

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-CV-01997-WYD-CBS

MONICA ARIOWITSCH, a natural person; NANCY SMITH, a natural person; CRAIG C. NELSON, a natural person; HAROLD NELSON, a natural person; PAT HUEY, a natural person; RICHARD DEEM, a natural person; CINDY LAWRENCE, a natural person; WILLIAM H. SIMMONS, a natural person; DAVID GORDON, a natural person; and, ANTHONY CHARA, a natural person.

Plaintiffs,

v.

RMT COTTAGES, LLC, a Tennessee Limited Liability Company; RPL PROPERTIES, LLC, a Tennessee Limited Liability Company; RARITY COMMUNITIES, INC., a Tennessee Corporation; FIRST TENNESSEE BANK, N.A., a Tennessee Corporation; and DAVID H. ROOS, a natural person.

Defendants.

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**THIRD AMENDED VERIFIED COMPLAINT**

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**COME NOW** the Plaintiffs, Monica Ariowitsch, Nancy Smith, Craig C. Nelson, Harold Nelson, Pat Huey, Richard Deem, Cindy Lawrence, William H. Simmons, David Gordon, and Anthony Chara, by and through their attorneys, Howard O. Bernstein, P.C., and for a Third Amended Verified Complaint state and aver as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Monica Ariowitsch (hereinafter “Ms. Ariowitsch”), a natural person, resides at 1845 Deer Valley Road Boulder, Colorado 80305.
2. Plaintiff Nancy Smith (hereinafter “Ms. Smith”), a natural person, resides at 400 S. Lafayette Street, Suite 802, Denver, Colorado 80209.

3. Plaintiff Craig C. Nelson (hereinafter “Mr. C. Nelson”), a natural person, resides at 0090 Heritage Park Place, Edwards, Colorado 81632.
4. Plaintiff Harold Nelson (hereinafter “Mr. H. Nelson”), a natural person, resides in Vermont and his address is P.O. Box 697, Londonderry, Vermont 05148.
5. Plaintiffs Pat Huey (hereinafter “Mr. Huey”), a natural person, resides at 1504 Adonia Circle, Lafayette, Colorado 80026.
6. Plaintiff Richard Deem (hereinafter “Mr. Deem”), a natural person, resides at 4800 West 80<sup>th</sup> Avenue, Suite 100, Westminster, Colorado 80030.
7. Plaintiff Cindy Lawrence (hereinafter “Ms. Lawrence”), a natural person, resides at 992 Sycamore Avenue, Boulder, Colorado 80303.
8. Plaintiff William H. Simmons (hereinafter “Mr. Simmons”), a natural person, resides at 509 Drawdy Way, Sebastian, Florida 32958.
9. Plaintiff David Gordon (hereinafter “Mr. Gordon”), a natural person, resides at 10431 Carriage Club Dr., Lone Tree, Colorado 80124.
10. Plaintiff Anthony Chara (hereinafter “Mr. Chara”), a natural person, resides at 18200 E. Asbury Place, Aurora, Colorado 80013.
11. Defendant RMT Cottages, LLC (hereinafter “RMT”), a Tennessee limited liability company, is located and does business at 100 Rarity Bay Parkway, Vonore, Tennessee 37885.
12. Defendant RPL Properties, LLC (hereinafter “RPL”), a Tennessee limited liability company, is located and does business at 2624 Carpenters Grade Rd., Maryville, Tennessee 37803.

13. Defendant Rarity Communities Inc., (hereinafter “Rarity Communities”), a Tennessee corporation, is located and does business at 150 Rarity Bay Parkway, Vonore, Tennessee 37885.

14. Defendant David H. Roos (hereinafter “Mr. Roos”), a natural person, who resides at 3125 Lakeside Commons Drive, Southport, North Carolina, 28462.

15. Defendant First Horizon National Corporation d/b/a First Tennessee Bank, N.A. (hereinafter “First Tennessee Bank”), a Tennessee corporation, is located and does business at 165 Madison Avenue, Memphis, Tennessee 38103.

16. This action presents a claim under the laws of the United States for which the District Courts of the United States have original jurisdiction pursuant to 15 U.S.C. § 1719, et seq.

17. The District Courts of the United States have supplemental jurisdiction over the State claims made by Plaintiffs, which Plaintiffs assert are part of the same case or controversy, pursuant to 28 U.S.C. § 1367(a).

18. In addition, this action presents a claim under the laws of the United States for which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1332, et seq.

### **BACKGROUND**

19. In or around 2006, Mr. Michael Kass (“Mr. Kass”), president of Dharma Mountain, LLC and Dharma Investment Group, LLC (“Dharma”), presented Plaintiffs with an investment opportunity through Dharma, whereby Plaintiffs would purchase a residential property in the Rarity Mountain and/or Rarity Pointe subdivisions prior to the general release of properties in the Rarity Mountain subdivision in Jellico, Tennessee,

and in the pre-construction phase in the Rarity Pointe subdivision in Lenoir City, Tennessee.

20. Pursuant to this investment opportunity, Dharma would then resell the investment property, approximately two years later, through a Joint Venture Arrangement, and presumably earn a 500% return on the investment.

21. Dharma had secured 100% financing with First Tennessee Bank for its investors who were willing to purchase Rarity Mountain and Rarity Pointe properties in the pre-release and pre-construction stage.

22. Rarity Mountain and Rarity Pointe are two of nine “Rarity Community” subdivisions.

23. The Rarity Communities include over one-thousand subdivision lots.

24. The Rarity Communities are advertised as an upscale housing development with nine separate unique subdivisions, each offering unique upscale amenities.

25. Rarity Mountain is advertised as an upscale mountain resort community equipped with equestrian facilities, hiking/biking trails, tennis courts, swimming pools, country club and a Jack Nicklaus golf course, SUV driving course, shooting range, rock climbing and other amenities.

26. Upon information and belief, RMT provides sales services for Rarity Mountain.

27. Rarity Pointe is advertised as an upscale lake resort community equipped with a championship golf course, miles of walking trails, a wellness center and clubhouse, yacht club, swimming pools, tennis courts, and other amenities.

28. Upon information and belief, RPL provides sales services for Rarity Pointe.

29. Mr. Michael Ross (hereinafter “Mr. Ross”), a principal owner and developer of the Rarity Communities, is the sole owner of RPL.

### **JOINT VENTURE AGREEMENT: RARITY MOUNTAIN**

30. Plaintiffs Ms. Ariowitsch, Mr. C. Nelson, Mr. H. Nelson, Mr. Huey, and Mr. Gordon (the “Rarity Mountain Plaintiffs”) purchased properties in the Rarity Mountain subdivision through Dharma.

31. The Rarity Mountain Plaintiffs each entered into individual Joint Venture Agreements with Dharma.

32. The individual Joint Venture Agreements contained identical terms whereby Dharma would assist the Plaintiffs in obtaining financing to purchase their respective properties, obtain the properties for less than fair market value, manage the properties by paying the properties’ monthly mortgage payments, direct the properties sales approximately two years later, and earn a large return on the investment.

33. The Dharma marketing material that was presented to potential investors, including the Rarity Mountain Plaintiffs stated that investors in Rarity Mountain would receive an “Outrageous ROI (CONSERVATIVELY projected at 500%).”

34. The Joint Venture Agreements state in relevant part that the Plaintiffs agree to “sell and Rarity Mountain Club agrees to buy the Rarity Mountain Founder’s Golf Club Membership (which is included with the purchase of the Property) for the sum of Seventy Five Thousand (\$75,000.00) Dollars. These funds shall be placed in an escrow account to be held by DM (Dharma) and subsequently used to pay the monthly mortgage payments obtained by PARTY 1 (Plaintiffs).”

**JOINT VENTURE AGREEMENT: RARITY POINTE**

35. Plaintiffs Ms. Smith, Mr. Deem, Ms. Lawrence, Mr. Simmons, Mr. Gordon, and Mr. Chara (the “Rarity Pointe Plaintiffs”) purchased properties in the Rarity Pointe subdivision through Dharma.

36. Plaintiffs Ms. Smith, Ms. Lawrence, Mr. Simmons, Mr. Gordon, and Mr. Chara each entered into individual Joint Venture Agreements with Dharma.

37. Plaintiff Mr. Deem never executed a Joint Venture Agreement with Dharma.

38. The individual Joint Venture Agreements contained similar terms whereby Dharma would assist the Plaintiffs in obtaining financing to purchase their respective properties, obtain the properties for less than fair market value, manage the properties by paying the properties’ monthly mortgage payments, supervise the properties’ construction, and direct the properties’ sale.

39. Ms. Lawrence and Mr. Simmons, Mr. Chara, and Mr. Gordon’s, Joint Venture Agreements also stated that “it is agreed that the Property will be listed for sale no later

than Eight (8) months from the date of this Agreement and the Property sold to the first bona-fide purchaser for a reasonable purchase price.”

40. Although Mr. Deem never executed the Joint Venture Agreement with Dharma, Mr. Deem received a Joint Venture Agreement from Dharma that stated “it is agreed that the Property will be listed for sale no later than Eight (8) months from the date of this Agreement and the Property sold to the first bona-fide purchaser for a reasonable purchase price.”

41. Ms. Smith’s Joint Venture Agreements stated that “it is agreed that the Property will be listed for sale no later than Eighteen (18) months from the date of this Agreement and the Property sold to the first bona-fide purchaser for a reasonable purchase price.”

42. In addition, after Ms. Smith purchased the properties, Defendant Rarity Communities and RPL refunded to Ms. Smith ten percent (10%) of her properties’ purchase price over twelve (12) months.

### **HOMESITE PURCHASE AGREEMENTS**

43. Upon information and belief, Mr. David Roos, a real estate sales agent for the Rarity Communities, provided Mr. Kass with several blank Homesite Purchase Agreements.

44. Upon information and belief, Mr. Kass entered into several Homesite Purchase Agreements and purchased several properties within the Rarity Mountain and Rarity Pointe subdivisions from Mr. Roos, which Mr. Kass intended to assign to various third party purchasers.

45. RMT and RPL were aware of Mr. Kass's plan to assign the Homesite Purchase Agreements to various third party purchasers. RMT and RPL even negotiated changes to the terms of the Homesite Purchase Agreements to accommodate Mr. Kass's assignment plans.

46. Mr. Roos traveled to Colorado on more than one occasion to assist Mr. Kass in soliciting Rarity Community property sales to Colorado residents, including to some of the Plaintiffs.

47. Mr. Roos, RMT and RPL knew or had reason to know that Mr. Kass intended to enter into Joint Venture Agreements to manage the Rarity Community properties with third party purchasers because Mr. Kass and Mr. Roos worked together in Colorado at real estate conferences, jointly soliciting the Rarity Community property sales and the Joint Venture arrangements.

#### **HOMESITE PURCHASE AGREEMENTS: RARITY MOUNTAIN**

48. Upon information and belief, on or about March 17, 2006, Mr. Kass entered into Homesite Purchase Agreements with Mr. Roos and RMT to purchase the following lots in the Rarity Mountain Subdivision: Lot 28, Lot 30, Lot 38, Lot 40, Lot 53, and Lot 71.

49. Mr. Kass assigned Rarity Mountain Subdivision Lot 38 to Mr. C. Nelson on or about May 8, 2006. Rarity Mountain Subdivision Lot 38 Homesite Purchase Agreement is attached hereto as Ex.1.

50. Mr. C. Nelson signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 38 Agreement, and Mr. Kass assigned the Rarity Mountain Subdivision Lot 38 Agreement to Mr. C. Nelson on or about May 8, 2006.



51. Mr. C. Nelson purchased the assigned Homesite Purchase Agreement for \$445,000.00.

52. Mr. Kass assigned Rarity Mountain Subdivision Lot 53 to Mr. C. Nelson on or about July 12, 2006. Rarity Mountain Subdivision Lot 53 Homesite Purchase Agreement is attached hereto as Ex.2.

53. Mr. C. Nelson signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 53 Agreement, and Mr. Kass assigned the Rarity Mountain Subdivision Lot 53 Agreement to Mr. C. Nelson on or about July 12, 2006.

54. Mr. C. Nelson purchased the assigned Lot 53 Agreement for \$445,000.00.

55. Mr. Kass assigned Rarity Mountain Subdivision Lot 40 to Mr. Gordon on or about July 11, 2006. Rarity Mountain Subdivision Lot 40 Homesite Purchase Agreement is attached hereto as Ex.3.

56. Mr. Gordon signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 40 Agreement, and Mr. Kass assigned the Rarity Mountain Subdivision Lot 40 Agreement to Mr. Gordon on or about July 11, 2006.

57. Mr. Gordon purchased the assigned Rarity Mountain Subdivision Lot 40 Agreement for \$445,000.00.

58. Mr. Kass assigned Rarity Mountain Subdivision Lot 71 to Ms. Ariowitsch on or about September 14, 2006. Rarity Mountain Subdivision Lot 71 Homesite Purchase Agreement is attached hereto as Ex.4.

59. Ms. Ariowitsch signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 71 Homesite Purchase Agreement, on or about September 14, 2006.

60. Ms. Ariowitsch purchased the assigned Homesite Purchase Agreement for \$445,000.00.

61. Mr. Kass assigned Rarity Mountain Subdivision Lot 28 to Mr. H. Nelson in or around October 2006.

62. Upon information and belief, Mr. H. Nelson signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 28 Agreement, and Mr. Kass assigned the Rarity Mountain Subdivision Lot 28 Agreement to Mr. H. Nelson on or around October, 2006.

63. Mr. Nelson purchased the assigned Rarity Mountain Subdivision Lot 28 Agreement for \$445,000.00.

64. Mr. Kass assigned Rarity Mountain Subdivision Lot 30 to Mr. Huey on or about November 21, 2006. Rarity Mountain Subdivision Lot 30 Homesite Purchase Agreement is attached hereto as Ex.5.

65. Mr. Huey signed Addendum D, an assignment clause to the Rarity Mountain Subdivision Lot 30 Agreement, and Mr. Kass assigned the Rarity Mountain Subdivision Lot 30 Agreement to Mr. Huey on or about November 21, 2006.

66. Mr. Huey purchased the assigned Rarity Mountain Subdivision Lot 30 Agreement for \$445,000.00.

67. Upon information and belief, Mr. Kass did not receive Property Reports for Rarity Mountain Subdivision Lots 28, 30, 38, 40, 53, and 71 at or before closing.

68. Mr. Kass purchased the Rarity Mountain Subdivision properties in his own name, and specifically included on the first page of the Homesite Purchase Agreements that the Buyer was Michael Kass or Assigns.

69. Upon information and belief, Paragraph 17 of the Homesite Purchase Agreements states for all Rarity Mountain Plaintiffs that “Buyer represents that it is buying the Lot for itself, and not for any other person or entity.”

70. Mr. Kass negotiated with RMT to allow for an assignment of the Homesite Purchase Agreements.

71. Most of the Rarity Mountain Plaintiffs obtained their mortgages to assume the Homesite Purchase Agreements with 100% financing through First Tennessee Bank.

72. Plaintiff Mr. C. Nelson obtained a mortgage to assume the Rarity Mountain Subdivision Lot 38 Homesite Purchase Agreement through Sun Trust Bank.

73. Assurance Title Company, LLC (“ATC”) performed the underwriting on the mortgages for all of the Rarity Mountain Plaintiffs, except for Mr. C. Nelson, Mr. H. Nelson, and Mr. Gordon.

74. Mr. Michael Ross is or was an owner of ATC.

75. With the exception of Mr. Gordon, Mr. C. Nelson and Mr. H. Nelson, \$100,000.00 of the total \$445,000.00 purchase prices was utilized to purchase a membership in the Rarity Mountain Golf Club. Settlement statements are attached hereto as Ex. 6.

76. Mr. C. Nelson and Mr. H. Nelson were only charged \$25,000.00 for the Golf Club membership fee.

77. Upon information and belief, Paragraph 12 of the Homesite Purchase Agreements state in part for all Rarity Mountain Plaintiffs that “Buyer agrees and the deed of conveyance to Buyer shall provide that Buyer shall be required to maintain, at a minimum, a ‘Social Membership’ in the Golf Club.”

78. All of the Rarity Mountain Plaintiffs, including Mr. Gordon, Mr. C. Nelson and Mr. H. Nelson, received a \$75,000.00 refund for their Golf Club memberships after they closed on the sale of their respective properties.

79. Dharma agreed to place each of the Rarity Mountain Plaintiffs' \$75,000.00 Golf Club membership refunds in escrow to pay their respective property's monthly mortgage payment.

80. Upon information and belief, Dharma never placed the \$75,000.00 refunds in escrow.

81. Dharma defaulted on all of the Rarity Mountain Plaintiffs' mortgage payments.

82. Upon information and belief, RMT retained the remaining \$25,000.00 of the Golf Club membership fees.

83. Upon information and belief, RMT never granted Mr. Kass a Warranty Deed for any of the Rarity Mountain properties he assigned to the Rarity Mountain Plaintiffs.

84. RMT refunded the Rarity Mountain Plaintiffs' Golf Club membership fees in spite of the language included in paragraph 12 of the Homesite Purchase Agreement requiring a minimum "Social Membership" in the Golf Club.

85. Mr. C. Nelson has made payments on the Rarity Mountain Subdivision Lot 38 mortgage totaling approximately \$49,000.00.

86. Mr. C. Nelson has made payments on the Rarity Mountain Subdivision Lot 53 mortgage totaling approximately \$39,500.00.

87. Mr. Gordon has made payments on the Rarity Mountain Subdivision Lot 40 mortgage totaling approximately \$21,113.00.

88. Ms. Ariowitsch has made payments on the Rarity Mountain Subdivision Lot 71 mortgage totaling approximately \$34,875.56.

89. Mr. H. Nelson has made payments on the Rarity Mountain Subdivision Lot 28 mortgage totaling approximately \$32,088.00.

90. Mr. Huey has made payments on the Rarity Mountain Subdivision Lot 30 mortgage totaling approximately \$40,500.00.

91. Upon information and belief, Defendants failed to Provide Dharma and/or Ms. Ariowitsch with a Property Report pursuant to 15 U.S.C. §1707 et. seq.

92. Ms. Ariowitsch discovered Defendants' failure to provide a Property Report in violation of 15 U.S.C. §1701, the Interstate Land Sales Full Disclosure Act ("ILSFDA") in or about August 2008.

93. Since discovering Defendants' violation of the ILSFDA, Ms. Ariowitsch has made repeated requests, both written and oral, that Defendants rescind the Homesite Purchase Agreement and refund Ms. Ariowitsch's money. Copies of Ms. Ariowitsch's written requests are attached hereto as Ex. 7.

94. Defendants refuse to rescind the Homesite Purchase Agreement and refund Ms. Ariowitsch's money.

#### **HOMESITE PURCHASE AGREEMENTS: RARITY POINTE**

95. Upon information and belief, Mr. Kass entered into Homesite Purchase Agreements with Mr. Roos and RPL to purchase the following lots in the Rarity Pointe Subdivision: Lot 225, Lot 260, and Lot 281.

96. Mr. Kass entered into the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 260 in or around January 2006.

97. Mr. Kass assigned the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 260 to Mr. Gordon on or about January 26, 2006. Rarity Pointe Subdivision Lot 260 Homesite Purchase Agreement is attached hereto as Ex. 8.

98. Mr. Gordon signed Addendum F, an assignment clause to the Rarity Pointe Subdivision Lot 260 Agreement, and Mr. Kass assigned the Rarity Pointe Subdivision Lot 260 Agreement to Mr. Gordon on or about January 25, 2006.

99. Mr. Gordon purchased the assigned Rarity Pointe Subdivision Lot 260 Agreement for \$310,900.00.

100. Mr. Kass entered into the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 225 on or about January 31, 2006.

101. Mr. Kass assigned the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 225 to Mr. Chara on or about February 1, 2006. Rarity Pointe Subdivision Lot 225 Homesite Purchase Agreement is attached hereto as Ex. 9.

102. Mr. Chara signed Addendum G, an assignment clause to the Rarity Pointe Subdivision Lot 225 Agreement, and Mr. Kass assigned the Rarity Pointe Subdivision Lot 225 Agreement to Mr. Chara on or about February 1, 2006.

103. Mr. Chara purchased the assigned Rarity Pointe Subdivision Lot 225 Agreement for \$425,900.00.

104. Mr. Kass entered into the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 281 on or about January 24, 2006.

105. Mr. Kass assigned the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 281 to Mr. Simmons and Ms. Lawrence on or about February 2, 2006.

Rarity Pointe Subdivision Lot 281 Homesite Purchase Agreement is attached hereto as Ex.10.

106. Mr. Simmons and Ms. Lawrence signed Addendum F, an assignment clause to the Rarity Pointe Subdivision Lot 281 Agreement, and Mr. Kass assigned the Rarity Pointe Subdivision Lot 281 Agreement to Mr. Simmons and Ms. Lawrence on or about February 2, 2006.

107. Mr. Simmons and Ms. Lawrence purchased the assigned Rarity Pointe Subdivision Lot 225 Agreement for \$225,900.00.

108. Ms. Smith entered into the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 278 with RPL, and through Mr. Kass on or about November 3, 2005. Rarity Pointe Lot 278 Homesite Purchase Agreement is attached hereto as Ex. 11.

109. Ms. Smith purchased the Rarity Pointe Subdivision Lot 278 Agreement for \$231,900.00.

110. Ms. Smith entered into the Homesite Purchase Agreement for Rarity Pointe Subdivision Lot 287 with RPL, and through Mr. Kass on or about November 3, 2005. Rarity Pointe Lot 287 Homesite Purchase Agreement is attached hereto as Ex. 12.

111. Ms. Smith purchased the Rarity Pointe Subdivision Lot 287 Agreement for \$252,900.00.

112. On or about January 24, 2006 Mr. Roos purchased Rarity Pointe Subdivision Lot 293 for \$195,000.00.

113. On or about March 20, 2006 Mr. Deem entered into a Resale Purchase Agreement For Rarity Pointe Subdivision Lot 293 with Mr. Roos. Resale Purchase Agreement For Rarity Pointe Subdivision Lot 293 is attached hereto as Ex. 13.

114. Mr. Deem was informed by Mr. Roos and Mr. Kass that he was purchasing a Rarity Pointe Subdivision lot from the Rarity Communities.

115. Mr. Deem was informed by Mr. Roos and Mr. Kass that Mr. Roos would be acting as his real estate agent at the property's closing.

116. Because Mr. Deem was not present at the property's closing, he did not know that Mr. Roos was actually the property's seller.

117. Mr. Deem relied upon Mr. Roos to execute all necessary purchase documents at the property's closing.

118. Mr. Deem did not discover that he purchased the property from Mr. Roos, and not from the Rarity Communities, until recently.

119. Mr. Deem purchased the Rarity Pointe Subdivision Lot 293 for \$240,000.00.

120. Upon information and belief, RPL never granted Mr. Kass a Warranty Deed for any of the Rarity Pointe properties he assigned to the Rarity Pointe Plaintiffs.

121. All of the Rarity Pointe Plaintiffs were required to pay \$20,000.00 towards a Rarity Pointe Club membership fee.

122. The \$20,000.00 Rarity Pointe Club membership fee appears in connection with the loan in Mr. Deem, Mr. Chara, Mr. Gordon, Mr. Simmons and Ms. Lawrence, and Ms. Smith's Lot 287 settlement statements' Settlement Charges. Settlement statements are attached hereto as Ex. 14.

123. The \$20,000.00 Rarity Pointe Club membership fee does not appear in Ms. Smith's Lot 278 settlement statement's settlement charges. Ms. Smith obtained her Lot 278 mortgage through Wachovia Bank, not First Tennessee Bank.



124. ATC performed the underwriting on all of the Rarity Pointe Plaintiffs' mortgages.

125. Mr. Chara has made payments on the Rarity Pointe Subdivision Lot 225 mortgage totaling approximately \$ 39,295.18.

126. Mr. Gordon has made payments on the Rarity Pointe Subdivision Lot 260 mortgage totaling approximately \$10,213.00.

127. Mr. Simmons and Ms. Lawrence have made payments on the Rarity Pointe Subdivision Lot 281 mortgage totaling approximately \$131,000.00.

128. Ms. Smith has made payments on the Rarity Pointe Subdivision Lot 278 mortgage totaling approximately \$27,101.20.

129. Ms. Smith has made payments on the Rarity Pointe Subdivision Lot 287 mortgage totaling approximately \$33,916.74.

130. Mr. Deem has paid off the entirety of his mortgage on the Rarity Pointe Subdivision Lot 293.

### **FIRST TENNESSEE BANK MORTGAGES**

131. Mr. Kass informed the Rarity Mountain Plaintiffs that Dharma had secured 100% financing with First Tennessee Bank for its investors who were willing to purchase Rarity Mountain properties in the pre-release stage.

132. Mr. Kass also informed the Rarity Mountain Plaintiffs that they could obtain a mortgage very easily through First Tennessee Bank based on their respective credit ratings.

133. All of the Plaintiffs were advised by Mr. Kass that they should use First Tennessee Bank to obtain 100% of the necessary financing to purchase the properties.

134. Mr. Huey is the only Plaintiff who did not receive some financing through First Tennessee Bank.

135. Upon information and belief, Dharma had pre-negotiated all of the investment finance details with First Tennessee Bank, thereby allowing potential investors to secure 100% loan financing with no documentation.

136. The following Rarity Mountain Plaintiffs obtained mortgages through First Tennessee: Ms. Ariowitsch for Lot 71; Mr. C. Nelson for Lot 53; Mr. H. Nelson for Lot 28; and Mr. Gordon for Lot 40.

137. Mr. C. Nelson obtained a mortgage for Lot 38 with SunTrust Bank. Sun Trust Bank did not use ATC to underwrite Mr. C. Nelson's mortgage for Lot 38, and SunTrust Bank obtained a property appraisal for Lot 38 prior to the property's closing.

138. Upon information and belief, First Tennessee Bank did not perform any due diligence in connection with approving mortgages for Plaintiffs, nor did it order valuations or obtain comparables on the pre-release and pre-construction investments.

139. Instead, First Tennessee Bank hired ATC to perform the underwriting on all of the Plaintiffs' mortgages that it processed, except the mortgage for Mr. C. Nelson and Mr. H. Nelson.

140. Mr. Ross, as principal owner and developer of the Rarity Communities, and owner of ATC, had a clear interest in making sure Dharma's investors could obtain financing for the Rarity Community properties.

141. Upon information and belief, ATC did not obtain any information supporting the purchase price of the properties prior to their sale to Plaintiffs.

142. Upon information and belief, Mr. Ross, as owner and developer of the Rarity Communities, determined the purchase prices for the Rarity Community properties.

143. ATC performed the underwriting on all of the Plaintiffs' mortgages, except for Mr. H. Nelson's mortgage.

144. The following Rarity Pointe Plaintiffs obtained mortgages through First Tennessee: Mr. Chara for Lot 225; Mr. Gordon for Lot 260; Mr. Simmons and Ms. Lawrence for Lot 281; Mr. Deem for Lot 293; and Ms. Smith for Lot 278.

145. The settlement statements for all of the Rarity Pointe Plaintiffs who obtained mortgages through First Tennessee Bank contained miscellaneous and unaccounted for expenses, including fees payable to "LTR".

146. The following fees have been included in the Rarity Pointe Plaintiffs' mortgage settlement statements: Mr. Chara, Lot 225: \$42,863.00 for LTR; Mr. Gordon, Lot 260: \$30,719.04 for LTR; Mr. Simmons and Ms. Lawrence, Lot 281: \$21,743.04 for LTR; and Ms. Smith: Lot 278, \$20,041.00 for LTR as well as an RPL seller's rebate of \$23,190.00.

147. Upon information and belief, "LTR" is LTR Properties, Inc.

148. Mr. Ross is the sole owner of LTR Properties, Inc.

149. Upon information and belief, ATC routinely prepared two sets of settlement statements with differing entries under the heading "Summary of Seller's Transaction."

150. Upon information and belief, the property sellers would receive accurate settlement statements, but the property purchasers would receive false settlement statements.

151. The following Plaintiffs all received short-term mortgages, with terms between one and three years, through First Tennessee Bank: Ms. Ariowitsch for Lot 71; Mr. C. Nelson for Lot 53; Mr. H. Nelson for Lot 28; Mr. Gordon for Lot 40; Mr. Chara for Lot 225; Mr. Gordon for Lot 260; Mr. Simmons and Ms. Lawrence for Lot 281; Mr. Deem for Lot 293; and Ms. Smith for Lot 278.

152. First Tennessee Bank knew or had reason to know that the Plaintiffs' properties listed in paragraph 151 above were being offered as short term investments.

#### **MISREPRESENTATIONS BY RMT, RPL, AND RARITY COMMUNITIES**

153. Mr. Kass assured the Plaintiffs that their investments in the Rarity Community properties were sound because they would be "constructed by the highly respected developer Mike Ross."

154. Plaintiffs were also assured that the Rarity Pointe and Rarity Mountain subdivisions' extensive amenities made the properties highly desirable. Promotional information is attached hereto as Ex. 15.

155. In or around 2006, Mr. Roos traveled to Colorado on several occasions to present at real estate conferences with Mr. Kass.

156. Mr. Roos solicited sales in the Rarity Mountain and Rarity Pointe subdivisions at Colorado real estate conferences with Mr. Kass.

157. Mr. Roos made numerous representations to the Rarity Pointe Plaintiffs that it was essential to invest in the Rarity Pointe properties in the pre-construction phase, and before all of the Rarity Pointe community amenities were completed to assure a maximum return on investment.

158. Upon information and belief, Defendant Rarity Communities directed its sales staff to make definite promises regarding the availability and completion dates for various Rarity Pointe facilities and amenities, knowing that such promises would not and could not be kept.

159. Mr. Roos made representations to the Rarity Pointe Plaintiffs that the Rarity Pointe community amenities would be completed within eighteen (18) months from the Rarity Pointe Plaintiffs' date of purchase, or around the summer of 2007.

160. In addition, Mr. Roos represented that the \$20,000.000 Rarity Pointe Club fee charged to the Rarity Pointe Plaintiffs with the purchase of their properties included membership in the Rarity Pointe private marina and golf course.

161. The Rarity Pointe marina and golf course are actually public.

162. RPL and First Tennessee Bank included payment to LTR, an unexplained and otherwise unidentified entity, in the following settlement statements: Mr. Chara, Lot 225; Mr. Gordon, Lot 260; Mr. Simmons and Ms. Lawrence, Lot 281; Mr. Deem, Lot 293; and Ms. Smith's Lot 278.

163. To date, upon information and belief, the majority of the promised Rarity Pointe community amenities, including the marina, golf course, and lodge have not been completed.

164. RPL and Rarity Communities have failed to develop the promised amenities, which has reduced the properties' desirability and significantly diminished the promised return on investment to the Rarity Pointe Plaintiffs.

165. Upon information and belief, Rarity Communities, acting by and/or through RPL, sold lots in Rarity Pointe to the Rarity Communities' employees and sales agents at

substantial discounts below the properties' fair market values with the intention and knowledge that such individuals would, and did re-sell the lots at a significant gain.

166. Mr. Roos made numerous representations to the Rarity Mountain Plaintiffs that it was essential to invest in Rarity Mountain properties in the pre-release stage, or before the properties were offered to the general public in order to assure a maximum return on investment.

167. In or around September 2006, Mr. Roos told Ms. Ariowitsch that at least 50% of the lots in the Rarity Mountain subdivision had already been sold.

168. Mr. Roos made the same representation to Mr. Gordon, Mr. C. Nelson and Mr. Huey before they purchased their lots.

169. Upon information and belief, approximately 15 % of the Rarity Mountain subdivision lots have been sold.

170. The substantial availability of property in the Rarity Mountain subdivision makes the Rarity Mountain Plaintiffs' properties far less valuable than the Rarity Mountain Plaintiffs were led to believe before they invested.

171. Mr. Roos also told the Rarity Mountain Plaintiffs that the Rarity Mountain subdivision would be developed within 18 months from their date of purchase, in or around the summer of 2008.

172. Upon information and belief, the Rarity Mountain subdivision does not have any roads, tennis courts, equestrian facilities or other amenities promised by RMT.

173. RMT and Rarity Communities have failed to begin developing most of the amenities promised, which has reduced the properties' desirability and significantly diminished the promised return on investment to the Rarity Mountain Plaintiffs.

174. The Rarity Mountain Plaintiffs relied upon Mr. Roos's material misrepresentations in deciding to purchase lots in the Rarity Mountain subdivision.

**FIRST CLAIM FOR RELIEF**

(Breach of Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701 et seq. –  
Against Defendants Rarity Communities, RPL and RMT)

175. Plaintiffs reallege and incorporate all previous paragraphs by reference.

176. Defendant is a developer, within the definition provided in 15 U.S.C. §1701(5), of a subdivision, as defined in 15 U.S.C. §1701(3), known as Rarity Mountain located in the City of Jellico, County of Campbell, State of Tennessee.

177. Defendants are not exempt from the ILSFDA pursuant to 15 U.S.C. § 1702 because the Rarity Communities have a "common promotional plan" as defined in 15 U.S.C. §1701(4).

178. On or about March 17, 2006, Mr. Kass entered into the Homesite Purchase Agreement with RMT to purchase Ms. Ariowitsch's Rarity Mountain property, Lot 71.

179. Ms. Ariowitsch's property is described in the Homesite Purchase Agreement as Lot 71, Phase I, Subdivision Rarity Mountain.

180. On or about September 14, 2008, Ms. Ariowitsch entered into an agreement with Mr. Kass of Dharma to assume his interest in the Homesite Purchase Agreement. Ms. Ariowitsch assumed his rights in the Property.

181. Ms. Ariowitsch purchased the Property for \$445,000.00.

182. Ms. Ariowitsch purchased the Property as an investment.

183. Dharma had secured 100% financing with First Tennessee Bank for its investors who were willing to purchase Rarity Mountain properties in the pre-release stage.

184. Ms. Ariowitsch acquired a mortgage to assume the Homesite Purchase Agreement with 100% financing through First Tennessee Bank.

185. To date, Ms. Ariowitsch has made payments on her property mortgage totaling approximately \$34,875.56.

186. Upon information and belief, Defendants failed to Provide Dharma and/or Ms. Ariowitsch with a Property Report pursuant to 15 U.S.C. §1707 et. seq.

187. Ms. Ariowitsch discovered Defendants' violation of 15 U.S.C. §1701 in or about August 2008.

188. Since discovering Defendants' violation of the ILSFDA, Ms. Ariowitsch has made repeated requests, both written and orally, that Defendants rescind the Homesite Purchase Agreement and refund Ms. Ariowitsch's money.

189. Defendants refuse to rescind the Homesite Purchase Agreement and refund Ms. Ariowitsch's money.

190. Ms. Ariowitsch has been injured by this failure of Defendants, in that she remains personally liable for all outstanding mortgage payments.

191. Wherefore, Ms. Ariowitsch has been damaged in an amount to be determined at trial.

## **SECOND CLAIM FOR RELIEF**

(Rarity Mountain Fraud – Against All Defendants)

192. Plaintiffs reallege and incorporate all previous paragraphs by reference.

193. Defendants made false representations to Plaintiffs of material facts, including but not limited to: (a) claiming in 2006 that 50% of the Rarity Mountain subdivision lots had been sold; (b) representing that the Rarity Mountain amenities would be completed



within 18 months, or by the summer of 2008; (c) entering into the Homesite Purchase Agreement with Mr. Kass while failing to provide him with any record title in the properties; (d) providing an unsubstantiated and inaccurate value for the properties; (e) providing title underwriting to Rarity Mountain Plaintiffs through a title company in which Mr. Ross had an undisclosed ownership interest ; and (f) other representations to be proven at trial.

194. Defendants knew that such representations were false.

195. Rarity Mountain Plaintiffs did not know that such representations were false.

196. Defendants made such misrepresentations with the intention that they be acted upon by the Rarity Mountain Plaintiffs.

197. The Rarity Mountain Plaintiffs reasonably took action in reliance on such misrepresentations, including, but not limited to, assuming the Homesite Purchase Agreements from Mr. Kass; acquiring mortgages through First Tennessee Bank to purchase their properties as an investment; allowing Defendants to refund \$75,000.00 of the Golf Club membership fee while retaining the remaining \$25,000.00; placing the \$75,000.00 Golf Club membership refund in escrow with Dharma in a Joint Venture Investment Agreement to pay the properties' monthly mortgage payments; and other actions to be proven at trial.

198. This reliance resulted in damage to the Rarity Mountain Plaintiffs in an amount to be determined at trial.

### **THIRD CLAIM FOR RELIEF**

(Rarity Pointe Fraud –Against All Defendants)

199. Plaintiffs reallege and incorporate all previous paragraphs by reference.

200. Defendants made false representations to the Rarity Pointe Plaintiffs of material facts, including but not limited to: (a) including payments to an entity the Rarity Pointe Plaintiffs did not know was owned by Mr. Ross in Mr. Chara's Lot 225, Mr. Gordon's Lot 260, Mr. Simmons and Ms. Lawrence's Lot 281, Mr. Deem's Lot 293, and Ms. Smith's Lot 278 settlement statements; (b) representing that the Rarity Pointe amenities would be completed within 18 months, or by the summer of 2008; (c) representing that the Rarity Pointe marina and golf course would be private; (d) entering into the Homesite Purchase Agreement with Mr. Kass while failing to provide him with any record title in the properties; (e) providing an unsubstantiated and inaccurate value for the properties; (f) providing title underwriting to Rarity Pointe Plaintiffs through a title company in which Mr. Ross had an undisclosed ownership interest ; and (g) other representations to be proven at trial.

201. Defendants knew that such representations were false.

202. The Rarity Pointe Plaintiffs did not know that such representations were false.

203. Defendants made such misrepresentations with the intention that they be acted upon by the Rarity Pointe Plaintiffs.

204. The Rarity Pointe Plaintiffs reasonably took action in reliance on such misrepresentations, including, but not limited to, assuming the Homesite Purchase Agreements from Mr. Kass and Mr. Roos; entering into Homesite Purchase Agreements with RPL; acquiring mortgages through First Tennessee Bank to purchase their properties

as an investment; paying a \$20,000.00 membership fee in the Rarity Pointe Club; and other actions to be proven at trial.

205. This reliance resulted in damage to the Rarity Pointe Plaintiffs in an amount to be determined at trial.

#### **FOURTH CLAIM FOR RELIEF**

(Negligent Misrepresentation/Non-Disclosure Against All Defendants)

206. Plaintiffs reallege and incorporate all previous paragraphs by reference.

207. Defendants supplied false information and/or failed to disclose material facts to the Plaintiffs regarding the status and financing of the Rarity Pointe and Rarity Mountain properties under circumstances in which they had a duty to disclose such information.

208. Defendants supplied such false information and/or failed to disclose such material facts in the course of their business dealings with the Plaintiffs, knowing that their misrepresentations and/or failures of disclosure would induce the Plaintiffs to act with respect to their purchases of the properties, and with the intent to guide the Plaintiffs in their purchases of their properties.

209. Defendants failed to exercise reasonable care or competence in communicating the false information and/or failing to disclose material facts to the Plaintiffs.

210. As a direct and proximate result of Defendants' misrepresentations and/or failures to disclose material facts, the Plaintiffs have and will continue to incur damages, expenses, and other losses in an amount to be proven at trial.

## **FIFTH CLAIM FOR RELIEF**

(Negligence Against All Defendants)

211. Plaintiffs reallege and incorporate all previous paragraphs by reference.

212. Defendant First Tennessee Bank owed Plaintiffs a duty to conduct reasonable due diligence prior to approving their mortgages, obtain an independent title company to perform all necessary underwriting, and disclose or reject any unaccounted for charges in the settlement statements.

213. As a direct and proximate result of Defendant First Tennessee Bank's actions and/or inactions, the Plaintiffs have and will continue to incur damages, expenses, and other losses in an amount to be proven at trial.

214. Defendants Rarity Communities, RMT, RPL, and Mr. Roos had a duty to disclose all known facts regarding the development of the Rarity Mountain and Rarity Pointe communities, and the ownership relations between Mr. Ross, Rarity Communities, RMT, RPL, and LTR.

215. As a direct and proximate result of Defendants Rarity Communities, RMT, RPL, and Mr. Roos' actions and/or inactions, the Plaintiffs have and will continue to incur damages, expenses, and other losses in an amount to be proven at trial.

## **SIXTH CLAIM FOR RELIEF**

(Unjust Enrichment Against All Defendants)

216. Plaintiffs reallege and incorporate all previous paragraphs by reference.

217. The Plaintiffs conferred a benefit on Defendants by purchasing the properties at the contract prices, and thereby enabling the payment of real estate commissions,

mortgage payments, and other unaccounted for and/or undisclosed fees to First Tennessee Bank, Mr. Roos, the Rarity Communities, RPL and/or RMT.

218. Under the circumstances described herein, it would be unjust for Defendants to retain the benefits conferred upon them without compensating the Plaintiffs for their damages, expenses, and other losses incurred as a result of Defendants' acts and omissions.

### **SEVENTH CLAIM FOR RELIEF**

(Breach of Duty Against Defendant Roos)

219. Plaintiffs reallege and incorporate all previous paragraphs by reference.

220. Mr. Roos acted as Mr. Deem's agent at the closing of Mr. Deem's Rarity Pointe property.

221. Mr. Roos, in acting as Mr. Deem's agent, owed a duty to Mr. Deem.

222. Mr. Roos breached his duty to Mr. Deem by failing to disclose the nature of Mr. Roos's involvement in the property sale.

223. As a direct and proximate result of Defendant Roos' breach of duty, Plaintiff Deem has and will continue to incur damages, expenses, and other losses in an amount to be proven at trial.

### **EIGHTH CLAIM FOR RELIEF**

(Respondeat Superior Against Defendants Rarity Communities, RPL, and RMT)

224. Plaintiffs reallege and incorporate all previous paragraphs by reference.

225. At all relevant times, Mr. Roos was employed as a real estate broker by Defendants Rarity Communities, RPL, and/or RMT.

226. As Mr. Roos's employer and/or principal, Defendants Rarity Communities, RPL, and/or RMT are liable to the Plaintiffs for his negligence.

**NINTH CLAIM FOR RELIEF**

(Breach of Contract Against Defendants Rarity Communities, RMT and RPL)

227. Plaintiffs reallege and incorporate all previous paragraphs by reference.

228. The Rarity Mountain Plaintiffs entered into and/or assumed the Homesite Purchase Agreements.

229. Dharma had the authority to assign the Homesite Purchase Agreements.

230. The Rarity Mountain Plaintiffs substantially performed all of their duties under the Homesite Purchase Agreements.

231. Upon information and belief, all conditions precedent to performance under the Homesite Purchase Agreements were met.

232. Defendants have breached the Homesite Purchase Agreements by failing to comply with paragraph 12 of the Homesite Purchase Agreements by refunding the Golf Club membership fee; and/or in other ways to be proven at trial.

233. Wherefore, the Rarity Mountain Plaintiffs has been damaged in an amount to be determined at trial.

**TENTH CLAIM FOR RELIEF**

(Civil Conspiracy Against All Defendants)

234. Plaintiffs reallege and incorporate all previous paragraphs by reference.

235. Defendants and Dharma, jointly and severally, had a common purpose to injure Plaintiffs' financial position by inducing Plaintiffs to purchase properties in the

Rarity Mountain and Rarity Pointe subdivisions as investment properties with an assured return on investment after a two-year period.

236. Defendants and Dharma, jointly and severally, agreed to pursue this common purpose.

237. Defendants took overt actions in furtherance of this purpose, including, but not limited to, misrepresenting the nature of the Homesite Purchase Agreement; misrepresenting the value of the properties; negotiating short-term loans for the pre-released and pre-construction Rarity Community properties without substantiating the properties' values; misrepresenting Mr. Kass's ownership interest in the properties; misrepresenting Mr. Roos's ownership interest in Mr. Deem's property; misrepresenting the percentage of lots sold in the Rarity Mountain subdivision; misrepresenting the expected completion period for the Rarity Mountain and Rarity Pointe subdivision amenities; including unexplained payments to an entity owned by Mr. Ross entities in Mr. Chara's Lot 225, Mr. Gordon's Lot 260, Mr. Simmons and Ms. Lawrence's Lot 281, Mr. Deem's Lot 293, and Ms. Smith's Lot 278 settlement statements ; representing that the Rarity Pointe marina and golf course would be private; amending the terms of the Homesite Purchase Agreement to allow Dharma the ability to assign the Homesite Purchase Agreements to investors who would be bound by Dharma's fraudulent Joint Venture property management scheme; and in other ways to be proven at trial.

238. Plaintiffs have suffered substantial monetary damages as a result of these actions, in an amount to be determined at trial.

**ELEVENTH CLAIM FOR RELIEF**

(Rescission Against All Defendants)

239. Plaintiffs reallege and incorporate all previous paragraphs by reference.

240. Upon information and belief, Defendants failed to provide Mr. Kass and/or Plaintiffs with a Property Report in violation of 15 U.S.C. §1707 et seq.; Defendants provided Plaintiff s with pre-negotiated loans for properties Defendants improperly valued; Defendants induced Plaintiffs to assume and/or enter into the Homesite Purchase Agreements based on fraudulent misrepresentations; and Defendants amended the terms of the Homesite Purchase Agreement to allow Dharma and/or Mr. Kass the ability to assign the Homesite Purchase Agreements to investors who would be bound by its fraudulent Joint Venture property management scheme.

241. Plaintiffs have suffered substantial damages as a result of these actions and Defendants' breach of 15 U.S.C. § 1707, entitling Plaintiff to rescind the Homesite Purchase Agreement.

**TWELVTH CLAIM FOR RELIEF**

(Offer or Sale of Unregistered Securities –Against Defendants Rarity Communities, RMT, RPL and Roos)

242. Plaintiffs reallege and incorporate all previous paragraphs by reference.

243. The properties and/or investment opportunities offered and sold by Defendants and their agents as described in this Complaint are “securities” in that they are “investment contracts” as defined in C.R.S. 11-51-201 (17).

244. By engaging in the conduct described above, Defendants made “offers” or “sales” of securities in Colorado pursuant to C.R.S. 11-51-102 (1), and C.R.S. 11-51-201(13).



245. Defendants failed to register the securities in violation of C.R.S. 11-51-301.

246. Plaintiffs are entitled to an award of damages, interest, costs, and attorneys fees pursuant to C.R.S. 11-51-604 and restitution, rescission, disgorgement, and other equitable relief to be determined at trial.

### **THIRTEENTH CLAIM FOR RELIEF**

(Unlicensed Sales Representative Activity –Against Defendants Rarity Communities, RMT, RPL and Roos )

247. Plaintiffs reallege and incorporate all previous paragraphs by reference.

248. By engaging in the conduct described above, Mr. Roos and Mr. Kass acted as “sales representatives” as defined in C.R.S. 11-51-201(14) in that they are individuals either authorized to act and acting for an issuer in effecting or attempting to effect sales of the issuer’s own securities and performing no other function for the issuer other than their sales representative role.

249. At no time were Mr. Roos and Mr. Kass licensed, or exempt from license, as “sales representatives” or registered in any capacity with the Commissioner as required by C.R.S. 11-51-401 and 402.

250. Defendants Rarity Communities, RPL, and RMT employed or otherwise engaged unlicensed sales agents to act as sales representatives in Colorado in violation of C.R.S. 11-51-401(2).

251. Plaintiffs are entitled to an award of damages, interest, costs, and attorneys fees pursuant to C.R.S. 11-51-604 and restitution, rescission, disgorgement, and other equitable relief to be determined at trial.

**FOURTEENTH CLAIM FOR RELIEF**  
(Securities Fraud –Against All Defendants )

252. Plaintiffs reallege and incorporate all previous paragraphs by reference.

253. In connection with the offer, sale, or purchase of securities in Colorado, the Defendants, directly or indirectly:

- a. Employed a device, scheme, or artifice to defraud;
- b. Made written and oral untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. Engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit on investors;

In violation of C.R.S. 11-51-501(1).

254. The Defendants offered or sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading (the buyers not knowing of the untruths or omissions), and therefore Defendants are liable to the Plaintiffs for damages under C.R.S. 11-51-604(4), based on violations of C.R.S. 11-51-501.

255. Defendants engaged in acts, practices, and/or a course of business which operated or would operate as a fraud or deceit upon Plaintiffs as is explained in this Complaint, and therefore, is liable to the Plaintiffs for damages under C.R.S. 11-51-604, based on violations of C.R.S. 11-51-501.

256. Plaintiffs are entitled to an award of damages, interest, costs, and attorneys fees pursuant to C.R.S. 11-51-604 and restitution, rescission, disgorgement, and other equitable relief to be determined at trial.

**FIFTEENTH CLAIM FOR RELIEF**

(Aiding and Abetting –Against All Defendants )

257. Plaintiffs reallege and incorporate all previous paragraphs by reference.

258. Mr. Kass and Dharma recklessly, knowingly, and/or with an intent to defraud Plaintiffs, sold securities, i.e., the Joint Venture Agreements, in violation of C.R.S. 11-51-501.

259. Mr. Kass and Dharma offered or sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading (the buyers not knowing of the untruths or omissions).

260. Defendants knew or had reason to know that Mr. Kass, Dharma and/ or, upon information and belief, Mr. Roos engaged in conduct which constitutes violations of C.R.S. 11-51-501 and gave substantial assistance to such conduct.

261. Defendants are, therefore, jointly and severally liable to the same extent as Mr. Kass and Dharma to Plaintiffs pursuant to C.R.S. 11-51-604(5)(c).

**SIXTEENTH CLAIM FOR RELIEF**

(Violations of the Securities Act of 1933 Section 5(a) Registration Requirement and the Securities and Exchange Act of 1934 15 U.S.C. 78 et.seq. –Against All Defendants)

262. Plaintiffs reallege and incorporate all previous paragraphs by reference.

263. The properties and/or investment opportunities offered and sold by Defendants and their agents as described in this Complaint are “securities” in that they are “investment contracts” as defined in 15 U.S.C. 77(b).

264. Defendants, directly or indirectly, made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any security, without filing a registration statement as to the security in violation of 15 U.S.C. 77(e). The securities were required to be, but were not registered for sale.

265. Plaintiffs are entitled to an award of damages, interest, costs, and attorneys fees pursuant to 15 U.S.C. 77(l) and restitution, rescission, and other equitable relief to be determined at trial.

#### **SEVENTEENTH CLAIM FOR RELIEF**

(Violations of the Securities Act of 1933 (15 U.S.C. 77(q)) and the Securities and Exchange Act of 1934, Rule 10(b)(5) (15 U.S.C. 78j) –Against All Defendants )

266. Plaintiffs reallege and incorporate all previous paragraphs by reference.

267. In connection with the offer, sale, or purchase of securities in Colorado, the Defendants, directly or indirectly:

- a. Employed a device, scheme, or artifice to defraud;
- b. Made written and oral untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. Engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit on investors;

In violation of 15 U.S.C. 77(q).

268. The Defendants offered or sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading (the buyers not knowing of the untruths or omissions), and therefore Defendants are liable to the Plaintiffs for damages under U.S.C. 77 et. seq. and 78 et.seq, and SEC Rule 10(b)(5).

269. Plaintiffs are entitled to an award of damages, interest, costs, and attorneys fees pursuant to U.S.C. 77(l) and restitution, rescission, and other equitable relief to be determined at trial.

**WHEREFORE**, Plaintiffs, Ms. Ariowitsch, Mr. C. Nelson, Mr. H. Nelson, Mr. Huey, Mr. Gordon, Ms. Smith, Mr. Deem, Ms. Lawrence, Mr. Simmons, and Mr. Chara request the entry of judgment in their favor and against Defendants in an amount to be determined at trial, including actual and consequential damages, economic and non-economic damages, punitive damages, statutory damages including attorney fees and costs incurred in pursuing this matter, pre- and post- judgment interest, rescission and for such other and further relief as this Court deems just and proper.

Respectfully submitted this 30th day of April, 2009.

HOWARD O. BERNSTEIN, P.C.

*/s/ Howard O. Bernstein*

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