]

h. Almost all of the real properties that the Consolidated Legacy Debtors purchased and owned as of the filing of the Bankruptcy cases remained undeveloped, with no entitlements in place. In fact, the only real property that was developed to a point that developed units could be sold was property related to CASV.[26]

i. Reporting required to be made to the Securities and Exchange Commission (the "SEC") was done on a consolidated basis.[27]

j. Although separate accounting records and General Ledgers were maintained by CAREIC for the Debtors, there were significant and complicated intercompany transactions,[28] and given these voluminous "intercompany transfers and the weaving of these transfers through multiple General Ledge Accounts that are often times commingled, significant time and expense would be required to 'unscramble' the intercompany transfers and transactions of the Legacy Debtors from the journal entries alone."[29]

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[25] *Id.* ¶ 42.

[26] *Id.* ¶ 45.

[27] *Id.* ¶ 26.

[28] *Id.* ¶¶ 27-32 & ¶¶ 46-59.

[29] *Id.* ¶ 56.

25. Throughout the bankruptcy cases, the Bankruptcy Court expressed considerable concern for the fact that, with the exception of claims made by a handful of third parties and insiders, the primary persons harmed by the Debtors' bankrupt enterprise were investors who combined placed a total of approximately $73.6 million with the Debtors which in most cases had provided no return.

26. In light of his statutory duties as well as the concerns expressed by the Bankruptcy Court, the Trustee devised a *Plan of Liquidation* (the "Confirmed Plan")[30] which was ultimately confirmed by the Bankruptcy Court pursuant to the entry of its Confirmation Order[31] that, among other things, (a) created the Liquidating Trusts, (b) provided for the appointment of the Trustee as the Liquidating Trustee of the Liquidating Trusts, and (c) provided for the transfer to the Liquidating Trusts of (i) all Claims and Causes of Action held by the Debtors' bankruptcy estates against former management and others, and (ii) all Claims and Causes of Action held by individual investors (defined in the Confirmed Plan as the "Individual Claims") which had been assigned to the Liquidation Trusts as part of the confirmation of the Confirmed Plan.

27. Through this Complaint, the Plaintiff, as the Liquidating Trustee of the Liquidating Trusts, brings the Claims and Causes of Action belonging to the Debtors' bankruptcy estates as well as the Individual Claims of investors to assist the Trustee in making a return to creditors as well as investors who the Trustee believes were defrauded by the Debtors.

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[30] Docket No. 701 (as confirmed, the Confirmed Plan is titled Second Amended Chapter 11 Trustee's Plan of Liquidation Dated February 25, 2013).

[31] Docket No. 705; *see id.* Docket No. 704 (Findings of Fact and Conclusions of Law).

III. JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 1331 and 1334(b) in that this Complaint states claims on behalf of the Liquidating Trusts arising under Title 15 and Title 11 of the United States Code and this civil proceeding is a proceeding arising under Title 11, or arising in or related to the Debtors' bankruptcy cases under Title 11.

29. Defendants directly, and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails in connection with the transactions, acts, and courses of business alleged herein, certain of which have occurred within the District of Utah.

30. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1409(a) because (a) certain of the transactions, acts, practices and courses of business alleged in this Complaint took place in the District of Utah and because certain of the Defendants reside in and transact business in the District of Utah, and (b) the Debtors bankruptcy cases are pending in the District of Utah and this is a proceeding arising under Title 11 or arising in or related to the Debtors' bankruptcy cases under Title 11.

IV. PARTIES

31. Plaintiff is the estate representative for the Debtors and duly-appointed Liquidating Trustee under the Liquidating Trusts.

32. Defendant Geringer is a resident of the State of California. Geringer was CAREIC's President and a member of its Board of Directors from CAREIC's inception in 2004

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until July 15, 2009, when he resigned. While associated with the Debtors, Geringer was the person principally responsible for all of the Debtors' activities related to real estate acquisition, entitlement, development, and sale. Geringer was not registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC.

33. Defendant Cochran is a resident of the State of Utah. Cochran served as CAREIC's CEO from CAREIC's inception in 2004 until November, 2010, when he resigned as CEO. As CEO, Cochran was the person principally responsible to manage the Debtors' affairs and business. He was required to direct, manage and control the Debtors' business to the best of his ability and, subject to the Board of Directors, had complete authority, power, and discretion to make any and all decisions regarding the business or affairs of the Debtors. Cochran also served as Chairman of CAREIC's Board of Directors from CAREIC's inception in 2004 until May 15, 2007, when Defendant William H. Davidson was appointed Chairman. Cochran continued to serve on the Board until appointment of a receiver on July 12, 2011. Cochran was not registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC.

34. Defendant Robert Clawson ("Clawson") is a resident of the State of California. Clawson was the Managing Director Business Development of CAREIC, an investor relations contact, and a de facto officer and member of the Board of Directors of CAREIC from its inception until appointment of a receiver in 2011. Clawson attended nearly every board meeting and was deeply involved in the development, marketing and sales of all of the Debtors' securities offerings. Clawson was not registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC. In fact, since

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2003, Clawson has been a person subject to a "statutory disqualification" within the meaning of 15 U.S.C. §78c(a)(39), being permanently barred by the SEC from associating with any broker or dealer, or functioning as a "a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock."

35. Defendant Jeff Austin ("Austin") is a resident of the State of California. Austin was the Senior Vice President Business Development of CAREIC and a member of its Board of Directors. He also served as CAREIC's CEO from November of 2010 until appointment of a receiver on July 12, 2011, and then from the Petition Date until the Trustee was appointed to assume control of the Debtors as Chapter 11 trustee. As Senior Vice President of Business Development, Austin was the person principally responsible for the Debtors' capital-raising activities which was primarily comprised of selling securities to the public. Notwithstanding this, Austin was not registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC.

36. Defendant Douglas W. Child ("Child") is a resident of the State of Utah. Child was CAREIC's Chief Financial Officer ("CFO") and a member of its Board of Directors from its inception in 2004 until July 12, 2011, when a receiver was appointed, and then from the Petition Date until the Trustee was appointed to assume control of the Debtors as Chapter 11 trustee. As CFO, Child was the person principally responsible for preparation and maintenance of the Debtors' accounting records. He was also the person principally responsible for preparation and filing of the Debtors' financial and other reports publicly-filed with the SEC. Child was not

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registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC.

37. Defendant Child, Van Wagoner & Associates, PLLC, fka Child, Sullivan & Associates; fka Child, Van Wagoner & Associates, LLC, fka Child Van Wagoner & Bradshaw, PLLC, (the "Child Firm") is a professional limited liability company of which Child was a principal and which provided substantial accounting services for the Debtors .

38. Defendant William H. Davidson ("Davidson") is a resident of the State of California. Davidson became a member of CAREIC's Board of Directors in January 2006, and was elected Chairman on May 15, 2007. He remained Chairman of the Board until November of 2010, when he resigned. As a member of the Company's Board of Directors, Davidson was charged with primary responsibility of directing and overseeing the operation of the Debtors' business and affairs. He was principally responsible for formulating corporate policy, and monitoring the Debtors' business and affairs including, among other things, the Debtors' business performance, risk assessment and management, compliance with legal obligations and corporate policies, and the accuracy and quality of the Debtors' financial and other reports to shareholders.

39. Defendant William Warwick ("Warwick") is a resident of the State of North Carolina. Warwick was a member of CAREIC's Board of Directors from its inception until at least November 16, 2009. As a member of the Company's Board of Directors, Warwick was charged with primary responsibility of directing and overseeing the operation of the business and affairs of the Debtors. He was principally responsible for formulating corporate policy, and monitoring the Debtor's business and affairs including, among other things, the Debtors'

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business performance, risk assessment and management, compliance with legal obligations and corporate policies, and the accuracy and quality of the Debtors' financial and other reports to shareholders.

40. Defendant William Grundy ("Grundy") is a resident of the State of Illinois. Grundy became a "consultant" for CAREIC in approximately July of 2005, and in or about March of 2009 became CAREIC's Regional Vice President, Business Development – East Region. Grundy received his Series 62 and 63 licenses as of June of 2008.

41. Defendant Keith Green ("Green") is a resident of the State of California. Green became a "consultant" for CAREIC in approximately July of 2005 and in or about March of 2009 became CAREIC's Regional Vice President, Business Development – West Region. Green was not registered with the SEC as a broker-dealer or as being associated with a broker-dealer firm that was registered with the SEC

42. Defendant John Does 1-50 are persons or entities, whose true names are currently unknown, against whom the Debtors, or any Investor in the Debtors may have actions, Causes of Action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise, including, without limitation, Avoidance Actions, Individual Claims, actions for subordination of any kind, including under 11 U.S.C.§§ 506 and 510, actions under common law, including but not limited to actions for disgorgement, fraud of any kind, bad faith, breach of any duty, mismanagement, unjust enrichment, breach of contract, negligence, any Claim arising from or

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relating to any Equity Securities, and any Claim that any Investor may have arising under state or federal securities laws.[32]

V. GENERAL ALLEGATIONS

A. The Company's Corporate Structure

43. CAREIC was formed as a California limited liability company, on or about April 1, 2004, by Cochran, Geringer, Austin, and Child ("the Founders").

44. To provide initial capital for the Company, the Founders made contributions totaling only fifteen thousand four hundred dollars ($15,200). For these modest contributions, however, the Founders granted themselves some fifteen million two hundred thousand (15,200,000) shares of the Company's common stock. CAREIC at times calls these shares "common units."

45. In 2004, the Founders' shares represented over eighty percent (80%) of the Company's total outstanding shares. In 2006, after the Founders had taken in over twenty one million dollars ($21,000,000) in investor money in exchange for shares in Company, the Founders' holdings still represented over sixty percent (60%) of the Company's outstanding shares.

46. During CAREIC's existence, the Defendants formed several other entities purportedly for the development of specific projects or specific investment opportunities. CAREIC owned all of substantially all of the membership interests of each of these entities.

[32] Capitalized terms have the meanings ascribed to them in the Confirmed Plan.

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47. The Company, and all of these affiliated entities, were at all times controlled by a single paid management team consisting of the Founders, and CAREIC's Board of Directors and executives.

B. The Company's Securities Offerings

48. CAREIC was organized in April of 2004. It began taking in money from investors almost immediately. Over the course of its existence, the Company generated almost no revenue from its own operations, or the operations of its affiliates. To the contrary, nearly all of its "operations" were funded by monies taken from investors.

49. Over the course of its existence (*i.e.*, prior to filing bankruptcy), the Company raised money through a series of so-called "private placements." Between 2004 and 2008, the Company sold securities to the public through the following private placement memoranda ("PPMs"):

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Series	Date of PPM	Units offered	Amount Raised
Series A	May 1, 2004	1,000,000 Investment Units One Common Unit, One Preferred Unit	**$1,000,000**
Series B	July 22, 2004	1,000,000 Investment Units One Common Member Unit and Two Preferred Series B Member Units	**$2,000,000**
Series C	Nov 5, 2004	1,000,000 Investment Units One Common Member Unit and Three 8% Cumulative Preferred Series C Member Units	**$3,300,000**
Series D	June 30, 2005 – expanded April 2006	3,000,000 Investment Units/(Expanded and Placed 5,030,160 Investment Units) One Common Member Unit and One 8%59 Cumulative Preferred Series D Member Unit	**$25,000,000**
Series E	June 1, 2008	500,000 Investment Units/(Expanded and Placed 714,536 Investments Units) One Common Member Unit and One 8% Cumulative Preferred Series E Member Units	**$7,100,000**

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50. The ostensible and stated purpose of CAREIC's securities offerings was to raise capital to locate, secure, and entitle undeveloped land parcels that would be sold to real estate developers.

51. However, by April of 2006, after taking in approximately **$21.6 million** in investor money, the Defendants determined that they still had insufficient capital, and they had made little progress to achieve the Company's basic business plan: acquisition and entitlement of real estate.

52. To gain access to additional investor funds, the Defendants decided to create entities, described as single purpose entities, to serve as additional vehicles through which funds could be raised. Over the course of its life, the Company caused the following entities to be formed:

Entity	Formation Date	State of Organization	CAREIC Interest	Manager	Funds raised	Investment Opportunity
CAK	April 2006	Nevada	74.8%	CAREIC	Series A PPM May 2006 **$10 Million** Series B PPM Sept. 2008 **$50,000**	Kingman Property
CAS	June 2007	Nevada	92.5%	CAREIC	Series A PPM June 2007 **$4.1 million** Series B PPM Feb 2008 **$400,000**	Smyrna Property
CASDF	Jan 2008	Nevada	100%	CAREIC	Series A PPM Feb 2008 **$8.4 million**[33]	Fund secured by CAREIC Real Estate

53. In 2009, the crash of the real estate market and the financial crisis made fundraising under the Company's then existing business model (the "Legacy Fundraising Model") impossible. But rather than focusing on developing, or winding down the existing real estate development projects that the Company allegedly had underway, the Defendants turned to a new scheme to continue their money-raising machine.

54. The Defendants developed the "Distressed Property Fundraising Model." They created two new fundraising vehicles, CAOP I and CAOP II, to advance their new fundraising plan. The CAOPs' offerings are shown below:

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[33] Approximately $700,000 was later redeemed.

Entity	Formation Date	State of Organization	CAREIC Interest	Manager	Funds raised	Investment Opportunity
CAOP I	Mar 2009	Nevada	42%	CAOP Managers	Series A PPM Mar 2009 **$10 million**[34]	"Tapes" of Distressed Real Property
CAOP II	Oct 2009	Nevada	100%	CAOP Managers	Series A PPM Oct 2009 **$4.4 million**	"Tapes" of Distressed Real Property

1. Sale of Unregistered Securities

55. Under Section 5 of the Securities Act of 1933 ("the Securities Act"), it is unlawful to sell or offer to sell any security, unless a valid registration statement covering that security is in effect. None of the securities listed above, which were offered and sold to the public, were covered by a valid registration statement at any time.

56. Each of the PPMs listed above states that the offering is exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder.

57. In fact, none of these offerings were exempt from registration. These offerings were not exempt because, on information and belief, the Defendants, among other things,

a. used general solicitation and advertising to market the securities;

b. sold the securities to investors who were not sophisticated within the meaning of the securities laws;

c. sold the securities in each offering to more than 35 non-accredited investors;

d. included in the PPMs (as detailed below) false statements of material fact, and omitted other material facts that, in light of their representations, were necessary to render those representations not misleading; and

[34] Approximately $1.5 million was later redeemed.

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e. sold the securities to persons and in amounts that were directly contrary to the PPMs representations regarding those facts.

58. Each of these PPMs also states that the securities offered therein were offered only to "Accredited Investors." Contrary to this representation, each securities offering was in fact offered and sold to non-accredited investors.

59. Each of these PPMs also states that there is a "minimum investment" in the offering. For instance, the CAREIC Series A PPM states that the minimum investment is $25,000. Contrary to this representation, each securities offering was in fact offered and sold in amounts less than the minimum investment.

2. Illegal Sales of CAREIC Securities By Unlicensed Broker Dealers

60. Throughout the Debtors' existence, the bulk of the securities it sold were illegally sold by unlicensed broker dealers. This material fact was not disclosed to investors or the public.

61. The Defendants were involved in this illegal activity.

62. Defendant Austin's principal duties while at the Company were selling the Debtors' securities, and overseeing the Debtors' securities sales force. He performed no other substantial duties for the Debtors.

63. In his position at CAREIC, Austin regularly and actively solicited investors, routinely advised investors on the merits of investing in the Debtors, regularly engaged in the business of effecting transactions in securities for the Debtors, and received significant compensation and bonuses from the Company for these activities, which were tied to his securities sales production.

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64. Austin received transaction-based compensation for his sales of securities, including but not limited to bonuses and incentive rewards.

65. Austin was not licensed as a broker or dealer with the SEC or any state securities regulator.

66. For most of the time that the Debtors were raising money, the bulk of Austin's securities sales force were also unlicensed broker dealers, or worse, and Austin knew or should have known this.

67. Defendant Clawson's principal function at the Company was selling CAREIC securities. He regularly sent PPMs and investor information to potential investors. He actively marketed the securities of CAREIC, CAK, CAOP I, and CASDF to potential investors with full knowledge and approval of the Defendants.

68. Clawson solicited investors to purchase securities and participated in the order-taking and order-routing process. While employed by CAREIC, he regularly engaged in the business of effecting transactions in securities for the Debtors.

69. Clawson was compensated by CAREIC, at least in part, based upon the volume of sales. Clawson was invited to the "Chairman's Education Forum in Maui," a company-sponsored junket, on the basis of his securities sales production.

70. Clawson was not registered as a broker or dealer with the SEC, and was in fact subject to a "statutory disqualification" within the meaning of 15 U.S.C. §78c(a)(39), and was barred from participating in any penny stock offerings, such as those being made by the Debtors, and from association with any broker or dealer.

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71. Defendant Grundy became CAREIC's Regional Vice President for Business Development under Austin. In this position, Grundy regularly sold securities of the Debtors, and had no other substantial responsibilities. He regularly engaged in the business of effecting transactions in securities for the Debtors.

72. In addition to his salary from CAREIC, Grundy received transaction-based compensation for his sales of securities, including but not limited to bonuses and incentive rewards.

73. Grundy did not obtain his Series 62 license until February 1, 2008, and did not obtain his Series 63 license until June 30, 2008.

74. Defendant Green became CAREIC's Regional Vice President for Business Development, West Region under Austin. In this position, Green regularly sold securities of the Debtors, and had no other substantial responsibilities. He regularly engaged in the business of effecting transactions in securities for the Debtors.

75. In addition to his salary from CAREIC, Green received transaction-based compensation for his sales of securities, including but not limited to bonuses and incentive rewards.

76. Defendant Green took the Series 62 or 63 license examinations, but did not pass them. As a result, he was never licensed as a broker dealer or registered representative.

77. In short, none of the Company's executives principally responsible for solicitation and sales of its securities were licensed as broker dealers.

78. None of these Defendants were exempt from registration under Rule 3a4-1, or any other exemption because, among other things,

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a. persons associated with the Company were subject to statutory disqualification, at the time the Company was selling securities;

b. persons associated with the Company were paid commissions or other remuneration based either directly or indirectly on transactions in securities;

c. persons associated with the Company did not (i) restrict their participation in securities transactions described in paragraph (a)(i) of Rule 3a4-1; (ii) perform substantial duties for the Company other than in connection with securities transactions; or (iii) limit their participation to activities described in paragraph (a)(iii) of Rule 3a4-1.

79. The Company also routinely sold securities through unlicensed "finders" not otherwise associated with the Company who were required to be licensed.

80. Many of the Company's finders regularly solicited investment from others, and were engaged in the business of effecting securities transactions.

81. For instance, Geringer recruited Matthew Luxenberg, M.D., who acted as a "finder" for CAREIC, and received over $92,000 in transaction-based "finder's fees" for soliciting investors to purchase securities.

82. Similarly, Geringer also recruited Francis Pistorio, a lawyer in Chicago, to act as a "finder" for CAREIC. Pistorio received over $40,000 in transaction-based "finder's fees" for soliciting investors to purchase securities.

83. The Company had dozens of these finders, and they were often paid transaction-based compensation.

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84. The Company's finders routinely recommended the purchase of securities in the Debtors, attended meetings where the merits of an investment in the securities were discussed. In addition, they often handled the funds of others who invested in the Debtors.

85. Accordingly, the great bulk of the securities the Debtors sold were sold in violation of Section 15(a) of the Securities Exchange Act of 1934 ("the Exchange Act"). Among other things, this rendered these sales subject to rescission under Section 29 of the Exchange Act.

86. Given their positions and contact with Austin, the Defendants knew or should have known that Austin was selling the Debtors' securities, notwithstanding that Austin was not a licensed broker-dealer.

87. The Defendants knew or should have known that the Debtors' securities were being sold by unlicensed agents operating under Austin's supervision.

88. Minutes of meetings of the Company's Board of Directors in 2006 and 2007 reflect that the Defendants in fact knew that the Company was selling its securities through unlicensed broker dealers, and that the Company was paying transaction-based compensation to finders.

89. CAREIC's offerings were penny stock within the meaning of 15 U.S.C. § 78c(a)(51).

90. In its PPMs and public filings, the Debtors falsely represented that securities would be sold by registered broker-dealers that are members of the National Association of Securities Dealers.

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91. The Debtors' PPMs and public filings did not disclose that the bulk of the Debtors' securities were being sold illegally by unregistered broker dealers.

3. Fraudulent Misrepresentations In Securities Offerings

92. Throughout the Company's existence, the Defendants described CAREIC and its affiliates as a successful real estate development company. For instance, the Company's promotional literature says,

> Castle Arch specializes in entitling and developing raw land in high-growth markets. We acquire raw land by the acre, entitle it for development, and then sell it by the lot to production builders or further develop it for multi-family housing, retail, office, recreational and industrial uses.

93. The Defendants further represented that the Company had a highly successful approach to real estate investment with a proven track record of success, offering investment security, preservation of capital and attractive returns. For example, in promotional literature distributed to investors, the Defendants represented:

> Our experienced management team continues to extend its track record of success, utilizing a unique business model and investor-friendly structure in applying the power of the capital markets to raw land and other underdeveloped real estate opportunities offering the most lucrative and stable areas of real estate investment. We create and capture value across thousands of acres, often through our dynamic process of entitlement for residential use, whereby we substantially increase the value of the properties. To further strengthen and diversify our model, we also develop raw land to create value with mixed-use and industrial properties, as well as office buildings and multi-family housing, and may strategically hold or manage those properties over time.
>
> We structure offerings around real estate in many ways, typically providing fixed-rate returns plus upside participation while putting investors in preferred positions for cash and assets. As a result, the most enticing benefits to our investors include recurring income

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> and stability, portfolio diversification, a hedge to economic cycles and significant upside potential.

94. In fact, none of this was true. The Defendants had no track record of real estate development at all, much less a record of success. They had no dynamic process of entitlement, no history of development of raw land. In truth, Geringer was the only Defendant with any real experience in real estate development.

95. At the time these representations were made, CAREIC had yet to complete development or entitlement of a single piece of real estate. The situation did not get better over time. Over the course of the Debtors' existence, the Defendants were able to successfully entitle only one 40-acre development, Star Valley, and sold only one .5-acre residential lot for a four-plex in that development. CAREIC never entitled any raw land for mixed-use or industrial properties or office buildings, let alone "thousands of acres."

96. Certain of the Company's single purpose entities (CAK, CAS, CASDF) were described to investors as an entity tied to a particular real estate development project, or investment opportunity, and formed for the single purpose of pursuing that opportunity. For instance, the CAK PPM states that

> [CAK] was organized . . . as a residential and commercial land development company to develop approximately 2,125 acres of land located in the Kingman area of northwest Arizona.
>
> * * * *
>
> Our principal activity is exploitation of the acquisition rights to approximately 2,125 acres of property in the Kingman Arizona area, obtaining zoning and other entitlements for the property, securing financing for the purchase of the property, improving the property's infrastructure and amenities, and selling the property.

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97. Investors were, thus, led to believe that when they invested in CAK their money would be devoted to CAK, and its business operations.

98. Likewise, the CAS PPM states that

> [CAS] was organized . . . as a residential and commercial land development company to develop approximately 1,700 residential lots on approximately 640 acres of land located in the Greater Nashville area of middle Tennessee.
>
> * * * *
>
> Our principal activity is exploitation of the acquisition rights to approximately 640 acres of property in the Smyrna Tennessee area, obtaining zoning and other entitlements for the property, securing financing for the purchase of the property, improving the property's infrastructure and amenities, and selling the property.

99. Investors were, thus, led to believe that when they invested in CAS their money would be devoted to CAS, and its business operations.

100. In fact, the Bankruptcy Court has determined that cash raised from investors was used "indiscriminately" by the Defendants to fund whatever entity was in need of cash at any given time. The Bankruptcy Court has concluded that the Debtors' bank accounts controlled by CAREIC's management were, "on a whole," used collectively, as if part of one big 'piggy bank,' with funds from the account of whichever entity had cash on deposit being transferred, commingled, and used by the entity in need of cash at any given times."

101. For example, when CAREIC needed cash to close on the purchase of certain water rights for property known as the "Tooele Property," it used funds from CASV, CAS, CAK and CASDF to close the sale. Or when CASDF needed funds to make interest payments to its investors, CAREIC used funds from CAREIC, CAOP I and CAOP II to make the payments. CAREIC liberally used money from CASDF to pay operating expenses for CAK,

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which ultimately gave worthless notes and mortgages to CASDF in an effort to "paper" the transfers as "loans."

102. Under the Distressed Property Fundraising Model, investors in CAOP I and CAOP II (collectively, the "CAOPs") were told that money invested in these vehicles would be used to buy "pools of assets of nonperforming notes or bank owned real estate sometimes referred to as 'Pools' or 'Tapes.'" The Defendants told investors that they expected "a minimum of 15% annual return with greater returns possible from a 25% share of the net profits of the Fund."

103. As with prior fundraising vehicles, investors in the CAOPs were led to believe that when they invested in the CAOPs funds, their money would be devoted to CAOP I's or CAOP II's respective business operations, and not for the purposes of CAREIC or its other affiliates generally.

104. In fact, nearly 30% of CAOP I's funds raised (approximately $2.9 million) was "loaned" to CAREIC to stave off immediate foreclosure of another CAREIC project, the Company's Tooele Property. However, no notes or other evidence of the indebtedness was executed to document this purported "loan" transaction between CAOP I and CAREIC.

105. The CAOP I PPM does not disclose this loan to CAREIC as a potential investment.

106. The PPM represented that no management fees would be paid for twelve months. However, CAREIC immediately obtained operating funds from money paid by investors in CAOP I.

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107. The CAOPs were sold and marketed as funds by CAREIC as a short term investment, in which principal and interest would be returned in 6-9 month.

108. Investors would not have placed capital in the CAOPs knowing the capital may go to pay obligations on CAREIC's failed land business and corporate overhead in disproportion to the CAOP's fair share, as claimed in the CAOP use of proceeds tables.

109. Investors would not have placed capital in the CAOPs if they had known that CAREIC would deliberately extend the products out to three years in length.

4. Additional Materially False and Misleading Statements and Omissions by Defendants

110. The Debtors' securities offerings, securities sales process, and public reporting were characterized by pervasive and continual misrepresentation of material facts, and by pervasive and continual omission of facts necessary to make statements made not misleading.

(a) Internal Controls and Reliability of the Company's Financial Statements

111. Beginning with the period ended December 31, 2005, the Company publicly filed with the SEC annual reports on Form 10-KSB. In each of these annual reports, the Company's CEO (Cochran) and CFO (Child) were required to certify that they had evaluated, with the assistance of management, the Company's disclosure controls and procedures.

112. The requirement of such a certification was designed, among other things, to assure that the Company had an adequate system in place to make sure that its resources were used as the Company intended, to eliminate fraud, and to assure that the Company's public financial reports are accurate, and can be relied upon by shareholders and the public.

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113. In each of the Company's Form 10-KSBs, Cochran and Child certified that the Company's internal controls and procedures (a) were properly designed to ensure that material information relating to the business was made known to them; (b) were properly designed to ensure that the Company's financial statements and reports were reliable and in accordance with generally accepted accounting principles; and (c) had been evaluated to determine their effectiveness.

114. Cochran and Child also certified in each of the Company's Form 10-KSBs that they had disclosed all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which were reasonably likely to adversely affect the Company's ability to record, process, summarize and report its financial information.

115. Each of these certifications was false. Among other things, the Company

a. conducted administrative services for the Company and all of its affiliates out of a single office located in Utah;

b. staffed these functions with a single group of employees in that office;

c. indiscriminately used cash raised for one of the Debtors to fund whatever entity was in need of cash at any given time;

d. accounted for and reported large volumes of transactions between the Debtors on commingled intercompany general ledger accounts;

e. failed to identify which transactions involved or related to a particular Debtor;

f. provided inadequate descriptions of transactions which did not reflect the true nature of the transaction;

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g. failed to allocate to individual Debtors costs set forth in invoices for services made on a consolidated basis;

h. deposited funds obtained from investors in one of the Debtors into the bank accounts of one or more of the other Debtors;

i. falsely reported misapplied payments as "loans";

j. used the cash of one Debtor to pay the expenses of another Debtor;

k. used funds obtained from investors in one of the non-CASDF Debtors to pay redemptions to CASDF investors;

l. funneled all of CAREIC's cash through CASV bank accounts to hinder and delay efforts by the State of California to collect taxes owed by CAREIC; and

m. weaved a voluminous amount of intercompany transfers through multiple and comingled general ledger accounts, making it extremely difficult to unscramble the intercompany transfers and transactions of the Debtors.

116. In May of 2008, the Company's auditors, Bouwhuis, Morrill & Company ("Bowhuis"), informed the Company's Audit Committee and Board of Directors that the Company's system of internal financial controls suffered from several significant deficiencies and "reportable conditions," under the standards of the American Institute of Certified Public Accountants ("the Bouwhuis letter").

117. Among other things, Bouwhuis reported that the Company,

a. did not have adequate company-wide policies and procedures related to significant functions including back office, accounting, personnel, payroll, and executive functions;

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b. allowed one person to hold ultimate control over multiple critical functions;

c. allowed Geringer to negotiate contract terms related to property acquisitions and financing arrangements, independently and outside of the Company with the result that neither the Company nor any of its other executives have any input on the terms or structure of certain deals or their purchase price;

d. allowed property closings to be structured so that HUD closing documents or disclosures by other parties are not reviewed by any of the Company's officers or employees, other than Geringer;

e. allowed properties to be acquired by Geringer or another unrelated party in their names and subsequently transferred to the Company via assignment agreements;

f. allowed purported independent contractors to act as agents or pseudo-agents of the Company, and engage third parties on behalf of the Company;

g. allowed expense reports without receipts or other adequate documentation to assure that the claimed expenses were actually incurred;

h. did not require pre-approval at the management level of significant expense reimbursement requests, including expense requests from non-employees;

i. allowed inaccurate and inconsistent subscription agreements and offering documents

j. allowed individuals to subscribe to and purchase investments offered as private placements to accredited investors, even though they had answered the Company's investor suitability questionnaire to indicate that they were not accredited.

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118. The Company did not disclose to investors that it had received the Bouwhuis letter. To the contrary, in its next two quarterly reports, Form 10Q, the Company reported that it had carried out an evaluation of the effectiveness and design of its system of internal control and had concluded that the system was effective "as of the end of the period covered by [each] report."

(b) Misrepresentations About Use of Proceeds

119. The PPMs for CAREIC's Series A, B and C offerings each make specific representations about how much money raised from the offering will be used to defray administrative expenses. For instance, the Series A PPM represents as follows:

> The Company will charge an annual management fee of 2% for managing the day-to-day activities involved in developing, recapitalizing, and selling of the properties. The Fee will be based upon the amount raised in the secondary offerings and will be paid annually to the Company until the completion of the project. The proceeds of the fees will go to ***cover*** management salaries, bonuses and operational other expenses.

120. The Series B and C PPMs contain identical representations.

121. All of these representations were false when made. Contrary to the representations of the PPMs, nearly 6.5% of the net proceeds of first three CAREIC private placements went directly into the Defendants' pockets in the form of salaries and fees.

122. The Company's consolidated financial statements show that through 2011 over $11.7million was spent on "administrative costs"; $10.4 million for business development; and $8 million for executive compensation and expenses.

123. In other words, approximately $30 million – nearly half of all amounts raised – was spent on the administration of an entity that was unable to get a single project fully

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entitled. The fact that almost 50% of investor proceeds would be spent on administration should have been disclosed to investors.

124. Several of the Company's project-specific PPMs make representations concerning the Company's estimated use of proceeds in these entities. For instance, the June 25, 2007 CAS PPM represents that the Company estimates that 93% of proceeds from the sale of units would be used "for land acquisition."

125. In the February 1, 2008 CAS Series B PPM, the Company represented that it projected that 93% of the proceeds of that offering would be used for "land development activities" including "entitlement and development of real estate." Similarly, in the May 22, 2006 CAK Series A PPM, the Company represented that it projected that an estimated 83.8% of the proceeds from the sale of units would be used for "land purchases, entitlement costs, construction and acquisition of current project assets at cost" – 39.3% of the proceeds for "purchase of real estate," 43% for "development costs," and 1.5% for "entitlement costs." Again in the September 15, 2008 CAK Series B PPM, the Company represented that it estimated that 88% of the proceeds would be used for "land purchases, entitlement costs, construction and acquisition of current project assets at cost."

126. In the March 15, 2009 CAOP I PPM, the Company represented that it projected that 92.5% of the net proceeds of the offering would be used "to invest in distressed real properties" and for the "purchase, management and disposition of REO properties." Similarly, in the October 1, 2009 CAOP II PPM, the Company represented that it estimated that 83.5% of the proceeds from the offering to be used "to invest in distressed real properties" and for the "purchase, management and disposition of REO properties."

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127. The CAK, CAS, and CAOP PPMs reiterate the representation that CAREIC would receive only a 2% management fee for its management of CAK, CAS, and CAOP I and CAOP II.

128. For the reasons stated above, these representations were similarly false.

(c) Deep Involvement of Statutorily Disqualified Person in CAREIC Business

129. Defendant Clawson was the Managing Director Business Development of CAREIC, an Investor Relations Contact, and a de facto officer and member of the Board of Directors of CAREIC from its inception until appointment of a receiver as of July 2011.

130. Clawson was one of CAREIC's highest paid employees, and attended nearly every Company board meeting. He was deeply involved in the development, marketing and sales of all securities offerings.

131. In 2001, Clawson was the subject of an enforcement proceeding brought by the SEC, alleging that he had violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, by participating in a scheme to defraud investors in a real estate development company.

132. By order dated, September 5, 2001, the SEC Administrative Law Judge determined that Clawson "acted with scienter and willfully engaged in a scheme to defraud . . . investors in violation of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder." As a result, Clawson was (1) permanently barred from participating in any penny stock offerings and from association with any broker or dealer; (2) ordered to account for and disgorge any ill-gotten gains; and (3) ordered to pay a $100,000 civil money penalty.

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133. By order dated July 9, 2003, the SEC upheld in all material respects the decision of the Administrative Law Judge.

134. As such, Clawson was a person subject to a "statutory disqualification" within the meaning of 15 U.S.C. §78c(a)(39).

135. Throughout the Company's existence the Defendants failed to disclose to their investors, in their solicitation materials, or in their public filings,

a. that Clawson was deeply involved in the Company and its operations;

b. that Clawson had previously participated in a scheme to defraud investors in violation of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

c. that Clawson was subject to a permanent bar order by the SEC; or

d. that Clawson was a statutorily disqualified person.

(d) Misrepresentations Concerning The Properties

136. The Defendants also continually misrepresented the value of, the nature of the Company's interest in, and the development status of the Company's real estate projects.

1. <u>Coalinga and Firebaugh Property</u>

137. In January of 2005, Geringer executed two agreements called "Assumption and Assignment of Purchase and Sale Agreement," ("Assignment Agreements") on behalf of CAREIC. Pursuant to the Assignment Agreements, CAREIC acquired the right to purchase two pieces of real property known as the Firebaugh Property and the Coalinga Property.

138. The underlying Purchase and Sale Agreements provided the purchaser with the right to buy the Firebaugh Property for $7,890,900 and the Coalinga Property for $ 3,838,250.

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The Coalinga Property purchase was to close in June 2005, and the Firebaugh Property purchase was to close in January 2006.

139. Geringer purchased these purchase rights from Brett Baillio ("Baillio"), a business partner and friend he had known and done business with since 1993. Indeed, Geringer and Baillio had a mutual business interest in the Coalinga area, called Contour Development.

140. CAREIC agreed to pay Baillio $70,000 in cash for the Assignment Agreements.

141. In addition, the Assignment Agreements Geringer negotiated with his friend Baillio, provided that CAREIC would

a. replace any escrow deposits Baillio had made;

b. reimburse Baillio for up to $150,000 of his expenses related to the Coalinga and Firebaugh properties;

c. pay Baillio a fee of ten percent (10%) of the sales price of the Coalinga and Firebaugh Properties if sold within three years;

d. pay Baillio 30% of CAREIC's net profit from the ultimate sale of the Coalinga and Firebaugh Properties,; and

e. give Baillio the option to reacquire the purchase rights on certain terms if CAREIC was unable or unwilling to close the purchase transaction.

142. As June 2005 approached, it appeared that CAREIC did not have the financial resources to close the Firebaugh or Coalinga transactions.

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143. On or about June 8, 2005, Geringer (on behalf of CAREIC) entered "Reassignment and Assumption of Purchase and Sale Agreements" ("Reassignment Agreements") with Baillio as to both the Coalinga and Firebaugh Properties.

144. In these Reassignment Agreements, Baillio agreed to pay Castle Arch $4,750,000 by December 31, 2005, in addition to certain reimbursement for the Coalinga Property, and further agreed to pay $5,650,000, payable partly by promissory note, by December 31, 2005, for the Firebaugh Property.

145. Geringer executed the Reassignment Agreements, even though he knew or should have known that Baillio did not have the monies to close the purchase of the Coalinga or Firebaugh Properties, or to pay CAREIC the $10.5 million he had promised in the Reassignment Agreements.

146. Geringer also knew or should have known that under the Reassignment Agreements CAREIC would receive (a) no contemporaneous cash consideration, or reimbursement of the cash it had paid or the value that it had added to the Coalinga and Firebaugh Properties, (b) no residual interest in the properties, and (c) no profit rights from the sale of the properties.

147. The deals Geringer arranged for Firebaugh and Coalinga provided CAREIC with no rights against the eventual purchaser of the Coalinga and Firebaugh Properties, against the Properties, or against any profits Baillio might derive from the Properties.

148. Yet, in its PPM dated June 30, 2005, CAREIC falsely represented that "[a]s of June 30, 2005," CAREIC had "entered into option contracts to purchase two properties located in . . . Firebaugh & Coalinga." The PPM further represented that CAREIC intended to entitle

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the properties and sell paper lots to institutional builders. These statements were false when made.

149. In its Form 10SB/A3 filed August 18, 2005, CAREIC falsely represented that it retained an interest in the Firebaugh and Coalinga Properties and that CAREIC was "successfully working the properties through the entitlement process," and was "currently attempting to close of the sale of our rights in these properties."

150. In fact, CAREIC had already reassigned the purchase rights for the Firebaugh and Coalinga Properties to Baillio in return for his unsecured promissory note.

151. In its Form 10-KSB for the year ended December 31, 2005, CAREIC represented that it had a "profits interest" in the Coalinga and Firebaugh Properties after the Reassignment Agreements, and asserted that the Company had the right "to receive future proceeds contingent upon the acquisition and sale of the underlying properties."

152. These statements were false. After executing the Reassignment Agreements, CAREIC retained ***no interest*** in the Firebaugh or Coalinga Properties. Baillio owed CAREIC $10.5 million and it was not contingent upon any further sale of the property.

153. The Form 10-KSB for the year ended December 31, 2005 was signed by Cochran, CAREIC's CEO, and Child, CAREIC's CFO.

154. Similarly, in a May 23, 2006 press release, Cochran represented that CAREIC anticipated "capturing value of approximately $10 million" from the sales proceeds of the Coalinga and Firebaugh Properties "prior to year's end."

155. In its 2006 Form 10-KSB, CAREIC misrepresented that it was to receive "future proceeds, contingent upon the acquisition and sale of the underlying properties."

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156. Baillio was also unable to close on the Firebaugh and Coalinga properties. Instead, a company known as Baillio Development, Inc. (“BDI”) purchased the properties.

157. On information and belief, BDI is affiliated with Baillio and Geringer.

158. BDI’s purchase of the properties was financed by two loans: (a) Robhana, Inc. loaned BDI $3,500,000 (the “Robhana Loan”) to purchase the Coalinga property in June 2005; and (b) Palm Finance Corporation loaned BDI $8,200,000 (the “Palm Finance Loan”) to purchase the Firebaugh property in January 2006.

159. Geringer executed personal guaranties required by both Robhana and Palm Finance.

160. None of the loan proceeds were paid to CAREIC. In fact, Palm Finance required CAREIC to contribute $1 million toward purchase of the Firebaugh Property.

161. While Geringer agreed that CAREIC would provide $1 million toward the purchase of the Firebaugh Property, he did not require that CAREIC be given any rights to repayment upon any transfer of the property, or refinancing of the loan

162. BDI was unable to timely sell the either of the properties at a price that would cover its loan obligations.

163. In the January 2007 publication of CAREIC’s quarterly newsletter entitled “Investor Insight,” CAREIC falsely represented to investors that CAREIC still had an interest in the “Fresno-area projects,” notwithstanding that CAREIC had divested itself of all interest in the property in 2006.

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164. The CAREIC PPM dated May 25, 2007, also falsely states that if CAREIC obtained a judgment against Baillio, CAREIC could "foreclose on the land." Baillio's obligation to CAREIC was not secured by the land.

165. The Robhana Loan to BDI was refinanced in January 2007 through First Federal Bank of California (later OneWest Bank), and the Palm Finance Loan was refinanced in April 2007 through ANB Financial (later ANB Ventures).

166. When no sales were made, CAREIC continued to using investor cash to cover debt service on the underlying loans until March of 2008.

167. When CAREIC made its Series E offering in April of 2008, promotional materials prepared by the insider Defendants continued representing to investors that the Coalinga and Firebaugh Properties were "Current Castle Arch Projects," although CAREIC had given up any interest it had in the properties in June of 2005.

168. Not only did the insider Defendants misrepresent the terms of CARIEC's arrangement with Baillio to investors, they also omitted to advise investors regarding CAREIC's failure to enforce CAREIC's contractual rights against Baillio.

169. In its Form 10-QSB for the quarter ending September 30, 2006, CAREIC stated that:

> Our management recognizes that our president, Robert Geringer's relationship with Mr. Baillio creates a potential conflict of interest. However, Mr. Geringer has disclosed the scope and nature of his relationship with Mr. Baillio to our board. Our board deems Mr. Geringer's interactions with Mr. Baillio to be fair to us.

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170. The Defendants did not fully disclose the extent of Geringer's relationship with Baillio or the extent to which Geringer persuaded the CAREIC Board of Directors not to sue Baillio.

171. Rather, the PPM issued in connection with the Series E offering states that entitlement costs, interest payments and non-refundable deposits were lost because the Coalinga and Firebaugh Properties did "not perform as expected" or because CAREIC was "unable to successfully integrate new properties" into our existing operations."

172. Similarly, the Company's 2008 Form 10-K states that CAREIC's decision to expense the costs of Firebaugh and Coalinga was "based on its assessment of the properties' ultimate viability and profitability." This was also untrue.

173. The PPM omits to state that the losses were incurred because of CAREIC's failure to pursue its contractual rights against Baillio, even though, upon information and belief, Geringer was aware that there was a potential that Baillio could pay.

174. For example, in May of 2007, $3,000,000 was distributed to entities owned or controlled, in part, by Baillio. Geringer was aware of this distribution.

175. Similarly, Baillio received an $800,000 distribution from Contour Development in 2006. Geringer was aware of this distribution.

176. In 2008, Geringer was actively marketing as his *own developments* the Coalinga Property as "Summer Glen Estates" and the Firebaugh Property as "El Sendero Ranch."

177. Upon information and belief, Geringer eventually received $1 million in connection with the sale of the Coalinga and/or Firebaugh Properties.

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178. CAREIC invested approximately $1.5 million in the Coalinga and Firebaugh Properties, but received nothing in return because of the Defendants' failure to enforce CAREIC's contractual rights against Baillio and Geringer's usurpation of the corporate opportunity.

2. *Tooele Property*

179. All waters in the state of Utah are public property. A "water right" is a right to divert and beneficially use water. The Utah Division of Water Rights regulates the appropriation and distribution of water in the state of Utah.

180. On May 6, 2008, CAREIC entered into a Water Rights Purchase Agreement with Lincoln Investments, LLC, to acquire the rights to 167.082 acre-feet of water approved by the Utah State Engineer for irrigation use in Erda, Tooele County, Utah. At the time of the purchase, the water rights were not approved for domestic use on the Tooele Property in unincorporated Tooele County.

181. Before CAREIC could use these water rights, one or more change applications had to be approved by the Utah State Engineer to permanently change the point of diversion, place of use, and nature of use of the water represented by the water right to the Tooele Property.

182. Under the Water Rights Purchase Agreement, if CAREIC was unsuccessful in changing the point of diversion, place of use, and nature of use and failed to obtain approvals of the change application(s) for the at least one of the water rights within twelve months from the date of the Agreement, Lincoln Investments could terminate the Agreement, return the earnest money, and receive the return of its quitclaim deed for all of the water rights.

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183. In the CAREIC Series E PPM dated June 1, 2008, CAREIC represented that:

> Up until quite recently, we were experiencing a delay in that the County was requiring us to show the purchase of additional water for the project prior to starting review. We achieved this requirement in the second week of May and provided the additional capital that was not part of the original budget for the project.

184. In its Form 10-Q for the quarterly period ending June 30, 2008, CAREIC stated with regard to the Tooele Property that "we now own outright or have purchase rights to sufficient water necessary to service the project."

185. CAREIC's statements in its Series E PPM and Q2 Form 10-Q were untrue.

186. Change applications – the right to use the water – for the 167.082 acre-feet had not been approved as of June 30, 2008.

187. As of June 30, 2008, CAREIC had only acquired rights to approximately 481.022 acre-feet of water – not enough to service the project.

188. In its Form 10-Q for the quarterly period ending September 30, 2008, CAREIC represented:

> We expect to complete the purchase of additional water shares in the fourth quarter of 2008. *Upon closing of the water purchase of the additional water shares, we expect to own sufficient water necessary to service the project as currently planned*. If we are unsuccessful in the purchase of the water, *the current project plan will be imperiled.*

189. On information and belief, Geringer, in behalf of CAREIC, had entered into an agreement to obtain an additional 155.93 from Lincoln Investments for $2.3 million in November of 2008.

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190. In its Form 10-Q for the quarterly period ending September 2008, CAREIC disclosed that "subsequent to September 30, 2008, the Company repaid principal debt, interest and origination fees to its President [Robert Geringer], totaling $647,527."

191. CAREIC did not disclose that it had repaid Geringer based on his assurances that Robhana, a lender used by Geringer, would be willing to loan CAREIC one-half of the money it needed to close on the purchase of the additional 155.93 acre-feet of water rights. However, Robhana had apparently not made such a promise.

192. The Form 10-Q omitted to state that payment of the principal debt to Geringer significantly impacted CAREIC's ability to close on the additional 155.93 acre-feet of water rights for Tooele in November of 2008, not to mention its interest reserve for CASDF and money that was supposed to be escrowed for CASV.

193. To close the purchase of the 155.93 acre-feet timely, CAREIC was required to come up with over $2.3 million that it did not have.

194. Consequently, CAREIC obtained loans from Cochran, Austin, Davidson, Kimberlee Higa and Nolan Higa, as well as cash/loans from CAK, CASDF, CASV and CAS.

195. None of the loans used for the purchase of the 155.93 acre-feet of water were secured by any interest in the water rights.

196. CAREIC was ultimately able to acquire change applications for all of the water rights.

197. However, as of December 2, 2009, the Utah State Engineer had approved change applications for only 167.082 acre-fee of water for the domestic needs of 371.293 families in the Tooele Property.

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198. The Utah State Engineer had not approved change applications for the remaining 449.16 acre-feet of water for the domestic needs of 357.7114 families, irrigation of 42.343 acres of land and water for a fire station, fire protection and school – over half of the Tooele Project.

199. It its SEC filings, CAREIC failed to disclose that it did not have approved change applications – i.e., the right to use water – for over half of the Tooele Property as of December 2009.

3. Kingman Property

200. In approximately August of 2005, CAREIC entered into an agreement with Lingenfelter Investments Limited Partnership, Dr. John Lingenfelter, and their affiliates (collectively, "Lingenfelter") to develop approximately 2,125 acres located in Mohave County, Arizona (the "Kingman Project") into a fully-developed multi-use project containing approximately 5,000-9,000 residential units, 80-100 acres of commercial property, and two signature Jack Nicklaus golf courses with corresponding amenities.

201. The total purchase price for the entire 2,125 acre tract was approximately $55.2 million – or $25,000 per acre – for raw, desert property.

202. On or about August 31, 2005, CAREIC entered into a purchase agreement for approximately 216 acres of the Kingman Project from Lingenfelter for the sum of $5,626,397. The Purchase Agreement also provided options to purchase approximately 1,884 additional acres from Lingenfelter.

203. On or about April 26, 2006, CAREIC closed on the first option for an additional 216 acres for $5,676,352. CAREIC utilized proceeds from its first four rounds of securities

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offerings in 2004, 2005 and 2006. Additionally, approximately $3.7 million of loan provides from a loan with ANB (secured by the Tooele Property), was used to close the transaction.

204. CAK was formed in April of 2006 to raise money for, and develop the Kingman Project. In its Series A Private Placement Memorandum in May of 2006, CAK represented to investors that it planned to sell fully entitled building lots to production builders over a period of seven to ten years, with the first lot sales anticipated to begin in 2008.

205. A Project Summary distributed to investors contained a pro forma showing an IRR of $22% on the investment.

206. CAK's Series A private placement raised approximately $10 million, far short of its $30 million goal. Yet, CAK proceeded with entitlement activities for the Kingman Project.

207. Geringer delegated significant responsibility for promoting and managing entitlement activities for the Kingman Project to Andrew Feola ("Feola"), his associate in CAREIC's Beverly Hills office. Feola, although an experienced real estate salesman, had no experience with real property entitlement.

208. In or about January 26, 2007, Feola developed a sales presentation for the Kingman Project which made the following material misrepresentations:

a. "The Project is entitled for 6,500 residential units of various densities, a twenty-seven-hole golf course, and additional community/recreational amenities."

This statement was false. The Project had not been entitled.

b. "A culinary well on the site has been certified at 3,000 gallons per minute, and is estimated by qualified engineers to be of sufficient quality and quality to supply water for the planned residential units and golf course."

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This statement omits to state that neither CAK nor CAREIC owned the well.

> c. "Castle Arch is pursuing an amendment to the existing entitlements to provide for commercial development in addition to the existing entitled uses."

This statement was false, as there were no existing entitlements.

> d. "The land that will secure the financing is of value in and of itself; it is entitled, serviced by utilities, accessible by public roads and free and clear of debt."

This statement was false. Funding for the Kingman Project was secured by the Tooele Property, which was not entitled, not served by any utilities, and encumbered by over $9 million in debt.

209. Geringer estimated a $20 million budget for 2008, with $10 million required from equity sales and debt for clubhouse development prior to commencement of construction. The board estimated that approximately $4 million could be borrowed against the real property.

210. The CAREIC Board of Directors, who managed CAK, anticipated that they would start "moving dirt" in early 2008.

211. In March of 2008, CAREIC acquired approximately 380 acres from Lingenfelter for the purchase price of $9,859,789. Of this amount, $8,257,371 was reflected by a promissory note payable to the Lingenfelter, with the balance having been paid utilizing cash from CAREIC, CAK, CAS and CASDF.

212. In its Form 10-Q for the quarterly period ending June 30, 2008, CARIEC omitted to state that no dirt had been moved in 2008 because CAK did not have enough money.

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213. By the beginning of 2008, CAK had already spent the $10 million raised from its private offering in 2006. So, to raise money for the Kingman Project, CAREIC formed CASDF as an additional funding vehicle.

214. In its Private Placement Memorandum dated February 1, 2008, CASDF stated that it was organized "to invest money into land projects and securing [*sic*] those investments with senior lien positions using the land as collateral."

215. CASDF placed approximately $8.4 million in its Series A units.

216. On March 25, 2008, CAK executed a Promissory Note in favor of CASDF in the sum of $1,280,000. To secure this note, CASDF received a First Mortgage on 40 acres of raw, undeveloped desert land in the Kingman Project described as "Parcels 10-13 Long Mountain Ranches," located in unincorporated Mohave County, Arizona, that had been purchased in March 2007.

217. On July 2, 2008, CAK executed a Promissory Note in favor of CASDF for another $3,200,000. To secure this note, CASDF received a First Mortgage on 120 acres of raw, undeveloped desert land in the Kingman Project located in unincorporated Mohave County, Arizona, that had been purchased in January 2006 and April 2006. Funds for this loan were sent to CAREIC and CAK. Funds sent to CAK were immediately sent to CAREIC or used to pay Geringer's and Davidson's CAS Loans.

218. CAK subsequently issued a Series B Private Placement Memorandum dated September 1, 2008, seeking to raise an additional $15 million. Of this anticipated amount, only $50,000 was ultimately placed.

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219. In its Form 10-Q filed for the quarterly period ending September 30, 2008, CAREIC stated regarding the Kingman Property that:

> To date we have invested over **$22.4 million** as of September 30, 2008 to purchase the property parcels, working with our architectural, marketing and engineering teams currently under development. We are moving forward with the project, however, we have restrained our velocity based on financing challenges connected with the financial markets and property value declines in the area.

220. CAK had failed to disclose in its Series B PPM that it had "restrained its velocity."

221. In its Form 10-Q filed for the quarterly period ending March 31, 2009, CARIEC conceded that it did not have the money to commence excavation.

222. Nevertheless, the fundraising continued apace. On July 2, 2009, CAK executed a Promissory Note in favor of CASDF for another $3,325,893. For this note, CASDF received a First Mortgage on a 100-acre parcel, a 21.28-acre parcel, a 46-acre parcel and a 60-acre parcel of raw, undeveloped desert land described by metes and bounds located in unincorporated Mohave County, Arizona, that had been Arizona purchased in February 2006, March 2008, and November 2008.

223. The CASDF "loan proceeds" were funds that had been sent to CAREIC from November 2008 through May 2009. The Promissory Note between CAK and CASDF was prepared *post hoc* to paper the transactions. None of the money actually went to CAK.

224. In May of 2009, CAREIC represented to CASDF investors that the Fund was backed by high-quality real estate and senior lien positions on assets at fair value.

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225. In fact, the three CASDF notes in the amount of over $7.8 million were secured by approximately 400 acres of raw, undeveloped desert land that was generating no revenue and for which development was already over budget and delayed.

226. In its Form 10-Q for the period ending September 2009, CAREIC disclosed that

a. it had not paid any interest on a seller-financed loan to Lingenfelter,

b. it had elected during the quarterly period ending on June 30, 2009, to abandon the remaining seller-financed acres of the Kingman Project back to Lingenfelter'

c. it had defaulted on a $6,989,120 note to Lingenfelter; and

d. it was in negotiations with Lingenfelter to convey the seller-financed acres back to Lingenfelter.

227. By September of 2009, the Kingman Project had not been entitled.

(e) Misrepresentations Regarding the Board's Real Estate Development and Investment Experience

228. The Defendants consistently and materially misrepresented their real estate development experience. They made these misrepresentations in nearly every PPM they issued, in most of the promotional materials that were used to solicit investors, and in their public reports filed with the SEC.

229. The Defendants misrepresentations regarding their real estate development experience began in the Company's first PPM. The CAREIC Series A PPM issued May 1, 2004 represented that the Defendants had "50 years experience among the officers in real estate investing, and a proven track record of realizing the goals of investors, founders, members and other stakeholders."

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230. By July 22 of the same year, when they issued CAREIC Series B PPM the Defendants' real estate experience had ballooned to "70 years of collective experience among the officers in reals estate investing, and a proven track record of realizing the goals of investors, founders, members and other stakeholders."

231. Similarly, in marketing materials, the Defendants represented that the Company's management team had "over 70 year of success in real estate investing and a rich history of realizing the goals of investors and other stakeholders."

232. In 2008, the Company's marketing materials boasted that the Defendants had 100+ years of experience in real estate development, fund management, and investment experience.

233. CAOP I promotional materials from 2009 also represent that Defendants have 100+ years of "real estate development, fund management, and investment experience."

234. The Company's public filings and marketing materials consistently misrepresent Cochran's real estate experience. For instance, its 2005 Form 10-K, represents that Cochran "has bought and sold millions of dollars of real estate throughout his career, with a primary focus on raw land."

235. These materials also represent that Child "is experienced in a broad array of real estate area including residential development. . . ."

236. The Company's promotional materials also touted CAREIC's "superior proprietary valuation model;" its "proven model for evaluating, acquiring, repairing and disposing of assets"; its "proprietary valuation database system that created accurate

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valuations"; and its "accelerated rehab and sales process via national network of realtors and contractors."

237. None of these representations were true.

238. The only CAREIC Insider with any substantial real estate development experience was Geringer. Cochran has testified that, before his association with Castle Arch, his real estate development experience was limited to purchasing his own homes and developing a two-parcel ranch property in Star Valley.

239. Austin had no experience with real estate entitlement or development until he started working for Cochran.

240. Child did own two real estate holding companies: (1) RFC Properties, that owned his office building in Kaysville, Utah, as well as another office building and (2) REO, LLC, that purchased five homes out of foreclosure and resold them. But he had no experience with real estate entitlement or development.

241. The Company did not, at any time, have "a proven model for evaluating, acquiring, repairing and disposing of assets;" a "proprietary valuation database system that created accurate valuations;" or an "accelerated rehab and sales process via national network of realtors and contractors."

242. The Defendants knew or should have known their representations were false. Indeed, they had been told as much by the Company's counsel, who was hired to respond to an SEC investigation. In his report, counsel notes that "One concern surfaced repeatedly in our inquiry: alteration of the Board composition to more clearly reflect the real estate experience stated and/or implied in Castle Arch's public disclosure documents . . . The Board as

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constituted consists of a group of individuals with fund raising skills, but no one with knowledge with respect to real estate development processing experience (including adding value by entitling raw land) or experience with real estate opportunity ("REO") processes."

C. The Defendants' Breaches of Fiduciary Duty.

243. The Defendants had fiduciary duties to the all of the Debtors and their shareholders as a result of their positions as directors, officers, employees, and agents of these companies.

244. These duties required them to use a high standard of care, skill or diligence in their work for the Company and its affiliates, to remain loyal to the company, preferring the interests of the Company to their own, and to avoid conflicts of interest. The Defendants were at all times expected to act in good faith to promote the success of the corporation.

245. During their tenure with the Company, all of the Defendants grossly breached their fiduciary duties to the Company.

1. Lack of Officer Diligence.

246. The Company's officers had a fiduciary duty to devote sufficient time and attention to the Company and its affiliates to allow them to supervise, operate, and control the Company with the highest standard of care, skill, and diligence.

247. The Company's officers abjectly failed to fulfill these basic duties.

248. As the CEO of CAREIC, Cochran was responsible for, among other things: "(a) the day-to-day management and control of the Company; [and] (b) the business affairs of the Company, dominion and control of the Company assets and general supervision by the Company over its employees and agents, and professional advisors."

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249. However, Cochran at all times acted as if CAREIC was a part-time job. While Cochran was CEO of CAREIC, Cochran was an officer and/or director of several other companies, including but not limited to FloBridge, Western Credit, North Point Advisors, Clear Peak Energy, Caldera Energy Inc., AquaGenus, L.L.C.; Broadcast International, Inc., Zing Media Solutions, Mesa Medical, Angia Corporation, CDL Capital Corporation, Diversified Lenders, Inc., Earth Marketing, Inc., H20 Aquacare Salt Lake, LLC, Invest Linc Consulting Corp, K&R Capital, L.L.C., K&R Consolidation Group, L.L.C., KWLI, L.L.C., Napili Capital Ventures, Inc., as well as an adjunct finance professor at the University of Utah.

250. While CEO of CAREIC, Cochran in fact devoted 60% or more of his time to a company called Clear Peak Energy. Clear Peak was purportedly "in the business of planning the development and operation of clean solar electric power plants incorporating proven, lower-cost, photo-voltaic (PV) technology.

251. By 2008, Cochran was paying almost no attention to CAREIC, and was devoting nearly all his time to other companies

252. Geringer, the Company's President, and the person responsible for all of the Company's real estate activities, also acted as if CAREIC was a part time job. While President of CAREIC, Geringer ran numerous other businesses. He maintained his own private law practice, ran his own personal investments, including entertainment properties, and thoroughbred horses. Geringer did this through Geringer Capital a holding company comprised of four LLCs, which were officed in CAREIC's "headquarters" on Wilshire Boulevard in Beverly Hills.

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253. Child, the Company's CFO, and person responsible for all of its financial reporting, continued to function as a full time employee and principal of his own public accounting firm, Child, VanWagoner & Bradshaw& Associates, PLLC. In addition, he ran two real estate holding companies, (1) RFC Properties, that owned his office building in Kaysville, Utah, as well as another office building and (2) REO, LLC, that purchased five homes out of foreclosure and resold them. Child also devoted a substantial amount of time to another Cochran business, Clear Peak Energy.

254. Austin also had his own companies, including but not limited to Austin Capital Corp., Austin Construction, Inc., and Pacificor Construction, Inc.

255. As a result of the officers' failure to devote sufficient attention to the Company's business, CAREIC never had sufficient people working in what CAREIC described as its core business – acquiring real estate, entitling it, developing it, and selling it – for it to be successful.

256. The Debtors' own internal documents show that the Defendants knew that the Company's real estate development operations would require far more personnel and time then the Defendant officers actually were spending. The Debtors internal documents reflect that a large real estate development staff was required including "executive managers with management experience in real estate development." Each executive managers would need to be assisted by five or more "Senior Property Managers" and the Senior Property Managers would also require assistants.

257. The Defendant realized that "the project in Kingman Arizona alone is a major undertaking requiring thousands of man hours and tens of millions of dollars to complete."

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258. The Defendants failed to commit anything close to the amount of time and resources that they acknowledged was required. In fact, the only person who did any real estate entitlement work was Robert Geringer. He had one assistant, Andrew Feola, who had no experience in this type of work.

259. Rather than committing resources to what the Company said was its core business, most of the Company's resources and personnel were devoted to soliciting investors and raising additional funds. The end result was that the Defendants never committed sufficient human resources to accomplish any of the Debtors core business objectives. The Defendants knew or should have known this.

2. Lack of Board Oversight.

260. The Company's Board of Directors also abjectly failed to devote sufficient time and attention to the Company, failed to properly inform themselves of the activities of the Company's executives, or how they were managing the Debtors.

261. The Board also failed to competently oversee and supervise the activities of management. The Board failed to implement or enforce a clear and appropriate set of duties and responsibilities for the Company's executives, or to set clear limits on executive authority.

262. As a result, among other things, Geringer operated unchecked by the Board of Directors or the officers of the Company. When Geringer asked Cochran for essentially unlimited authority to bind the Debtors with regard to real estate matters, Cochran improperly gave him this authority, and the Board did not stop it.

263. Thereafter, Geringer operated without restraint. He withheld information from the Board including but not limited to land purchase contracts, vendor contracts, vendor

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invoices, appraisal documents, title documents, lien documents, feasibility studies, projections and land purchase closing documents.

264. Geringer maintained all real estate closing documents at his office in Beverly Hills, allowing him to provide the Company's officers and directors with only those documents he chose. Geringer provided copies of closing documents to the Defendants sporadically, but failed to provide key seller HUDs, which would have, among other things, disclosed payments to others.

265. The Board improperly let this situation persist over the life of the Debtors.

266. The Debtors embarked upon and pursued projects without input, approval, oversight, or control from the Company's Board. As a result, the Debtors continued sinking money into the projects for dubious reasons, and long after ordinary care would have disclosed that the projects were not economically feasible.

267. The Board failed to exercise ordinary care in reviewing materials filed with the SEC, Private Placement Memoranda, or marketing materials. As a result, as detailed above, the Debtors published and filed SEC reports, PPMs, and marketing materials that were materially false and misleading.

268. In short, the Board failed at its basic responsibility: establishing a course for the Debtors and seeing that management moved the Debtors in that direction. Because of that, the Debtors did not competently pursue any real estate development activities. Instead, the Debtors' history shows that, because of the Board's failure to discharge its responsibilities, the Debtors simply became a fundraising machine that existed for that purpose alone.

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3. Exorbitant And Unnecessary Spending

269. During their existence, the Debtors never generated any substantial operating revenue. Yet, despite this nearly complete absence of operating revenue, the Defendants paid themselves as if the Debtors were awash in revenue.

270. The Debtors' financial records show that through 2011, approximately $30 million – *i.e.,* over 40% of the **$73.6 million** that the Debtors had raised from investors – was spent on executive compensation, administrative costs, and business development.

(a) Executive Compensation

271. The Defendants breached their fiduciary duties by paying company officers in salary and benefits, in amounts that were far in excess of industry norms, especially for personnel who acted as part time employees.

272. Geringer and Cochran were each paid $25,000 per month. Child, similarly was paid $15,000 per month. The Company also paid Clawson – a person with a lifetime ban – nearly $21,000 per month. None of these personnel committed their full time to their jobs.

273. All officers were paid least $2,000 per month for office expenses, even though many of them had no offices outside of their homes.

274. In addition, the Board allowed Cochran to employ and pay individuals who apparently did not do anything for the Debtors, but instead were assistants to Cochran, and spent their time advancing his personal business interests, not the business of the Debtors.

275. Cochran's son, Stephen Cochran, was listed as a "staff accountant." In fact, Stephen performed no accounting services for the Company, and did not report to the Company's CFO.

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276. Another Cochran son, Nathan Cochran was paid as Cochran's assistant. In fact, Nathan Cochran performed no substantial services for the Company. Instead, he primarily worked on "FloBridge," and Caldera Energy, Inc., , businesses in which Cochran's was personally involved.

277. Cochran also employed Chad Jardine to serve as "CEO Public Relations," that is, to perform public relations for Cochran, not the Debtors. In this unique role, he wrote articles for Cochran personally, including articles for personal Cochran's website, North Point Advisors. He also managed Western Credit Service Company, an online payday lender, and another of Cochran's personal business interests.

(b) Perks

278. Although the Debtors had no operating revenue, the Company spent lavishly on "retreats" to destinations like Palm Springs, Hawaii, and Sun Valley, Idaho.

279. For instance, in 2009 CAREIC held a "Chairman's Educational Forum" at the Ritz-Carlton in Maui from Feb. 24 – March 3, 2009. Cochran and his wife, Austin and his wife, Grundy and his wife, Green and his wife, as well as five other CAREIC securities salesmen and their wives were invited to the Chairman's Educational Forum.

280. On information and belief, there was no legitimate business purpose for the "Chairman's Educational Forum." Instead, this was simply a personal vacation for the Company's officers and directors at the Company's expense.

281. Allowing Company resources to be used this way was a breach of fiduciary duty.

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282. The Board did not implement adequate procedures for review and approval of business expenses. As a result, Company executive submitted lavish expense reports for travel that had no legitimate business purpose related to the Company.

283. For instance, Geringer submitted bills for, and was reimbursed for, travel to Las Vegas, lodging at the Four Season Resort hotel in Las Vegas, and expensive meals in Las Vegas, although CAREIC was not developing any property in Las Vegas.

284. The Company also reimbursed travel to China although the Company had no business operations there, and never raised a dime there.

(c) Geringer Expenses

285. Geringer induced the Company to fund the operation of his personal penthouse office on Wilshire Boulevard in Beverly Hills, as well as his personal office staff. The Company eventually paid Geringer $15,000 per month to operate his office in Beverly Hills.

286. In addition to rent, CAREIC paid Geringer's two administrative assistants, although they assisted Geringer in running his private businesses.

287. The Company also paid Geringer's real estate assistant, Andrew Feola, compensation of $300,000 for 2007, $400,000 for 2008, and $225,000 for the first six month of 2009. At this level of compensation, Feola was the highest paid employee in the company.

288. Notwithstanding this, Feola's compensation was not required to be submitted to, approved by, the Board. Feola's compensation was agreed to and paid without Board approval.

289. In allowing these expenses, the Company's officers and Board of Directors breached their fiduciary duties.

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4. Mismanagement of the Company's Real Estate Operations

290. The Defendants grossly mismanaged the Company's real estate operations, in breach of their fiduciary duties, by failing to properly investigate potential properties for investment, failing to properly memorialize and protect the Company's property interests, failing to properly document transactions, failing to actually entitle properties in which the Company had an interest, and overpaying for real property interests..

(a) Imperial Valley Properties

291. In managing the Imperial Valley Properties, the Defendants breached their fiduciary duties by, among other things, failing to exercise an appropriate standard of care, skill or diligence in investigating the property.

292. In October 2005, Geringer, without Board approval, executed contracts to acquire two adjacent 160-acre properties in the Imperial Valley in California (the "Imperial Property"). Geringer committed the Company to pay $15.58 million for the Imperial Property.

293. At the time Geringer entered these contracts, he knew that at least one of the properties was subject to restrictions on development imposed by the California Land Conservation Act of 1965, commonly referred to as the Williamson Act.

294. It took Geringer nine months to discover that it would not be possible to remove the Williamson Act restrictions. By this time, the Company had spent $156,626 in entitlement costs in the form of government filing fees, engineering fees and legal fees in connection with planning and civil engineering services, environmental site assessment, biological study, burrowing owl survey, tentative subdivision map, engineering services, site assessment,

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preparation of conceptual layout, biological assessment, research and reporting, environmental consulting services.

295. Geringer continued to work and spend on the other Imperial Valley parcel. In September of 2007, Geringer finally obtained an estimate of the engineering and improvement costs for the parcel. The estimate to develop the property was $20,941,124.87 for the onsite improvements and $6,650,029.78 for offsite improvements, with a 20% contingency, for a whopping total of **$33,109.385.58.** By this time, Geringer had wasted several hundred thousand additional dollars on the property.

296. Geringer admitted that "[o]bviously nothing near these numbers could possibly work for this property in this market … We are of the opinion that without extremely significant changes in these requirements, the project is uneconomical and we would like to stop the bleeding from an engineering and cost standpoint."

297. The Company ultimately decided not to close the purchase lost its non-refundable deposit and entitlement costs. In all, a total of $715,000 of investor money was lost in the failed Imperial Property project.

(b) Lindale Property

298. The Defendants breached their fiduciary duties in connection with the Lindale property by, among other things, failing to exercise an appropriate standard of care, skill or diligence in investigating the property, or documenting and protecting the Company's interest in the property.

299. In 2007, Geringer entered into discussions with Scott Brown of S&B Developments LLC ("S&B"), about the Company entering a partnership to acquire and

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develop approximately 75 acres of land ("Lindale Property"). S&B had closed on three of the six parcels, making up the tract, but had not closed on the remaining three.

300. Geringer committed the Company to advance money to S&B to allow it to obtain contract extensions on three remaining parcels which integral to the overall development.

301. The Company loaned S&B a total of $530,000, for this purpose. However, Geringer had not concluded any enforceable partnership agreement with S & B. Moreover, Geringer did not get a promissory note from S&B for the full amount of the loan. And the trust deed he did get (which covered only $190,000 of the loan) was in a third position.

302. S&B failed to repay the $530,000.

303. Geringer instituted suit on behalf of the Company, and S&B countersued in a different court. In the litigation, Brown and S&B asserted that there was no promissory note at all, that Geringer begged Brown to issue a deed of trust to CAREIC so that Geringer could justify to CAREIC why he was sinking so much money into the Lindale Property with nothing to show for it.

304. The Court ultimately held that the Trust Deed Geringer had obtained was worthless. The Company lost its entire $530,000 loan to S&B, as well as over $45,000 in entitlement costs.

305. The money was invested without any diligence by the Board. The Board never required Geringer to defend his expenditure of CAREIC funds, nor did it demand accountability from Geringer.

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(c) Kingman Project

306. In managing the Kingman property, the Defendants breached their fiduciary duties by, among other things, failing to exercise an appropriate standard of care, skill or diligence in investigating the property and its value, by failing to plan or purchase the property in accordance with industry norms.

1. Unjustified Purchase Price

307. The Company began buying property for the Kingman Project in approximately August of 2005, when it entered into an agreement with Lingenfelter to develop the Kingman Project. The total purchase price for the entire 2,125 acre tract was approximately $55.2 million – or $25,000 per acre – for raw, desert property.

308. On April 27, 2006, the Company exercised an option to buy an additional 216 acres for $5,676,352.00. On or about March 27, 2008, the Company exercised an option to buy another 381.63 acres for $9,859,872.32 ("Option No. 2").

309. By no later than September 18, 2008, the Defendants knew that the financial crisis had dramatically changed the real-estate market in Phoenix and Las Vegas. Nonetheless, the Company continued to buy and invest in the Kingman Project.

310. By December of 2009, CAREIC had expended over $30 million to acquire and develop the Kingman Project. Just three months later, in February of 2010, the appraised value of the entire Kingman Project (all 2,125 acres) was only $10,810,000, or less than $5,000 per acre.

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2. *1031 Exchanges*

311. Contrary to the Company's stated plan for development of the Kingman Project, Geringer sold three pieces of the Kingman project, and then immediately entered to repurchase them over time, and a much greater value.

312. On information and belief, the purpose of these transaction was to raise cash in the short term to meet demands from Debtors other than CAK.

313. Each of these transactions was purportedly structured as a so-called 1031 exchange.

314. Geringer engaged in each of these transactions without the input, approval or supervision of any other officer, or of the Board of Directors.

315. In each instance, the Debtors lost money as a result of the transactions, and each of the transactions has resulted in further claims against the Debtors in bankruptcy.

3. *Irregular Financing And Security Documents Render Kingman Property Undevelopable*

316. The Defendants in addition breached their fiduciary duties by purchasing, financing and documenting the Kingman transactions in a way that was contrary to customary business practice, that left ownership hopelessly tangled, and rendered the property unnecessarily difficult to develop or sell.

317. Funding to purchase the Kingman Property was as to come from private offerings, resale of a portion of the 2,125 acres, and loans from third parties or seller-financed loans to CAK from CAREIC.

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a. The First CAK Note

318. CASDF furnished $840,109.00 in cash and CAREIC furnished $760,000.00 in cash to exercise Option No. 2. The $840,109.00 was transferred directly by CASDF to the title company on or about the date of closing; and (b) the remaining $760,000.00 was paid on or about the date of closing by CAREIC from funds that were deposited into its commingled operating account by other Debtors.

319. The Defendants then caused CAK to enter a Promissory Note with CASDF in the principal amount of $1,280,000.00 (the "First CAK Note"), although these funds were not sent to CAK. The note states that it is secured by the "Wilson Land" – a separate 40.09 acre parcel of the Kingman Property different than the 380 acres purchased under Option 2.

320. Moreover, the CAK note covers not only the $840,109.00 that CASDF contributed to the exercise Option No. 2, but also a series of cash transfers that CASDF made to CAREIC's commingled operating account totaling $440,000.00 and that were apparently used for CAREIC's general operations.

321. Thus, while the First CAK Note purports to memorialize a loan from CASDF to CAK, it is in fact for monies that CASDF transferred to or for the benefit of CAREIC.

322. The date of the First CAK note, March 25, 2008, also appears to be irregular because the transfers totaling $440,000.00 actually took place from March 31, 2008 through April 22, 2008, after the First CAK Note was allegedly issued.

b. The Second CAK Note

323. On or about July 2, 2008, Child caused CAK to execute a second Non-Recourse Promissory Note in the sum of $3,200,000.00 in favor of CASDF (the "Second CAK Note").

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324. This note was secured by a pledge of 120 acres of Kingman property purchased in January 2006 and April 2006. However, the Kingman property pledged by CAK to CASDF to secure that Note was in fact titled in CAREIC's name, not CAK's.

325. Furthermore, a significant portion of the funds CAREIC used to purchase the 120 acres pledged to CAK was obtained from loan proceeds that CAREIC obtained from other multiple non-CAREIC sources, including third-party lenders who issued loans collateralized by the Tooele Property, including but not limited to ANB Financial, N.A. ("ANB"), rather than by the Kingman Property it was purchasing.

326. In addition, although the Second CAK Note purports to memorialize a loan used to purchase Kingman property, the subject monies were either (i) not transferred to CAK, but rather to CAREIC, or (ii) transferred to CAK and immediately transferred to CAREIC to pay operating and Davidson's CAS loan or paid directly from CAK to pay Geringer's CAS loan. As with the First CAK note, many of these transfers occurred *after* the July 2, 2008 date stated on the Second CAK Note.

c. The Third CAK Note

327. On or about May 15, 2009, Child caused CAK to execute another Non-Recourse Promissory Note in the sum of $3,325,892.81 in favor of CASDF (the "Third CAK Note").

328. The Third CAK Note purports to be secured by CAK's pledge of four separate tracts of land. However, three of these tracts are titled in CAREIC's name, not CAK's.

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[35] Trustee Declaration, Exh. K-5. "*CASDF/CAK Loan #3 ($3,325,893)*" (the "Third Loan Chart").

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329. The Third CAK Note purports to memorialize a loan from CASDF to CAK. In fact, the monies that were transferred from CASDF's bank accounts (i) were transferred CAREIC, (ii) were transferred directly to a third party (who apparently was owed money by CAS), or (iii) were CASDF investor monies that were directly deposited in CAREIC's operating account. These transfers occurred between November 2008 and May 2009, before the date of the Third CAK Note.

330. The Defendants breached their fiduciary duties by financing and encumbering the Kingman properties in this way.

(d) Tooele Property

331. In connection with the Tooele property, the Defendants breached their fiduciary duties to the Debtors by, among other things, failing to exercise an appropriate standard of care, skill or diligence in (i) investigating the property and its value, and as a result grossly overpaying for the assets acquired; (ii) entirely disregarding the corporate source and ownership of funds used in the Tooele transactions; (iii) preferring their own financial interests to those of the corporations in resolving claims under indebtedness against the property; and (iv) failing to protect the separate economic interests of the Debtors.

332. Between September of 2005 and July of 2006, the Company acquired approximately 348 acres of raw land located in Tooele County, Utah (the "Tooele Property"). Between October 2005 and November 2008, the Company also acquired approximately 616 acre-feet of water, to be used in connection with the project (the "Tooele Water Rights"). The Company paid in excess of $13 million dollars for the land and water rights.

333. Geringer negotiated all of these purchases.

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334. On information and belief, neither Geringer nor any of the other Defendants performed an adequate investigation into the market price for water in the Tooele area prior to making these purchases. As a result, the Company grossly overpaid for the Tooele Water Rights.

335. CAREIC borrowed approximately $6.9 million from ANB Financial, purportedly to finance these purchases (the "ANB loans"). The ANB loans were secured by trust deeds on the Tooele Property, *and by the personal guarantees of Geringer, Child and Cochran*.

336. However, in violation of their fiduciary duties, the Defendants actually used $3.7 million of the loan proceeds to purchase 216 acres in the Kingman Project. The funds used to acquire the Tooele Water Rights actually came from CAK, CASDF, CASV and CAS. In addition, some $540,000.00 of the funds used to acquire the Water Rights was loaned to the Company by Defendants.

337. On information and belief, the terms of the loans from the Defendants were less favorable to the Company than would have been agreed to had the loans been made by unrelated third parties. For instance, the loan documentation gives the Defendants a security interest not only in the Tooele Water Rights, but also the Smyrna property, which was titled in the name of CAS, not CAREIC.

338. By February 9, 2009, the holder of the ANB loans (Kingston Management Services ("Kingston")) notified the Company that the loans had passed their maturity dates, and that $7.6 million was immediately due and payable in full.

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339. The Defendants negotiated a settlement with Kingston under which Kingston would cancel its Trustee's sale, and sell its notes to CAREIC upon a cash payment of $3million. To fulfill this settlement – and allow CAREIC to keep its ownership of the Tooele Property –CAREIC "borrowed" $2.9 million from CAOP I. No notes or other evidence of indebtedness were executed to document the "loan" transaction between CAOP I and CAREIC. This use of CAOP I funds was not in accordance with CAOP I's or the Company's representations to investors about the use of proceeds invested in CAOP I.

340. Once the Company had acquired the ANB notes, the Defendants promptly voted to release themselves (*i.e.*, Geringer, Child and Cochran) from their guarantees, effectively giving the CAOP I's money to the Defendants.

341. In other words, the Defendants used $2.9 million of CAOP I's money to acquire notes on the Tooele property, and then used that purchase to their own benefit by releasing themselves from their guarantees on the notes, which would otherwise have been a CAOP I asset.

342. The Defendants continued this pattern of ignoring the economic interests of the Legacy Debtors when they sold the Tooele Property. In January of 2011, the CAREIC Board of Directors determined to sell the Tooele Property, including the Water Rights, to CAOP I for $5.6 million.

343. In February of 2011, the Tooele Property was valued at **$7,680,000**. Notwithstanding this, the entire Board of Directors, consisting of Cochran, Davidson, Austin and Child and the "Board of Advisors" purportedly consisting of Bill Grundy, Andy Benis, and

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Keith Green approved the sale of the Tooele project to CAOP I for $2 million less than appraised value.

344. When questioned about this below-market transfer, Austin stated:

> Again, the [CAOP I] money wasn't moving at all. It wasn't, it wasn't making any money. It was sitting there. And it was a great opportunity for CAREIC – I mean CAOP I to have an asset that was worth a lot more than what we sold it to them for.

(e) Smyrna Property

345. In connection with the Smyrna property, the Defendants breached their fiduciary duties to the Legacy Debtors by, among other things, failing to exercise an appropriate standard of care, skill or diligence in (i) investigating whether the property could feasibly be developed before spending the Debtors' money on the property; (ii) self-dealing and preferring their own financial interests to those of the corporations; (iii) disregarding the corporate source and ownership of funds used in the Smyrna transactions, and commingling those funds; and (iv) failing to protect the economic interests of the Legacy Debtors.

346. CAS was organized in 2007 to purchase and develop approximately 1,700 residential lots on approximately 640 acres of land located in the greater Nashville area in Rutherford County, Tennessee (the "Smyrna Property").

347. On information and belief, Geringer, Gregory Nesto ("Nesto"), and Jeffrey Green knew each other from business dealings that they had prior to the time CAS was organized, and at the time CAS was organized they had other mutual business interests.

348. The original Contract for Purchase and Sale of Real Estate for the Smyrna Property was dated September 28, 2006 (the "Smyrna Purchase Contract"). It provided for the

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purchase 495+/- acres of the Smyrna Property for $5.6 million. In the contract, Geringer and Nesto were collectively identified as "Buyer."

349. Geringer, using the Company's money, paid Nesto $200,000 from a CAK account to assign his interest in the Smyrna Purchase Contract to Geringer. On information and belief, none of the Defendants performed any investigation or diligence to determine whether Geringer's payment was appropriate, or reasonable.

350. In March 2007, Geringer then executed an Assignment and Assumption of Agreement pursuant to which Geringer assigned his rights under the Smyrna Purchase Contract to CAREIC in exchange for a payment to him of $150,000.00. At the time Geringer took this payment, he was being paid $25,000 per month to act as an employee of the Company, and his principal responsibility in that position was locating real estate in which the Company could invest.

351. By August of 2007, the Company had paid approximately $600,000 in non-refundable deposits toward the purchase price of the property. CAS completed the purchase of 486 acres of the Smyrna Property on August 15, 2007.

352. A significant portion of the monies used to pay for the purchase of the Smyrna Property came from loans made to CAS from CAREIC insiders Bill Davidson ($500,000) and Robert Geringer ($1,400,000) , as well as from an entity affiliated with Geringer called "Robhana, Inc." ($1,800,000).

353. On information and belief, the terms of the loans from the insiders were less favorable to the Company than would have been agreed to had the loans been made by

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unrelated third parties. Among other things, the loans were made at hard money rates, with a post maturity rate of 20% which was paid for some months.

354. All of these lenders were paid in full by the middle of 2008. Davidson was paid $594,513.50 for his original $500,000.00 loan. Geringer was paid $1,601,450.39 for his original $1,316,449.00 loan. Robhana was paid $1,986,442.00 for its original $1,800,000.00 loan.

355. The funds to repay the Defendants' to CAS loan came from CAS, CASDF, CAK and CAREIC.

356. On information and belief, after purchasing the Smyrna Property, and after expending considerable funds in development efforts, Geringer discovered that it was not feasible to get water or sewer service to the Smyrna Property at a cost that would allow development of the property to be economically viable.

357. On information and belief, had the Defendants properly exercised their duties the sewer and water problems with the Smyrna would have been discovered prior to the time the Defendants used the Company's money to pay off CAS's borrowings used to purchase the property.

5. Conflicts of Interest In Operating CAOPs

358. The Debtors' managers had a fiduciary duty to avoid conflicts of interest, to be loyal to the Debtors, and to prefer the Debtors' interests to their own.

359. In addition to the conflicts of interest and self-dealing described above, the Defendants breached their fiduciary duty of loyalty in operating the CAOPs entities.

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360. The Company had numerous opportunities to close the CAOP funds and liquidate them during the two years prior to the Petition Date. CAREIC's own estimates of the capital in the CAOPs as of summer 2010 would have been sufficient to make CAOP I holders nearly whole and provide a small profit for CAOP II holders. Over time, CAREIC's estimates of the CAOPs' assets and performance to return capital to investors became significantly reduced.

361. However, the Defendants consciously chose to keep the CAOP funds active. Defendants did not close the CAOPs and redeem investors because the only way the Company could make money on the CAOPs was if there were capital gains remaining to be shared at the completion of each entity.

362. In short, the Defendants kept the CAOPs open for their own potential gain and to fund the Company, even at the expense of the investors' protection and interests.

6. Operation of The "Secured Development Fund" Ponzi Scheme

363. The business model of CASDF was, purportedly, to provide bridge funding for land development projects. However, shortly after issuance of the CASDF PPM and solicitation of investors for the fund, it became clear that CASDF did not have the ability to make interest and redemption payments to investors out of operating revenue.

364. Rather than shut CASDF to new investors, and shut it down in an orderly fashion, the Defendants determined to use new investors' money to make interest payments and redemption payments to old investors.

365. CASDF continued to accept subscriptions, notwithstanding that it was unable to pay prior investors out of operational revenue, and it continued to make interest and

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redemption payments, even though it was unable to make such payments without using new investor money.

366. CASDF was conceptualized and promoted by Robert Clawson, a person with a lifetime state and federal ban on his participation in any penny offering of securities as a result of his prior involvement in the sale of securities to purchase undeveloped land.

367. Any involvement of Clawson in the CASDF was a violation of this government order, and the Defendants knew or should have known it. The Defendants breached their fiduciary duties by operating CASDF as a Ponzi scheme.

7. Involvement of Banned Person in Sales of CAREIC Investments

368. As described in the sections above, Defendant Clawson was the Managing Director Business Development of CAREIC, an Investor Relations Contact, and a de facto officer and member of the Board of Directors of CAREIC from its inception until appointment of a receiver in 2011.

369. Clawson was one of CAREIC's highest paid employees, and attended nearly every Company board meeting. He was deeply involved in the development, marketing and sales of all of CAREIC's securities offerings.

370. In 2001, an SEC Administrative Law Judge determined that Clawson "acted with scienter and willfully engaged in a scheme to defraud . . . investors in violation of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder." As a result, Clawson was (1) permanently barred from participating in any penny stock offerings and from association with any broker or dealer; (2) ordered to account for and disgorge any ill-gotten gains; and (3) ordered to pay a $100,000 civil money penalty.

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371. By order dated July 9, 2003, the Commission upheld in all material respects the decision of the Administrative Law Judge.

372. The Company's Board and Officers breached their fiduciary duty by involving a banned person in the Company's management and operation, and by concealing that involvement from the Company's investors.

8. Illegal Sales of CAREIC Securities By Unlicensed Broker Dealers

373. As described in the sections above, throughout the Company's existence, the bulk of the securities it sold were illegally sold by unlicensed broker dealers.

374. The Company's Defendants breached their fiduciary duties by allowing and being involved in this illegal activity.

9. Internal Control

375. As described in sections above, no later than May of 2008, the Defendants became aware that the Company's system of internal financial controls suffered from several significant deficiencies and "reportable conditions." Among other things, the Company,

a. did not have adequate company-wide policies and procedures related to significant functions including back office, accounting, personnel, payroll, and executive functions;

b. allowed one person to hold ultimate control over multiple critical functions;

c. allowed Geringer to negotiate contract terms related to property acquisitions and financing arrangements, independently and outside of the Company with the result that neither the Company nor any of its other executives have any input on the terms or structure of certain deals or their purchase price;

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d. allowed property closings to be structured so that HUD closing documents or disclosures by other parties are not reviewed by any of the Company's officers or employees, other than Geringer;

e. allowed properties to be acquired by Geringer or another unrelated party in their names and subsequently transferred to the Company via assignment agreements;

f. allowed purported independent contractors to act as agents or pseudo-agents of the Company, and engage third parties on behalf of the Company;

g. allowed expense reports without receipts or other adequate documentation to assure that the claimed expenses were actually incurred;

h. did not require pre-approval at the management level of significant expense reimbursement requests, including expense requests from non-employees;

i. allowed inaccurate and inconsistent subscription agreements and offering documents

j. allowed individuals to subscribe to and purchase investments offered as private placements to accredited investors, even though they had answered the Company's investor suitability questionnaire to indicate that they were not accredited.

376. The Company's Board and Officers breached their fiduciary duties by allowing these conditions, and by allowing them to continue.

D. Fraudulent Transfers

377. Prior to the Petition Date, certain Debtors made significant transfers of funds to each of the Defendants.

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378. Attached hereto as Exhibits __ through Exhibit ___ are summaries prepared from the Debtors' books and records in the Trustee's custody and control of transfers of cash made by the Debtors noted thereon to each of the Defendants prior to the Petition Date (collectively, these transfers as to each Defendant are the "Transfers").

379. Upon information and belief, the noted Debtors made the Transfers to each of these Defendants as compensation, including as applicable, consulting fees, payroll, expenses and commissions for soliciting investments in, referring investors to, or raising funds for the Debtors. The amount of the Transfers for each Defendant is set forth on Exhibit __ through Exhibit __ which are incorporated herein.

380. Each of the Transfers is a transfer of an interest of the named Debtors in property.

381. Upon information and belief, the Transfers were made by the Debtors or the obligations of the Debtors to make payments to the Defendants were made with the actual intent to hinder, delay or defraud creditors and investors.

382. Upon information and belief, the Transfers were made by the Debtors at a time when these Defendants were not licensed securities brokers or dealers authorized to sell or solicit investments in securities.

383. Upon information and belief, the Transfers were made by the Debtors or the obligations of the Debtors to make payments to the Defendants were for services for which the Debtors received less than a reasonably equivalent value in exchange for such Transfers or obligations.

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384. Upon information and belief, each of the Defendants is an insider of the Debtors.

385. Upon information and belief, such Transfers were made or obligations to make such Transfers were incurred to benefit insiders under employment contracts and not in the ordinary course of business.

386. At all times relevant hereto, the Debtors were insolvent.

387. At all relevant times hereto, the relevant Debtors had at least one unsecured creditor.

E. Preferential Transfers

388. Upon information and belief, each of the Defendants is an insider of the Debtors.

389. Some of the Transfers were made by the Debtors during the 90 days prior to the Petition Date and, in the case of insiders, within 90 days and one year of the Petition Date.

390. At all times relevant hereto, the Debtors were insolvent.

391. Upon information and belief, it is possible that creditors of the Consolidated Legacy Debtors will not be paid in full under the Confirmed Plan.

F. Claims Asserted By Defendants

392. Several of the Defendants have filed Proofs of Claim against the Debtors in the Bankruptcy cases.

393. Defendant Geringer filed a Proof of Claim in CAREIC's Chapter 11 case, which he later amended to assert a general unsecured claim in the approximate amount of $7.8 million. After a trial, at which the Trustee's rights and claims asserted herein were preserved,

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the Bankruptcy Court entered an Order disallowing the Proof of Claim with the exception of a claim in the amount of $243,146.13 (the "Geringer Claim").[36]

394. Defendant Child filed a Proof of Claim in CAREIC's Chapter 11 case, asserting a general unsecured claim in the total amount of $597,251.13 (the "Child Claim"). The Child Claim has neither been allowed nor disallowed at this time, and the Trustee's time for objecting to the Claim has not expired.

395. Defendant Austin filed a Proof of Claim in CAREIC's Chapter 11 case, asserting a general unsecured claim in the total amount of $300,000.00 (the "Austin Claim"). The Austin Claim has neither been allowed nor disallowed at this time, and the Trustee's time for objecting to the Claim has not expired.

396. Defendant Davidson filed a Proof of Claim, asserting a general unsecured claim in the amount of $154,354.30 (the "Davidson Claim"). The Trustee objected to the Davidson Claim, preserving all rights and claims asserted herein, and the Bankruptcy Court entered an Order allowing the Davidson Claim as a general unsecured claim against CAREIC in the total amount of $103,243.29.

397. Defendant Grundy filed numerous Proofs of Claim in CAREIC's Chapter 11 case, asserting claims exceeding $3 million. With the exception of one Proof of Claim, the Bankruptcy Court has entered Orders disallowing each of these Proofs of Claim. At this time, the remaining Proof of Claim, asserting a general unsecured claim in the amount of $314,853.00, has not been objected to (the "Remaining Grundy Claim"). The Remaining

[36] Docket No. 666.

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Grundy Claim has neither been allowed nor disallowed at this time, and the Trustee's time for objecting to the Claim has not expired.

398. The Geringer Claim, the Child Claim, the Austin Claim, the Davidson Claim and the Remaining Grundy Claim are referred to collectively herein as the "Insider Claims".

399. The deadline to assert claims against the Debtors in the bankruptcy cases has expired.

VI. CLAIMS AGAINST DEFENDANTS

FIRST CLAIM FOR RELIEF

(Securities Fraud Under Section 10(b) of the Securities Act of 1934 (15 U.S.C. § 78j) and Rule 10b-5 (17 CFR 240.10b-5)

400. The Trustee incorporates each of the preceding allegations by reference.

401. The Insider Defendants had a duty to disclose material facts that a reasonable investor would have considered important in making the decision to invest in CAREIC's securities.

402. The Insider Defendants did not fulfill this duty, but instead, have made, disseminated, and / or approved false statements or omissions of material fact in connection with the purchase or sale of securities. The Insider Defendants' false statements and material omissions include, but are not necessarily limited to:

- Falsely representing the purported experience of CAREIC's management team and breadth of transactions in promotional literature;
- Falsely representing to investors that funds were being raised for single-purpose entities when, in fact, funds were being used indiscriminately by the Insider Defendants to fund whatever entity was in need of cash at any given time;

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- Falsely representing to investors that their money would be devoted to CAOPs and related business operations when, in fact, funds were being used for general operations or excessive personal expenditures;
- Falsely representing in PPMs that no management fees would be paid for twelve months when, in fact, monies were being immediately transferred to operations;
- Falsely certifying the Company's public filings as discussed above;
- Comingling funds and manipulating accounting records to conceal the true financial condition of CAREIC and its Affiliated Debtors;
- Marketing CAOPs as "6-9 month" return of principal and interest vehicles when, in fact, the Insider Defendants knew that no return would be paid;
- Failing to disclose the findings of the Bouwhuis letter to investors or prospective investors;
- Misrepresenting the use of the proceeds of private placements, and in particular, concealing the fact that a significant percentage of proceeds were being directed to the Insider Defendants in the form of salaries and fees;
- Misrepresenting the status of various development projects in presentations to investors;
- Falsely representing in PPMs and public filings that CAREIC's securities would be sold by registered broker-dealers that are members of the National Association of Securities Dealers, when in fact, sales were occurring securities through unlicensed broker dealers, finders, and / or consultants;
- Falsely representing in PPMs that the securities offerings were exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder when, in fact, none of the offerings were exempt from registration;
- Falsely representing in PPMs that the securities were being offered only to accredited investors, when in fact securities were being sold to unaccredited investors in amounts less than the purported minimum investment.

403. The Insider Defendants, by their conduct, have committed violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 in that they: (a) employed a

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device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon other persons, including purchasers and sellers of CAREIC's securities.

404. The Insider Defendants acted with scienter, either with an actual intent to defraud or in reckless disregard of the truth or falsity of their statements.

405. The purchasers and sellers of CAREIC's securities reasonably relied upon the accuracy of the Defendants' representations in making their decisions to invest, and would not have invested in the companies at the price paid, if at all, had they known the truth of the Insider Defendants' statements and omissions.

406. As the result of the Insider Defendants' misrepresentations and withholding of material facts, investors in CAREIC have been damaged.

407. The investors' Individual Claims have been unconditionally assigned to the relevant Liquidating Trusts. As the duly-appointed Liquidating Trustee, the Trustee is duly-authorized to recover these damages for the benefit of the Liquidating Trusts.

408. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. the Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

409. Because the Insider Defendants conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

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SECOND CLAIM FOR RELIEF

(Sales of Securities by Unlicensed Agents Under Section 15 of the Securities Act of 1934 (15 U.S.C. 78o))

410. The Trustee incorporates each of the preceding allegations by reference.

411. The Insider Defendants solicited investors to purchase securities through use of the U.S. mail, telephone, email and other forms of interstate commerce. At the time of these solicitations, the Insider Defendants were not registered as broker-dealers.

412. In fact, at least one of the Insider Defendants, Defendant Clawson, had been permanently barred from participating in any penny stock offerings or from associating with any broker or deal as a result of his prior violations of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Thus, Defendant Clawson was subject to "statutory disqualification" within the meaning of 15 U.S.C. §78c(a)(39).

413. The Insider Defendants further utilized finders/consultants to sell securities, none of whom were registered as brokers/dealers with the SEC.

414. None of the Insider Defendants, finders, or consultants were exempt from registration under Rule 3a4-1, or any other exemption. The Insider Defendants and their finders / consultants could not have been exempt because they were:

(a) subject to statutory disqualification at the time the Company was selling securities;

(b) paid commissions or other remuneration based either directly or indirectly on transactions in securities; and / or

(c) persons associated with the Company that did not (i) restrict their participation in securities transactions described in paragraph (a)(i) of

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Rule 3a4-1; (ii) perform substantial duties for the Company other than in connection with securities transactions; or (iii) limit their participation to activities described in paragraph (a)(iii) of Rule 3a4-1.

415. The Insider Defendants knew that CAREIC was selling its securities through unlicensed broker dealers as well as unlicensed finders and consultants. Alternatively, the Insider Defendants should have known that CAREIC was offering securities through unlicensed broker dealers, finders, and / or consultants.

416. The Insider Defendants did not disclose the lack of registration to investors or the public. To the contrary, the Insider Defendants caused CAREIC to falsely represent in its PPMs and public filings that its securities would be sold by registered broker-dealers that are members of the National Association of Securities Dealers.

417. The Insider Defendants' conduct, and in particular, their sale of securities through unlicensed agents, violates Section 15(a) of the Exchange Act.

418. Pursuant to Section 29 of the Exchange Act, the Trustee is entitled to an order rescinding all sales that were commenced in violations of Section 15(a) of the Exchange Act, together with any additional relief required to return the parties to the position they had been in prior to the illegal sale. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

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THIRD CLAIM FOR RELIEF

(Improper Sales of Unregistered Securities – 15 USC § 77e)

419. The Trustee incorporates each of the preceding allegations by reference.

420. Under Section 5 of the Securities Act of 1933 ("the Securities Act"), it is unlawful to sell or offer to sell any security, unless a valid registration statement covering that security is in effect. None of the Defendants' securities, which were offered and sold to the public, were covered by a valid registration statement at any time.

421. The CAOP I PPM dated March 15, 2009, and the CAOP PPM dated October 1, 2009, purport to be private offerings that are exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder.

422. In fact, none of these offerings were exempt from registration. These offerings were not exempt because, among other things, the Defendants:

a. used general solicitation and advertising to market the securities;

b. sold the securities to investors who were not sophisticated within the meaning of the securities laws;

c. sold the securities in each offering to more than 35 non-accredited investors;

d. included in the PPMs false statements of material fact, and omitted other material facts that, in light of their representations, were necessary to render those representations not misleading; and

e. sold the securities to persons and in amounts that were directly contrary to the PPMs representations regarding those facts.

423. Each of these PPMs also states that the securities offered therein were offered only to "Accredited Investors." Contrary to this representation, each of the securities offering was in fact offered and sold to non-accredited investors.

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424. Each of these PPMs also states that there is a "minimum investment" in the offering. For instance, the CAREIC Series A PPM states that the minimum investment is $25,000. Contrary to this representation, each securities offering was in fact offered and sold in amounts less than the minimum investment.

425. CAREIC had no procedures in place to ensure that its unlicensed finders or consultants take proper measures to ensure investors were accredited.

426. Upon information and belief, CAOP I securities were sold to at least 36 persons who were not "accredited investors."

427. Upon information and belief, CAOP II securities were sold to at least 36 persons who were not "accredited investors."The Defendants' sale of 15 USC § 77e.The Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

430. Because the Insider Defendants conduct was sufficiently reckless and intentional, the Trustee is further entitled to an award of treble damages in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Common Law Fraud)

431. The Trustee incorporates each of the preceding allegations by reference.

432. Defendants, acting individually or through their authorized agents, have made one or more made a false representation of material fact in order to induce a purchase of securities. Specifically, Defendants have represented that:Falsely representing the purported experience of CAREIC's management team and breadth of transactions in promotional literature;

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- Falsely representing to investors that funds were being raised for single-purpose entities when, in fact, funds were being used indiscriminately by the Insider Defendants to fund whatever entity was in need of cash at any given time;

- Falsely representing to investors that their money would be devoted to CAOPs and related business operations when, in fact, funds were being used for general operations or excessive personal expenditures;

- Falsely representing in PPMs that no management fees would be paid for twelve months when, in fact, monies were being immediately transferred to operations;

- Falsely certifying the Company's public filings as discussed above;

- Comingling funds and manipulating accounting records to conceal the true financial condition of CAREIC and its Affiliated Debtors;

- Marketing CAOPs as "6-9 month" return of principal and interest vehicles when, in fact, the Insider Defendants knew that no return would be paid;

- Failing to disclose the findings of the Bouwhuis letter to investors or prospective investors;

- Misrepresenting the use of the proceeds of private placements, and in particular, concealing the fact that a significant percentage of proceeds were being directed to the Insider Defendants in the form of salaries and fees;

- Misrepresenting the status of various development projects in presentations to investors;

- Falsely representing in PPMs and public filings that CAREIC's securities would be sold by registered broker-dealers that are members of the National Association of Securities Dealers, when in fact, sales were occurring securities through unlicensed broker dealers, finders, and / or consultants;

- Falsely representing in PPMs that the securities offerings were exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder when, in fact, none of the offerings were exempt from registration;

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- Falsely representing in PPMs that the securities were being offered only to accredited investors, when in fact securities were being sold to unaccredited investors in amounts less than the purported minimum investment.

433. At the time Defendants made these misrepresentations, Defendants knew that the statements were false, or at a minimum, made the statement recklessly and without regard for the truth.

434. Defendants intended that investors would rely upon the statements, and made the representations with the intent of inducing potential investors to purchase securities and invest funds.

435. The investors reasonably relied upon the statement and have made substantial payments to the Defendants as a result of its misrepresentations.

436. The investors suffered damages as a result of the Defendants' conduct.

437. The investors' Individual Claims have been unconditionally assigned to the relevant Liquidating Trusts. As the duly-appointed Liquidating Trustee, the Trustee is duly-authorized to recover these damages for the benefit of the Liquidating Trusts.

438. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

439. Because the Defendants' conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

FIFTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

440. The Trustee incorporates each of the preceding allegations by reference.

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441. Defendants, acting individually or through their authorized agents, have made one or more made a false representation of material fact in order to induce a purchase of securities. Specifically, Defendants have represented that:

- Falsely representing the purported experience of CAREIC's management team and breadth of transactions in promotional literature;
- Falsely representing to investors that funds were being raised for single-purpose entities when, in fact, funds were being used indiscriminately by the Insider Defendants to fund whatever entity was in need of cash at any given time;
- Falsely representing to investors that their money would be devoted to CAOPs and related business operations when, in fact, funds were being used for general operations or excessive personal expenditures;
- Falsely representing in PPMs that no management fees would be paid for twelve months when, in fact, monies were being immediately transferred to operations;
- Falsely certifying the Company's public filings as discussed above;
- Comingling funds and manipulating accounting records to conceal the true financial condition of CAREIC and its Affiliated Debtors;
- Marketing CAOPs as "6-9 month" return of principal and interest vehicles when, in fact, the Insider Defendants knew that no return would be paid;
- Failing to disclose the findings of the Bouwhuis letter to investors or prospective investors;
- Misrepresenting the use of the proceeds of private placements, and in particular, concealing the fact that a significant percentage of proceeds were being directed to the Insider Defendants in the form of salaries and fees;
- Misrepresenting the status of various development projects in presentations to investors;
- Falsely representing in PPMs and public filings that CAREIC's securities would be sold by registered broker-dealers that are members of the National

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Association of Securities Dealers, when in fact, sales were occurring securities through unlicensed broker dealers, finders, and / or consultants;

- Falsely representing in PPMs that the securities offerings were exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder when, in fact, none of the offerings were exempt from registration;
- Falsely representing in PPMs that the securities were being offered only to accredited investors, when in fact securities were being sold to unaccredited investors in amounts less than the purported minimum investment.

442. At the time these material representations were made, the statements were not true.

443. Defendants failed to use reasonable care in making its representations, and were in a better position than investors to know the true facts.

444. Defendants intended that investors would rely upon the statements, and made the representations with the intent of inducing potential investors to purchase securities and invest funds.

445. The investors reasonably relied upon the statement and have made substantial payments to the Defendants as a result of its misrepresentations.

446. The investors suffered damages as a result of the Defendants' conduct.

447. The investors' Individual Claims have been unconditionally assigned to the relevant Liquidating Trusts. As the duly-appointed Liquidating Trustee, the Trustee is duly-authorized to recover these damages for the benefit of the Liquidating Trusts.

448. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

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449. Because the Defendants conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

SIXTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

450. The Trustee incorporates each of the preceding allegations by reference.

451. As officers and/or directors of CAREIC and each of the Affiliated Debtors, the Insider Defendants owed a fiduciary duty of care to CAREIC, the Affiliated Debtors, and their shareholders.

452. The duty of care required the Insider Defendants to exercise sound business judgment, in good faith, with the care of an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interest of CAREIC and the Affiliated Debtors.

453. The Insider Defendants were further obligated to use their ingenuity, influence, and energy, and to employ all the resources of the corporation, to preserve and enhance the property and earning power of the corporation, even if the interests of the corporation are in conflict with their own personal interests.

454. The Insider Defendants also owed a duty of loyalty to CAREIC and the Affiliated Debtors. That duty included, but is not limited to, the duty to disclose all conflicts of interest that might affect their duties and responsibilities to CAREIC and the Affiliated Debtors.

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455. The Insider Defendants breached their fiduciary duties to CAREIC and its Affiliated Debtors. Among other things, the Insider Defendants have breached their fiduciary duties by:

- Failing to provide oversight over the affairs CAREIC while devoting a majority of their time to alternative businesses;
- Paying the Insider Defendants exorbitant salaries, even though CAREIC and the Affiliated Debtors achieved no profits;
- Failing to disclose all transactions and business relationships between Geringer and Baillio;
- Failing to commence an action, on behalf of CAREIC, against Baillio within the applicable California statute of limitations, thereby resulting in the potential forfeiture of a $10.5 million claim;
- Co-mingling funds of the various affiliated entities and diverting the funds to purposes not disclosed to investors;
- Engaging in transactions that put their personal interests before the interests of CAREIC and its investors;
- Failing to act in good faith and with the care of an ordinarily prudent person in a like position;
- Wasting corporate assets and investors' money;
- Failing to enforce CAREIC's corporate governance procedures, audit policies, and compensation policies;
- Paying excessive compensation to Cochran, Child, Austin, Geringer and Feola;
- Utilizing CAREIC's resources and investor funds for unrelated entities and / or personal benefit;
- Contracting with Baillio for the sale of real property, without obtaining sufficient security and knowing that Baillio would be unable to fulfill his obligations;

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- Investing over $1 million in the acquisition of land in Imperial Valley California, without conducting any due diligence regarding developmental restrictions;

- Investing over $500,000 in a real property project in Lindale, Texas, without obtaining any valid security interest in the property, and without seeking any board oversight.

456. The Insider Defendants' conduct constitutes gross negligence, and violates their fiduciary duties.

457. The Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

458. Because Insider Defendants conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

SEVENTH CLAIM FOR RELIEF

(Civil Conspiracy)

459. The Trustee incorporates each of the preceding allegations by reference.

460. The Insider Defendants constitute a combination of two or more persons, who have acted together to defraud potential investors. The Insider Defendants have agreed to a course of action to cover up the true nature of their scheme to defraud.

461. As an overt act in furtherance of the conspiracy, the Insider Defendants have intentionally or negligently misrepresented the true state of CAREIC's business affairs to potential investors. Among other things, the Insider Defendants have lied to prospective investors about the use of investor funds, the risks associated with the investment, the

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purported compensation, commissions, and finders' fees paid to them and others, and the true financial condition of CAREIC.

462. The Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interests to the extent allowed by law.

463. Because Insider Defendants conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

EIGHTH CLAIM FOR RELIEF

(RICO – Violation of 18 U.S.C. §§ 1962(c) and (d))

464. The Trustee incorporates each of the preceding allegations by reference.

465. 18 U.S.C. § 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

466. 18 U.S.C. § 1962(d) makes it "unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

467. The individual Defendants are each a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

468. CAREIC and its Affiliated Debtors constitute an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) ("the Enterprise"). The Enterprise is directed by the Insider Defendants who solicited financing, developed, and implemented a fraudulent scheme.

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469. Under the veil of a legitimate business, the Defendants used the Enterprise to defraud investors and engage in broader misconduct. The Defendants further solicited third-party agents, including finders / consultants, to implement their scheme to defraud.

470. The common purpose of each of the members of the Enterprise was to fraudulently induce investors to place monies into the scheme so that the Defendants could siphon a profit from the Enterprise. The Defendants have engaged in this activity since approximately April 1, 2004.

471. The Defendants violated 18 U.S.C. § 1961(1) by engaging in "racketeering activity" including mail fraud, wire fraud, racketeering activity, and financial institution fraud. Specifically, Defendants engaged in a scheme or artifice to defraud to obtain money from investors by means of false or fraudulent pretenses, representations, and promises, including but not limited to:

- Falsely representing the purported experience of CAREIC's management team and breadth of transactions in promotional literature;
- Falsely representing to investors that funds were being raised for single-purpose entities when, in fact, funds were being used indiscriminately by the Insider Defendants to fund whatever entity was in need of cash at any given time;
- Falsely representing to investors that their money would be devoted to CAOPs and related business operations when, in fact, funds were being used for general operations or excessive personal expenditures;
- Falsely representing in PPMs that no management fees would be paid for twelve months when, in fact, monies were being immediately transferred to operations;
- Falsely certifying the Company's public filings as discussed above;

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- Comingling funds and manipulating accounting records to conceal the true financial condition of CAREIC and its Affiliated Debtors;
- Marketing CAOPs as "6-9 month" return of principal and interest vehicles when, in fact, the Insider Defendants knew that no return would be paid;
- Failing to disclose the findings of the Bouwhuis letter to investors or prospective investors;
- Misrepresenting the use of the proceeds of private placements, and in particular, concealing the fact that a significant percentage of proceeds were being directed to the Insider Defendants in the form of salaries and fees;
- Misrepresenting the status of various development projects in presentations to investors;
- Falsely representing in PPMs and public filings that CAREIC's securities would be sold by registered broker-dealers that are members of the National Association of Securities Dealers, when in fact, sales were occurring securities through unlicensed broker dealers, finders, and / or consultants;
- Falsely representing in PPMs that the securities offerings were exempt from registration under Section 4(2) of the Securities Act and Rule 506 promulgated under Regulation D thereunder when, in fact, none of the offerings were exempt from registration;
- Falsely representing in PPMs that the securities were being offered only to accredited investors, when in fact securities were being sold to unaccredited investors in amounts less than the purported minimum investment.

472. In violation of 18 U.S.C. § 1962(c), the Defendants conducted and / or participated in the conduct of the Enterprises' affairs, directly or indirectly, through a pattern of racketeering activity as described herein. The Defendants participated in the operation and management of the Enterprise.

473. In furtherance of this scheme to artifice, the RICO Defendants transmitted or caused to be transmitted by U.S. Mail or wire communication in interstate commerce the writings, presentations, PPMs, and other documents identified herein.

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474. In violation of 18 U.S.C. § 1344, the Defendants obtained moneys, funds, or other assets from investors under fraudulent pretenses and through misrepresentations.

475. The acts of fraud and racketeering activity identified herein constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5). The acts alleged were related to each other by virtue of common purpose and common result of fraudulently inducing investments in the Enterprise.

476. The Defendants committed and caused to be committed a series of overt acts in furtherance of the Enterprise and the conspiracy to affect the objects thereof, including but not limited to, the acts set forth in this complaint.

477. As the result of the Defendants' violations of 18 U.S.C. § 1962(c), investors in CAREIC have been damaged.

478. The investors' Individual Claims have been unconditionally assigned to the relevant Liquidating Trusts. As the duly-appointed Liquidating Trustee, the Trustee is duly-authorized to recover these damages for the benefit of the Liquidating Trusts.

479. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial.

480. Pursuant to 18 U.S.C. §§ 1962 and 1964, the Trustee is further entitled to an award of treble damages, attorneys' fees and costs of suit.

NINTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 548(a)(1)(A))

481. The Trustee incorporates each of the preceding allegations by reference.

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482. The Transfers as to each Defendant as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, made within two years of the Petition Date (the "Two Year Transfers"), to the extent they exist as to each Defendant, was a transfer of an interest of the relevant Debtors in property.

483. The Two Year Transfers or any obligation of the Debtors to make the Two Year Transfers were made or incurred with actual intent to hinder, delay or defraud the relevant Debtors' creditors.

484. Each of the Two Year Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 548(a)(1)(A).

TENTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 548(a)(1)(B))

485. The Trustee incorporates each of the preceding allegations by reference.

486. Each of the Two Year Transfers was a transfer of an interest of the Debtors in property.

487. The relevant Debtors did not receive reasonably equivalent value in exchange for the Two Year Transfers or any obligation of the Debtors to make the Two Year Transfers.

488. At the time the Two Year Transfers were made to each of the Defendants as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, or the obligations to the Defendants were incurred, the relevant Debtors (a) were insolvent or became insolvent as a result of the Transfers or the obligations incurred; (b) were engaged in a business or transaction, or were about to engage in a business or transaction for which any property remaining with the Debtors was unreasonably small capital; or (c) intended to incur, or

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believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

489. Alternatively, the Debtors made such Two Year Transfers to each of the Defendants as set forth on Exhibit ___ through Exhibit ___ to benefit the insider Defendants, or incurred obligations to the Defendants for the benefit of the insider Defendants, under an employment contract not in the ordinary course of business.

490. Each of the Two Year Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 548(a)(1)(B).

ELEVENTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 544(b) and Utah Code Annotated §§ 25-6-5(1)(a) and 25-6-8)

491. The Trustee incorporates each of the preceding allegations by reference.

492. At all relevant times hereto, the relevant Debtors had at least one unsecured creditor.

493. Each of the Transfers was a transfer of an interest of the relevant Debtors in property.

494. The Transfers to each Defendant as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein were made or were based on obligations incurred with actual intent to hinder, delay or defraud the relevant Debtors' creditors.

495. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8.

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TWELFTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 544(b) and

Utah Code Annotated §§ 25-6-5(1)(b) and 25-6-8)

496. The Trustee incorporates each of the preceding allegations by reference.

497. At all relevant times hereto, the relevant Debtors had at least one unsecured creditor.

498. Each of the Transfers was a transfer of an interest of the relevant Debtors in property.

499. The relevant Debtors did not receive reasonably equivalent value in exchange for each of the Transfers to each Defendant as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, or any obligation of the Debtors to make the Transfers.

500. At the time the Transfers were made or the obligations were incurred, the relevant Debtors (a) were engaged or were about to engage in a business or a transaction for which the remaining assets of the Debtors were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that they would incur debts beyond their ability to pay as they became due.

501. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8.

THIRTEENTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. §544(b) and

Utah Code Ann. §§ 25-6-6(1) and 25-6-8)

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502. The Trustee incorporates each of the preceding allegations by reference.

503. Each of the Transfers was a transfer of an interest of the relevant Debtors in property.

504. The relevant Debtors did not receive reasonably equivalent value in exchange for each of the Transfers to each Defendant as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, or any obligation of the Debtors to make the Transfers.

505. The relevant Debtors were insolvent at the time the Transfers or any obligations to make the Transfers were made, or became insolvent as a result of the Transfers.

506. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-6(1) and 25-6-8.

FOURTEENTH CLAIM FOR RELIEF

(Avoidance of Preferential Transfers Under 11 U.S.C. § 547(b))

507. The Trustee incorporates each of the preceding allegations by reference.

508. Each of the Transfers made to the Defendants as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, made within 90-days of the Petition Date or within one-year of the Petition Date (the “Preferential Transfers”) was a transfer of an interest of the Debtors in property.

509. To the extent that Defendants are found to be creditors, which is denied, the Preferential Transfers made by the Consolidated Legacy Debtors were made to or for the benefit of a creditor.

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510. Each of the Preferential Transfers made by the Consolidated Legacy Debtors to the Defendants were made for or on account of an antecedent debt owed by the Consolidated Legacy Debtors before such Transfers were made.

511. Each of the Preferential Transfers was made while the Consolidated Legacy Debtors were insolvent.

512. Each of the Preferential Transfers made by the Consolidated Legacy Debtors to each Defendant enabled such Defendant to receive more than such Defendant would receive if the bankruptcy cases were filed under Chapter 7, the Preferential Transfers had not been made, and the Defendants received payment of any debt they were entitled to under the Confirmed Plan.

513. Each of the Preferential Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 547(b).

FIFTEENTH CLAIM FOR RELIEF

(Recovery of Avoided Transfers Under 11 U.S.C. §§ 550 and 551)

514. The Trustee incorporates each of the preceding allegations by reference.

515. Each of the Two Year Transfers is avoidable under 11 U.S.C. §548(a)(1)(A) and/or (B).

516. Each of the Transfers is avoidable under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5, 25-6-6, and 25-6-8.

517. Each of the Transfers is avoidable under 11 U.S.C. § 547(b).

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518. The Trustee may recover from each of the Defendants and preserve for the benefit of the respective Trusts each of the Transfers as relating to each of the Defendants under 11 U.S.C. §§ 550 and 551.

SIXTEENTH CLAIM FOR RELIEF

(Disallowance of Claims—11 U.S.C. § 502)

519. The Trustee incorporates each of the preceding allegations by reference.

520. To the extent any of the Defendants assert a claim against the Debtors such claims, to the extent not asserted in the Insider Claims, cannot be asserted and are barred under applicable law, the Confirmed Plan and Confirmation Order.

521. The Child Claim, the Austin Claim and the Remaining Grundy Claim have not been allowed by the Bankruptcy Court and the Trustee hereby objects to them pursuant to 11 U.S.C. § 502(b) because, for all of the reasons set forth herein, they are not allowable claims or alternatively, they are not enforceable against the Debtors.

522. Each of the Transfers made to each of the Defendants as set forth on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, are avoidable by the Trustee under 11 U.S.C. §§ 544, 547 and/or 548(a).

523. The Insider Claims, to the extent that they have been or are allowed, must be disallowed under 11 U.S.C. § 502(d) , unless the applicable Defendant asserting an Insider Claim has paid the amount for which he is liable for the avoidable Transfers made to him.

SEVENTEENTH CLAIM FOR RELIEF

(Subordination – 11 U.S.C. § 510(c))

524. The Trustee incorporates each of the preceding allegations by reference.

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525. As set forth in all of the facts stated herein, the Defendants have engaged in wrongful behavior and acted in bad faith in relation to the Debtors

526. The Defendants actions have harmed its creditors and investors, all of whom are beneficiaries under the Trusts.

527. To the extent that the Insider Claims have been or are held to be allowed claims of any of the Defendants assert additional claims that are determined to be allowed claims, such claims must be subordinated pursuant to 11 U.S.C. § 510(c) and all applicable principles of equitable subordination incorporated by that section to all beneficiaries of the Trusts.

EIGHTEENTH CLAIM FOR RELIEF

(Constructive Trust)

528. The Trustee incorporates each of the preceding allegations by reference.

529. Each of the Transfers to Defendants were comprised of property of the Debtors and was made by the respective Debtors improperly or are based on illegal obligations.

530. Each of the Transfers can be traced to the wrongful behavior of the Debtors, their officers, and/or Defendants.

531. Allowing Defendant to retain any of the Transfers as set forth as to each Defendant on Exhibit __ through Exhibit __, which Exhibits are incorporated herein, would unjustly enrich the Defendants and would be inequitable.

532. An injustice would result if Defendants were allowed to keep their respective Transfers.

533. A constructive trust for the benefit of the respective Liquidating Trusts must be imposed in the amount of the Transfers made to each of the Defendants.

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NINETEENTH CLAIM FOR RELIEF

(Unjust Enrichment and Disgorgement)

534. The Trustee incorporates each of the preceding allegations by reference.

535. Each of the Transfers to each of the Defendants as set forth as to each Defendant on Exhibit __ through Exhibit __, which Exhibits are incorporated herein were comprised of property of the Debtors.

536. The Transfers to each of the Defendants conferred a benefit upon that Defendant.

537. Upon information and belief, each Defendant knowingly benefited from the Transfers made to him.

538. Allowing Defendants to retain the Transfers made to each of them would unjustly enrich the Defendants and would be inequitable.

539. Absent return of the Transfers, the Liquidating Trusts will be damaged by Defendants' unjust enrichment and may have no adequate remedy at law.

540. Defendants must disgorge the total amount of the Transfers applicable to them for the benefit of the respective Liquidating Trusts.

VII. PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully prays for relief as follows:

A. On the First Claim for Relief, for an award of actual and punitive damages in an amount to be proven at trial.

B. On the Second Claim for Relief, for an order rescinding all sales of securities that were commenced in violations of Section 15(a) of the Exchange Act, together with any

additional relief required to return the parties to the position they had been in prior to the illegal sale.

C. On the Third Claim for Relief, for an award of actual and treble damages in an amount to be proven at trial.

D. On the Fourth Claim for Relief, for an award of actual and punitive damages in an amount to be proven at trial.

E. On the Fifth Claim for Relief, for an award of actual and punitive damages in an amount to be proven at trial.

F. On the Sixth Claim for Relief, for an award of actual damages in an amount to be proven at trial.

G. On the Seventh Claim for Relief, for an award of actual and punitive damages in an amount to be proven at trial.

H. On the Eighth Claim for Relief, for an award of actual and treble damages in an amount to be proven at trial.

I. On the Ninth Claim for Relief, avoidance of the Two Year Transfers.

J. On the Tenth Claim for Relief, for avoidance of the Two Year Transfers.

K. On the Eleventh Claim for Relief, for avoidance of the Transfers.

L. On the Twelfth Claim for Relief, for avoidance of the Transfers.

M. On the Thirteenth Claim for Relief, for avoidance of the Transfers.

N. On the Fourteenth Claim for Relief, avoidance of the Preferential Transfers.

O. On the Fifteenth Claim for Relief, recovery of the avoided Transfers.

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P. On the Sixteenth Claim for Relief, for disallowance of any Claims asserted by the Defendants.

Q. On the Seventeenth Claim for Relief, for subordination of any Claim of the Defendants that has been or may be determined to be an allowed Claim.

R. On the Eighteenth Claim for Relief, for the imposition of a constructive trust.

S. On the Nineteenth Claim for Relief, for a judgment for unjust enrichment and a judgment ordering the disgorgement of the Transfers.

T. For pre-judgment interest, attorneys' fees, and costs of suit to the extent allowed by applicable federal or state law.

U. For any other relief as the Court deems appropriate.

DATED this _____ day of October, 2013.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden
Milo Steven Marsden
Peggy Hunt
Attorneys for D. Ray Strong, Liquidating Trustee

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