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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DENNIS S. FAULKNER, as Trustee of the REL Liquidating Trust,	§	
Plaintiff,	§	**Civil Action No. _____**
v.	§	
ROTUNDA PARTNERS II, LLC and LEONARD EPSTEIN,	§	
Defendants.	§	

ORIGINAL COMPLAINT

Dennis S. Faulkner (the "Trustee"), in his capacity as Trustee of the REL Liquidating Trust (the "Trust"), the successor-in-interest to certain causes of action previously held by R.E. Loans, LLC ("REL" or the "Debtor"), brings this action against Rotunda Partners II, LLC and Leonard Epstein (collectively, the "Defendants"), and alleges as follows:

I. NATURE OF THE ACTION

1. REL was a real estate investment fund in which more than 1,400 people—many of whom were retirees investing their life savings—have lost hundreds of millions of dollars because of the fraud and misconduct of the insiders controlling REL. Defendants to this action

were "net winners"—investors who, unlike most, profited from their investment in the REL fraud.

2. REL's insiders knew that the company was doomed to fail by July 2007 because: (a) REL had committed undisclosed securities law violations since its inception; (b) REL, on advice of counsel, had stopped accepting new investments as a result of these violations; (c) REL had stopped receiving loan repayments from a significant portion of its loan portfolio due to its poor loan origination and underwriting practices and the collapsing real estate market; (d) REL had little hope of receiving significant principal repayments as to other loans in its portfolio given that 85% of the portfolio did not mature for another two to six years; (e) REL had stopped making new loans to borrowers and, therefore, would not be receiving principal and interest repayments on future loans; (f) REL had engaged in Ponzi-like activity to address and conceal its severe liquidity needs; and (g) REL faced the need to fund more than $200 million in future loan commitments to its existing borrowers.

3. Rather than disclosing these pervasive problems when they arose, REL's insiders concealed them and sought to wrongfully postpone the inevitable—a bankruptcy filing—so they could continue to receive millions of dollars in personal transfers from REL and affiliated entities. However, to keep their own personal payments flowing, the insiders had to cause REL to make regular payments to investors in REL, or else the true financial condition of REL would be revealed. Thus, every payment to the investors in REL helped to perpetrate the insider's fraud, wrongfully prolong REL's existence outside of bankruptcy, and lure in more investors and creditors.

4. REL's insiders sought to prolong REL's existence outside of bankruptcy through a three-part strategy. First, to solve its immediate liquidity crisis, REL entered into $50 million

(and later increased to a $65 million) secured loan from Wells Fargo Capital Finance, LLC ("Wells Fargo"), even though much of that loan was used to line the insiders' pockets and make payments to investors. Second, after closing that loan, REL entered into a so-called exchange transaction designed to conceal its securities law violations from existing investors. Many investors received payments from REL pursuant to this transaction, born of the insiders' deceit and greed. Third, the insiders solicited funds from new investors for a new related entity, MF08, which then funneled money to REL in order to conceal its ongoing losses and to ensure that the REL would be able to make distributions its existing investors. Together, this strategy enabled the insiders to prolong REL's life outside of bankruptcy and reap the continued benefits of their fraud.

5. The entire fraudulent scheme ultimately collapsed, leaving thousands of people collectively with millions of dollars in losses. Indeed, many of REL's insiders have been charged by the Securities and Exchange Commission for some of the misconduct described in this Complaint. By this action, the Trustee seeks to recover transfers made to Defendants, those who actually profited from the insider misconduct, for the benefit of all of REL's creditors.

6. Accordingly, the Trustee brings this action against Defendants, asserting the following claims: (a) claims for avoidance of fraudulent transfers under 11 U.S.C. § 544(b) and California Civil Code §§ 3439.04(a)(1) and 3439.07(a)(1); and (b) claims for recovery of such transfers under 11 U.S.C. § 550(a).

II. PARTIES

A. The Plaintiff

7. On September 13, 2011 (the "Petition Date"), REL, R.E. Future, LLC ("RE Future"), and Capital Salvage, a California corporation ("Capital Salvage") (collectively, the

"Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). REL is a California limited liability company with its headquarters and principal place of business previously located in Lafayette, California. RE Future, a wholly owned subsidiary of REL, is also a California limited liability company with its headquarters and principal place of business previously located in Lafayette, California. Capital Salvage, another wholly owned subsidiary of REL, is a California corporation with its headquarters and principal place of business previously located in Lafayette, California.

8. The Trust was created pursuant to the Modified Fourth Amended Joint Chapter 11 Plan of Reorganization (the "Plan"), confirmed by the Bankruptcy Court on June 26, 2012, and that certain Liquidating Trust Agreement and Declaration of Trust, effective June 29, 2012. The Plan expressly retained certain causes of action belonging to the Debtors, including the causes of action asserted in this action, for enforcement by the Trust under 11 U.S.C. § 1123(b).

9. The Trust is a grantor trust organized under Texas law. The Trustee, who is a citizen of the State of Texas, serves as trustee of the Trust.

B. The Defendants

10. Defendant Rotunda Partners II, LLC ("Rotunda", upon information and belief, is a California limited liability company with its principal place of business in the State of California. Rotunda may be served with process by serving its agent for service of process, Leonard Epstein, at 300 Frank H. Ogawa Plaza, Suite 340, Oakland, California 94612.

11. Defendant Leonard Epstein, an individual and a citizen of the State of California, may be served with process at 300 Frank H. Ogawa Plaza, Suite 340, Oakland, California 94612.

C. Relevant Non-Parties

12. B-4 Partners, LLC ("B-4 Partners") is a California limited liability company with its headquarters and principal place of business located in Lafayette, California. B-4 Partners was the sole manager of REL from its inception in January 2002 through the Petition Date. B-4 Partners has been the sole member of REL since November 2007. During the relevant time periods, the members and managers of B-4 Partners were as follows:

a. Prior to September 24, 2009, Walter Ng and Bruce Horwitz served as the managers of B-4 Partners, and the following individuals were members of B-4 Partners: Walter Ng (25%), Barney Ng (25%), Kelly Ng (25%), and Bruce Horwitz (25%);

b. On September 24, 2009, Bruce Horwitz resigned as a manager of B-4 Partners and sold his interest in B-4 Partners to Kelly Ng;

c. From September 24, 2009 to September 12, 2011, Walter Ng and Kelly Ng served as the managers of B-4 Partners, and the following individuals were members of B-4 Partners: Walter Ng (25%), Barney Ng (25%), and Kelly Ng (50%); and

d. On September 12, 2011, Walter Ng resigned as a manager of B-4 Partners.

13. Bar-K, Inc. ("Bar-K") is a California corporation with its headquarters and principal place of business located in Lafayette, California. Bar-K originated and serviced loans for REL. Barney Ng and Kelly Ng each own a 50% equity interest in Bar-K. Barney Ng served as the president of Bar-K prior to September 2009, and Kelly Ng has served as its president since September 2009.

14. Mortgage Fund '08, LLC ("MF08") is a California limited liability company with its headquarters and principal place of business previously located in Lafayette, California. The sole member and manager of MF08 is The Mortgage Fund, LLC. MF08 was a debtor in a Chapter 11 bankruptcy case (Case No. 11-49803) filed in the United States Bankruptcy Court for

the Northern District of California, Oakland Division. Pursuant to the confirmed Chapter 11 plan in that case, MF08's assets have been transferred to a liquidating trust.

15. The Mortgage Fund, LLC ("Mortgage Fund") is a California limited liability company with its headquarters and principal place of business located in Lafayette, California. Walter Ng and Kelly Ng, are the members of the Mortgage Fund and served as the managers of the Mortgage Fund until September 12, 2011. Kelly Ng has served as the manager of the Mortgage Fund since September 12, 2011.

16. Walter Ng, Bruce Horwitz, Barney Ng, and Kelly Ng are all California residents.

III. JURISDICTION AND VENUE

17. The Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331, in that the action involves causes of action under the Bankruptcy Code. In addition, this Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. §§ 157(a) and 1334(b), in that the action arises in and/or relates to the bankruptcy cases filed by the Debtors in the Bankruptcy Court in this district.

18. Venue for the action in this Court is proper under 28 U.S.C. § 1409(a) as it is commenced in the district in which the bankruptcy cases filed by the Debtors are pending.

IV. BACKGROUND

A. REL's Origins and Business Model

19. In the 1950s and 1960s, Walter Ng originated and serviced loans made by himself and his clients, individual investors, and secured by real property (usually through second and third trust deeds). In 1975, Walter Ng and his two sons, Barney Ng and Kelly Ng, formed Bar-K to serve as the entity to originate and service these secured loans on behalf of the individual investors. Bruce Horwitz, a former investor himself, joined the business in approximately 1980.

20. In the mid 1980s, Bar-K introduced a new loan product to its business—first trust deeds with up to a six-year maturity. To meet growing demand for these new loans, Walter Ng and Bruce Horwitz formed several limited partnerships, which: (a) raised and pooled money from investors; (b) provided limited partnership interests to the investors in exchange for their investments; and (c) funded the loans originated and serviced by Bar-K. Walter Ng and Bruce Horwitz also formed B-4 Partners to manage these limited partnerships.

21. The creation of limited partnerships not only made it easier for Bar-K to originate loans, but also made the investment more attractive for some investors. First, using pooled investor funds in the limited partnerships, Bar-K could respond more rapidly to loan requests from borrowers and could fund larger loans. Second, by investing in the limited partnerships, investors could keep their funds continuously invested, spread their exposure across more loans, and make incremental additional investments, all while enjoying the benefit of a more liquid investment structure. Between 1986 and 2001, B-4 Partners formed nine of these limited partnerships.

22. In 2001, Walter Ng and Bruce Horwitz decided to merge the nine limited partnerships into a single entity. Thus, REL was formed in 2002 as the successor entity resulting from the merger of these limited partnerships. The assets, liabilities, and operations of these limited partnerships were consolidated into REL, and their limited partners (*i.e.*, the investors) became members of REL. Although the limited partnerships were consolidated into REL effective January 2003, the actual loans made by the limited partnerships were not transferred to REL until September 2003.

23. Like the predecessor limited partnerships, REL: (a) was managed by B-4 Partners; (b) made secured loans to residential and commercial real estate developers; (c) used Bar-K to

originate and service those loans; and (c) raised capital to fund those loans by selling equity interests to investors. Even though these equity interests constituted securities, REL did not register its offerings with the U.S. Securities and Exchange Commission (the "SEC"). Instead, REL sold its membership interests as unregistered offerings under section 25113(b)(1) of the California Corporations Code and sections 3(a)(11) and 12(g) of the Securities and Exchange Act of 1934.

B. REL's Early Growth from 2002 to 2004

24. REL experienced significant growth in its loan portfolio from 2002 to 2004. Specifically, the loan portfolio grew as follows: (a) $121.9 million as of December 31, 2002; (b) $201.1 million as of December 31, 2003; (c) $288.7 million as of December 31, 2004. Much of this growth was fueled by contributions from investors who had invested directly in fractionalized loans originated and serviced by Bar-K.

25. As of December 31, 2003, Bar-K was still servicing approximately $330 million in loans on behalf of 1,500 investors holding fractionalized interests in such loans. These loans accounted for more than one-third of the loans serviced by Bar-K. REL's loans accounted for less than two-thirds of the loans serviced by Bar-K.

26. As investors were repaid on their fractionalized loans during 2003 and 2004, many of them re-invested the funds in REL (in part due to regulatory restrictions allowing no more than ten investors in any fractionalized loan, making it more difficult for investors to find suitable investments). By December 31, 2004, REL's loan portfolio had grown to $288.7 million and accounted for nearly 90% of the loans serviced by Bar-K. REL's management attributed approximately $80 million of this growth to contributions from investors who had previously

invested in fractionalized loans and then decided to re-invest the funds in REL as their loans were repaid.

27. Thus, by the end of 2004, REL essentially amounted to a consolidation of nine limited partnerships and individual investors in fractionalized loans. By the end of 2005, the consolidation of the partnerships and virtually all individual investors was complete, with REL's loan portfolio of $450 million accounting for virtually 100% of loans serviced by Bar-K.

C. REL's Rapid Growth from 2004 to 2006

28. In order to fund loans prior to REL's creation, Bar-K needed to gather funds from some combination of the limited partnerships and individual investors. California regulations required such funds to be placed in a trust account until a loan could be funded. The need to aggregate funds from multiple sources and the regulatory requirement to deposit investor funds in a trust account separate and apart from borrower payments significantly limited Bar-K's ability: (a) to fund large loans; and (b) to fund loans quickly. Bar-K could fund a loan only to the extent that it had fresh cash from investors and/or the limited partnerships available at any given time.

29. As a result of these business and regulatory constraints, Bar-K was unable to fund large loans in excess of $20 million. Each limited partnership's outstanding loan portfolio was relatively modest, ranging from approximately $5 million to approximately $20 million in total loans outstanding as of 2002. In the aggregate, the nine limited partnerships had invested in approximately 300 loans totaling $115 million.

30. The creation of REL removed the business and regulatory constraints imposed on Bar-K's loan origination business. Through pooling together the nine limited partnerships and rollover investments from individual investors who had been repaid on fractionalized loans,

REL's insiders had significant amounts of cash available to them to spend at their whim. Further, the insiders did not establish a separate trust account to keep investor contributions separate from borrower payments (via Bar-K as loan servicer), but rather commingled those funds in REL's bank accounts (as discussed below). As a result, Bar-K was able to use REL funds to originate loans more quickly than before, thereby eliminating any timing constraints to loan funding and expanding Bar-K's universe of potential borrowers.

31. In addition, Bar-K was able to expand its potential market of borrowers to include those borrowers seeking loans in excess of $20 million, loans that Bar-K previously would have been unable to fund. For example, on April 4, 2004, Bar-K closed a $28.5 million loan to All American Bottled (A0097). On January 1, 2005, Bar-K closed a $64.7 million loan (C0390) to Canyon Club. On September 5, 2005, Bar-K closed a $38.5 million loan to Aquaterra (A0106). And on April 28, 2006, Bar-K closed a $41.5 million loan to Lakeview Point Development (L0336). Bar-K would not have been able to fund these loans under its prior business model, or any of the other loans in excess of $20 million that it originated following REL's creation.

32. The dramatic increase in loan origination opportunities available to Bar-K led to massive growth in REL's loan portfolio. This growth was further catalyzed by Bar-K's shift away from the use of regulated loan funding trust accounts and third-party disbursement control entities in making loan advances and funding interest reserves to in-house funding controlled by Bar-K, B-4 Partners, and REL's insiders.

33. Under California law, Bar-K's funding trust accounts were subject to a yearly external audit. The audited financial statements for Bar-K's trust accounts reflect a precipitous decline in the use of Bar-K's funding trust account as a funding mechanism, specifically:

FUNDING TRUST	
Year Ending	**Disbursements**
July 31, 2004	$ 202,457,649.00
July 31, 2005	$ 146,961,731.00
July 31, 2006	$ 14,877,014.00
July 31, 2007	$ 12,414,106.00

This sharp decline in Bar-K's use of its trust account took placed at the same time that REL's reported level of loan originations more than doubled. Specifically, REL's audited financial statements reflect an increase in REL loan fundings from $151.8 million for the fiscal year ending December 31, 2004 to $397.1 million for the fiscal year ending December 31, 2006.

34. Bar-K's shift away from the use of its funding trust account as the primary funding mechanism for its loan originations made it much easier for Bar-K and REL's insiders to cause monies to be transferred into its loan servicing account on behalf of non-performing borrowers. With less regulatory oversight and no requirement for an independent audit of bank accounts used to fund loans, Bar-K, B-4 Partners, and the insiders were free to use cash from many different sources—e.g. new investor deposits with REL, borrower payments on other loans, fee income, etc.—in order to fund advances of "interest reserves" or otherwise make purported interest payments on behalf of borrowers. Such advances accounted for a significant portion of the rapid growth in REL's loan portfolio.

35. The shift in Bar-K's business model thus made it much easier for REL's insiders: (a) to fund very large loans, including insider loans, on short notice (and with little due diligence); and (b) to temporarily keep bad loans in a "performing" status by advancing interest to or on behalf of struggling borrowers. The latter facilitated the former by making REL's loan portfolio appear much stronger and more valuable than what it really was, thereby inducing future investors into providing the liquidity necessary to fund additional loans.

36. Bar-K, B-4 Partners, and the insiders operated with perverse incentives in using their new-found flexibility to fund as many loans as possible and to keep bad loans in a performing status. First, Bar-K collected: (a) fees and/or "commissions" in connection loan advances; and (b) servicing fees in connection with incoming purported payments of principal and interest (to the extent that such payments were made). Second, these mechanisms enabled Barney Ng to provide financing to various projects in which he held an interest, both directly through funding those projects and indirectly by growing REL's loan portfolio in order to make additional related-party loans without exceeding the permissible ratios. Third, inflating REL's growth and the quality of its loan portfolio through these mechanisms enabled the insiders to obtain the liquidity necessary to make fee generation and insider lending possible.

37. By December 31, 2006, REL's reported loan portfolio exceeded $630 million, more than double its outstanding balance of $288.7 million from just two years earlier.

D. REL's Artificial Growth and Liquidity as of Late 2006

38. REL's rapid growth, liquidity, and ability to sustain its operations depended upon significant monthly infusions of "new" cash from investors, either from investors re-investing funds from repaid loans previously originated by Bar-K, or new investors who were lured into a false sense of security by the seemingly "hot" real estate market, which appeared to generate large returns for REL's existing investors as a result of the fraudulent practices described herein. Indeed, from 2004 to 2006, REL received almost twice as much in investor contributions ($781.6 million) as it collected in principal repayments from borrowers ($408.7 million). REL's continuous need for fresh capital from investors resulted from both: (a) loan origination practices in brokering more and more large loans and/or extending loans that required significant future investor monies to fund "interest reserves" to keep even its more promising loans current; (b)

covering interest payments on problem loans through advances of "interest reserves" or otherwise, thereby generating fees for Bar-K and making REL's loan portfolio to appear much stronger than it really was; and (c) payment of significant amounts to investors as "distributions" or "withdrawals" in order to induce additional investor contributions by creating an illusion of liquidity in the underlying investment.

39. In part as a result of REL's rapid growth from 2004 to 2006, several of Bar-K's loan origination practices combined to create a significant need for additional cash from investors if REL were to remain in operation going forward:

a. First, REL originated several "bad" loans as a result of its *ad hoc* loan approval process. Specifically, REL—through its loan originator, Bar-K—funded its loans with virtually no independent appraisals of the underlying collateral or other significant underwriting work. Instead, REL relied entirely on Barney Ng to provide his personal judgment as to whether to originate particular loans. As a result, the financial analysis that typically would accompany and support a multi-million dollar loan—much less dozens of them—was completely absent.

b. Second, REL typically made loans that would require only a large balloon payment of principal at the maturity date, with interest only payments due before then. In many instances, the interest owed by the borrower was to be advanced by REL through the funding of an "interest reserve" that was to be drawn down. These interest reserves were, in some cases, to be funded through future loan advances made by REL, thereby putting additional liquidity pressure on REL.

c. Third, REL originated many loans that would not be due for up to 60 months, meaning that several years of interest needed to be provided for through REL's funding of "interest reserves." For five-year balloon loans at the 10% to 12% interest rate typically owed by REL's borrowers, such interest reserves—interest reserves often to be funded by REL through additional advances—approached the amount of principal initially advanced by REL.

d. Fourth, REL—through its loan servicer, Bar-K—extended or re-financed loans as they reached maturity and/or depleted their interest reserves. As some loans approached their maturity dates

> or exhausted their REL-funded interest reserves, Bar-K would extend the maturity date or refinance the loan with an entirely new REL-funded interest reserve (even where the additional loan documents did not require such additional interest reserve funding). As a result, despite the underperforming nature of the loan portfolio, only a relatively low percentage of loans in the portfolio became classified as non-performing or in default, thereby lulling investors into a false sense of security by making the loan portfolio appear to be much stronger than it actually was. This practice also allowed Bar-K to continue collecting management and servicing fees with respect to these troubled loans.

40. In some instances, Bar-K re-wrote loans and extended maturity dates long before the loan was actually due. For example, the Adams Canyon Ranch loan (A0107), which had a maturity date of October 1, 2007 and a principal balance of approximately $18.3 million as of December 31, 2005, was re-written during 2006 as a new loan (A0111) with a maturity date of October 1, 2008. The principal balance was also increased to more than $30 million. Similarly, the Harmony Holdings loan (H0116) was not due until November 1, 2010, but was re-written during 2006 as new loan (H0118) with a maturity date of April 1, 2011 and an increased principal balance of more than $36 million.

41. Taken together, these business practices meant that principal repayments from borrowers were both distant and uncertain, while REL faced mounting pressure to advance cash to borrowers for interest reserves or to otherwise make interest payments on behalf of borrowers. In particular, the principal balance collectable by REL within three years was relatively small in relation to its total loan portfolio at any given time. For example, as of December 31, 2003, more than $135 million of the $201 million loan portfolio was not due for another three years or more (until 2007). Similarly, as of December 31, 2005, more than $294 million of the $450 million loan portfolio was not due for another three years or more (until 2009). And even then,

collection in full on the principal remained uncertain given the lack of due diligence in originating REL's loans in the first place.

42. As a result of its rapid growth, Bar-K's shoddy loan origination practices, and the need to use funds to cover interest payments, REL experienced significant negative cash flow through its loan origination and servicing activity. From 2004 through 2006, REL funded $428.7 million more than it collected in principal payments from borrowers.

43. REL's cash flow shortfalls were made up through investor contributions. From 2004 through 2006, REL raised massive amounts of cash from investors, as follows:

Year	Contributions
2004	$228.9 million
2005	$244.1 million
2006	$308.6 million

These contributions were induced by REL's repeated emphasis on the liquidity of an investment in REL and on the strength of its loan portfolio. For example, the "About Us" section on REL's website proclaimed that the move from nine limited partnerships to REL enabled "withdrawals periodically or on a regular monthly, quarterly, annual or other basis," and that "[t]his liquidity makes the pools ideal for retirement, college, or other uses, since money can be 'parked' in the pool for a period of time and then be released quickly when the need arises."

44. To help maintain this illusion of liquidity, REL's insiders caused it to make substantial payments to REL's investors as either "distributions" or "withdrawals" as follows:

Year	Distributions/Withdrawals
2004	$113.0 million
2005	$129.2 million
2006	$177.9 million
TOTAL	$420.1 million

The $420.1 million in investor payments from 2004 to 2006 exceeded the $408.7 million in principal payments that REL actually collected from its borrowers during the same time period.

45. The $420.1 million in investor payments, moreover, were made out of commingled bank accounts in which investor contributions were also deposited. Specifically, beginning in late August 2003 and continuing through February 2005, REL's common practice was: (a) to deposit borrower payments received from Bar-K in REL's checking account at Mechanics Bank (#1365); (b) to immediately transfer such funds to REL's money market account at Mechanics Bank (#2983), where new investor contributions were deposited and commingled with the borrower payments; and (c) to transfer funds from the commingled money market account (#2983) back to the checking account (#1365) as needed in order to make payments to investors out of that account. In turn, virtually every payment that REL made to investors from August 2003 through February 2005 originated from a commingled bank account (#2983) in which new investor funds were deposited.

46. In March 2005, REL began using a new checking account at Mid-Peninsula Bank (#7700) as its primary checking account. Upon opening this account, incoming payments from borrowers (received from Bar-K as loan servicer) were commingled with new contributions from investors made into the account. From March 2005 through early 2009, this commingled account was used to make the vast majority of payments to REL's investors, except for a limited number of payments to investors with accounts at Mechanics Bank who received direct transfers out of REL's commingled money market account (#2983). Either through the new checking account (#7700) or the commingled money market account (#2983), virtually every payment REL made to investors from March 2005 through June 2007 originated from commingled accounts in which new investor funds were deposited.

47. A significant portion of the payments made to investors as purported "distributions" or "withdrawals" out of these commingled accounts were made with cash that originated (at least in part) from new investors. During 2006, for example, purported payments of interest and principal from borrowers accounted for only 38% of incoming cash that was used to pay investors from REL's checking account, with the remainder coming from new investors. Further, the actual percentage of incoming cash from borrowers was even lower than 38% given that many of the purported interest payments never came from the borrower. Rather, it was common practice for checks to be issued from REL's checking account and deposited by Bar-K, and then for Bar-K to simultaneously issue a check back to REL as a purported interest payment.

48. The Ponzi-like nature of the payments of "distributions" and "withdrawals" was never disclosed to REL's investors. Nor was it ever disclosed to investors that the liquidity of their investments with REL would depend in large part on future infusions of cash from other investors, and not monthly cash flow generated from borrower payments.

49. REL's undisclosed reliance on new investor cash to fund investor distributions and withdrawals was especially pronounced by the late 2006. As of December 31, 2006, approximately $396 million of the $630 million loan portfolio was not due until 2010 or later, and more than $540 million was not due until 2009 or later. And less than $90 million was due in the next two years (before December 31, 2008). As such, REL's liquidity going forward into 2007 and beyond was entirely dependent on substantial infusions of new capital from investors.

E. REL's Operations in Early 2007

50. In early 2007, REL was advised by its counsel to immediately stop soliciting or accepting investor contributions in order to avoid further compounding existing securities law violations. Specifically, REL had operated since its inception in violation of securities laws. REL had sold unregistered securities in violation of sections 3(a)(11) and 12(g) of the Securities

and Exchange Act of 1934 because: (a) it had solicited and sold to investors residing outside of California; (b) it had originated more than 80% of the loans on real property located outside of California; (c) it had sold securities to more than 500 investors; and (d) it had more than $10 million in assets. As a result, REL announced that it would stop taking new investor contributions on April 1, 2007. In May 2007, REL retained Greenberg Traurig LLP ("Greenberg") to assist in addressing securities law violations.

51. At the same time, REL's liquidity problems had worsened. By May 2007, REL had distributed virtually all of its cash to fund: (a) significant new loans to borrowers in early 2007; and (b) distributions to REL investors in early 2007, including some large distributions to friends and family members of REL's insiders. Yet REL had serious cash needs, including approximately $20 million in short-term loan commitments to its borrowers and continuing obligations imposed by its liberal (and unsustainable) redemption policy for investors.

52. Stripped of their ability to suck in $20 million per month in new cash from investors and saddled with a loan portfolio that would not be collectable for years (if at all), REL's insiders tried to conceal the company's liquidity problem by advancing funds from related-party investors. Starting in May 2007, the insiders caused REL to take more than $8 million in cash advances from B-4 Partners, Bar-K, Walter Ng, Barney Ng, Kelly Ng, and two affiliates (the "Insider Advances"). One of these affiliates was "Walter Ng Investors," which was designed to pool new contributions from out-of-state investors and which advanced more than $1.2 million to REL to make distributions to its investors during this time period. These advances constituted a continuation of the Ponzi-like scheme employed to make "distribution" and "withdrawal" payments to pre-existing investors in that "new" investments were used to pay

"old" investments in REL. The advances, however, could not satisfy the company's severe cash needs.

53. By the summer of 2007, REL's unsustainable and inherently doomed business was on the verge of collapse. REL faced a number of significant problems, including that:

a. REL had depleted its cash reserves and needed a line of credit to fund its loan commitments and "day to day cash needs";

b. REL did not have "sophisticated systems and internal controls," but had recently retained a former audit manager to assist in upgrading internal controls;

c. Some $122 million in REL loans (almost 17% of the portfolio) were more than 90 days past due;

d. More than 85% of the loans in REL's portfolio did not mature for another two to six years;

e. REL had stopped making new loans to borrowers;

f. REL has over $200 million in future loan commitments to existing borrowers;

g. Bar-K, as the loan servicer, had historically and was currently making payments on some non-performing loans in REL's portfolio;

h. REL's insiders were informed in March 2007 that they had been operating the company in violation of federal securities laws; and

i. Given the securities law violations, REL was advised by counsel to stop taking new investments, which the company did on or about April 1, 2007; and

j. Counsel was working with REL's insiders "on a number of options" for dealing with the securities law violations.

In short: (a) REL had stopped receiving new investments; (b) REL had stopped receiving loan repayments from a significant portion of its loan portfolio; (c) REL had little hope of receiving significant principal repayments as to other loans in its portfolio given that 85% of the portfolio did not mature for another two to six years; and (d) REL had stopped making new loans to

borrowers and, therefore, would not be receiving principal and interest repayments on future loans. At the same time, REL faced the need to fund more than $200 million in future loan commitments to its existing borrowers.

54. Although REL should have filed for bankruptcy by mid-2007, REL's inevitable collapse was delayed—to the detriment of REL and its creditors—through a three-part strategy developed by the insiders and Greenberg. First, to solve its immediate liquidity crisis, REL would enter into $50 million loan from Wells Fargo. Second, after closing that loan, REL would enter into a so-called exchange transaction designed to conceal its securities law violations from existing investors. Third, the insiders would solicit funds from investors for a new related entity, MF08, which would provide funding to REL in order to conceal its ongoing losses and to make distributions its existing investors. Together, this strategy enabled the insiders to siphon off millions of dollars in fees for Bar-K and to obtain additional advances to borrower entities affiliated with the insiders.

F. The Wells Fargo Loan

55. In early June 2007, REL's insiders met with Wells Fargo to discuss a proposed loan. On June 14, 2007, Wells Fargo prepared an internal report regarding its initial meeting with REL's insiders and its preliminary due diligence, noting a host of "issues and concerns," including:

a. REL had no credit files (*e.g.*, credit checks, financial statements, etc.) on any of its borrowers;

b. REL had no appraisals for the collateral securing the loans in its portfolio;

c. REL had other information missing from its loan files, including loans without settlement statements, a recorded deed of trust, and title insurance;

d. REL had no written policies or procedures for servicing, managing, and collecting its loans; and

e. REL was unable to provide a receivable loan roll-forward report showing anticipated loan collections in the coming months.

Wells Fargo also noted in this internal report that REL had to somehow find sufficient liquidity to fund more than $200 million in future loan commitments to its existing borrowers.

56. As it continued its due diligence, Wells Fargo prepared an internal financing memorandum dated June 25, 2007, noting the following pertinent issues:

a. REL had depleted its cash reserves and needed a line of credit to fund its loan commitments and "day to day cash needs";

b. REL did not have "sophisticated systems and internal controls," but had recently retained a former audit manager to assist in upgrading internal controls;

c. Some $122 million in REL loans (almost 17% of the portfolio) were more than 90 days past due;

d. More than 85% of the loans in REL's portfolio did not mature for another two to six years;

e. REL had stopped making new loans to borrowers;

f. Bar-K, as the loan servicer, had historically and was currently making payments on some non-performing loans in REL's portfolio;

g. REL's insiders were informed in March 2007 that they had been operating the company in violation of federal securities laws; and

h. Given the securities law violations, REL was advised by counsel to stop taking new investments, which the company did on or about April 1, 2007; and

i. Counsel was working with REL's insiders "on a number of options" for dealing with the securities law violations.

Thus, by June 2007, REL: (a) had stopped receiving new investments; (b) had stopped receiving loan repayments from a significant portion of its loan portfolio; (c) had little hope of receiving significant principal repayments as to other loans in its portfolio given that 85% of the

portfolio did not mature for another two to six years; (d) had stopped making new loans to borrowers and, therefore, would not be receiving principal and interest repayments on future loans; and (e) faced the need to fund more than $200 million in future loan commitments to its existing borrowers.

57. Despite these issues, Wells Fargo believed that the proposed loan was "conservatively structured" from the bank's perspective with only "a 20% advance rate on Eligible Loans," which were determined to be approximately $568 million of the $723 million in loans in the REL portfolio. Since Wells Fargo's proposed loan would be capped at $50 million, Wells Fargo further noted that this translated to "an effective advance rate of only 8.8%." Wells Fargo, moreover, calculated that the proposed loan (assuming only $20 million was advanced) would have an average yield of 3.29% over LIBOR, generating a projected interest margin of $637,000 annually for Wells Fargo. Finally, Wells Fargo laid out its "exit strategy" for the proposed loan as follows:

> [Wells Fargo] expects the eventual repayment of debt funded under the proposed Facility to be from the repayment of outstanding Notes through the ordinary course of business. In the event of a default, [Wells Fargo] would have the option to transfer the Notes portfolio to a new servicing agent or assume servicing of the Notes pledged as collateral. If [Wells Fargo] were required to foreclose upon the Notes Receivable pledges as collateral, [Wells Fargo] would likely sell the portfolio to a third party purchaser or service the Notes per their contractual terms to full resolution in order to repay [Wells Fargo's] principal and interest.

In other words, Wells Fargo knew that it would incur little, if any, risk in making this loan, and would reap significant fees and interest in the process. Thus, Wells Fargo approved the proposed loan to REL on or about June 25, 2007.

58. To the extent the loan was a good deal for Wells Fargo, it was a bad deal for REL. By July 2007 at the latest, REL's insiders knew to a substantial certainty that REL was doomed to fail. Specifically, they knew that:

a. REL faced a significant cash liquidity crisis, and was unable to meet its debts as they came due without questionable infusions of cash from insiders and other investors (*e.g.*, Walter Ng Investors).

b. The real estate market was collapsing, and REL's borrowers were having significant difficulty in repaying their loans. REL's borrowers were primarily developers of second-home and vacation-type residences. Many of the loans, moreover, had already been extended or re-written several times, resulting in declining loan-to-value ratios (a problem exacerbated by the declining real estate values).

c. As a result of its non-compliance with securities laws, REL was closed to new investors, and thus (i) REL would not be able to satisfy its loan funding obligations with fresh capital, and (ii) REL's failure to provide financing to its borrowers would worsen their difficulties in repaying obligations owed to REL.

d. REL's attempt to remedy its non-compliance with securities laws (discussed in more detail below) was going to add even more liquidity pressure through the incurrence of mandatory debt obligations to pay interest (as opposed to discretionary payments to its investors as equity holders under the terms of REL's governing documents).

In light of such knowledge, REL's insiders must have known to a substantial certainty that REL would not be able to meet its cash needs and satisfy its obligations going forward to note holders through cash flow generated from operations. And as equity capital would no longer be available to REL as a result of its closure to new investment, this meant to a substantial certainty that REL would only be able to sustain operations through a downward spiral of increasing debt. Indeed, REL's insiders must have known that the Wells Fargo loan would never be repaid and that the loan would cause REL's insolvency to deepen. Yet REL's insiders approved the loan transaction anyway because without a new influx of cash, REL could not continue to make payments to the insiders.

59. Moreover, REL's insiders knew that a substantial percentage of the proceeds of the loan with Wells Fargo would be used to line their pockets. On July 17, 2007, Wells Fargo entered into the Loan and Security Agreement (the "Loan Agreement") with REL and B-4 Partners. After entering into the Loan Agreement, REL immediately borrowed $43.6 million from Wells Fargo on July 17, 2007. Wells Fargo disbursed these funds as follows:

a. $20,036,773.28 was wired to B-4 Partners and used (i) to repay $8,122,490.90 in Insider Advances; and (ii) to make $11,914,282.38 in interest payments to REL investors;

b. $2,002,299.30 was wired to Greater Bay Bank to pay off a letter of credit owed by B-4 Partners; and

c. $21,335,590.46 was wired to third parties to fund REL's outstanding loan commitments to borrowers.

Thus, a major purpose of entering into the Loan Agreement, and of subjecting REL to massive debt it could never repay, was to disburse over $8.1 million to insiders. This same debt allowed the insiders to make over $11.9 million in interest payments to investors to keep REL's true financial condition hidden, keep REL out of bankruptcy, and allow the insiders' scheme to continue.

60. The initial $43.6 million in borrowing was not enough for the insiders, however. In November 2007, REL's insiders convinced Wells Fargo to increase the maximum revolver amount under the Loan Agreement from $50 million to $65 million. The insiders intended to use this additional $15 million in availability to fund another $15 million payment to Rancho Las Flores in connection with REL's refinance of its existing $40 million loan to Rancho Las Flores into a larger $80 million loan (with a corresponding increase in REL's funding obligation to Rancho Las Flores). The insiders caused REL to transfer $2,223,754.65 to Bar-K – controlled by the insiders -- as a "commission" in connection with this troubled loan on November 9, 2007.

Adding insult to injury, Bar-K then used the proceeds to pay a "bonus" to Barney Ng in the amount of $1,182,600.00 and to pay him an additional $350,000.00.

61. REL's borrowing from third-party lenders was, in itself, fraudulent, even apart from REL's woeful financial condition and the use of the proceeds of the Wells Fargo loan. REL's offering circular actually contained several representations to investors that REL would not borrow funds from third-party lenders, such as Wells Fargo. For example, the offering circular stated that REL would be capitalized only "from three sources: (1) cash subscriptions from new investors; (2) contributions of whole or fractional interests in existing mortgage loans . . . ; and (3) mergers with existing limited partnerships and limited liability companies affiliated with the Manager, whose sole assets are qualifying mortgage loans." The offering circular mentioned nothing about capitalizing REL with any long-term debt from third-party lenders. Indeed, the offering circular expressly stated that REL would not borrow operating capital from such lenders. In discussing federal income tax consequences, the offering circular assured REL's investors that their investment would not result in unrelated business taxable income, which would accrue with any third-party financing: "[S]ince [REL] will not utilize borrowed funds for the purpose of making or investing in loans, interest earned on [REL] loans should not constitute unrelated business taxable income."

62. Notwithstanding these prior representations to investors, REL's insiders caused the company to enter into the Loan Agreement in mid-2007 in order to prolong their scheme and postpone REL's inevitable collapse, thereby making it much worse for REL and its investors.

G. The Exchange Transaction

63. After entering into the Loan Agreement, REL's insiders worked closely with Greenberg to implement the Exchange Transaction in order to conceal the securities law violations discussed above from investors. Together, Greenberg and the insiders concocted the

"Exchange Transaction." In preparing for the Exchange Transaction, however, REL's insiders made additional misrepresentations to investors. In September 2007, for example, the insiders distributed a "Fund Update" that falsely represented that REL's loan portfolio was doing well and that "the growth of the Fund requires us to reorganize the Fund and the structure of your investment to achieve regulatory and operating efficiencies."

64. On October 8, 2007, REL circulated a letter and a confidential memorandum (the "Exchange Memo") to its members summarizing certain aspects of the Exchange Transaction and attaching approval ballots and a copy of the Exchange Agreement. REL's insiders made further misrepresentations in the Exchange Memo, including that the purpose of the Exchange Transaction was "meeting certain regulatory requirements" and that REL was entering into a loan with Wells Fargo to "facilitate the Fund's lending capacity during and after" the Exchange Transaction.

65. On November 1, 2007, REL's investors approved the Exchange Transaction. The Exchange Notes issued to REL's former members were secured by a second-priority lien in substantially all of REL's personal property. The security agreement for the Exchange Notes provided that the lien granted to secure the Exchange Notes would be subordinate to Wells Fargo's first-priority security interest. The Exchange Notes were due interest until December 31, 2012, at which time they would become due and payable. REL, however, stopped making interest payments on most of the Exchange Notes on September 30, 2008. With very few exceptions, no interest or principal payments were made to any noteholders after that date. As of the Petition Date, there were approximately 2,800 Exchange Notes outstanding, held by approximately 1,400 separate investors.

66. Following the Exchange Transaction, REL had more than $700 million in reported liabilities. Further, REL had over a $100 million in future funding commitments on its outstanding loans. The fair market value of REL's assets was far less than these liabilities given the troubled nature of many of the loans in its portfolio and the underlying collateral. As such, REL was balance-sheet insolvent at all times after Exchange Transaction. Moreover, the Exchange Transaction was rooted in fraud: its nature was misrepresented to investors and its purpose was to disguise REL's securities law violations so that REL could remain out of bankruptcy and so its insiders could continue to receive payments from REL and its affiliates.

H. Ongoing Ponzi-Like Activity and Other Misconduct

67. REL's insiders continued to utilize Ponzi-like transactions to meet the company's liquidity needs even after consummation of the Loan Agreement in July 2007. For example, between August and December 2007, the insiders transferred more than $4,783,000 in new investor funds from Walter Ng Investors to REL, using B-4 Partners as a pass-through entity. The table below lists these advances:

Walter Ng Investors Deposit to B-4			**B-4 Tranfer to REL**	
Date	Check #	Amount	Amount	Date Deposited
8/1/2007	978	$ 150,000.00	$ 150,000.00	8/2/2007
8/2/2007	979	$ 726,000.00	$ 726,000.00	8/2/2007
8/6/2007	980	$ 100,000.00	$ 100,000.00	8/7/2007
8/13/2007	cashiers	$ 40,000.00	$ 40,000.00	8/13/2007
8/13/2007	983	$ 250,000.00	$ 250,000.00	8/14/2007
8/17/2007	985	$ 250,000.00	$ 250,000.00	8/17/2007
8/20/2007		$ 290,000.00	$ 290,000.00	8/20/2007
8/21/2007	988	$ 547,000.00	$ 547,000.00	8/22/2007
8/28/2007	989	$ 355,000.00	$ 355,000.00	8/28/2007
9/4/2007	1003	$ 975,000.00	$ 975,000.00	9/4/2007
12/3/2007		$ 1,100,000.00	$ 1,100,000.00	12/3/2007
Total		**$ 4,783,000.00**	**$ 4,783,000.00**	

68. In October 2007, REL's insiders created MF08, a new fund whose stated purpose—like REL's stated purpose—was to use investor money to make real estate loans. In reality, MF08's true purpose was to funnel money to REL. In December 2007, the very first month of its existence, MF08 advanced more than $11 million to REL. And in January 2008, MF08 advanced more than $16 million to REL. REL's insiders caused MF08 to make these advances almost immediately after its receipt of funds from the underlying investors. The insiders utilized B-4 Partners as a pass-through entity for these advances to REL, in order to conceal this Ponzi-like activity from Wells Fargo and others. The table below lists all such advances from December 4, 2007 through March 3, 2008:

MF08 Deposit to B-4			**B-4 Tranfer to REL**	
Date	Check #	Amount	Amount	Date Deposited
12/4/2007	1000	$ 2,282,157.11	$ 2,282,157.11	12/4/2007
12/12/2007	1001	$ 2,404,911.86	$ 2,404,911.86	12/12/2007
12/14/2007	1002	$ 875,000.00		12/14/2007
12/14/2007	2003	$ 4,378,590.84	$ 5,253,590.84	12/14/2007
12/19/2007	1004	$ 1,144,874.51	$ 1,144,874.51	12/19/2007
12/20/2007	1005	$ 188,000.00	$ 188,000.00	12/20/2007
1/4/2008	1006	$ 3,500,000.00	$ 3,500,000.00	1/4/2008
1/10/2008	1008	$ 4,500,000.00		1/10/2008
1/10/2008	1007	$ 1,000,000.00	$ 5,500,000.00	1/10/2008
1/14/2008	1010	$ 5,888,664.43	$ 5,888,664.43	1/14/2008
1/30/2008	1011	$ 1,773,730.18	$ 1,773,730.18	1/30/2008
2/1/2008	1013	$ 4,609,076.64	$ 4,609,076.64	2/1/2008
2/4/2008	1014	$ 1,700,000.00	$ 1,700,000.00	2/4/2008
2/7/2008	1015	$ 1,292,430.20	$ 1,292,430.20	2/7/2008
2/13/2008	1016	$ 950,000.00	$ 950,000.00	2/13/2008
2/20/2008	1017	$ 500,000.00	$ 500,000.00	2/20/2008
2/22/2008	1018	$ 336,000.00	$ 336,000.00	2/22/2008
2/28/2008	1019	$ 600,000.00	$ 600,000.00	2/28/2008
3/3/2008	1021	$ 1,500,000.00	$ 1,500,000.00	3/3/2008
Total		**$ 39,423,435.77**	**$ 39,423,435.77**	

Each of these advances of "new" investor money was made into the bank account out of which REL made payments to "old" investors.

69. These advances violated MF08's organizational and offering documents, which generally prohibited MF08 from making or purchasing any loan in which the borrower was a related party, including REL. Yet, as of December 31, 2007, more than 90% of MF08's assets had been advanced to REL.

70. In early February 2008, Wells Fargo, through its review of REL's year-end financial statements, became aware of the advances from MF08 to REL. On February 11, 2008, Wells Fargo's counsel notified REL's counsel that this liability to MF08 was not permitted under section 7.01 of the Loan Agreement because it was not covered by an agreement subordinating the MF08 indebtedness to the Wells Fargo's line of credit.

71. By early March 2008, REL's insiders and Greenberg had devised a way to conceal these problems. As of March 3, 2008, MF08 had advanced $39.4 million to REL. To eliminate this unsecured debt, REL would "sell" three troubled loans to MF08 for in exchange for $40 million (the face amount of the loans) and would backdate those transactions to make it appear as if the sale occurred when MF08 had originally advance the cash to REL. REL transferred the three loans—the Alligator Bay, Peachtree, and T&J Development loans—to MF08 on March 11, 2008. Each of these loans was either in default or non-performing at the time.

72. Even after these backdated loan sales, REL's insiders continued to engage in Ponzi-like activity through MF08. First, from April to May 2008, the insiders caused MF08 to transfer approximately $5.6 million to REL in exchange for six non-performing or under-performing loans. Second, from April 2008 to March 2009, the insiders caused MF08 to transfer

an additional $19.5 million to REL. Rather than "selling" loans to MF08 as cash was transferred, the insiders added MF08 as an additional payee on one large non-performing loan, the Eagle Springs loan. Then, as MF08 transferred additional cash to REL, the insiders simply recorded an increase to MF08's interest in that loan.

73. In total, REL's insiders transferred $66,226,496 from MF08 to REL between December 2007 and March 2009. Thus, the insiders misappropriated more than $66.2 million from "new" investors in MF08 into the same bank account out of which REL paid "old" investors. Through the use of funds from MF08, Walter Ng Investors, and other sources to make payments to the noteholders, the insiders were able to maintain the facade of operating a legitimate business throughout late 2007 and into mid-2008. This enabled them to obtain additional investor funds to provide liquidity through MF08 and Walter Ng Investors.

74. From 2007 through mid-2008, the insiders caused REL to fully repay certain noteholders (the "Closed Account Noteholders"), including Defendants, even though the Closed Account Noteholders were not entitled to a complete redemption of their Exchange Notes upon demand. In particular, REL paid more than $22.2 million in order to fully redeem the following Closed Account Noteholders, including Defendants:

Account No.	Name	Aggregate Transfers
2EDE010	Edelen	$107,125.92
4AMA030X	Amaral	$187,178.72
4MIL085X, 4MIL090X, MIL040, MIL041, MIL042, MIL043, MIL045X, MIL091	Miller	$2,985,468.04
BAL017	Ballati	$573,076.69
BAP010, BAP011	Baptiste	$975,886.99
BRI030X	Briner	$460,646.31
CHA018X	Chamberlain	$542,416.37
CON010	Conklin	$227,628.44
ENG025	English	$183,711.24
EPS011X	Epstein	$999,948.14
FLE011X	Fletcher	$110,950.19
KRA045	Kran	$213,601.78

KWO013X	Kwong	$111,986.67
MAL022X	Mall	$470,505.71
MAL030, MAL031	Malkassian	$1,103,890.65
MAZ010	Mazaheri	$106,088.79
MOR085X	Morrison	$991,448.82
NAT015X	National Foundation	$543,832.42
NEL035X, NEL037X	Nelson	$2,482,125.78
PAR030X	Parry	$127,734.44
PEA017	Pearson	$102,627.32
PET017X	Peterson	$217,680.41
PET020	Peterson	$645,886.20
PHI026	Phillips	$273,603.43
ROTO25X	Rotunda Partners	$6,691,343.03
SCH070	Schram	$104,683.32
SHI032	Shih	$436,885.29
THO030X	Thompson	$301,009.03
Total		**$22,278,970.14**

A detailed listing of each of REL's transfers to the Closed Account Noteholders is attached hereto as Exhibit "A."

75. Each of the Closed Account Noteholders was a "net winner" on the closed Exchange Note at issue. Specifically, each of the Closed Account Noteholders had been an investor for many months or years, during which time period REL never failed to make an interest payment to its investors (through cash payments, rollovers, and/or reinvestments). In fully repaying the accounts described above, therefore, REL paid more to the Closed Account Noteholders on the given account than what had been contributed to REL in connection with that account.

76. In causing REL to make the transfers to the Closed Account Noteholders, the insiders knew that the inevitable consequence of each Transfer was to hinder, delay, or defraud REL's other creditors. Notwithstanding the certainty of this knowledge, however, the insiders nevertheless caused REL to make the transfers in order to enable them to continue to siphon funds for their benefit.

77. Following REL's entry into the Loan Agreement with Wells Fargo, REL was required to maintain a "Blocked Depository Account," referred to within the enterprise as the "Lock Box" account. Incoming payments from borrowers owed to REL were deposited in this account and then swept to Wells Fargo (as a repayment of REL's obligation to Wells Fargo). Upon explanation of the source of the deposits into the "Lock Box" and instruction, Wells Fargo then distributed the deposited proceeds as either: (a) wire transfers directly to Bar-K's checking account to the extent any commissions, loan servicing fees, and other fees were purportedly owing in connection with the lockbox deposit; and (b) loan re-advances to a special "Loan Account" maintained by B-4 Partners for loan drawdowns (account #2801). From the Loan Account, B-4 Partners then transferred re-advanced proceeds to REL and Bar-K, consistent with the purpose explained to Wells Fargo.

78. Unfortunately for REL and its creditors, the safeguards put in place through these mechanisms proved wholly inadequate to halt the continuous abuse of REL by certain of its insiders. Wells Fargo did not exercise direct control over either REL's main checking account, Bar-K's loan servicing account, or Bar-K's checking account. As such, the insiders were able to use funds from these accounts and other sources of cash at their disposal to make purported "advances" to borrowers (for purported "interest reserves" and otherwise) and to cover interest payments on behalf of borrowers. As long as the insiders had available cash, they were free to circulate funds through various channels as deposits to the "Lock Box" account (in repayment of the Wells Fargo loan) and subsequent drawdowns to B-4's "Loan Account," which served as a waypoint between such loan advances and the ultimate destination.

79. In large part as a result of their ability to move cash around in this manner, the insiders' were able to generate significant commissions and fees for Bar-K. Between August

2007 and July 2008 alone, Wells Fargo wire transferred approximately $20 million directly to Bar-K for fees and commissions that it was purportedly owed in connection with deposits made into the "Lock Box" account and new loan "advances" to pay interest and otherwise. The amount of these fees was grossly disproportionate to the amount of real payments originating directly from borrowers (rather than from advances made to borrowers or other payments made on their behalf). Further, many of these fees were incurred in connection with advances to insider-affiliated borrowers and/or payments of principal and interest made on behalf of such borrowers.

80. The payment of fees and commissions to Bar-K and advances on troubled loans and to insider-affiliated borrowers necessarily harmed REL and its creditors. Such diversion of legitimate principal and interest owed to REL for such purposes directly harmed REL's creditors by reducing the amount available for distribution to such creditors upon REL's inevitable winding down. This harm was compounded by making it more difficult for REL: (a) to satisfy its funding commitments to legitimate borrowers; (b) to make necessary expenditures to maximize the value of distressed loans and properties; and (c) to timely take remedial action against troubled borrowers kept current only as a result of interest payments made on their behalf (or additional fundings of interest reserves).

81. The desire by certain insiders to be able to continue to siphon funds in the form of illegitimate fees to Bar-K and otherwise was a motivating factor behind both: (a) the Ponzi-like scheme involving MF08; and (b) causing REL to make the transfers to the Closed Account Noteholders. First, payments to the Closed Account Noteholders maintained the façade of "business as usual," thereby enabling more unfettered control over REL's funds in order to fraudulently generate fees to Bar-K and/or to benefit insider-affiliated borrowers. Second,

payments to the Closed Account Noteholders engendered confidence in MF08's investors, many of whom were also investors in REL. Had the transfers to the Closed Account Noteholders not been made, the insiders would not have been able to siphon nearly as much cash to Bar-K and insider-affiliated borrowers during the time period in which the transfers were made. As such, each of the transfers to the Closed Account Noteholders was made in furtherance of the underlying scheme.

82. The insiders knew that causing REL to make the transfers to the Closed Account Noteholders would inevitably hinder, delay, or defraud REL's creditors. First, they knew that: (a) such transfers facilitated the their ability to skim funds to Bar-K through illegitimate fees and/or make other transfers for the benefit of the insiders and/or affiliated borrowers; and (b) this scheme harmed REL and reduced the amount available for distribution to creditors. Second, they knew that making early and complete redemptions to some investors would necessarily harm other creditors by reducing the amount available for distribution upon REL's inevitable collapse. Third, they knew that REL was inevitably doomed to fail, and that it had only persisted as long as it had on the basis of false promises of safety and liquidity.

V. CAUSES OF ACTION

Count 1: Avoidance of Fraudulent Transfers Under 11 U.S.C. § 544 and Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07(a)(1)

83. The Trustee re-alleges and hereby incorporates the foregoing allegations as though fully set forth herein.

84. The Debtor made transfers of its property by checks, wire transfers, or otherwise to Defendants (collectively, the "Transfers"), including the following:

Account	Transferee	Date	Date Cleared	Amount
EPS011X	L. Epstein c/o CCG	10/31/2007	11/6/2007	$6,000.00
EPS011X	L. Epstein c/o CCG	11/30/2007	12/5/2007	$6,000.00
EPS011X	L. Epstein c/o CCG	12/31/2007	1/3/2008	$6,000.00
EPS011X	L. Epstein	1/31/2008	2/4/2008	$6,000.00
EPS011X	L. Epstein c/o CCG	2/29/2008	3/10/2008	$6,000.00
EPS011X	L. Epstein co. CCG	3/31/2008	4/7/2008	$6,000.00
EPS011X	L Epstein c/o CCG	4/30/2008	5/12/2008	$6,000.00
EPS011X	L Epstein	6/30/2008	7/11/2008	$57,948.14
Total				**$99,948.14**

ROT025X	Rotunda Partners II, LLC	10/31/2007	11/6/2007	$40,000.00
ROT025X	Rotunda Partners II, LLC	11/30/2007	12/5/2007	$40,000.00
ROT025X	Rotunda Partners II, LLC	12/27/2007	12/31/2007	$450,000.00
ROT025X	Rotunda Partners II, LLC	12/31/2007	1/4/2008	$40,000.00
ROT025X	Rotunda Partners II, LLC	1/3/2008	1/4/2008	$300,000.00
ROT025X	Rotunda Partners II, LLC	1/10/2008	1/14/2008	$200,000.00
ROT025X	Rotunda Partners II, LLC	1/17/2008	1/22/2008	$350,000.00
ROT025X	Rotunda Partners II, LLC	1/24/2008	1/24/2008	$465,000.00
ROT025X	Rotunda Partners II, LLC	1/31/2008	2/4/2008	$40,000.00
ROT025X	Rotunda Partners II, LLC	1/31/2008	2/4/2008	$285,000.00
ROT025X	Rotunda Partners II, LLC	2/7/2008	2/11/2008	$325,000.00
ROT025X	Rotunda Partners II, LLC	2/14/2008	2/20/2008	$285,000.00
ROT025X	Rotunda Partners II, LLC	2/21/2008	2/26/2008	$340,000.00
ROT025X	Rotunda Partners II, LLC	2/28/2008	2/28/2008	$250,000.00
ROT025X	Rotunda Partners II, LLC	2/29/2008	3/10/2008	$40,000.00
ROT025X	Rotunda Partners II, LLC	3/13/2008	3/18/2008	$50,000.00
ROT025X	Rotunda Partners II, LLC	3/18/2008	3/20/2008	$100,000.00
ROT025X	Rotunda Partners II, LLC	3/27/2008	4/1/2008	$225,000.00
ROT025X	Rotunda Partners II, LLC	3/31/2008	4/7/2008	$40,000.00
ROT025X	Rotunda Partners II, LLC	4/4/2008	Wire	$75,000.00
ROT025X	Rotunda Partners II, LLC	4/17/2008	4/22/2008	$100,000.00
ROT025X	Rotunda Partners II, LLC	4/30/2008	5/12/2008	$40,000.00
ROT025X	Rotunda Partners II, LLC	5/20/2008	Wire	$2,000,000.00
ROT025X	Rotunda Partners II, LLC	5/30/2008	6/4/2008	$75,000.00
ROT025X	Rotunda Partners II, LLC	6/30/2008	7/11/2008	$36,343.03
ROT025X	Rotunda Partners II, LLC	1/16/2007	1/19/2007	$500,000.00
Total				**$6,691,343.03**

85. The Debtor made the Transfers with actual intent to hinder, delay, or defraud its then-existing and future creditors.

86. At the time of the Transfers, there was at least one or more creditors of the Debtor that held an allowable unsecured claim as of the Petition Date and could have avoided the

Transfers under applicable state law, including Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07(a)(1).

87. The fraudulent and wrongful nature of the Transfers was not and could not have reasonably been discovered by at least one or more creditors of the Debtors prior to the Petition Date or at least within one year before the Petition Date.

88. Accordingly, the Transfers should be avoided under 11 U.S.C. § 544(b)(1) and applicable state law, including California Civil Code §§ 3439.04(a)(1) and 3439.07(a)(1).

Count 2: Recovery of Avoided Transfers
Under 11 U.S.C. § 550(a)

89. The Trustee re-alleges and hereby incorporates the foregoing allegations as though fully set forth herein.

90. The Transfers are avoidable under 11 U.S.C. § 544 and applicable state law, including Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07(a)(1).

91. Defendants received the Transfers as the initial transferee, a person for whose benefit the initial transfer was made, or an immediate or mediate transferee.

92. Accordingly, the Transfers (or the value thereof) should be recovered from Defendants by the Trustee under 11 U.S.C. § 550(a).

VI. PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully requests that the Court enter judgment against Defendants as follows:

- Avoiding the Transfers as fraudulent transfers under 11 U.S.C. § 544 and applicable state law, including Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07(a)(1);

- Awarding a monetary judgment for or otherwise ordering recovery of the amount of the avoided Transfers;

- Awarding pre-judgment interest at the maximum rate allowable by law and/or equity;

- Awarding reasonable attorney's fees and costs to the extent permissible by applicable law; and

- Granting such other and further relief as may be just and proper.

Dated: September 13, 2013

Respectfully submitted,

REID COLLINS & TSAI LLP

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-and-

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